

**From Dispossession to Decolonization:
Towards a Critical Indigenous Geography of Hul'qumi'num Territory**

by

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ABSTRACT

This study examines historic and contemporary struggles over land and natural resources in Hul'qumi'num territory. This territory, located in British Columbia's southern Georgia Strait region, encompasses the aboriginal title claim of the Hul'qumi'num people, a Coast Salish group. I explore processes of colonization and dispossession during the latter half of the nineteenth century, examining how colonial ideas of civilization, law and property—backed by military force—aided in the breaching of Hul'qumi'num territorial sovereignty, leading to resettlement of this region. I document how resettlement schemes, the delineation of Indian reserves, and a large railway land grant divided the territory into two distinct and unequal spaces, an expansive space for white resettlement and a marginal space of indigenous confinement. I further show how these processes were marked by conflict and continual indigenous resistance.

I also explore contemporary efforts to resolve the land question in the territory, focusing on the Hul'qumi'num's engagement with the British Columbia treaty process. The Hul'qumi'num face many challenges in negotiating a modern comprehensive treaty, including the predominance of private land (almost 84 percent of the territory is privately held) and disagreement about how aboriginal title and Crown sovereignty can be reconciled. For the Crown, reconciliation is sought by redrawing and redefining the boundaries between indigenous and non-indigenous spaces. For the Hul'qumi'num reconciliation is sought through the sharing (with the Crown) of jurisdiction and control over territory. This latter approach, I argue, offers greater potential to support meaningful reconciliation between indigenous peoples and the Crown.

This study is positioned within the emerging subdiscipline of indigenous geography, which recognizes the importance of indigenous concerns and draws them into geography's mainstream. I argue that a 'critical indigenous geography'—an approach which recognizes distinctly indigenous conceptions of geography, documents historical geographies of colonialism and dispossession and their contemporary effects, and pays close attention to the agency of indigenous actors—offers a framework for geographers to contribute not only to the decolonization of the discipline but also to broader efforts to decolonize relations between indigenous and non-indigenous peoples in places like Canada.

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ABBREVIATIONS

AAG	Association of American Geographers
BCCTF	British Columbia Claims Task Force
BCTC	British Columbia Treaty Commission
HTG	Hul'qumi'num Treaty Group
SOI	Statement of Intent

CHAPTER 1

Introduction

On April 20th, 2007, a group of Mohawk activists from the Tyendinaga reserve near the Bay of Quinte in southeastern Ontario mounted a blockade of the main Canadian National Railway (CN) line between Kingston and Toronto. The blockade, which disrupted freight and passenger service for a day along one of the nation's busiest transport corridors, was designed to draw attention to a proposed condominium development on land claimed by the Mohawk group. Shawn Brant, acting as spokesperson for the Mohawk activists, noted that the action came on the one-year anniversary of a clash between police and protesters at Caledonia, another high profile indigenous land dispute in Ontario.¹ Speaking to reporters, Brant attributed his activism to personal experiences of deprivation and loss in indigenous communities: "I'm absolutely sick and tired of having our kids committing suicide," he told a reporter, "or drinking polluted water. I'm sick and tired of the overcrowding, the poverty, the sadness."² Brant described the rail blockade as "the first soft step of the campaign" and promised future economic disruptions.³ The story made headlines across the nation.

In late January and early February of 2008, Canadians were swept up in another headline-grabbing story about contemporary indigenous life, the tragic events on the Yellow Quill Indian reserve in rural Saskatchewan. Two young girls were dead, frozen to

¹ Caledonia, a small town in southwest Ontario, has been the focus of a long-standing land dispute between local indigenous people and the federal and provincial governments. The dispute erupted into open protest in early 2006.

² Caroline Alphonso, "I'm Sick and Tired of the Poverty, the Sadness," *Globe and Mail*, 30 June 2007.

³ Matthew Chung, "Next Target Chosen, Mohawks Warn," *Toronto Star*, 21 April 2007.

death on a bitterly cold night, reportedly abandoned by their parents who were too drunk to care for them (or themselves) properly. As the story unfolded in the media, Canadians were painted an all too familiar picture of an indigenous community in crisis. The Yellow Quill narrative had all the elements so familiar to other stories of dysfunctional indigenous communities across Canada: alcohol and drug addiction, sexual abuse and family violence, despair and suicide, parental neglect and ineptitude, loss of culture and tradition, the impacts of residential schools, poverty and unemployment, decrepit and overcrowded housing, undrinkable water, dependency on a distant federal bureaucracy, lack of capacity, failed governance and misspent funds, all neatly wrapped up in the obligatory reference to Third World living conditions. Dispatched to the scene, *Globe and Mail* columnist Christie Blatchford described a community infected with fatalism and self-loathing, a place where people were numb to the death of young children, a place where people's sense of normal was "out of whack".⁴ The image produced by Blatchford was of a place beyond the experience and understanding of most Canadians—a place literally 'beyond the pale'—leading her to conclude that indigenous issues and indigenous places in Canada should be treated by the media "as a foreign bureau, complete with foreign correspondent and travel budget."⁵

Here we have two common yet very different representations of contemporary indigenous life in Canada. The Yellow Quill story draws on one common representation,

⁴ This reading is drawn from a series of articles Blatchford penned in the *Globe and Mail* newspaper in February 2008. See: "The Fog of Self-loathing, Shame and Despair is as Thick as Smoke," 4 February 2008; "Fatalism a Cold Comfort to the Grieving Pauchays," 15 February 2008; "'Our People's 'Normal' is so Out of Whack,'" 19 February 2008; and "It is No Accident that What Happens at Yellow Quill ... Happens," 23 February 23 2008.

⁵ Christie Blatchford, "Canada's Native Reserves Deserve Foreign Correspondent Treatment," *Globe and Mail*, 2 February 2008.

that of a people and a community prostrate, subsumed by history, seemingly unable to move beyond despair and dysfunction. The blockade at Tyendinaga represents another common image, that of a people and a community on its feet, fed-up, angry, and in rebellion. In a sense you could argue that these two representations occupy polar ends of the representational spectrum of indigenous life in Canada. The differences are obvious: passive, defeated, and inward-looking in one case (Yellow Quill), active, resisting, outward-looking on the other (Tyendinaga). One need not look too far, however, to find the commonalities: poverty, unemployment, bad water, bad housing, neglect, frustration, and anger are all common features of indigenous life in Canada today. What links these stories and these places together is precisely their indigeneity, their location apart, their occupation of the margins of what we commonly think of as Canadian life. Indeed, contemporary indigenous life in this country is typically marked by its marginality in all senses of the word, spatially, politically, culturally, socio-economically.⁶

I begin this study—which examines historic and contemporary struggles over land and natural resources in Hul’qumi’num territory, a place located on the southwest coast of British Columbia—with this discussion of stories and representations from Yellow Quill and Tyendinaga for several reasons. I start with these examples in an effort to set a broader context within which the Hul’qumi’num case can be considered and understood.

⁶ Throughout this study I use a variety of terms to refer to the people who lived here (in this place now called Canada) prior to the arrival of Europeans. To refer to these people as a general category I most commonly use the term ‘indigenous’ (or ‘indigenous people’). In some cases I use the terms ‘aboriginal,’ ‘First Nation,’ ‘Native,’ or ‘Indian,’ usually when used by an author (or speaker) whose words I am citing. When referring to specific indigenous groups, I use the specific names that they have applied to themselves (e.g., ‘Tyendinaga’ or ‘Cowichan’). I use the term ‘non-indigenous’ to describe in a general way other peoples who came from other places to settle in Canada and British Columbia; on occasion I use the term ‘European’ or ‘white’ for this purpose, again primarily to follow the usage of another author or speaker.

While these representations, so dominant in the mainstream media, greatly simplify the diverse realities of contemporary indigenous life in Canada—clearly not all indigenous peoples or communities are caught up in such struggles or crises—they do serve to highlight important commonalities. As I hope to demonstrate, like the people of Yellow Quill and Tyendinaga, the Hul'qumi'num have been shoved to the margins of Canadian life. Many of the social and economic struggles facing the people of the Yellow Quill First Nation are also evident in the Hul'qumi'num case—poverty, exclusion, substance abuse, violence, and hopelessness (to name a few)—and, like the Mohawks of Tyendinaga, the Hul'qumi'num are engaged in a contemporary struggle over land, seeking to protect and recover a territory that has been, and continues to be, possessed and refashioned by people who have come to this place from somewhere else.

The Hul'qumi'num story presented here, in other words, is part of a larger set of stories about indigenous peoples in Canada: complex stories about repression, marginalization and loss, as well as about struggle, resistance and recovery. The stories about indigenous peoples in Canada are local stories, rich with details about local histories and geographies; but they are also national stories and, indeed, part of a much broader global narrative of socio-cultural, political-economic, and geographic change. These are also contested stories, told through various voices and perspectives, and they are stories that have undergone change and revision over time. In recent decades, for example, long-standing dominant narratives about indigenous peoples, and about the relationships between indigenous and non-indigenous societies, have come under more careful scrutiny (in academic and non-academic circles) resulting in the emergence of new stories and understandings. Thus, while the primary focus in this study is on this

place called ‘Hul’qumi’num territory’, I seek to contextualize this story within the broader array of indigenous struggles over land, territory, and self-determination taking place across British Columbia, Canada, and beyond. Hul’qumi’num territory, then, is my site of investigation and the starting point of my analysis, but it must be understood, I argue, within this larger context.

This emphasis on context, on emphasizing the links between local place and broader scales, is certainly not new. Indeed, here I can draw inspiration from a number of sources. One can look to what is generally considered a foundational text in political ecology, Piers Blaikie and Harold Brookfield’s *Land Degradation and Society*, for an articulation of the importance of context for understanding local problems: these authors emphasized the importance of examining local cases of land degradation “within a wide historical and geographical framework.”⁷ More recently, in their work on Clayoquot Sound, Warren Magnusson and Karena Shaw have presented a cogent and convincing argument for the importance of studying local places. Their argument focuses not so much on the need to consider the context in which conflicts in a place like Clayoquot Sound can be understood, but rather on the ways that this particular place can serve as an entry point to think through larger issues, such as global politics and broader political theories. It was the particular characteristics of Clayoquot Sound—local, small, peripheral, intensely contested, richly documented—that made it a productive site for thinking about larger problems: the global could be read, they insisted, through Clayoquot Sound.⁸

⁷ Piers Blaikie and Harold Brookfield, *Land Degradation and Society* (London and New York: Methuen, 1987), xxi.

⁸ Warren Magnusson, “Introduction: The Puzzle of the Political,” in Warren Magnusson and Karena Shaw, eds., *A Political Space: Reading the Global through Clayoquot Sound* (Montreal & Kingston: McGill-Queen’s University Press, 2002).

Geographers are, of course, well versed in such debates about scale, about the links between the local and global, and have sought to demonstrate how these spatial categories—indeed, how all kinds of space—are deeply enmeshed in each other.⁹ There is a need to move beyond the notion of places as bound and discrete entities, argues Bruce Braun, and towards an understandings of places as networked and rhizomatic, with place “rendered dialectical, constituted at the nexus of multiple material-semiotic practices.”¹⁰ Struggles over land and resources in Hul’qumi’num territory, then, are enmeshed in (and linked to) broader indigenous struggles in British Columbia, Canada, and internationally.

Key Themes: History, Violence, and Law

I also begin this study with these examples from Yellow Quill and Tyendinaga because they encompass a number of themes that are also central to the Hul’qumi’num case. Here I’d like to briefly discuss three overlapping themes that emerge and link these cases together: history, violence, and law. Questions of history are always central to contemporary indigenous struggles, whether over access to land and resources or over matters of justice and rights. In my work with indigenous groups in Canada I have been struck by the continual reference to history, and to the demand on the part of indigenous people that we pay close attention to the particular histories, and particular historical geographies, of indigenous communities and territories, and how these have shaped the contemporary problems and struggles that beset these communities. The critical point

⁹ See, for example, Doreen Massey, *For Space* (London: Sage, 2005).

¹⁰ Bruce Braun, *The Intemperate Rainforest: Nature, Culture, and Power on Canada’s West Coast* (Minneapolis: University of Minnesota Press, 2002), 26.

here, of course, is that there are very different understandings of history, and of the history of Canada, and that the understanding of history is itself an important site of struggle. What indigenous people argue, it seems to me, is that their histories have been largely unrecognized within the standard (or mainstream) histories of Canada. Particularly problematic in this respect are what Sherene Razack refers to as “white settler mythologies” or “national stories” which speak to Canada’s origins, and which enable Canadians “to think of themselves as part of a community, defining who belongs and who does not belong to the nation.”¹¹ A quintessential feature of white settler mythologies, argues Razack, is a disavowal of certain difficult and unpleasant aspects of the history of this place, namely the forceful and often violent displacement of indigenous peoples. The histories of European conquest and colonization are still often denied, she notes, “largely through the fantasy that North America was peacefully settled and not colonized.”¹²

In the British Columbia context, Daniel Clayton describes efforts to construct a “white history” of the province, a project undertaken in the late nineteenth and early twentieth centuries by a small group of prominent intellectual and political figures, the leading men of the province’s established settler society.¹³ Part of this project involved the creation of an archive, a repository of knowledge that would be available to present and future historians of British Columbia, which went hand in hand with the building of a local

¹¹ Sherene Razack, “Introduction: When Place Becomes Race,” in Sherene Razack, ed., *Race, Space, and the Law: Unmapping a White Settler Society* (Toronto: Between the Lines, 2002), 2.

¹² *Ibid.*

¹³ Clayton identifies E.W. Howay, G.M. Sproat, E.O.S. Scholefeld, and C.F. Newcombe as some of the “principal architects of a colonialist historiography of British Columbia.” Daniel W. Clayton, *Islands of Truth: The Imperial Fashioning of Vancouver Island* (Vancouver: UBC Press, 2000), 56.

master narrative, essentially a story or a myth of the white founding of this place. Drawing on the work of Michel Foucault, Clayton refers to this as the production of a “traditional history” of this place; that is, a history constructed along a narrow perspective rather than one open and attentive to a wide range of perspectives.¹⁴ This was a history comforting to the inheritors of this colonial place, Clayton writes, a history which served to consolidate a place built on shaky foundations. Part of the task of decolonization, as Razack argues, is the uncovering of this colonial history and geography, and of “the ideologies and practices of conquest and domination.”¹⁵ Decolonizing requires the recognition by Canadians that racial hierarchy and racial exclusion lie at the origins of this nation.

A second theme which emerges and links these cases is violence. Violence lies at the heart of Canada’s founding, it underlies the production of colonial and postcolonial space and runs through the history of relations between indigenous and non-indigenous societies in this country. Furthermore, violence continues to permeate relations between indigenous and non-indigenous peoples in Canada. The evidence of violence at Yellow Quill, for example, is everywhere: from the stories of residential school survivors, taken away from their families and placed in institutions specifically designed “to kill the Indian in the child”¹⁶, to the identification of domestic violence and sexual abuse as the

¹⁴ Foucault described traditional history as a “patient and continuous development” and written as a “consoling play of recognitions.” See: Michel Foucault, “Nietzsche, genealogy, history,” in *Language, Counter-memory, Practice: Selected Essays and Interviews*, ed. D. Bouchard (Ithaca, NY: Cornell University Press, 1977), 139-64; quote is from p. 153-54.

¹⁵ Razack, “Introduction: When Place Becomes Race,” 5.

¹⁶ John S. Milloy, *A National Crime: The Canadian Government and the Residential School System* (Winnipeg: University of Manitoba Press, 1999).

“core issues” affecting the community.¹⁷ A community subjected to state and institutional violence—developed by the state, the residential schools were often run by churches, and it was often priests and nuns who directly carried out the emotional, physical, and sexual abuse of indigenous children in their care—turns on itself in self-loathing and self-abuse, with violence directed at oneself and one’s family members. Another kind of violence is also evident in the case of Tyendinaga, the violence associated with processes of spatial marginalization and exclusion, with processes of territorial dispossession. Scholars of colonialism in Canada have pointed out how colonial authorities relied upon violence to achieve their fundamental aim, the taking possession of land that belonged to someone else: as Cole Harris has noted in the particular case of British Columbia, large-scale wars against indigenous people were not necessary as the selected and strategic use of brutal force (e.g., summary executions) was often enough to overcome and dissuade indigenous resistance.¹⁸ Nicholas Blomley adds to this discussion by noting that, through colonialism, “[s]pace, property, and violence were performed simultaneously.”¹⁹ As I will explore later in this study, in the colonial and postcolonial constitution of space, property regimes, and indigenous subjects, violence is also central to the Hul’qumi’num story.

This discussion of violence leads us to our third theme: law. As Blomley points out, law, at least in its modern Western form, is centrally concerned with drawing and monitoring boundaries: law creates and polices the line between what is legal and illegal,

¹⁷ Christie Blatchford, “Our People’s “Normal” Is So Out of Whack,” *Globe and Mail*, 19 February 2008.

¹⁸ Cole Harris, *The Resettlement of British Columbia: Essays on Colonialism and Geographical Change* (Vancouver: UBC Press, 1997), see particularly chapter 2.

¹⁹ Nicholas Blomley, “Law, Property and the Geography of Violence: The Frontier, the Survey, and the Grid,” *Annals of the Association of American Geographers* 93 (2003): 121-141.

right and wrong, public and private.²⁰ A nation's legal system defines the boundary between reason and violence, it constitutes an 'inside' and an 'outside': inside the boundary are law, order, reason, right, civility; outside are chaos, criminality, brute force, savagery. Critical to the operation of the legal system is this definition of a boundary, as Blomley puts it:

The construction of that which is deemed law thus rests on the definition of a violent world of nonlaw. The inscription of a frontier—which may be figurative, temporal and spatial—is integral to this process.²¹

Colonialism and state formation required the pushing back of this frontier so as to allow for the incorporation of the spaces of nonlaw, as conceived by the colonizers, into the expanding sphere of law. In places like Canada, this process is inseparable from the incorporation of indigenous territories—spaces defined as violent and chaotic, empty and disordered—into white settler territory, a space of order and property. Indigenous peoples are dispossessed of their territories and their laws are displaced. Contrary to white settler mythologies, such colonial incorporations and displacements were neither easy nor peaceful but rather were brought about and maintained through the state's use of violence. Such incorporations and displacements were also, I hope to show, not always clear or complete. Nonetheless, with the folding of law into space, through property regimes and the drawing of property lines backed by state power, Cole Harris notes, "the land system became powerfully regulative."²²

Colonial and postcolonial authorities used Western ideas of law and property, backed by the use and threat of violence and legitimated by colonial discourses about civilization

²⁰ *Ibid.*, 124.

²¹ *Ibid.*

²² Cole Harris, "The Lower Mainland, 1820-1881," in Graeme Wynn and Timothy Oke, eds., *Vancouver and Its Region* (Vancouver: University of British Columbia Press, 1993), 38-68.

and savagery, to transform indigenous space and people, effecting the displacement of indigenous systems of law and territorial governance and confining indigenous subjectivity in ways that eased its subjugation. Lest this all seem too neat and seamless, however, it is critical to emphasize the continual refusal of indigenous people to be confined and subjugated under colonialism. Powerful though it might be, colonialism is marked by “contradictions and gaps and fissures” that open up possibilities for effective resistance and subversion, even from within the frame of colonialism itself.²³ Indigenous people in Canada have proven particularly adept at using one of the key tools of colonialism, Western law, to subvert the assertion of colonial and postcolonial rule over indigenous territories and peoples, a subject I will return to later in this study.

While these broad themes—history, violence, law (and property)—weave through the core of this study, the most immediate focus of the study is on struggles over land and resources. Of the many grievances expressed by indigenous peoples in Canada, perhaps no other is as long-standing and widespread as that related to land and natural resources. From coast to coast to coast in Canada, indigenous peoples are engaged in a continual struggle to retain and regain control over lands and resources within their territories. Centuries after the first European people came to North America, the question of land remains a key friction in relations between indigenous and non-indigenous societies. Most directly, the ‘Indian land question’, as it was phrased by federal and provincial authorities during the late nineteenth and early twentieth centuries, is a question about who has ownership and use rights over land and the natural resources that the land supports. More broadly, the land question can be seen as the most obvious manifestation

²³ Braun, *The Intemperate Rainforest*, 25.

of a larger challenge; as Lloyd Barber, former Commissioner of the Indian Claims Commission, wrote in 1977:

It is clear that most Indian claims are not simple issues of contractual dispute to be resolved through conventional methods of arbitration and adjudication. They are the most visible part of the much, much more complex question of the relationship between the original inhabitants of this land and the powerful cultures which moved in upon them.²⁴

If this is the case, and I believe that Barber is correct in his assessment, then one can argue that Canada's ongoing failure to adequately deal with indigenous land claims—a recent Senate of Canada report indicated that there were almost 900 land claims awaiting examination under the federal government's specific claims program, the resolution of which (at the current rate of less than 10 claims being resolved each year) would take close to a century²⁵—clearly indicates a failure on the part of the government of Canada, and on the part of Canadians in general, to come to terms with the more difficult and complex questions about the relationship between indigenous and non-indigenous peoples within this place called Canada. After all this time, it seems, we have still not figured out how to share this grand expanse of land, and the abundant natural resources it holds, in an equitable way.

²⁴ Lloyd Barber, Commissioner on Indian Claims, *A Report: Statements and Submissions* (Ottawa: Queen's Printer, 1977), 2. Cited in: RCAP, *Report of the Royal Commission on Aboriginal Peoples: Looking Forward, Looking Back, Vol. 1* (Ottawa: Supply and Services Canada, 1996), 203.

²⁵ Canada, *Negotiation or Confrontation: It's Canada's Choice*. Final Report of the Standing Senate Committee on Aboriginal Peoples, Special Study on the Federal Specific Claims Process (Ottawa: Senate of Canada, 2006).

Struggles Over Land and Resources in Hul'qumi'num Territory

Hul'qumi'num Peoples and Territory

The word *Hul'q'umi'num* refers to the Coast Salish dialect spoken by a number of indigenous groups based on southeast Vancouver Island and the adjacent Gulf Islands. Anthropologists refer to these people as 'Island Hul'qumi'num' to distinguish them from closely-related Coast Salish peoples on British Columbia's lower mainland who speak a similar dialect (sometimes referred to as 'Halkomelem').²⁶ In the context of this study, I use the term Hul'qumi'num (or Hul'qumi'num peoples) to refer specifically to the members of six indigenous groups—the Chemainus, Cowichan, Halalt, Lake Cowichan, Lyackson, and Penelakut First Nations—who share a common language, culture, and history. These groups are linked together by strong kinship ties, and also have similar ties to other Coast Salish groups throughout the Coast Salish world (Figure 1.1).²⁷ Defined in this way, the Hul'qumi'num comprise approximately 6500 people of indigenous heritage who have identified themselves as members of one of the six groups (of First Nations) listed above. Although these groups have much in common and have united for the purposes of negotiating a treaty, they are also distinct in various ways. They vary greatly, for example, in size. Of the six groups, the Cowichan are by far the largest group, with a population of over 4000 registered members. The Chemainus are the next largest with

²⁶ Brian Thom, *Coast Salish Senses of Place: Dwelling, Meaning, Power, Property and Territory in the Coast Salish World* (PhD Dissertation, McGill University, 2006), 62-63.

²⁷ The Coast Salish world encompasses lands and waters in southwest British Columbia and northwest Washington, extending through Puget Sound, the Juan de Fuca Strait, the lower Fraser Valley, and most of Georgia Strait. Within this region there are many Coast Salish subgrouping based on differences in dialect, culture and territory. See: Laurence C. Thompson and M.D. Kinkade, "Languages," in Wayne Suttles, ed., *Handbook of North American Indians, Volume 7, Northwest Coast* (Washington: Smithsonian Institute, 1990), 33.

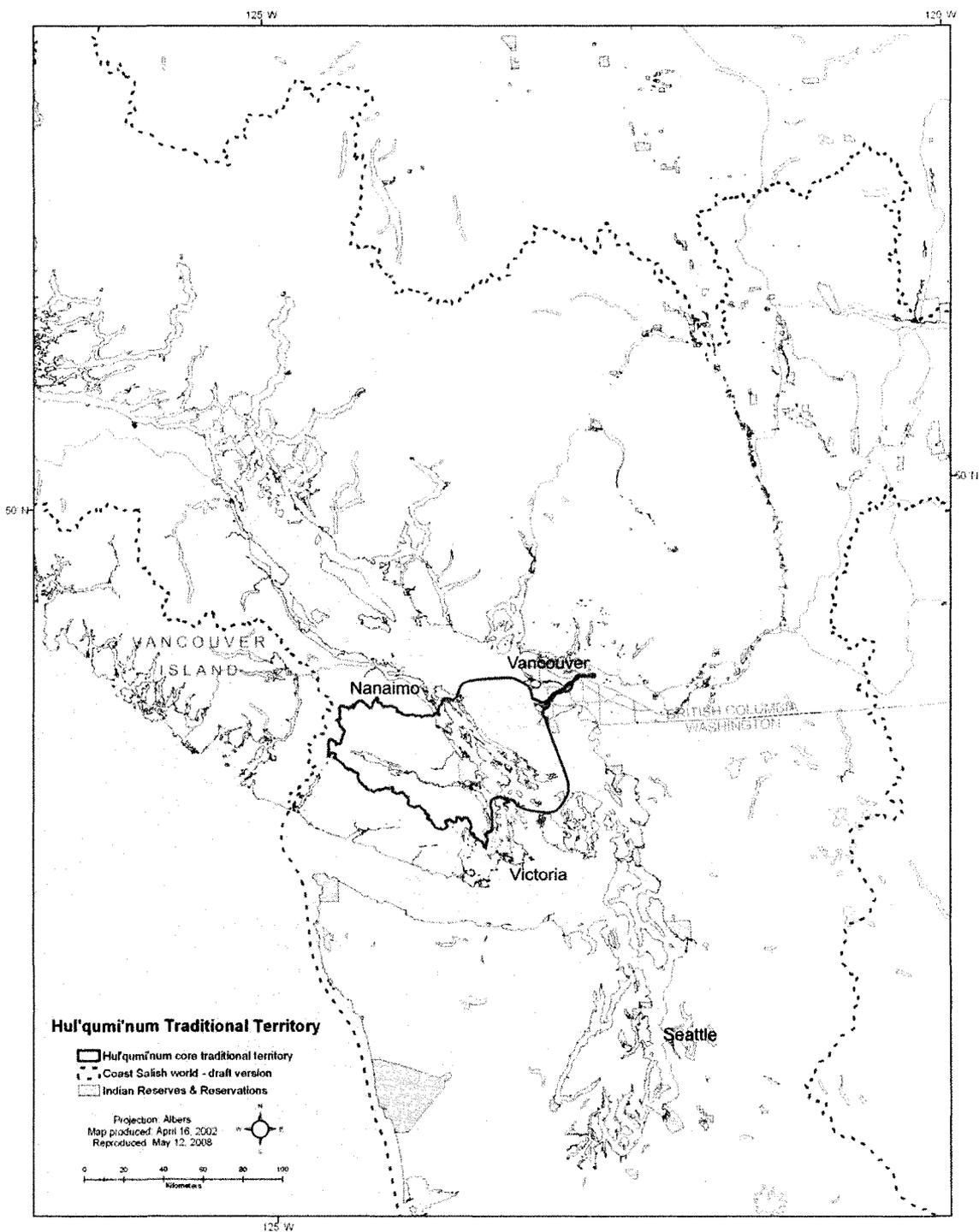


Figure 1.1: Coast Salish world in British Columbia, showing location of Hul'qumi'num territory. (Reprinted with permission of the Hul'qumi'num Treaty Group.)

more than 1110 members, followed by the Penelakut (over 800 members), the Halalt and Lyackson (about 200 members each), and the Lake Cowichan (about one dozen members).²⁸ Together, these six Hul'qumi'num groups possess 23 reserves, with a total landbase of about 5200 hectares (Figure 1.2). About 50 percent of the Hul'qumi'num membership lives on-reserve.

Treating these six groups as one social identity—the 'Hul'qumi'num' or the 'Hul'qumi'num people'—in this study, then, makes a certain amount of sense in socio-cultural (or anthropological) terms. However, it was the linking of these groups together in the early 1990s for a political purpose—to pursue treaty negotiations with Canada and British Columbia—that ultimately allowed for the identification of the Hul'qumi'num as the focus of this study. In 1993, these six indigenous groups created the Hul'qumi'num Treaty Group (HTG), an organization that was to represent their treaty interests in negotiations with the federal and provincial governments in the BC treaty process, a process created in the early 1990s to address indigenous land claims in British Columbia. Working through the HTG, these groups have identified common goals and objectives, in terms of the pursuit of a modern comprehensive treaty and, in the longer term, in the implementation of the self-governance provisions of the treaty. The Hul'qumi'num phrase *T'tst uw' hwnuts'ulwun*, meaning “working as one”, is displayed prominently on the wall in the large meeting room in the HTG offices, serving as a reminder of the broader objective of working together. However, it should be noted that this working together is not always an easy or smooth process, something that is evident even to an

²⁸ It should be understood that these groups are, to a significant degree, artificial creations of the Indian Act and the Indian Reserve system.

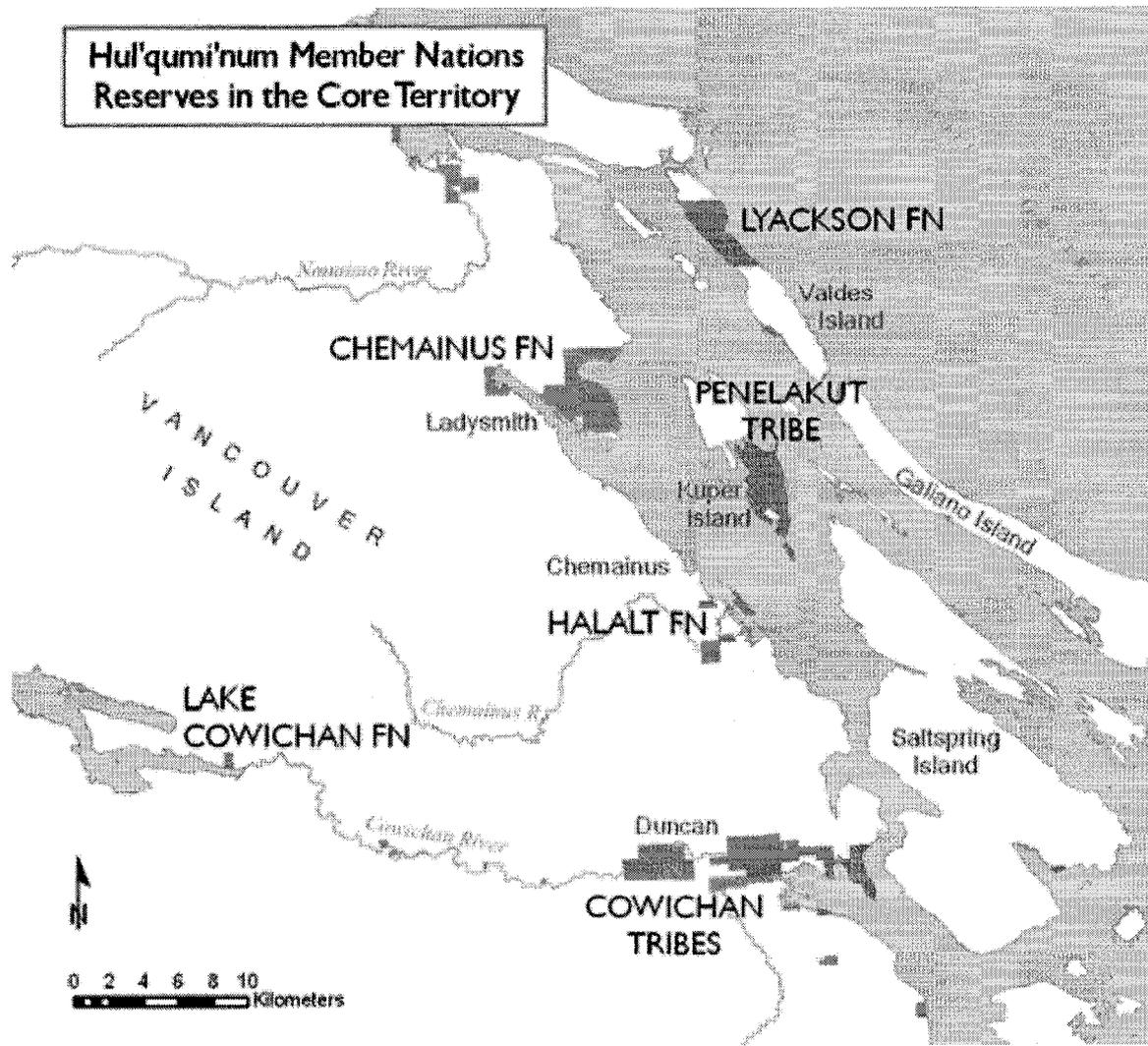


Figure 1.2: Hul'qumi'num member First Nations (FN) and Indian reserve locations. (Reprinted with permission from the Hul'qumi'num Treaty Group)

outsider (such as myself) with a limited understanding of the debates within Hul'qumi'num communities with respect to treaty issues. Treaty issues in British Columbia are highly contentious, not only in the broader public arena but also within indigenous groups themselves.

I present this discussion about the formation of this identity, the 'Hul'qumi'num people', at this point not because I wish to embark on a detailed discussion here on the nature of this identity, or to analyze the internal debates that characterize the working together of the six indigenous groups that constitute it. Rather my primary intention here is simply to recognize the complexity of this identity and make the point that the Hul'qumi'num should not be viewed as a monolithic entity: that is, like any other group brought together through a shared culture and history, and with a broadly shared political agenda, the Hul'qumi'num are also fractured along any number of social categories, including gender, age, and class. Due to the workings of colonialism, one might argue that indigenous groups have been particularly subject to fracturing. After all, as John Lutz points out, the identity "Indian" is a social construct brought into existence through colonialism.²⁹ Colonialism then worked in various ways to create or deepen divisions within indigenous communities—for example, by creating new categories embodied in law (i.e., in the *Indian Act*) such as "Indian bands" and "registered Indians"—which helped further the colonial project. Over time, of course, the category "Indian" also became a tool of resistance, a way of forging a common identity among indigenous

²⁹ John Lutz, "Making 'Indians' in British Columbia: Power, Race, and the Importance of Place," in Richard White and John Findlay, eds., *Power and Place in the North American West* (Seattle: University of Washington Press, 1999).

peoples across British Columbia and across Canada, and indeed around in the world, a common indigenous identity that stands in opposition to colonialism.³⁰

With the definition of the Hul'qumi'num as a distinct, if not monolithic, social entity came the creation of a geographically-defined Hul'qumi'num territory. For indigenous groups wishing to be part of the BC treaty process, the first step involves the preparation and submission of a "Statement of Intent" to enter into treaty negotiations with Canada and British Columbia. In addition to the definition of the indigenous group that is entering the process, the Statement of Intent (SOI) must identify that group's "traditional territory." This territory, to be submitted in the form of a simple map with the territorial boundaries marked by an unbroken line, serves to define the territorial extent of the indigenous group's claim to aboriginal title and rights.³¹ In submitting their SOI, the Hul'qumi'num identified a traditional territory encompassing some 335,000 hectares of land on southeast Vancouver Island, in the southern Gulf Islands, and along the lower reaches of the Fraser River (see Figure 1.3). As I discuss in more detail later (chapter 7), this mapping out of a Hul'qumi'num traditional territory was far from simple and straight-forward as it raised concerns, particularly among Hul'qumi'num elders, about the inscription of boundary lines between themselves and other Coast Salish groups. Such connections to other peoples and territories are tremendously important in Coast Salish

³⁰ Ronald Niezen, *The Origins of Indigenism: Human Rights and the Politics of Identity* (Berkeley: University of California Press, 2003).

³¹ The term 'aboriginal title' is key in any discussion of indigenous land claims in British Columbia. As discussed later in this study, the meaning of the term is still being elaborated through court cases and other processes. At this point, it is only important to note that aboriginal title is recognized as a specific kind of aboriginal right which confers a right to the land itself and not, for example, simply a right to use particular resources (e.g., wildlife, trees, fish) found on the land.



Figure 1.3: Landsat 7 image showing location of Hul'qumi'num traditional territory, approximately 1990. (Reprinted with permission of the Hul'qumi'num Treaty Group.)

culture, and in the act of symbolically severing those connections (in the form of a map), elders drew a parallel to colonial processes of defining Indian bands and confining these to closely delimited Indian reserves, processes which ultimately functioned to divide Coast Salish people and disperse their political and economic power. Nonetheless, the SOI map of Hul'qumi'num territory serves as the contemporary expression of the Hul'qumi'num people's claim to land and resources, as well as the primary focal point (in geographical terms) of this study.

Living in the Colonial Present

My introduction to the Hul'qumi'num people's contemporary struggle over land and resources came in 2003 when I was working as a researcher at the University of Victoria. I was leading a research project, developed in collaboration with the HTG, which was designed to gather information that would be useful to the Hul'qumi'num in their treaty negotiations. The project, referred to as a 'land selection study,' focused on an assessment of land and natural resources in Hul'qumi'num territory, the objective being to identify lands that might be suitable or attractive to the Hul'qumi'num in the negotiation of a treaty agreement. I recall attending a meeting of the HTG's land committee, a group of Hul'qumi'num chiefs and elders who worked with the treaty group staff on a variety of land issues related to treaty negotiations, shortly after the governments of Canada and British Columbia had announced the creation of a new national park in British Columbia's southern Gulf Islands. The Gulf Islands National Park Reserve, part of outgoing Prime Minister Jean Chretien's environmental legacy,³²

³² David Boyd, "The Greening of Jean Chretien," *Globe and Mail*, 21 May 2003.

would encompass 3500 hectares of land and intertidal zone as well as 2600 hectares of marine area (Figure 1.4). The press release from David Anderson's office, Canada's Environment Minister at the time, claimed that the government of Canada was "doing its part to ensure ecological integrity ... through the extension of the national parks system to include natural jewels like the Gulf Islands National Park Reserve."³³

What sticks in my mind most clearly from that meeting was the reaction of the Hul'qumi'num members of the land committee: there was outrage and dismay at the announcement of the park's creation. The reaction derived not so much from the fact that a new park had been created within their traditional territory, but rather from the fact that they had not been at all involved in the decision to create it. In fact, according to HTG staff, there had been no meaningful consultation by Parks Canada, or any other federal agency, with any of the indigenous groups whose territories encompassed any part of the newly created park.³⁴ The park was presented to the world, and to the Hul'qumi'num, as a *fait accompli*, as something beyond discussion and not subject to change. What made this announcement particularly galling was the fact that the Hul'qumi'num had, upon entering the treaty process in 1993, clearly delineated their territorial claim; the SOI map clearly showed that the southern Gulf Islands, including all of the areas that were included in the park, were well within the Hul'qumi'num territorial claim. This map had been filed with the federal and provincial governments, or at least the treaty negotiating arms of these governments, some ten years prior to the park being announced, and the

³³ Ivan Valensky, "Canada, BC Establish New Marine Reserve in Gulf Islands," *CYBER DIVER News Network*, 9 May 2003. (<http://www.cdn.info/eco/e030508/e030508.html>)

³⁴ Because of the overlap between traditional territories (a result of the fact that neighbouring groups share certain areas), at least three different indigenous groups have asserted a territorial claim to the southern Gulf Islands.

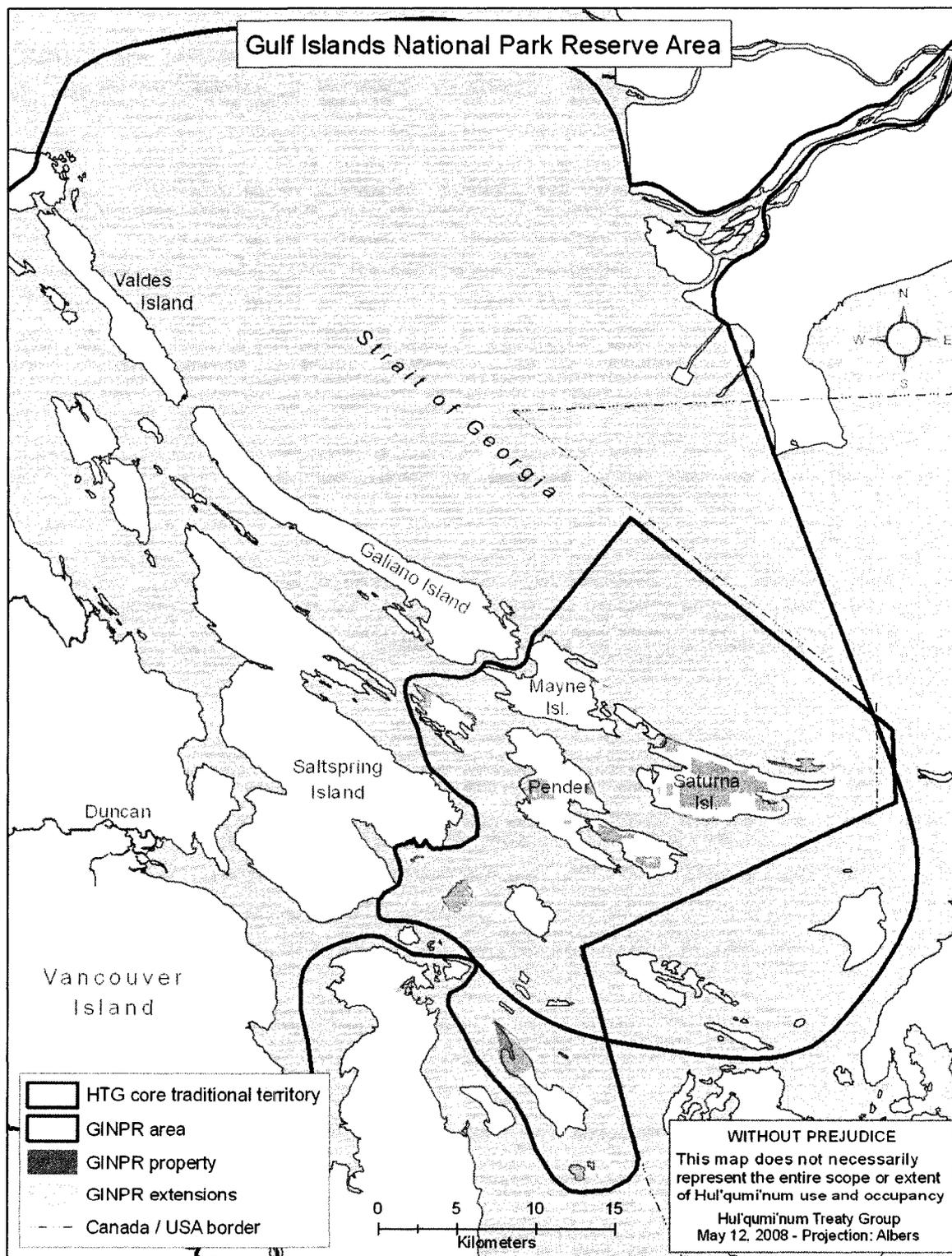


Figure 1.4: Gulf Islands National Park Reserve, showing overlap with Hul'qumi'num traditional territory. (Reprinted with permission of the Hul'qumi'num Treaty Group.)

Crown lands that were transformed into park lands in 2003 were lands that the Hul'qumi'num had been at the treaty table negotiating over for a decade. At the stroke of a pen, with the creation of the park, these lands were effectively removed from the treaty negotiations table: that is, the possibility of the Hul'qumi'num regaining full control of these lands, to be used for their own purposes, was effectively swept away.

What this example illustrates, I believe, is a fundamental disregard on the part of the federal and provincial governments for the concerns and interests of Hul'qumi'num peoples when it comes to the matter of land and territory. It demonstrates an ongoing denial of Hul'qumi'num claims and, more broadly, of all indigenous claims to aboriginal title and rights to lands and natural resources within their traditional territories. It highlights the way that non-indigenous governments have continually failed to recognize in a meaningful sense indigenous rights to land and resources, how they have failed to acknowledge the continuing existence of indigenous territories and of the ongoing connections of indigenous communities to the lands and resources within these territories. Of course, this kind of denial of aboriginal title and this failure to recognize the presence of indigenous peoples and their territorial rights is not at all new; indeed, it has long been a defining characteristic of the relationship between indigenous and non-indigenous peoples in British Columbia and Canada.

Upon hearing (through the media) of the creation of the park, the Hul'qumi'num sought a meeting with Parks Canada in order to express their concerns and make clear their claims to the area. However, as one member of the treaty group pointed out, even though the park was called the Gulf Island National Park *Reserve*, indicating that the aboriginal title question had not yet been resolved, there was no way that the park would

be un-created based on the opposition of indigenous people. Besides, he noted, expressing open opposition to the park would just make the Hul'qumi'num into environmental villains.³⁵ It should be noted that Gulf Islands park example is in no way unique: indeed, the claim and assertion of Hul'qumi'num title and rights have been repeatedly denied and overlooked. In 2002, for example, British Columbia created a provincial park (Wakes Cove Provincial Park) on Valdes Island, on land claimed by the Lyackson people, again without any meaningful consultation or consideration of the Hul'qumi'num claim.³⁶

As an outsider, a non-indigenous Canadian man who had been brought up in a middle-class suburban home but who just happened to be working with this indigenous group at that particular time, being able to observe the creation of the Gulf Island National Park and the Hul'qumi'num reaction to it was highly instructive. Like many Canadians, of course, I had a rudimentary knowledge of indigenous peoples and their land struggles and was sympathetic to their cause. However, also like many Canadians I think, I tended to see the land issue as something rooted only in the past, as something that happened “back then” in Canada’s colonial past. Yes, I knew that the issue needed to be dealt with today: the land claims of indigenous people in Canada were legitimate, stemming from injustices of the past, and they needed to be addressed today through modern treaty

³⁵ Interview with Joey Caro, Communications Director, Hul'qumi'num Treaty Group, 13 October 2006. On a more positive note, since the creation of the park the Hul'qumi'num have managed to work with staff at Parks Canada to develop an agreement that would allow for some measure of Hul'qumi'num involvement in decisions made about the development and management of the park. See: Canada and Hul'qumi'num Treaty Group, “Interim Consultation Agreement Concerning the Cooperative Planning and Management of Gulf Islands National Park Reserve,” agreement signed between the Hul'qumi'num Treaty Group and Parks Canada, 20 May 2006.

³⁶ Interview with Joey Caro, 13 October 2006.

negotiations. The fact that I was working with the treaty group while the park was created, and that I had a tiny glimpse inside at how this act affected the Hul'qumi'num people, helped me see that we had not moved much beyond deeply-rooted colonial perspectives. I began to understand that for the Hul'qumi'num, and for other indigenous peoples in Canada, colonialism had never really ended. I began to understand that we all very much still live, as Derek Gregory has put it, in the "colonial present".³⁷

The impact of the conversion of the disparate parcels of Crown land on the Gulf Islands into a national park, the effective removal of these lands from the treaty negotiation process, is exacerbated by the fact that only a small portion of Hul'qumi'num territory remains as Crown land. Today, the Hul'qumi'num live in a world and a territory where land is very much treated as "bounded units to be owned and operated for profit".³⁸ Indeed, almost 84 percent of the area identified as Hul'qumi'num traditional territory is now privately owned, thanks largely to a railway land grant made in the 1880s.³⁹ In 1887, as partial payment for the construction of a railroad from Esquimalt (near Victoria) to Nanaimo, a distance of 75 miles, the Esquimalt and Nanaimo (E&N) Railway Company was granted approximately 800,000 hectares of land on southeast Vancouver Island. This grant included approximately 268,000 hectares of land within Hul'qumi'num traditional territory, comprising virtually the entire extent of the territory that lies on Vancouver Island. Over the past 120 years, the 'E&N lands', as they came to be called, have been subject to intensive resource extraction, especially logging, and have changed hands

³⁷ Derek Gregory, *The Colonial Present* (Malden, MA: Blackwell, 2004).

³⁸ Julie Cruikshank, *The Social Life of Stories: Narratives and Knowledge in the Yukon Territory* (Lincoln: University of Nebraska Press, 1998), 16.

³⁹ Hul'qumi'num Treaty Group, *Shxunutun's Tu Suleluxwtst (In the Footsteps of our Ancestors): Interim Strategic Land Plan for the Hul'qumi'num Core Traditional Territory, 2005* (Ladysmith, BC: Hul'qumi'num Treaty Group, 2005), 19.

several times. Today, most of this land (almost 200,000 hectares) is owned by five forestry companies which manage them as private forest lands. As a result of this privatization, and the subsequent development it has supported, the Hul'qumi'num find themselves increasingly hemmed in on small reserves that were mapped out in the late nineteenth century, and which are wholly inadequate to meet the needs of the rapidly growing Hul'qumi'num population.⁴⁰

Because of privatization and development the Hul'qumi'num have lost access to most of the places they have long relied on for economic and cultural sustenance. The extent and depth of this loss of access, of this alienation of Hul'qumi'num lands and resources, has been profound. Access to fisheries and marine resources, the basis of the Hul'qumi'num economy, has been curtailed in a variety of ways: through depletion of the marine animals on which they have long depended (salmon and other fish, shellfish, marine mammals), through pollution of clam beds (and their closure to protect public health), through harvesting restrictions for conservation purposes, through fisheries regulations and licensing systems that allocate harvests to non-Hul'qumi'num and non-local individuals and companies, and through privatization of marine and beach areas (e.g., shellfish leases).⁴¹ Access to land-based resources has been similarly restricted. Access to hunting territories is made difficult because of private ownership of virtually all upland forest areas, and the tendency of private forest companies to erect gates across the roads that provide access to these areas. Similarly, access to areas traditionally used

⁴⁰ Between 1975 and 2001, the Hul'qumi'num population grew at an average annual rate of 2.1 percent. At this rate, the Hul'qumi'num population would more than double by 2043. See: Brian Egan, *Hul'qumi'num Land Selection Study. Volume I: Community Lands* (Victoria, BC: University of Victoria, Polis Project on Ecological Governance, 2003).

⁴¹ Interview with Irene Harris, Hul'qumi'num elder, 27 July 2007.

for gathering food and medicinal plants is made difficult (if not impossible) by development projects.⁴² Further, even where access to such sites is possible, often they have been altered beyond recognition by industrial development such as clearcut logging, compromising their ability to provide food or medicines for Hul'qumi'num use.⁴³

The loss of sites important for cultural and spiritual purposes is also of great concern; Hul'qumi'num members recount many stories, for example, about the disturbance of burial grounds, bathing sites, and other sacred places. There are many examples to draw on here: the digging up of an old village site and burial ground to build a luxury resort on South Pender Island in 2004⁴⁴ and the use of an old Penelakut burial grounds, at Walker Hook on Salt Spring Island, as a field for the disposal of waste from a nearby fish farm—a use approved by the government of British Columbia in 2003⁴⁵—being only the most recent and most egregious examples. In addition, through his work with Hul'qumi'num elders, anthropologist Brian Thom has documented the destruction of important bathing sites to make way for various development projects.⁴⁶ Finally, the Hul'qumi'num ability

⁴² August Sylvester, "Why Cut Down a Pharmacy," *Biodiversity Matters* (Newsletter of the Chemainus Biodiversity Education Project), Vol. 1, No. 2 (July 22, 2007). A study conducted for the HTG in 2003 indicated that Hul'qumi'num people harvest and consume far less traditional food than they desire each year, partly due to the lack of access to harvesting sites and sources. See: Karen Fediuk and Brian Thom, "Contemporary and Desired Use of Traditional Resources in a Coast Salish Community: Implications for Food Security and Aboriginal Rights in British Columbia," Paper Presented at the 26th Annual Meeting of the Society for Ethnobotany, Seattle, 27 March 2003.

⁴³ More than a century of logging has devastated the massive Douglas-fir forests that once were plentiful throughout this region; today, less than one percent of Hul'qumi'num territory is original old-growth forest. See: Robert Morales, "New Treaty, Same Old Problems," *Cultural Survival Quarterly* 30, 1 (27 March 2006).

⁴⁴ Jack Knox, "Native Bones Put Neighbours to a Test," *Times Colonist*, 5 June 2004.

⁴⁵ Stephen Hume, "Fighting to Save Ground," *Vancouver Sun*, 31 January 2004.

⁴⁶ Ritual bathing (*kw'aythut*)—which involves going into the mountains (or, in some cases, to the seashore) very early in the morning, especially in the winter, to cleanse

to gather resources important to their material culture—timber for carving, for making canoes and for construction of big houses, for example—has been greatly compromised. One Chemainus man, a specialist in carving traditional canoes, reports being unable to find logs that he can use to carry on his craft and teach younger members of the community.⁴⁷ All of this has contributed, as one member of the treaty group put it, to “the slow bleeding off” of Hul’qumi’num culture.⁴⁸

Treaty-Making in Hul’qumi’num Territory

For many Hul’qumi’num, the contemporary treaty process represents an opportunity to address this loss of access to lands and resources, and the slow bleeding off their culture.⁴⁹ A central goal for the Hul’qumi’num in entering the BC treaty process was to seek to retain and regain access to lands and resources in the territory, and to affirm their rights to be meaningfully involved in the governance of their territory and their communities. Hul’qumi’num elders were particularly clear in this respect, pointing out that since they had never ceded their land and territory—through surrender, sale, treaty or any other means—it was clear that they remained the rightful owners. The logic is simple and straight-forward: the Crown never possessed the authority, legal or ethical, to take

oneself and become strong—remains a very important aspect of Coast Salish cultural use of the landscape. Thom cites elders who describe the loss of traditional bathing sites near Ladysmith (due to the construction of a trailer park) and on Salt Spring Island (due to the establishment of a fish farm). See: Thom, *Coast Salish Senses of Place*, 153-54.

⁴⁷ Interview with Cheri Ayers, Natural Resources Manager, Hul’qumi’num Treaty Group, 21 November 2006.

⁴⁸ Interview with Katherine Johnnie, Impact Assessment Coordinator, Hul’qumi’num Treaty Group, 13 December 2006.

⁴⁹ Interview with Joey Caro, 17 January 2008. Caro notes that, in addition to the land question, the protection of language and culture was an important objective for entering the treaty process.

possession of their land and give or sell it to others. Based on this argument, the Hul'qumi'num treaty negotiators were given a clear mandate: to press for the recognition of title to 100 percent of Hul'qumi'num territory, and to gain “greater control over or compensation for lands and resources within that territory.”⁵⁰ Given the prevalence of private land in the territory, and the fact that Canada and British Columbia have insisted that private lands are not on the treaty table for negotiation, the task of “getting to 100 percent” is a difficult one.

Beyond a potential resolution of the long-standing land and resource question, the treaty process also represents an opportunity to address deeply rooted social and economic challenges faced by Hul'qumi'num communities. Like indigenous communities across Canada, the Hul'qumi'num tend to lag far behind their non-indigenous neighbours when it comes to a whole range of socio-economic indicators: they have lower incomes, are more likely to be unemployed, have lower levels of education and training, have substandard housing, suffer ill health, and die younger. Using a methodology developed by Indian and Northern Affairs Canada (INAC), in 2005 the HTG conducted a study of socio-economic “well-being” in Hul'qumi'num communities, and compared this to similar measures in non-indigenous communities in British Columbia. Using data from the 2001 Census, the study calculated a “Community Well-Being Index” (based on a number of standard socio-economic indicators) for 486 different communities in British Columbia.⁵¹ The five main Hul'qumi'num communities

⁵⁰ Hul'qumi'num Treaty Group, *Getting to 100%* (Ladysmith, BC: Hul'qumi'num Treaty Group), 2.

⁵¹ The INAC methodology assessed socio-economic well-being in Indigenous communities using a “Community Well-Being Index”. See: Mindy McHardy and Erin O'Sullivan, *First Nations Community Well-Being in Canada: The Community Well-Being*

all scored in the bottom ten percent of the ranking of BC communities in terms of community well-being: one Hul'qumi'num community (Tussie IR 6) ranked 483rd out of 486 communities, while two others (Kuper Island IR 7 and Chemainus IR 13) ranked 475th and 473rd respectively. All non-Indigenous communities located within Hul'qumi'num territory scored much higher.⁵² Many Hul'qumi'num hope that reaching agreement with Canada and British Columbia on a modern comprehensive treaty will provide some of the means to deal with some of these socio-economic challenges, including improved access to land and natural resources, stable funding for community economic development, and greater powers to manage their own affairs.

From the Hul'qumi'num perspective, however, the treaty negotiation process has to date been largely one of frustration and disappointment (as discussed in chapter 7, this is an experience shared by most indigenous groups engaged in the process). After more than a decade of negotiations, and after running up a large debt to fund their engagement in the process, the Hul'qumi'num see little hope for a meaningful settlement—that is, a settlement that would be acceptable to their communities—any time soon. While the question of private land is certainly a major stumbling block to reaching agreement with Canada and British Columbia, there are also at least a half dozen other important issues

Index (CWB), 2001 (Ottawa: Indian and Northern Affairs Canada, Strategic Research and Analysis Directorate, October 2004).

⁵² Hul'qumi'num Treaty Group, *Hul'qumi'num Treaty Group Communities and the Community Well-Being Index of Well-Being in Indian Reserves and Municipalities/Regional Districts in BC* (Ladysmith, BC: Hul'qumi'num Treaty Group, 2005). The report is available on the HTG web site: http://www.hulquminum.bc.ca/pubs/cwb_index_db_e_2001.pdf

that remain to be resolved.⁵³ A large part of the problem, according to the HTG's chief negotiator Robert Morales, is that the federal and provincial governments have not approached treaty negotiations in good faith, that they have come to the treaty table with pre-determined ideas of what a treaty should look like and they have refused to move from their positions. Morales indicates that the main parties—indigenous groups and the Crown—seem to have very different understandings of, and approaches to, the treaty process:

The treaty process is, we believe, supposed to be a nation-to-nation negotiation, and we felt that the treaties were going to reflect the needs and concerns of individual communities that were involved. But what we're finding is that government has chosen to go down a road of establishing a template, and they want all communities to basically agree to certain issues. So although we've made a substantial amount of progress in terms of some general areas, and have gone through twenty, probably twenty-two or twenty-three [treaty] chapters now, there are still some significant outstanding issues that are going to be difficult to negotiate, I believe.⁵⁴

For their part, Morales and the other Hul'qumi'num negotiators feel that they have few tools at their disposal to encourage or press federal and provincial negotiators to move away from their entrenched positions. More fundamentally, Morales argues, the lack of progress made in treaty talks reflects the difficulty in trying to overcome "150 years of policy and attitudes ... that have their basis in some pretty strong racist stereotyping."⁵⁵

For Morales, then, policies and attitudes that have their roots in British Columbia's (and Canada's) colonial history continue to shape and restrict the efforts of Hul'qumi'num people to reconnect with their ancestral lands and rebuild their communities.

⁵³ The issues of compensation (for the loss of Hul'qumi'num lands and resources) and certainty (how to achieve certainty about who owns lands and resources in the territory), for example, remain to be resolved. See: Morales, "New Treaty, Same Old Problems."

⁵⁴ Interview with Robert Morales, 21 November 2006.

⁵⁵ Interview with Robert Morales, 28 January 2008.

Study Objectives and Organization

When I first proposed this research project, I identified the broad purpose of the study as being “to examine historic and contemporary struggles over land and resources in Hul’qumi’num territory.” Over the last few years, when anyone asked me what I was researching, this phrase was always my stock reply: while this proved useful in social settings, serving to stifle any further discussion of my dissertation research and writing activities, it is too broad and descriptive for my purpose here. More precisely then, the primary objective of this project is to gain a better understanding of the processes by which Hul’qumi’num territory was transformed from a place defined by Hul’qumi’num modes of governance and control to one where the vast majority of the area was governed and controlled by non-Hul’qumi’num people. A central task here, then, is to document historic processes of colonialism and dispossession in Hul’qumi’num territory. How did colonialism work in this particular place? How exactly were the Hul’qumi’num dispossessed of their lands and resources? Also important to this project is the documentation of the role of the Hul’qumi’num in these processes. If colonization of Hul’qumi’num territory was not a matter of easy and frictionless accomplishment, how exactly did the Hul’qumi’num oppose the taking of their lands?

I believe it is important, however, not to restrict this story only to the past, as if dispossession and colonialism are somehow comfortably and irretrievably behind us. Thus, a supplementary objective of this study is to tease out some of the legacies of this colonial history in terms of how they shape the context of contemporary land and resource struggles. How do these colonial legacies constrain contemporary efforts by the Hul’qumi’num to address the injustices of the past and to regain control over a significant

portion of their territory? A key focus here is on the Hul'qumi'num's engagement with the BC treaty process, an initiative designed to address some of these colonial legacies. To what extent has the treaty process served as a vehicle for the Hul'qumi'num to achieve the kind of decolonization of their territory they ultimately seek? I also focus, more broadly, on contemporary initiatives designed to achieve reconciliation between indigenous and non-indigenous peoples, and explore the extent to which these hold promise for a coming to terms with the legacies of colonialism.

The organization of this document follows a somewhat standard format for dissertations and theses. This introduction is followed by a theory chapter, where I describe the scholarly literature and theories that I draw on in formulating answers to the broad questions set out in the previous paragraph. I have chosen to use an exploration of the notion of 'indigenous geographies', a term that is appearing with increasing frequency in the geography literature, as an entry into the various bodies of work—historical geography, postcolonial geography, political ecology, and legal geography—that I have found useful in the course of this project. Following this, the document is broken into two main parts: the first (chapters 3-6) dealing with what I refer to as historical struggles over land and resources and the second (chapters 7-8) dealing with contemporary struggles.

In chapter three, the first chapter of the historical part of the study, I seek to provide a broader context for understanding the colonization of Vancouver Island, describing the founding and early development of an English colony at Fort Victoria in the mid-nineteenth century and the forces that led to the extension of this colony into Hul'qumi'num territory. Of particular interest here are early European representations of

nature and indigeneity, the elaboration of Native-European social and economic relations during the early phase of colonization, processes of conflict and negotiation over land and resources, and the gradual imposition of colonial forms of law and order. In chapter four, I examine the first colonial intrusions into Hul'qumi'num territory. It was on the pretext of law and order, I argue, that these first intrusions took place and it was ultimately the threat and use of brute force—the deployment of soldiers and gunships, the capture and execution of indigenous prisoners—that resulted in the breaching of Hul'qumi'num sovereignty. Economic interests, the desire for land for settlement and speculative purposes and to exploit natural resources, were also central to the “opening up” of Hul'qumi'num territory for white resettlement. In chapter five, I describe the formulation and implementation of the Indian reserve system in British Columbia and the mapping out of Indian reserves in Hul'qumi'num territory. This marked the formal “cartographic incarceration” of indigenous people, a process that was facilitated in Hul'qumi'num territory through the strategic deployment of military force.⁵⁶ In chapter six I describe the origins and construction of the E&N Railway and the impacts of this project on Hul'qumi'num people and territory. The focus here is on the expropriation of land from Indian reserves to ease the passage of the rail line through indigenous communities and, more fundamentally, on the creation of the land grant which resulted in the privatization of virtually the entire Vancouver Island portion of Hul'qumi'num territory. Throughout this process, from first colonial intrusion to full privatization of the territory, I seek to emphasize the different ways that Hul'qumi'num people resisted the taking of their lands.

⁵⁶ The term ‘cartographic incarceration’ is from Braun, *The Intemperate Rainforest*, 149.

In chapters seven and eight I shift my focus to contemporary struggles over land and resources in Hul'qumi'num territory. In chapter seven I focus exclusively on the BC treaty process, tracing the origins of this process to indigenous protest and resistance in the mid-1980s, highlighting the challenges that have faced treaty negotiations in British Columbia, and documenting the failure of the process to adequately respond to the needs and concerns of most indigenous communities in the province. I explore the Hul'qumi'num experience with the treaty process, describing the issues (including the private land issue) that have resulted in glacial progress towards a treaty settlement in this territory. In chapter eight I broaden the focus to look at the concept of reconciliation, a term that has come to be central to the contemporary effort to address indigenous land claims and to develop a new relationship between indigenous and non-indigenous societies in British Columbia. I examine both the broader international context for this discourse on reconciliation as well as its particular manifestation in British Columbia and in Hul'qumi'num territory. The prevalence of 'reconciliation talk' in British Columbia can be understood, I argue, as symbolizing the desire of non-indigenous governments and peoples to move quickly and smoothly beyond the troubled past—beyond the historical injustices that characterize the formation of this place—and towards a future where indigenous and non-indigenous societies are united and living in harmony. Attractive and comforting as it might be to non-indigenous peoples, the notion of reconciliation is viewed more critically from the perspective of many indigenous people. As I learned from interviews with members of the Hul'qumi'num community, reconciliation cannot be separated from processes of recognition and restoration: recognition of aboriginal rights and title, recognition of the effects of colonial and postcolonial dispossession and

displacement, restoration of indigenous connections to land and resources, and restoration of indigenous forms of self-determination. Without such recognition and restoration, the idea of reconciliation between indigenous and non-indigenous societies in British Columbia is merely wishful thinking.

Approach, Methodology, and Methods

The notion, expressed by Christie Blatchford, that major media outlets in Canada should treat coverage of indigenous peoples and indigenous issues as “a foreign bureau, complete with foreign correspondent and travel budget” is telling.⁵⁷ For many Canadians, indigenous communities are indeed foreign territory; places and peoples seldom seen, except through the selective eyes of the mainstream media, and even less frequently visited. These are quintessentially places of “otherness” in Canada, distant, unknown, mysterious, even dangerous. Someone once said that, as a white person, it is possible to be born, grow up, and live one’s entire life in Canada without having any direct or meaningful experience of indigenous peoples and indigenous life, a statement which, given my own experience, I think is accurate. I spent my “growing up years” (elementary school, high school, first years of university) in a suburb of Vancouver, in a new subdivision hacked out of the verdant rainforest on the lower slopes of the North Shore mountains. This was in the heart of Tsleil-Waututh First Nation⁵⁸ territory, although at the time I had little sense of this. Mainly what I remember is that there was an Indian reserve along the waterfront (of Burrard Inlet) with dilapidated housing. The reserve was

⁵⁷ Blatchford, “Canada’s Native Reserves Deserve Foreign Correspondent Treatment”.

⁵⁸ This First Nation was referred to as the “Burrard Band” by Indian Affairs. For more information on the Tsleil-Waututh First Nation, see: <http://www.twnation.ca/>

bisected by one of the main highways (the Dollarton Highway) and this was really the only vantage point—a drive-by view, if you will—I had of the people that lived there. I have few memories of seeing or meeting any kids from the reserve at the local elementary or high school. I do remember once that a few boys from the reserve showed up on the grounds of the high school I attended and a fight broke out between them and some white kids at the school. These are scattered and fragmented memories, but the point is that I had little knowledge or sense that this was a place that had been long occupied by indigenous people prior to the installation of a white suburb. I am sure that the vast majority of my neighbours in that suburb had an equally poor understanding of the history of the land they had come to occupy.

With minimal direct experience of local indigenous people or places, I learned about aboriginal peoples and cultures the same way that most white Canadians of that era did, through second- or third-hand accounts presented in books, on television, and in other forms of media. Most influential in my younger years were works of popular fiction depicting adventures in the Canadian wilds in which indigenous characters usually played supporting roles, typically either as ‘noble savages’ or ‘ignoble savages’.⁵⁹ Later, nonfiction works dealing with indigenous peoples, and particularly those that explored indigenous peoples’ relationships to nature and the land as well as their struggles to reclaim their lands, helped shape my understanding of indigenous peoples and their

⁵⁹ There’s a large popular and semi-popular literature in this area, mostly by white writers. The works of Jack London, immensely popular accounts of life in the Canadian north, come to mind here. See especially: *The Call of the Wild* (published in 1903) and *White Fang* (published in 1906).

concerns.⁶⁰ Travel and volunteer work in Latin America, combined with reading about the history of colonialism and about the contemporary repression of indigenous peoples in the Americas, allowed me to develop an understanding that indigenous peoples were engaged in struggles over land and self-determination in many different parts of the world.

This study, then, has its origins in my long-standing interest in questions related to indigenous peoples and their rights to land, in British Columbia and elsewhere in the Americas, and in my experiences working with the Hul'qumi'num Treaty Group on a land selection research project during 2002 and 2003. Working on this project gave me an opportunity to learn a little about the history of colonization in Hul'qumi'num territory, a subject that captured my interest. I also learned about contemporary efforts to resolve indigenous land claims, both in Hul'qumi'num territory and more broadly in British Columbia, and developed an appetite to learn more about this process. Thus, shortly after beginning my doctoral studies (in the fall of 2004) I made the decision to shape my doctoral research project around indigenous land and resource issues in British Columbia and to make the Hul'qumi'num case a focal point of my analysis. Hoping to do research that might be of some use to the treaty group, I communicated my interest to the group and asked if there was a particular question or aspect of the land question that they needed someone work on. I met with treaty group staff in the summer of 2005 and learned that they were looking for someone to do a history of the E&N land grant, and I agreed to make this a focus of my doctoral research project.

⁶⁰ Most influential in my case were works by Farley Mowat (*People of the Deer*, 1952), Dee Brown (*Bury My Heart at Wounded Knee*, 1970), and Peter Mathiessen (*In the Spirit of Crazy Horse*, 1983).

My doctoral research project was thus shaped, to a considerable extent, by the interests of the treaty group. That is, one of the central objectives of the study—the documentation of the E&N Railway land grant, and its effect on the Hul’qumi’num people and on their struggles over land and resource—was specifically designed to address a need expressed by the treaty group. Luckily, this was a topic also of great interest to me, if for somewhat different reasons: I found it intellectually interesting, and it gave me a sense of doing something ‘useful’ and which might contribute (in some small way) to the efforts of the Hul’qumi’num to achieve justice on the land issue.⁶¹ Designing the project in this way provided certain benefits. Having the support of the treaty group, for example, facilitated access to documents; I was given access to the HTG’s library and other in-house documents, including their extensive collection of maps. It also greatly eased my access to people working inside the treaty group or otherwise involved in the Hul’qumi’num land issue, allowing me to set-up and conduct interviews with staff of the treaty group with relative ease. The treaty group also assigned one employee to assist me with interviewing Hul’qumi’num elders on the E&N land grant issue.

This project, I would argue, falls within the broad category of research labeled ‘action research’ in that it incorporates a commitment not only to social change but also to the production of knowledge that is useful to people in their everyday lives.⁶² There is even

⁶¹ Let me be clear on this last point, as I don’t want to overstate this; I see my contribution to the Hul’qumi’num’s land struggle as a small one. By a large margin, I see myself as the primary beneficiary of this project, particularly in terms of what I have learned through this work.

⁶² During the course of this project I participated (in a volunteer capacity) in several other projects which involved collaboration with the treaty group and which were designed to increase awareness and understanding of land and treaty issues in Hul’qumi’num territory

an element of participatory research practice in the project, something perceived as central to the action research approach, in that one of the objectives of the study was developed in consultation with the treaty group.⁶³ I do not claim, however, that this project lies at the more radical or transformative end of the action research spectrum, where the research project itself “empowers the people who are normally just the subjects of research, to develop their capacity to do their own research and develop their own solutions, where expertise is a resource available to all rather than a select (powerful) few.”⁶⁴ Much as I support such transformative research approaches and agendas, my claim here is much more modest: I have sought to carry out a research project which engages with one community’s particular struggle for social change, which seeks to make some contribution to that struggle, which is sensitive and responsive to the needs and concerns expressed by that community (in the formulation and implementation of the project), and which makes a commitment to share the results of the research project with that community. As Audrey Kobayashi points out, engaging in any kind of activist scholarship, whether deemed radical and transformative or more modest in approach, raises important methodological issues, including questions about objectivity and the political nature of research and knowledge production.⁶⁵

and British Columbia more broadly, including organizing a public talk by Robert Morales at the University of Victoria (in early December 2007) and providing research and writing services for the production of a small educational booklet on the E&N land grant, which was circulated within Hul’qumi’num and non-Hul’qumi’num communities.

⁶³ Peter Reason and Hilary Bradbury, *Handbook of Action Research: Participative Inquiry and Practice* (London: Sage, 2001).

⁶⁴ Sandra Kirby and Kate McKenna, *Experience, Research, Social Change: Methods from the Margins* (Toronto: Garamond, 1989), 26.

⁶⁵ Audrey Kobayashi, “Negotiating the Personal and the Political in Critical Qualitative Research,” in Melanie Limb and Claire Dwyer, eds., *Qualitative Methodologies for Geographers: Issues and Debates* (London: Arnold, 2001): 55-70.

It should be clear by this point that I do not claim any simple objectivity in undertaking this project, that I do not see myself as an impartial or neutral observer. Rather, this study is very much shaped by my desire to support what I believe to be an important and just cause, the efforts of indigenous people, and of the Hul'qumi'num in particular, to assert their rights to land and self-determination. I draw support for this approach from the work of scholars, and particularly from the work of feminist theorists, who have paid close attention to the tight links between research, knowledge production, and politics. Research is always political, such scholars argue, not only in the sense that the knowledge produced through research has political implications and effects but also in the sense of recognizing that the entire research process is politically infused.⁶⁶ In this approach the notion of the researcher as a detached and impartial observer, someone who stands back and dispassionately seeks to excavate the 'truth' from the messy world *he* surveys—Donna Haraway argues that this is a particularly masculine idea—is replaced by one that sees the researcher as embodied and situated, both within the research process and more broadly within a particular social and political context.⁶⁷ The researcher comes to the research, then, from a particular place and with a particular understanding of the world, and as such her or his views are always partial and his or her interpretations are necessarily particular. From this perspective, as Sandra Harding points out, claims to objectivity tend to obscure the political nature of research and overlook the particular perspectives of the researcher; further, such claims tend to come from the political mainstream, and can function to universalize the perspectives of dominant groups in

⁶⁶ See, for example, J.K. Gibson-Graham, "'Stuffed If I Know!': Reflections on Post-Feminist Social Research," *Gender, Place and Culture* 1 (1994): 203-224.

⁶⁷ Donna Haraway, *Simians, Cyborgs and Women: The Reinvention of Nature* (London: Free Association Books, 1991).

society, who exert considerable control over research agendas and processes, and can subjugate other knowledges.⁶⁸

Situated in a particular place within a particular society, the researcher is by extension situated within a political context, defined in a broad sense, and carries this social and political entanglement to his or her work. Given this, feminist scholars have argued that it is important for researchers to be conscious of their ‘position’ both in society and within the research process—with ‘positionality’ defined in terms of characteristics such as race, nationality, age, gender, social and economic status, and sexuality—and to consider how this might shape the research and knowledge production process.⁶⁹ Such reflection on one’s positionality, a process referred to as ‘reflexivity’ in the feminist literature, serves as “a strategy for situating knowledges” and “a means of avoiding the false neutrality and universality of so much academic knowledge.”⁷⁰ As important as it is to reflect on one’s social position, particularly in relation to others engaged in the research process, it is important to also note, as Gillian Rose points out, that the mapping out of a transparent landscape of social positions, and a transparent landscape of power, is by no means an easy or even a possible task.⁷¹ Drawing particularly on the work of Judith Butler and J.K. Gibson Graham, Rose argues that research is more properly seen as messy, complex, and constitutive, with the researcher entangled in the research process in various ways.⁷² She thus argues for a more fractured picture of the research process, of research taking place

⁶⁸ Sandra Harding, *Whose Science? Whose Knowledge?* (New York: Cornell University Press, 1991).

⁶⁹ Haraway, *Simians, Cyborgs and Women*, 193.

⁷⁰ Gillian Rose, “Situating Knowledges: Positionality, Reflexivities and Other Tactics,” *Progress in Human Geography* 21, 3 (1997): 305-320.

⁷¹ *Ibid.*, 316.

⁷² Judith Butler, *Gender Trouble* (London: Routledge, 1990); Gibson-Graham, “Stuffed If I Know!”

across a “fragmented space, webbed across with gaps in understandings, saturated with power, but also, paradoxically, with uncertainty: a fragile and fluid net of connections and gulfs.”⁷³

Carrying out research on a topic related to indigenous peoples, whether it be focused on their struggles over land and self determination or any other topic, and doing so from a position of social privilege—I am a white, male, and highly-educated Canadian of middle-class background—poses certain challenges. It raises questions, for example, about the nature of the relationship between myself and the subjects of this study, and about the division between ‘insiders’ and ‘outsiders’ in such research projects. While I would certainly be defined as an ‘insider’ when it comes to the traditional notion of Canadian society, I am viewed as an ‘outsider’ in the Hul’qumi’num context. As such, in undertaking research within Hul’qumi’num communities I found a certain amount of (understandable) wariness to my presence and intent; this was part, I would argue, of a broader wariness of ‘outsiders’ who show up in aboriginal communities with their research (and career) agendas. Having the support of the treaty group provided, to some extent, an entry ‘into’ the Hul’qumi’num context, particularly to carry out interviews with staff of the Hul’qumi’num Treaty Group and to gain access to documents and other materials that had been collected by the treaty group. Arranging for interviews with elders and other members of the Hul’qumi’num community, however, proved more challenging, as I discuss below.

Much of the foregoing discussion revolves around questions of ‘methodology’; it deals, that is, with broader questions of epistemology—how knowledge is produced and

⁷³ Rose, “Situating Knowledges,” 317.

validated, for example—and with how I understand and have sought to shape the research process, and how I see my particular role in this process.⁷⁴ Methodology incorporates questions of research practice and technique—or ‘method’—and thus it is important at this point to provide a brief description of the research methods I have used in this study and to highlight some of the challenges that I faced in carrying out this work. My exploration of the historical dimensions of the Hul’qumi’num case relies largely on standard primary and secondary sources, including early newspapers, journals, correspondence, legislation, court cases, reports by government and non-governmental bodies, maps, and published and unpublished scholarly works (see the bibliography for a detailed listing of such sources). I spent time reviewing materials in both the Library and Archives of Canada (in Ottawa) and in the British Columbia Archives (in Victoria), and also had access to historical documents that had been collected by the HTG. Overwhelmingly, these sources are products of Western thought and analysis. As historians and historical geographers of British Columbia have noted, indigenous voices are rarely recorded in these materials, and where they do appear—such as in voices of protest and resistance to colonization—they do so through Western voices and translations.⁷⁵ Thus, while these sources offer valuable glimpses into the perspectives and struggles of indigenous peoples of the time, these are very much partial and second-hand views.

⁷⁴ Keith Hoggart, Loretta Lees, and Anna Davies, *Researching Human Geography* (London: Arnold, 2002). See chapter 1.

⁷⁵ For a discussion on this question of the challenges of finding and interpreting indigenous voices in the archival record, see the review symposium on Cole Harris’ *Making Native Space*; Evelyn J. Peters, “Focus: Making Native Space: A Review Symposium,” *The Canadian Geographer* 47, 1 (2003): 75-87.

My work on contemporary land and resource struggles also relies heavily on the review and analysis of standard documentary sources, including newspapers and other media, reports by government and non-governmental organizations, scholarly and popular texts, and contemporary maps. Without doubt, such contemporary sources provide much greater, and more direct, access to indigenous voices than is the case with historical sources. Nevertheless, in an effort to hear and incorporate indigenous voices more directly into the study, I sought to interview a range of people from different Hul'qumi'num communities. I originally proposed to interview a minimum of 25 Hul'qumi'num members, with about half being elders (who I hoped would provide me with valuable insight on the historical dimensions of the study) and half being other Hul'qumi'num members, including staff from the treaty group, who were involved in contemporary land and treaty issues. While interviewing staff members of the treaty group proved relatively straight-forward and yielded much useful information, including important perspectives on the history of the land issue in the territory, I had less success in interviewing other Hul'qumi'num members. In total I was able to conduct a total of 12 interviews with seven different people (I interviewed several people more than once), including six members of the treaty group staff and one elder.

There are several reasons for my failure to interview a broader range of Hul'qumi'num members. In a number of cases—including with one elder and with three prominent (and younger) community leaders—my direct written request for an interview received no response. I can only speculate as to the reasons for this; perhaps a lack of time (indigenous leaders face many pressing demands on their time) and/or a lack of interest in a project being conducted by an 'outside' researcher. Recognizing the

challenges that face an outside researcher seeking to interview members of the community, especially elders and prominent individuals, the treaty group assigned a staff member to help me set up and conduct interviews with Hul'qumi'num members.

Although we identified a list of six or seven elders for me to interview, this process only yielded one interview (with one of the elders on the list). The reasons for the lack of success with this approach are also somewhat unclear to me, although no doubt partly due to a lack of understanding of and/or support for the project. Also, it is important to note that my effort to interview members from one of the six Hul'qumi'num First Nations, the Cowichan Tribes, was hindered by a temporary rift between that group and the treaty group. During 2007, the Cowichan—the dominant group in the Hul'qumi'num alliance, comprising about 60 percent of the Hul'qumi'num membership and having the strongest organizational capacity—made moves to withdraw itself from the Hul'qumi'num Treaty Group. Needless to say, this had serious repercussions for the future of the treaty group, calling into question its ability or suitability to represent Hul'qumi'num interests in treaty negotiations with Canada and British Columbia. While Cowichan and the treaty group sought to resolve their differences, I was asked by treaty group staff not to pursue interviews with Cowichan elders or members. By the time the rift was resolved, at the end of 2007, I had moved on to the final (writing) phase of my project.

Another challenge that arose during the project related to the ownership of the research materials that were produced during the study. Of particular concern here were audio and/or recordings of Hul'qumi'num members collected (or proposed to be collected) through interviews. In late 2006, at the start of my interview process, I

appeared before the Cowichan Tribes' Treaty Advisory Committee to describe my research project and seek their assistance in conducting interviews with Cowichan elders. Although the committee expressed general support for the project they raised questions about who would own the research materials I would produce, and indicated that I needed to address this issue. This led me back to the HTG, where I discussed this issue and worked with one of the staff members to develop a research contract between the treaty group and myself, which specified the interview protocol to be followed with Hul'qumi'num members and which clarified questions about the ownership of the research materials and knowledge produced.⁷⁶ Through this contract I agreed that the ownership of the materials produced were to remain 'inside' the group—that is, with the treaty group—which would then provide me with permission to use the materials for my own scholarly purposes.⁷⁷ Dealing with this question of ownership required some time and effort to resolve, but did not (as far as I can tell) serve as a real barrier to carrying out my research. I mention it here simply to highlight one of the challenges that 'outside' researchers might face in undertaking research in indigenous communities.

⁷⁶ Such research protocols are increasingly common in research conducted in indigenous committees. In this particular case, the primary concerns related primarily to the recording, use, and ownership of *Sxwi'em'* (a term referring to Hul'qumi'num stories, legends, myths of folklore) and customary intangible property (which encompasses special Hul'qumi'num words, phrases, rituals, ceremonies and songs, and certain forms of traditional or inherited knowledge).

⁷⁷ The contract specified that the treaty group would become the owner of the research materials produced through interviews (the original audio tape and transcript), that I could keep copies of these materials for my own scholarly and educational use, and that I would have ownership of the intellectual products I created (e.g., publications) using these materials. The contract also requires me to ensure that two copies of "all publications, conference papers and other educational and scholarly materials" that I produce (or am part of producing) are deposited with the treaty group. Appendix I contains a copy of the research contract.

The study, then, is primarily based on an analysis of standard documentary sources, augmented by a small number of interviews with Hul'qumi'num members and members of the treaty group. No doubt the study would have been enriched and broadened had I been successful in conducting a larger number of interviews with a broader cross-section of the Hul'qumi'num community. In retrospect, given the scope of the project and the time limitations I was working with, my goal to conduct a minimum of 25 interviews with Hul'qumi'num members was probably overly ambitious. This all indicates that there is much more work to be done in this area; not only in terms of more interviews to pursue but also with respect to a more thorough examination of archival and documentary sources. Indeed, as I carried out the research and as I struggled to piece together this narrative, I often felt that I was barely scratching the surface of a number of very important issues that deserved more intensive and sustained attention. This study is broad in scope, covering a complex process of geographical change over a long period of time, and in a sense serves as much to map out a broad terrain for follow up investigation as it does to clearly delineate the precise contours of this landscape.

As the foregoing discussion indicates, research is not an innocent or objective undertaking and this is clearly evident from the history of the relationship between researchers and indigenous peoples. From an indigenous perspective, argues Linda Tuhiwai Smith, research is often directly linked to the exercise and function of colonial power.⁷⁸ Smith represents an indigenous perspective on the problems with Western research and researchers as follows:

⁷⁸ Linda Tuhiwai Smith, *Decolonizing Methodologies: Research and Indigenous Peoples* (London & New York: Zed Books, 1999).

It galls us that Western researchers and intellectuals can assume to know all that it is possible to know of us, on the basis of their brief encounters with some of us. It appalls us that the West can desire, extract and claim ownership of our ways of knowing, our imagery, the things we create and produce, and then simultaneously reject the people who created and developed those ideas and seek to deny them further opportunities to be creators of their own culture, and own nations. It angers us when practices linked to the last century, and the centuries before that, are still employed to deny the validity of indigenous peoples' claim to existence, to land and territories, to the right to self-determination, to the survival of our languages and forms of cultural knowledge, to our natural resources and systems for living within our environments.⁷⁹

Smith's point is an important one. Western researchers and intellectuals can and do play a central role in the collection, production and distribution of knowledge about indigenous peoples, and thus in the ways that indigenous peoples are represented to Western audiences. These representations can and do have powerful effects—at once symbolic and material—and may serve to underwrite the colonial attitudes and projects. In this sense, research is an important site of struggle over meanings, ways of knowing, and forms of representation. Ultimately, research is tied up with the power—to frame, to dominate, to resist—that comes through the production of knowledge.

Of particular concern in this respect is the danger of straying into essentialist representations of indigenous peoples and cultures. A critical project of feminist and anti-racist scholarship has been the challenging of essentialist ideas about gender and race; that is, the rejection of the idea that gender and racial categories are absolute and pre-determined. When it comes to indigenous peoples, essentialism was key to the colonial process: portraying indigenous identity as essentially 'savage', for example, allowed for the subjugation of indigenous peoples and cultures and their social, political, and geographic marginalization. While rejecting such essentialist representations, those who see themselves as allies of contemporary indigenous struggles must be wary of producing

⁷⁹ Smith, *Decolonizing Methodologies*, 1.

or perpetuating other essentialist ideas about indigeneity, such as those that portray indigenous identity as pure or ‘traditional’ and somehow beyond the taint of capitalist modernity.⁸⁰ Such essentialist representations are unhelpful and ultimately serve to limit the range of options open to indigenous people. Also unhelpful is the failure to acknowledge the internal tensions and divisions that often characterize indigenous societies; as is the case with any social group, such internal fractures occur along various lines of social differentiation (e.g., gender, age, social and economic class, community affiliation) and typically reflect unresolved social, political and economic inequalities. Thus, while the central focus in this study is on the fracture between indigenous and non-indigenous societies, and the struggle over land between these two groups, it is important to note that each of these groups is internally divided in various ways. It is also important to recognize that, although the divisions between indigenous and non-indigenous societies are real and profound, they are not absolute; these two groups do overlap in various ways—in shared social networks, in the formation of political alliances, in commercial partnerships, in sharing public spaces—and this provides opportunities for cooperation and understanding.

Finally, it is important to point out that not all research carried out by white scholars focused on indigenous peoples and indigenous issues serves to underwrite colonial attitudes and projects. There is, I believe, an important role for white scholars working on questions related to indigenous peoples and their concerns, to contribute, for example, to a better understanding of Canada’s colonial history and geography and how the “forms of

⁸⁰ Braun, *The Intemperate Rainforest*, chapter 3.

domination set in place” at that time “continue to shape the present.”⁸¹ Indeed, indigenous people are able (and do) draw on the best of such scholarship to advance their arguments. While this may not be in any way fair or ideal—in a fair and ideal world, in a decolonized world, indigenous peoples should have no need to legitimate their claims by referencing non-indigenous sources of knowledge—it is a reality of the world we live in today. What it is important for white scholars working in this area to do, it seems to me, is to be clear about the nature and limitations of their interventions and claims. Echoing Bruce Braun’s approach, my intention with this study is to intervene in the contemporary discussion on indigenous land and treaty issues, in Hul’qumi’num territory in particular and in British Columbia more broadly. I certainly do not claim to speak here for the Hul’qumi’num or any other indigenous group. Rather, what I present here is based on my own particular perspective and interpretation, drawn from my own partial understandings of the Hul’qumi’num and their land and resource struggles, and shaped by my own personal experiences and views.

⁸¹ *Ibid.*, 23.

CHAPTER 2

Towards a Critical Indigenous Geography

In January of 2008 I was invited to attend a meeting organized by the University of Victoria's geography department to discuss how the department could strengthen its ties to indigenous geography. The impetus for this seemed to come from several sources. The meeting and discussion stemmed, in part, from a request from the university's administration, which was seeking to increase its institutional capacity for indigenous teaching and research and hoping to draw more indigenous students to the university. The idea was picked up and carried forward by a number of people in the department who had a particular interest in indigenous matters. Discussion at the meeting, attended by university faculty, staff, and students from geography and several other disciplines, as well as a small number of others (including myself) with less formal attachments to the university, ranged over a wide and varied terrain, including the relevance of geography to the study of indigenous concerns, the possible reasons for the lack of indigenous students enrolled in geography programs, the particular contribution the department could make to indigenous studies at the university, and the ways that the department could increase its capacity in indigenous geography. My general impression was that the department had not, up to that point in any case, moved very far towards an engagement with this emerging and important field and was now in a hurry to do so.

Also evident in the discussion that day, I think, was some confusion (at least in my mind, at any rate) about what exactly this thing called 'indigenous geography' was and why it might be important. Does indigenous geography simply mean a form of geography

practiced by or directly relevant to indigenous people? A good part of the discussion, for example, revolved around indigenous peoples' use of mapping technologies in the assertion of their territorial claims; a form of indigenous 'countermapping'. Or does the term refer to a broader engagement of geography and geographers with indigenous matters, however that may be defined? Was the push for indigenous geography at UVic designed primarily to make geography relevant and attractive to indigenous students, and thus boost the enrollment of indigenous students? Or was it designed to encourage the department to engage more centrally with issues of concern to indigenous communities in British Columbia and Canada, and to perhaps play a role in finding solutions to these problems? And how was UVic going to strengthen its ties to indigenous geography? By hiring a geographer of indigenous descent? By creating a course in indigenous geography? I left the meeting determined to find out more about indigenous geography and wondering: Did my own work fit into this new field called indigenous geography?

The notion that there is a distinct field of study called indigenous geography (or indigenous geographies) is a recent one, emerging only within the past decade. No doubt this emergence is due in part to an increased interest of late in indigenous peoples and their concerns within academia, and indeed more broadly within Western societies. Within geography one may trace this rising interest in the increasing attention paid to indigenous geographies at conferences and in publications. The Association of American Geographers (AAG) annual conference, for example, has featured workshops organized by the Indigenous Peoples Specialty Group (IPSG) for a number of years. For some time it seemed that these sessions were poorly attended, with those involved in them and working on indigenous issues feeling marginalized within the larger conference and

within the discipline of geography itself. There are indications that this is changing, as there has been considerably more attention in recent years focused on the work of the IPSG and on the indigenous geographies sessions organized at the AAG meetings.¹ One could argue that there has been a similar increased focus on indigenous issues in recent annual meetings held by the Canadian Association of Geographers, and in recent work by Canadian geographers. In 2000, for example, Evelyn Peters provided a review of the published literature by Canadian geographers on indigenous peoples in Canada, suggesting that while there was still a dearth of such work there was evidence that this was changing.² Since that time, it is clear that a greater number of geographers are paying attention to indigenous peoples and places within Canada.

This increased interest in indigenous geography is also evident beyond Canada's borders, and this is reflected in a growing literature in this area. If one was to identify a moment that signaled the arrival of this new field, perhaps it was the publication in 2006 of a special edition of *Geografiska Annaler* dedicated to indigenous geographies. In an introductory article to this edition, Wendy Shaw and her co-authors R.D.K Herman and G. Rebecca Dobbs briefly described geography's encounter with indigeneity and sought to characterize the new subdiscipline called indigenous geographies. Although they acknowledged the dangers of creating a kind of essentialized and binding category in which studies related to indigeneity are to be placed, they asserted that there was an explicit political aim behind the notion of indigenous geographies, that is "to recentre and

¹ Wendy S. Shaw, R.D.K. Herman, and G. Rebecca Dobbs, "Encountering Indigeneity: Re-Imagining and Decolonizing Geography," *Geografiska Annaler* B, 88, 3 (2006): 267-276.

² Evelyn J. Peters, "Aboriginal People and Canadian Geography: A Review of the Recent Literature," *The Canadian Geographer* 44, 1 (2000): 44-55.

‘reclaim’ space within the discipline for distinctively indigenous concerns.”³ A serious engagement with indigenous geographies, the authors argued, would require an opening up of geography to the consideration and appreciation of different (i.e., non-Western) ways of seeing and understanding key geographic concepts such as land, place, and territory, and thus could constitute part of an ongoing process of decolonization within the discipline.

As the foregoing indicates, one sense of the term indigenous geographies is the assertion that indigenous peoples have particular conceptions and understandings of geography, stemming from particularly indigenous senses of place. The reference here is to ‘indigenous geographies’ as worldviews: as ways of seeing and understanding that come through the close connection of indigenous peoples to the land and to particular places (e.g., sacred sites, resource-procurement areas, sovereign territories) and to other beings (animals, supernatural beings), and the sense of identity that emerges from such connections. Shaw *et al.* assert that the “meaning of land is perhaps *the* core value for indigenous peoples globally, and the key point on which ‘Western’ and indigenous worldviews have historically diverged.”⁴ This point echoes arguments made by the anthropologist Tim Ingold, who argues that indigenous peoples’ understandings of land are relational in nature: that, from an indigenous perspective, land is not a lifeless substrate but rather a lively presence or a ground from which things, including people, develop and grow. Indigenous people see themselves as coming into existence through their relation to the land, argues Ingold, as part of the larger unfolding of the world and through the daily practices and interactions with the land and the living world in which

³ Shaw *et al.*, “Encountering Indigeneity,” 267.

⁴ *Ibid.* 270.

they are situated. The difference here between Western and indigenous meanings of land, argues Ingold, is between living *on* the land and living *in* the land: the former implies occupancy while the latter implies a coming into existence in relation to the land.⁵ From this different understanding come different ideas about how humans relate to the land, including the Western idea of ‘owning’ land: the notion of property in land—land as a commodity that can be broken up into pieces and sold for profit—being a particularly Western way of viewing land.

From this description of a particularly indigenous understanding of geography, Shaw *et al.* move on to a brief sketch of the recent engagement by geographers with issues related to indigenous peoples and their concerns, noting in particular the prevalence of work drawing on ideas from postcolonial theory. In the remainder of this chapter, I propose a somewhat fuller, though still limited, examination of geography’s engagement with matters indigenous. Here I will limit my review to four subfields within geography which have been most influential to my own thinking about indigenous peoples and their land and territorial struggles: political ecology, historical geography, postcolonial geography, and legal geography. By reviewing the way that scholars working in these areas have tackled questions to do with indigenous peoples and indigenous geographies, I will also map out the broader literature within which this particular study can be situated. Given the constraints of space, such a review will necessarily be partial: thus, the focus here will be on the works—and the theories and ideas—that I draw on most directly in this dissertation, including works focused on British Columbia, the geographic focus of this study.

⁵ Tim Ingold, *The Perception of the Environment: Essays in Livelihood, Dwelling and Skill* (London and New York: Routledge, 2000).

Political Ecology: Focusing on Struggles over Land and Resources

One of my goals in undertaking doctoral studies was to read broadly in political ecology. I had used the framework provided by political ecology in my Master's studies, focusing on deforestation and conservation in Central America (and completed in the mid-1990s), and set myself the task, as I began my doctoral program, of reviewing the political ecology literature that had been published over the past decade. This proved a daunting task, as the field of political ecology had greatly expanded over this period (leading one scholar to argue that political ecology had “become firmly established as a dominant field of human-environmental research in geography”⁶) and had extended to encompass such a diversity of approaches that one leading political ecologist suggested the field had “in a sense almost dissolved itself”.⁷ Indeed, while in the early 1990s it was fairly easy to characterize the political ecology approach—the most widely accepted definition being that provided by Piers Blaikie and Harold Brookfield in their study of the relationship between land degradation and society, where political ecology was described as combining “the concerns of ecology with a broadly defined political economy”⁸—this was much less the case a decade later.

Most notable over the past decade has been the engagement of political ecologists with a broad range of social theories, in particular drawing on ideas from poststructuralism, to develop what has been referred to as a “poststructuralist political

⁶ Peter A. Walker, “Political Ecology: Where is the Ecology?” *Progress in Human Geography* 29, 1 (2005): 73-82. P. 73.

⁷ Michael Watts, “Political Ecology,” in R.J. Johnston, Derek Gregory, Geraldine Pratt, and Michael Watts, eds., *The Dictionary of Human Geography, 4th Edition* (Malden, MA: Blackwell, 2000): 590-593. Quote is from page 593.

⁸ Blaikie and Brookfield, *Land Degradation and Society*, 17.

ecology”.⁹ Peter Brosius argues that whereas the early form of political ecology (“structuralist political ecology”) takes “as its point of departure the existence of an unproblematic material/ecological base and a series of actors, differentially empowered but with clear interests, contesting the claims of others to resources in a particular ecological context”, poststructuralist political ecology is characterized by its taking “‘nature,’ as well as the identities and interests of various agents, to be both contingent and problematic”.¹⁰ Those working within the field of poststructuralist political ecology, then, integrate considerations of identity (not just social class but also race/ethnicity and gender), discourse theory, the imbrication of knowledge and power, and a more complex understanding of how nature is constructed. Indeed, it is the intersection or overlapping of these concerns—nature, identity, knowledge, power, discourse—that best defines the work of political ecologists over the past decade.¹¹

Despite the increasing dissolution of the field, it is still possible to identify some core concerns or preoccupations of those working broadly within political ecology. First, there is the recognition that ecological issues—however those are defined—are fundamentally political issues; that is, there is a common understanding that the causes of ecological problems, and thus also their solutions, are social and political in nature. Second, political ecologists are concerned with questions of “marginalization”; that is, with the fate of peoples and social groups located on the margins of society. Those on the margins typically bear most of the costs of ecological degradation, and are often identified (in

⁹ Walker, “Political Ecology.”

¹⁰ Peter J. Brosius, “Comments on Escobar,” *Current Anthropology* 40, 1 (1999): 16-17.

¹¹ For an overview of the evolution of the field of political ecology, see: Michael Watts and Richard Peet, “Liberating Political Ecology,” in: Richard Peet and Michael Watts, eds., *Liberation Ecologies: Environment, Development, Social Movements, Second Edition* (London and New York: Routledge, 2004): 3-47.

mainstream analyses) as the causes of the degradation itself. Third, while political ecologists are concerned with the local manifestations of ecological problems (e.g., land degradation or forest loss in a particular place), they seek to better understand these problems by contextualizing them within larger social, economic, and political contexts, including provincial or national policies, international capital flows, and the operation of “regional discursive formations”.¹²

As the foregoing discussion might indicate, most political ecology studies take as their starting point the identification of some ecological problem, such as deforestation or land degradation. Somewhat less common, as a starting point in any case, is the identification of a conflict over access to the environment—over access to land and natural resources, for example—although this is often where political ecology analyses lead and end up. Susanna Hecht and Alexander Cockburn’s study of the Amazon, for example, now a “classic” in the political ecology literature, begins with the global concern about Amazonian deforestation but soon shifts to its central concern, the conflicts between those seeking to “develop” the Amazon and the indigenous peoples seeking to protect and maintain some degree of control over their forest territories.¹³ At the heart of political ecology, then, there has long been a concern about struggles over land and natural resources, a struggle primarily between marginalized groups (including indigenous peoples) and the state, but also involving other groups with an interest in the fate of such

¹² Regional discursive formations serve to shape, in highly circumscribed ways, discussions and understandings of particular problems and solutions. Richard Peet and Michael Watts use the term to describe the ways that discussions of development problems and solutions “originate in, and display the effects of, certain physical, political-economic, and institutional settings.” See: Michael Watts and Richard Peet, “Liberating Political Ecology,” 16.

¹³ Susanna Hecht and Alexander Cockburn, *The Fate of the Forest: Developers, Destroyers and Defenders of the Amazon* (London and New York: Verso, 1989).

lands and resources (e.g., capital, environmental groups). My dissertation project, then, with its focus on historic and contemporary struggles over land and resources in Hul'qumi'num territory, is clearly informed by the kinds of questions that are central to the field of political ecology.

Political ecologists often explore the role of indigenous peoples in ecological or land-based struggles. For the most part, however, the concern has been on indigenous peoples in the Global South,¹⁴ a reflection of the fact that political ecology emerged as, and largely remains, a field primarily focused on the 'Third World'.¹⁵ In recent years, a number of scholars have argued that many of the themes central to political ecology studies in the Global South are also evident in the Global North and this has led to a call for the development of a distinctly "First World political ecology."¹⁶ There is an emerging political ecology literature focused on land and environmental conflicts in First World settings, though it remains rather poorly developed and little of it deals explicitly with the struggles of indigenous peoples.¹⁷ Perhaps the most notable exception here has been work more properly recognized as environmental history, but which some scholars

¹⁴ There are numerous examples here, but let me cite two which more-or-less bracket (chronologically speaking) the field: Nancy Lee Peluso, "The Political Ecology of Extraction and Extractive Reserves in East Kalimantan, Indonesia," *Development and Change* 23, 4 (1992): 49-74; Tania Murray Li, "Environment, Indigeneity and Transnationalism," in Richard Peet and Michael Watts, eds., *Liberation Ecologies: Environment, Development, Social Movements* (New York and London: Routledge, 2004).

¹⁵ Raymond L. Bryant and Sinéad Bailey, *Third World Political Ecology* (London and New York: Routledge, 1997).

¹⁶ James McCarthy, "First World Political Ecology: Lessons from the Wise Use Movement," *Environment and Planning A* 34 (2002): 1281-1302.

¹⁷ Peter Walker, "Reconsidering 'Regional' Political Ecology: Towards a Political Ecology of the American West," *Progress in Human Geography* 27, 1 (2003): 7-24.

locate within a broadly defined political ecology,¹⁸ that has called into question common contemporary perceptions of nature and wilderness in North America, tracing these back in time to uncover their social production. The work of William Cronon is particularly important here, in his detailed tracing of ecological and social change in colonial New England¹⁹ and in his exploration of the creation of an iconic wilderness in the American West, something that required the removal—in physical and symbolic terms—of the indigenous people who lived in these places.²⁰ The removal of the Blackfoot and other indigenous groups from a territory that was destined to become one of America's most celebrated “wilderness” landscapes, Glacier National Park, highlights the fact that “uninhabited wilderness had to be created before it could be preserved.”²¹

Evelyn Peters has commented on the poor representation of indigenous people and indigenous concerns in Canadian geography; here she was referring to the lack of students and faculty of indigenous descent in geography departments around the country, to the relative absence of material dealing with indigenous issues within existing geography textbooks, and to the paucity of published work by geographers on indigenous matters in Canada.²² When one narrows the focus of inquiry somewhat further and looks only at the studies which examine the contemporary struggles of indigenous peoples over

¹⁸ Watts and Peet (“Liberating Political Ecology,” 15-16) argue that the work of environmental historians provides “much needed historical depth to political ecology”.

¹⁹ William Cronon, *Changes in the Land: Indians, Colonists, and the Ecology of New England* (New York: Hill and Wang, 1983).

²⁰ William Cronon, “The Trouble with Wilderness; or, Getting Back to the Wrong Nature,” in William Cronon, ed., *Uncommon Ground: Rethinking the Human Place in Nature* (New York: Norton, 1996).

²¹ Mark D. Spence, *Dispossessing the Wilderness: Indian Removal and the Making of the National Parks* (Oxford: Oxford University Press, 1999), 4.

²² Evelyn J. Peters, “Suzanne MacKenzie Memorial Lecture: Conceptually Unclad: Feminist Geography and Aboriginal Peoples,” *The Canadian Geographer* 48, 3 (2004): 251-265.

land and resources in Canada, and which draw specifically on ideas from political ecology, or indeed from any other critical geography perspectives, the picture becomes even more bleak.²³ Given the high profile nature of contemporary indigenous land claims and disputes, the ubiquity of such conflicts (they occur across virtually the entire country), and the importance such matters hold not only for indigenous communities but for all Canadians, the paucity of work by geographers is surprising and lamentable. This lack is even more puzzling when one considers the deeply geographical nature of indigenous land struggles; that is, they often incorporate matters that are central to the discipline, including questions of space and place, environmental management and sustainability (in its broadest sense), identity and nation, territory and the nation-state, mapping and the representation of nature.

It is important to note here that a considerable amount of the work that has been done in this area has focused on British Columbia, perhaps a reflection of the fact that indigenous land claims and disputes in this province have drawn a great deal of public attention over the past few decades. With respect to a political ecology perspective, however, the most impressive work here has come from scholars in other fields, notably in political science.²⁴ From a geography perspective, the best critical work on contemporary indigenous land struggles draws not so much from political ecology as from postcolonial theory; I'm referring here in particular to the work of Bruce Braun and Matthew Sparke, discussed later in this chapter. There is also an important body of work

²³ From a national perspective one can point to the work of Peter Usher on contemporary indigenous land claims, but there is little else of note from the discipline of geography. See: Peter Usher, "Environment, Race and Nation Reconsidered: Reflections on Aboriginal Land Claims in Canada," *The Canadian Geographer* 47, 4 (2003): 365-382.

²⁴ In particular, see the edited volume by Magnusson and Shaw, *A Political Space*.

on the historical geographies of indigenous land struggles in British Columbia, also discussed later. This is not to say that there are no published works on contemporary indigenous struggles over land by geographers that draw on ideas from political ecology; there are a small number of papers that do, including important contributions by Alex Clapp, Roger Hayter, Soren Larsen, David Rossiter, and Patricia Wood.²⁵ Rather, the point I'm trying to make here is that there is the scope and the need for much more work from a geographical political ecology perspective on contemporary indigenous land struggles in Canada, and indeed in the Global North. As Roger Hayter notes in a recent article on forestry conflicts in British Columbia, the rural space of the province is currently undergoing a highly contested remapping process, with one of the "wannabe remappers" (as he puts it) being indigenous people²⁶; this fundamental reshaping of the province, involving questions to do with the struggles of a long-marginalized group, with the attempt more broadly to address historical injustices, and requiring the consideration of multi-scalar political-economic forces, provides much fodder for geographical and political ecological analysis. There is a need, one might say, to develop a distinctively 'Fourth World' political ecology.

²⁵ Roger Clapp, "Wilderness Ethics and Political Ecology: Remapping the Great Bear Rainforest," *Political Geography* 23 (2004): 839-862; Roger Hayter, "The War in the Woods: Post-Fordist Restructuring, Globalization and the Contested Remapping of British Columbia's Forest Economy," *Annals of the Association of American Geographers* 93, 3 (2003): 706-729; Soren Larsen, "Promoting Aboriginal Territoriality through Interethnic Alliances: The Case of the Cheslatta T'en in Northern British Columbia," *Human Organization* 62, 1 (2003): 74-84; David Rossiter, "The Nature of Protest: Constructing the Spaces of British Columbia's Rainforests," *Cultural Geographies* 11 (2004): 139-164; David Rossiter and Patricia Wood, "Fantastic Topographies: Neo-liberal Responses to Aboriginal Land Claims in British Columbia," *The Canadian Geographer* 49, 4 (2005): 352-366.

²⁶ Hayter, "The War in the Woods."

Postcolonial Geography: Exploring Links between the Colonial Past and Present

Postcolonialism is a broad, interdisciplinary, complex, and contested intellectual project drawing scholars from a range of disciplines, including literary studies, cultural studies, anthropology, history, and geography. It is important to note that postcolonial theorists understand the term ‘postcolonial’ as referring not to a period following the end of formal colonialism, as if colonialism was something far behind us, but rather to the enduring effects (or the aftermath) of colonialism. Thus, for Derek Gregory, the origins of the ‘postcolonial condition’ can be traced back to the inaugural moment of colonialism.²⁷ A major task for postcolonial theorists, then, is to uncover and examine the colonial past, a project which serves to make this history more visible and approachable.

Postcolonialism, argues Gregory, “revisits the colonial past in order to recover the dead weight of colonialism: to retrieve its shapes, like the chalk outlines of a crime scene.”²⁸

This remembering of the colonial past also works in opposition to the tendency towards ‘colonial amnesia’ within postcolonial settings; that is, the tendency to forget the colonial past in the desire to create a new society and culture. As Leela Gandhi argues, it is only by “thinking, rigorously, *about* our pasts” that we can move forward in dealing with the aftermath of colonialism.²⁹

A central objective of colonial remembering is to explore the links, or continuities, between the colonial past and the colonial present. The argument here is that there is no clear break or discontinuity between colonialism and postcolonialism; rather, colonial relations persist into the present—in the form of neocolonialism, for example—and shape

²⁷ Gregory, *The Colonial Present*, 7.

²⁸ *Ibid.*, 9.

²⁹ Leela Gandhi, *Postcolonial Theory: A Critical Introduction* (New York: Columbia University Press, 1998), 9. Emphasis in original.

current inequalities, such as between the ‘developed’ and ‘developing’ worlds or between indigenous and non-indigenous peoples in settler states. Thus, postcolonialism provides an oppositional perspective that is clearly anti-colonial in its approach; it involves, Catherine Nash argues, a “critical engagement with colonialism and its continued legacies.”³⁰ Focusing on the continuity between the colonial past and the colonial present, argues Gregory (2004, 9), “reveals the continuing impositions and extractions of colonialism in order to subvert them: to examine them, to disavow them, and dispel them.”³¹ Also central to the work of postcolonial theorists is the attention paid to the operation of colonial discourses, the construction of colonial identities (the ‘colonized’ and the ‘colonizer’, the colonial ‘other’), and the links between the production of Western knowledges and forms of colonial power.³² Postcolonial theorists also explore the complex and ambivalent nature of the colonial relationship: colonialism is not only about hate, domination, and subjugation, such scholars argue, but also about desire, admiration, and resistance.³³

If postcolonialism can be said to have emerged as a distinctive field of inquiry in the late 1970s and early 1980s, geography’s engagement with postcolonial theory is more recent. An important starting point for any exploration of geography’s engagement with postcolonial theory is the recognition that geography played a key role in the West’s

³⁰ Catherine Nash, “Postcolonial Geographies: Spatial Narratives of Inequality and Interconnection,” in Paul Cloke, Philip Crang, and Mark Goodwin, eds., *Envisioning Human Geographies* (London: Arnold, 2004), 105.

³¹ Gregory, *The Colonial Present*, 9.

³² The work of Edward Said is foundational here. See: *Orientalism* (Harmondsworth: Penguin, 1978) and *Culture and Imperialism* (London: Chatto & Windus, 1993).

³³ Homi Bhabha, *Nation and Narration* (London: Routledge, 1990).

imperial and colonial adventures.³⁴ These were clearly geographical enterprises: incorporating distant territories into the imperial and colonial system required not only the technical abilities of geographers (e.g., in demarcating and registering territories) but also their imaginative abilities, to describe and legitimate the incorporation of new lands and peoples into the empire. This recognition has led to calls for “the intellectual decolonization” of the discipline³⁵, an appeal which, as we saw from the earlier discussion of indigenous geographies, continues to be made today. This process of internal disciplinary decolonization, involving a remembering of the history of complicity between geography and colonialism, is itself an important project of postcolonial geography.

Perhaps a more typical entry point for an exploration of postcolonial geography is through a consideration of the work of Edward Said. Derek Gregory observes that not only was geography a recurrent motif in Said’s work but that Said saw himself as “rethinking geography.”³⁶ Gregory argues that a dialectic between ‘land’ and ‘territory’ runs through Said’s writing on geography, and that he uses these terms in unusually creative ways:

...in effect, he charts a series of mappings, sometimes discordant and sometimes compounded, through which places and identities are deterritorialized and reterritorialized. He describes landscapes and cultures being drawn into abstract grids of colonial and imperial power, literally displaced and replaced, and illuminates the ways in which these constellations become sites of appropriation, domination and contestation.³⁷

³⁴ Anne Godlewska and Neil Smith, *Geography and Empire* (Oxford: Blackwell, 1994).

³⁵ Jonathan Crush, “The Discomforts of Distance: Post-Colonialism and South African Geography,” *South African Geographical Journal* 75, 2 (1993): 60-68.

³⁶ Derek Gregory, “Edward Said’s Imaginative Geographies,” in Mike Crang and Nigel Thrift, eds., *Thinking Space* (London: Routledge, 2000).

³⁷ *Ibid.*, 303.

Thus, Said's view is that geography—land, territory, landscape (and their representation)—is deeply entangled in relations of power. Perhaps Said's greatest contribution to rethinking geography comes from his articulation of the concept of “imaginative geographies” and the role these played in the discourse of Orientalism and in the exercise of power by ‘the West’ over ‘the East.’ Said argues that while a place (house, landscape, territory, nation, region) has an objective space, it also can be endowed with meaning(s) that may be quite different than its physical nature. Thus, a place not only has a physical (material) geography but also an imaginative geography, and these may be quite different. While both the physical and the imaginative geography may be worked over, enclosed and transformed, the imagined geography is perhaps more fluid or malleable, more open to change. Said argues that through Orientalist discourses the West constructed an image, or an ‘imaginative geography’, of Oriental culture and identity. This imaginative geography—for example, of the Orient being a romantic, exotic, mysterious, corrupt, barbarous, sexualized, and dangerous place—actually had very little to do with what the Orient was really like. Rather, as Said argues, this discourse says more about the West than the Orient, in the sense that Western culture and identity was defined in opposition to Oriental culture and identity. Thus, this discourse allowed for the construction of the West as everything that the Orient was not, such as civilized, moral, safe and familiar. Said points out that such Orientalist discourses were ultimately very political in that they served to justify Western colonialism and domination of the Orient.

As Gregory notes, Said was deeply influenced by his readings of Foucault and this was particularly evident in his writing on geography. Both Said and Foucault were

interested in the “discursive construction of exclusionary geographies” argues Gregory.³⁸ Foucault was interested in the way that space was organized, and the way that people and institutions (prisons, schools, asylums, hospitals, factories) were distributed spatially, in order to achieve certain aims. In this way, the organization of space was a technology of power, a way of constituting and disciplining subjects. Visuality was an important part of this; “spaces of constructed visibility”³⁹—most famously the ‘panopticon’—allowed for the implementation of the disciplinary technologies of observation and surveillance.⁴⁰ Building on such ideas, Said was attentive to the spatial and scopic regimes of Orientalism; how the Orient was constructed as a theatre attached to Europe, for Europe’s entertainment, pleasure and profit, or as an imaginary museum without walls, with all things Oriental spread out for display, to be classified, enclosed, judged, assessed, scrutinized, studied and, ultimately, governed. This was the world “as an exhibition”, as Timothy Mitchell phrases it, where everything was rendered clear and unambiguous; a “remarkable claim to certainty or truth” tightly tied to the colonial project, to the desire to firmly establish order and discipline where all seemed disordered and unruly.⁴¹

In his analysis of a prominent court case on aboriginal title in the Supreme Court of British Columbia and the release of the first volume of the *Historical Atlas of Canada*, Matthew Sparke draws on a number of the keys themes that have preoccupied those

³⁸ *Ibid.*, 314-16.

³⁹ John Rajchman, “Foucault’s Art of Seeing,” in Barry Smart, ed., *Michel Foucault (1): Critical Assessments* (New York and London: Routledge, 1995), 224-250.

⁴⁰ Michel Foucault, *Discipline and Punish: The Birth of the Prison* (New York: Vintage Books, 1995).

⁴¹ Timothy Mitchell, *Colonizing Egypt* (Berkeley: University of California Press, 1991).

working in postcolonial geography.⁴² I will focus here on the aspect of Sparke's work most directly relevant to this study, the BC court case involving the aboriginal title claims made by two indigenous groups, the Gitksan and Wet'suwet'en, to 58,000 square kilometres of land (encompassing their two distinct territories) in northwestern British Columbia. The case is commonly known as the Delgamuukw case, after the name of the Gitksan chief who acted as the primary claimant for the two groups. Sparke describes how the Gitksan and Wet'suwet'en brought their claims to the court fully aware of the ways that the Canadian court would limit and distort their territorial claims. By entering into the Canadian legal system, Sparke notes, the Wet'suwet'en and Gitksan were "insinuating their claims into the terms of reference of the dominant discourse."⁴³ This was a risky strategy for, as one Wet'suwet'en chief put it, "we were entering a game in which we had no involvement whatsoever with the putting together of that game, the making up of the rules, in the appointment of the referees and umpires."⁴⁴ Sparke describes how the Gitksan and Wet'suwet'en sought to challenge this legal game—a game that they recognized as "fixed" and unfair—through various strategies and performances in the court room, including the singing of songs that told oral histories (or oral historical geographies) illustrating attachments to and control over lands and territories, and the preparation and submission to the court of modern maps that showed the location of Gitksan and Wet'suwet'en territories and sub-territories, and which replaced colonial toponyms with pre-colonial place names.

⁴² Matthew Sparke, "A Map that Roared and an Original Atlas: Canada, Cartography, and the Narration of Nation," *Annals of the Association of American Geographers* 88, 3 (1998): 463-495.

⁴³ *Ibid.*, 470.

⁴⁴ Satsan, "The Fire Within Us," in Frank Cassidy, ed., *Aboriginal Title in British Columbia: Delgamuukw v. the Queen* (Lantzville, BC: Oolichan Books, 1992), 54.

Sparke examines the effects of these resistances. Although the trial judge largely discounted and discredited the songs as evidence of land occupation or ownership, the songs nonetheless “subverted the hushed and sanitized sounds of normal legal procedure.”⁴⁵ Further, he notes, the inclusion of Gitksan and Wet’suwet’en words in the oral testimony forced the court to stop and confirm the interpretation and spelling out of these indigenous words “such that the cultural distinctiveness of the peoples as First Nations with disjunctive cultural histories was reaffirmed.”⁴⁶ Through the use of modern maps, the Gitksan and Wet’suwet’en delimited their territories in a language that the court and judge could understand—the “abstract state-space of Cartesian cartography”—yet at the same time the use of Gitksan and Wet’suwet’en toponyms and the clear assertion of territorial claims also played against the normal rules of the court’s cartographic game.⁴⁷ Ultimately, the Gitksan and Wet’suwet’en lost this particular game as the judge rejected their claim, unable to recognize the possibility that other nations might have existed in this space prior to the arrival of Europeans. The judge, Sparke notes, ultimately disrespected and dismissed the more radical challenges (songs, anti-colonial maps) put forward by the Gitksan and Wet’suwet’en claimants: “These more radically resistant courtroom performances were simply policed and cordoned off with bold disrespect.” The decision, he concludes, served as a reminder of the difficulty in negotiating with “structures of violence.”⁴⁸

⁴⁵ Sparke, “The Map That Roared,” 472.

⁴⁶ Sparke, “A Map that Roared,” 472.

⁴⁷ *Ibid.*, 472.

⁴⁸ *Ibid.*, 479. The Gitksan and Wet’suwet’en appealed to the Supreme Court of Canada and McEachern’s ruling was overturned by that court in 1997, resulting in landmark ruling on aboriginal title in British Columbia. This final decision in the Delgamuukw case is discussed in chapter seven of this dissertation.

Sparke's larger point, brought out in his consideration of both the BC aboriginal title trial and the *Historical Atlas*, relates to the telling of national stories or, to use the language of postcolonial theory, to the imagination and narration of a nation. Drawing from Homi Bhabha's argument that the narration of nation is deeply marked by ambivalence,⁴⁹ Sparke seeks to understand, through these case studies, how this ambivalence is marked or represented spatially. Maps are key here: while there is a hegemonic project of mapping the nation, he notes, there are also counterhegemonic mapping projects at work. Ambivalence, in other words, is read into the contemporary mapping, and thus the narration, of the nation.

In his work on the environmental (forestry) conflicts taking place during the 1980s and 1990s in Clayoquot Sound—an expanse of inlets, valleys and islands on the west coast of Vancouver Island—Bruce Braun also draws heavily from postcolonial theory.⁵⁰ Braun's focus, however, is primarily on the mobilization and effects of various discourses of nature, including discourses emanating from logging companies, government agencies, and environmental groups, and how these serve to both shape understandings of nature in this particular place and of the indigenous peoples who have long lived here. A central part of Braun's analysis of the conflict, and its eventual (if partial) resolution through the provincial government's announcement in 1993 of the Clayoquot Sound Land Use Decision, is the way that the "temperate rainforest" (the central focus of the conflict) was constructed through environmental discourse and what was made visible and invisible in this construction. Here, one of Braun's primary concerns is with the lack of consideration

⁴⁹ Homi Bhabha, "Dissemination: Time, Narrative and the Margins of the Modern Nation," in *The Location of Culture* (New York: Routledge, 1994), 146-51.

⁵⁰ Braun, *The Intemperate Rainforest*, 20-25.

or recognition given to indigenous interests in the Clayoquot Sound conflict and land use decision. He uses the term “epistemic erasures” to describe how local indigenous peoples were made invisible, or at least selectively visible (that is, as a people closely tied to tradition and nature, distinctively constructed as pre-modern), in the formulation of the temperate rainforest.⁵¹ For environmental groups bent on “saving” Clayoquot Sound, for example, the presence of indigenous people in the area posed certain problems: while an indigenous presence could, in some ways, aid in the conservation cause (forest protection activists sometimes view indigenous land claims as a possible tactic to stop logging), the indigenous presence also could undermine the environmental objective (e.g., by weakening the environmentalists’ argument that this was a pristine wilderness area). The result of this is a deeply ambivalent relationship between environmentalists and indigenous peoples.

Braun argues that such epistemic erasures “are not innocent: they justify political and territorial erasures”.⁵² This erasure is reflected, for example, in the map produced by the provincial government to illustrate the new land designations under the new Clayoquot Sound Land Use Plan. The map effectively erases any Nuu-chah-nulth (the indigenous group whose territory includes Clayoquot Sound) presence in the area. Braun situates *The Intemperate Rainforest* within the field of postcolonialism, describing it as part of the “effort to dismantle the relations of domination set in place during European colonialism, but that continue to infuse the so-called post-colonial present.”⁵³ The political and geographical marginalization of indigenous peoples in contemporary environmental

⁵¹ *Ibid.*, 8.

⁵² *Ibid.*, 8.

⁵³ *Ibid.*, 10.

discourse, argues Braun, reiterates “earlier displacements that have receded from memory to become taken-for-granted elements in how people envision and speak about nature and culture on Canada’s west coast.”⁵⁴ Braun uses the term “technologies of displacement” to explore how the temperate rainforest has been constructed as a domain separate from the cultural geographies of individual indigenous groups and their communities, and subsequently resituated within very different geographies: the ‘nation,’ the ‘market,’ and more recently, the ‘global biosphere.’⁵⁵ The significance of these displacements, both in the past and the present, argues Braun, is that they authorize very different people—for example, forest corporation officials, forestry professional, government officials, environmental activists—to speak for the forest than before.

‘Modern Historical Geographies’: Engaging with the Histories of Colonialism

Historical geography, it seems, is undergoing something of a renaissance. Commonly defined as “the study of the geographies of past time”⁵⁶, historical geography long had a decidedly unfashionable reputation: this was the realm of grey-headed scholars, musty archives, the painstaking and tedious compilation of regional-scale narratives describing social, economic, and physical transformations over long periods of time. During much of the twentieth century historical geography seemed to occupy the margins of geography’s mainstream; indeed historical geographers were often dismissive of the

⁵⁴ *Ibid.*, 23.

⁵⁵ *Ibid.*, 32.

⁵⁶ Robin Butlin, *Historical Geography: Through the Gates of Space and Time* (New York and London: Routledge, 1993), ix.

latest theories and trends within the discipline.⁵⁷ As a subject deemed worthy of study, historical geography fell to the bottom of the list of subdisciplines within geography. The past decade, however, has witnessed a renewed interest of geographers in history and the definition of a new kind of historical geography. Indeed, Brian Graham and Catherine Nash recently announced the arrival on the scene of ‘modern historical geographies’, which they characterized as works of historical geographies that engage with contemporary issues and theories. Modern historical geographies, they argued, are “informed by feminism, post-structuralism, anti-racism and post-colonial perspectives, sharing concerns about questions of power and meaning with other researchers more readily located within the traditional subdisciplines of economic, cultural, political and social geography.”⁵⁸

This engagement has brought new approaches and new voices to the study and writing of historical geography. Rather than attempting to broadly map out of this ‘new’ historical geography, a task far beyond the scope of this chapter, what I seek to do here is to review some of the recent work by historical geographers which focuses on indigenous issues in British Columbia and consider how this literature has drawn from the broader social theories informing the work of geographers.⁵⁹ Luckily, there is a rich body of work here to draw on, including several important works by Cole Harris, widely recognized as

⁵⁷ Deryck W. Holdsworth, “Historical Geography: The Ancients and the Moderns—Generational Vitality,” *Progress in Human Geography* 26, 5 (2002): 671-78.

⁵⁸ Brian Graham and Catherine Nash, eds., *Modern Historical Geographies* (London: Longman, 2000), 3.

⁵⁹ My narrow focus here leaves out many important historical geographies of colonialism in Canada. See, for example, Frank Tough, *‘As Their Natural Resources Fail’: Native Peoples and the Economic History of Northern Manitoba, 1870-1930* (Vancouver: UBC Press, 1996) and Carole Desbiens, “Speaking the Land: Exploring Women’s Historical Geographies in Northern Quebec,” *The Canadian Geographer* 51, 3 (2007): 360-372.

a leading international scholar within historical geography. The work of Harris and other scholars on the colonial histories and geographies of British Columbia has been impressive and important. To my mind, its primary importance has been, as Harris describes it, in the telling of the complex story of the colonial construction of space in British Columbia.⁶⁰ A key part of the telling of this story, in this context, means the dismantling of old yet remarkably enduring ideas—white settler mythologies—about the creation of this place called British Columbia. This literature seeks to expose the uneven and complex operation of colonialism, the exercise of colonial power to effect the dispossession and displacement of indigenous peoples, the drawing of lines on maps and on land to create separate and uneven spaces for colonizers and colonized, and, somewhat less successfully, it seeks to identify modes of indigenous resistance to colonization.

Harris' work is the starting point for an analysis of this literature, and let me begin by briefly considering a collection of his essays published in 1997 under the title *The Resettlement of British Columbia*. The volume can be viewed as an attempt to combine what Harris calls “the synthesizing habit of mind inherent in historical geography” with a more explicit drawing from contemporary social theories. The book opens with a chapter on the impacts of smallpox on indigenous peoples living on British Columbia's southwest coast during the late nineteenth century. Drawing on the accounts of early European explorers, fur traders, and colonists, as well as directly from a number of indigenous sources, the chapter describes the decimation of indigenous communities—a commonly quoted figure is that indigenous populations declined by 90 to 95 percent within the first

⁶⁰ Cole Harris, *Making Native Space: Colonialism, Resistance, and Reserves in British Columbia* (Vancouver: UBC Press, 2002).

century after contact with European peoples (and European diseases)⁶¹—and the effects of this on indigenous economic, social, and political systems. The story told here is critically important to the understanding of colonialism, and the creation of colonial space, in British Columbia. Harris argues that

the idea of disease-inducing depopulation runs counter to the long-held conviction that Europeans brought enlightenment and civilization to savage peoples. It turns the story of the contact process away from the rhetorics of progress and salvation and towards the numbing recognition of catastrophe. Progress wrestled from the wilderness by hard, manly work and registered by expanding settlements is suddenly qualified by population losses. The rhetoric of development begins to pale.⁶²

Space in the landscape is opened up by the operation of European disease, in other words, easing the insertion of European settlements. What had long been referred to as the ‘settlement’ of British Columbia by European peoples was more properly characterized, Harris points out, as a process of ‘resettlement’; that is, the imposition of European settlements on lands that had previously been settled (and owned) by indigenous inhabitants.

The book also contains important chapters describing the production of colonial space in specific parts of British Columbia—the lower mainland and the Fraser canyon, for example—and a population geography of the province in 1881, all of which are important contributions to the understanding of colonial British Columbia. Given the limited space here, however, let me turn to the chapter which explores the ‘strategies of power’ employed by fur trade authorities during the early period of European intrusion into the indigenous spaces that would eventually become British Columbia. In this chapter Harris

⁶¹ William Denevan, “Native American Populations in 1492: Recent Research and Revised Hemispheric Estimate,” in William Denevan, ed., *The Native Population of the Americas in 1492*, Second Edition (Madison: University of Wisconsin Press, 1992).

⁶² Cole Harris, “Voices of Smallpox around the Strait of Georgia,” in Cole Harris, ed., *The Resettlement of British Columbia: Essays on Colonialism and Geographical Change* (Vancouver: UBC Press, 1997), 29.

draws on Foucault in exploring how a small group of Europeans sought to exercise some degree of control—or as Harris puts it, how they sought to extend something of the order and security they had created within their isolated fur trade posts (palisaded forts, the “power containers” of the fur trade system)—over a much larger territory and over a more numerous indigenous population. Critical to the exercise of this control was the use of violence to discourage indigenous hostility towards white fur traders. “Natives were to understand,” writes Harris, “that quick, violent retribution would follow any attack on the personnel or property of the fur trade.”⁶³ Furthermore,

trader violence was to be public, a spectacle of power intended to impress and dissuade within a pervasive theatre of power in which Natives, like company servants, were audience and actors.⁶⁴

Traders also used non-violent strategies to extend their control, including the awarding of presents, bribes, favour and flattery, the employment of spies and duplicity, and the posing of one indigenous group against another. The discourse of white power during this period, argues Harris, rested on what Foucault called ‘sovereign power’ or the power to seize life and property. This was not a form of ‘disciplinary power’, as Foucault used the term, since fur traders were not interested in normalizing or civilizing indigenous peoples; the civilizing mission would come later, with the onset of formal colonialism. Nonetheless, Harris argues, the strategies of power employed during the fur trade era, developed and tested across the broad expanse of the North American fur trade economy, prepared the ground for the later planting of a white colony in British Columbia.

Harris’ second major contribution to the historical geographies of colonialism in British Columbia is in telling the story of the development of the Indian reserve system in

⁶³ Cole Harris, “Strategies of Power in the Cordilleran Fur Trade,” in Harris, *The Resettlement of British Columbia*, 48.

⁶⁴ *Ibid.*, 49.

the province. In *Making Native Space* Harris traces the development of this system from the first reserves created by colonial Governor James Douglas in the 1850s, associated with the 14 Douglas treaties, through to the finalization of the system in the late 1920s. He traces the work of different bodies and groups—particularly the Joint Indian Reserve Commission (1876-78) and the Royal Commission on Indian Affairs (1912-16)—in the evolution of this system, as well as the effect of the long drawn-out conflict between federal and provincial officials over the kind of Indian land policy to be implemented in British Columbia. Harris demonstrates that provincial officials, reflecting the interests of a settler society focused on development and with little sympathy for the rights and concerns of indigenous peoples, largely shaped the reserve system, with the Dominion government (with fiduciary responsibility for the welfare of indigenous peoples in Canada) giving way to the Province on most points. The Indian reserve system, and colonialism more generally, Harris argues, led to the division of British Columbia into “two vastly unequal parts that came to underlie all its other developments: a tiny fraction of the land set aside for Natives, the rest available, in various tenures, for development.”⁶⁵

While Harris’s work is central, there are other important contributions to the historical geography of colonialism in British Columbia. Daniel Clayton’s work on the imperial fashioning of Vancouver Island, discussed in some detail in chapter 3 of this dissertation, deserves mention, as does the work of Ken Brealey. Brealey has contributed to our understanding of the creation of the Indian reserve system in British Columbia, documenting the work of Peter O’Reilly, the Indian Reserve Commissioner from 1880 to 1998, in laying down what became the most fundamental line on the map of the province,

⁶⁵ Harris, *Making Native Space*, xviii.

the line marking the division between indigenous space (Indian reserve) and non-indigenous space (everything else).⁶⁶ Brealey draws on Simon Ryan's distinctly postcolonial notion of the "cartographic eye/I" to theorize the creation of the Indian reserve system.⁶⁷ O'Reilly, who more than any other individual was responsible for marking out the system of Indian reserves in the province, is the "cartographic I" ("that mobile explorer, surveyor, cartographer, or landscape painter who is responsible for negotiating the objects of this gaze on the ground") while the "cartographic eye" refers "to that particular nexus of power, knowledge, and sight that constitutes (and is constituted by) a detached, panoramic gaze."⁶⁸ The cartographic eye/I functioned to incorporate "hitherto alternative cultural spaces into a universalizing, homogenizing, and essentializing spatial uniformity—the ground upon which an expanded sense of British Columbia could take shape."⁶⁹ Elsewhere, Brealey focuses on the role of maps in the territorial dispossession of indigenous peoples in British Columbia.⁷⁰

A central objective of all of these works is to understand more broadly the production of colonial space in British Columbia and, more particularly, the ways that colonialism acted to dispossess indigenous peoples of their lands and territories. These are important and valuable contributions, serving to lay the foundation for much further work in this area. There are significant gaps here, of course, that need to be addressed: the absence of any meaningful consideration of gender dynamics in processes of colonialism and

⁶⁶ Ken Brealey, "Travels from Point Ellice: Peter O'Reilly and the Indian Reserve System in British Columbia," *BC Studies* 115/116 (Autumn/Winter 1997/98): 181-236.

⁶⁷ *Ibid.*, 182-184.

⁶⁸ *Ibid.*, 182-83.

⁶⁹ *Ibid.*, 229-231.

⁷⁰ Ken Brealey, "Mapping Them 'Out': Euro-Canadian Cartography and the Appropriation of the Nuxalk and Ts'ilhqot'in First Nations' Territories, 1793-1916," *The Canadian Geographer* 39, 2 (1995): 140-156.

dispossession stands out as does the lack of detailed work focusing on these processes in urban settings. In addition, while all these works make note of the presence of indigenous resistance to these processes and, in some cases, document and explore the nature of this resistance, this remains largely a minor part of the story.⁷¹ There is a great need for more work on the modes of indigenous resistance to colonialism and dispossession in British Columbia, and on the ways that indigenous peoples survived and adapted to the transformation of their worlds.⁷² The emergence of a cadre of new scholars working on the historical geographies of colonialism in Canada and British Columbia, and engaging with broader social theories to do so, suggests that these gaps might begin to be addressed in the near future. Indeed, the publication of a recent edition of *The Canadian Geographer* with a special focus on the historical geographies of colonialism indicates that this is already underway.⁷³

Legal Geography: Property and the ‘Law-Space-Power Fusion’

The emergence of a distinct subdiscipline called legal geography can be traced to the publication in 1994 of Nicholas Blomley’s book *Law, Space, and the Geographies of Power*.⁷⁴ In this book, Blomley’s starting point was the realization that there had been little work on the links between law and geography, and that most of the work that had been published was weakly theorized. While previous work by geographers had observed

⁷¹ For an exception, see Nicholas Blomley, “Shut the Province Down”: First Nations Blockades in British Columbia, 1984-1995,” *BC Studies* 111 (1996): 5-35.

⁷² For further discussion of these gaps, see: Peters, “Focus: Making Native Space: A Review Symposium.”

⁷³ Volume 51, Number 3 (Fall 2007); see particularly: Sarah de Leeuw, “Intimate Colonialisms: The Material and Experienced Places of British Columbia’s Residential Schools,” *The Canadian Geographer* 51, 3 (2007): 339-359.

⁷⁴ Nicholas Blomley, *Law, Space, and the Geographies of Power* (New York and London: The Guilford Press, 1994).

that law and geography affected each other in various ways, noted Blomley, they were really portrayed as independent variables. Underlying this view, he argued, was a conception of law “as an autonomous, self-sufficient field”, something that was closed-off not only from geography but indeed also from social and political life itself.⁷⁵

Drawing on the literature of critical legal studies which argues that, far from being closed off from it, law is deeply implicated in social and political life and indeed is constitutive of social and political relations, Blomley argued that law is also deeply implicated in geography and space. As it has been put elsewhere, “[s]ocial space is saturated with legal meanings”.⁷⁶ At the heart of this field of legal geography, then, is this focus on the imbrication of the legal, the spatial, and the social. Going further, and drawing on the work of geographers who critiqued the idea of space as something abstract and external to society and who argued that space was socially and politically constructed (or produced),⁷⁷ Blomley made the argument that law, both legal discourses and legal practice, actively produces and maintains space. This is not, as Blomley and other scholars have insisted, simply the coming together of two separate entities, law and geography, to produce a third entity called “society”; rather, it is to say that “the legal and the spatial are, in significant ways, aspects of each other and as such, they are fundamental and irreducible aspects of a more holistically conceived social-material reality.”⁷⁸

⁷⁵ *Ibid.*, 7.

⁷⁶ David Delaney, Richard T. Ford, and Nicholas Blomley, “Preface: Where is Law?” in Nicholas Blomley, David Delaney, and Richard T. Ford, eds., *The Legal Geographies Reader* (Malden, MA: Blackwell, 2001), xviii.

⁷⁷ See, for example: Henri Lefebvre, *The Production of Space*, translated by Donald Nicholson-Smith (Cambridge, Mass: Blackwell, 1991).

⁷⁸ Delaney *et al.*, “Preface: Where is Law?”, xviii.

Also key to critical legal geographies is a recognition and consideration of the effects of power in this coming together of law and space, or what has been referred to as the fusion of “law-space-power”.⁷⁹ The fusion of law-space-power suggests “that much of social space represents a materialization of power and much of law consists in highly significant and specialized descriptions and prescriptions of the same power.”⁸⁰ Clearly, the production of space through legal practice and discourse has powerful effects on people and places. One could draw on any number of examples here, ranging from the imposition of English common law on indigenous societies and territories, a key step in the European colonization of distant places and the subsequent formation of settler nation-states, to the more subtle operations of law which, through the shaping of space, act to structure the very manner in which people experience and understand social life. It is important to recognize that the powerful effects of law to shape space are mobilized not only by the state and other powerful forces in society (e.g., capital) but also by oppositional groups who seek to resist the law or use it to their advantage. The resort to legal appeal by indigenous groups in British Columbia in order to press claims to land and resources, of which there is a long history in the province,⁸¹ is one good example of this. Nonetheless, there is clearly an uneven playing field here; those with the resources to shape and enforce law, namely the state and its allies, are better able to mobilize these tools in the shaping and production of space.

⁷⁹ *Ibid.*, xix.

⁸⁰ *Ibid.*

⁸¹ Hamar Foster, “We Are Not O’Meara’s Children: Law, Lawyers, and the First Campaign for Aboriginal Title in British Columbia, 1908-1928,” in Hamar Foster, Heather Raven, and Jeremy Weber, eds., *Let Right Be Done: Aboriginal Title, the Calder Case, and the Future of Indigenous Rights* (Vancouver: University of British Columbia Press, 2007), 61-84.

As a number of scholars have pointed out, property in land offers a particularly fruitful site for the exploration of the law-space-power fusion. In liberal Western societies, such as Canada, one vision or understanding of property tends to dominate all others: the ‘classical’ or ‘Blackstonian’⁸² model, where property means ‘private property’—that is, property owned by an individual (or a corporation, treated as an individual by the legal system⁸³) who holds formal legal title to a clearly identified and delimited piece of land. Legal title affords the owner a set of rights to the land, most notably rights to exclude others, to do with the land what he or she likes in order to maximize his or her gain (whether in monetary or other form), and the right to sell or trade the land. While the state retains a right to interfere in these rights—to regulate certain activities and to expropriate the land, for example—the ability of the state to intrude is carefully circumscribed by law and by dominant public discourse. Further, this notion of property is embedded within a dominant discourse of the nation, and as such is a key element in the white settler mythology that speaks of the hardy European pioneer taming a wild and unformed frontier and of the conversion of empty space to a propertied and peopled place through the tilling of the soil. Following the Lockean model, it is through the mixing of labour and land that property and civilization is created.⁸⁴ The dominance of this particular vision of property obscures other understandings of property and thus limits our ability to challenge this constricting view. As critical legal scholars have pointed out,

⁸² William Blackstone, *Commentaries on the Laws of England in Four Books* (London: Dawsons of Pall Mall, 1966 [1809]).

⁸³ Section 15 of the *Canada Business Corporation Act* states that “[a] corporation has the capacity and ... the rights, powers and privileges of a natural person.” Cited in Harry Glasbeek, *Wealth by Stealth: Corporate Crime, Corporate Law, and the Perversion of Democracy* (Toronto: Between the Lines, 2002), 9.

⁸⁴ John Locke, *Second Treatise of Government* (Indianapolis: Hackett, 1980 [1690]), section 32.

property rights are less about the relationship between people and things (like land) than they are about the relationship between people with respect to things. Property is brought into being—produced and maintained—through law, and it then acts to order and regulate social space and to structure social relations in space. Property “shapes entitlements and affects social distributions and hierarchies” and acts as “a vector of power.”⁸⁵

An understanding of the law-space-power nexus, and of property rights as one particular manifestation of this, is useful when thinking about the colonization and dispossession of indigenous peoples in places like British Columbia. As Cole Harris points out, by the time Britain had begun colonization of British Columbia, English common law had already been established as a centralized and standardized legal system in England.⁸⁶ English colonizers brought English common law with them, applying it to newly colonized places and peoples, in the process displacing the existing legal systems used to govern life in the many different sovereign indigenous territories that made up this colony of British Columbia. English common law proved remarkably flexible and powerful, adds Harris, providing “an abstract, generalized means of normalizing and managing people and nature within the purview of the state and at the expense of local custom.”⁸⁷ The transposition of English common law into distant colonies like British Columbia also resulted in the transposition of a complex matrix of ideas, ideologies, and values, all of which were broadly accepted by settler society. Perhaps most important, at

⁸⁵ Nicholas Blomley, “The Boundaries of Property: Lessons from Beatrix Potter,” *The Canadian Geographer* 48, 2 (2004): 99.

⁸⁶ Cole Harris, “How Did Colonialism Dispospossess? Comments from an Edge of Empire,” *Annals of the Association of American Geography* 94, 1 (2004): 165-182.

⁸⁷ *Ibid.*, 176-77.

least for our purposes here, was the importation and application of distinctly English (Blackstonian) ideas about property, which were imposed over existing indigenous land tenure regimes. When disputes over land arose between indigenous people and settlers, such as in the mapping out of Indian reserves, colonial (and later provincial and federal) authorities usually recognized the property claims of white settlers, validated as they were by documents and maps, over those of the original indigenous residents whose evidence to ownership were based in the oral tradition (stories, songs, names).

Towards a Critical Indigenous Geography

I have covered a lot of ground in this chapter, identifying and examining key ideas from four different fields within geography as they relate to indigenous peoples and their concerns. In the final section of this chapter, I would like to attempt a synthesis: I want to bring these ideas and fields together and briefly sketch out how they might contribute to the mapping out of this new field of indigenous geography. Further, drawing from the political engagement of the scholars working in these four fields, my intention is to explore what I will refer to (with some trepidation)⁸⁸ as a ‘critical indigenous geography’: that is, a politically-engaged approach, one that seeks to improve broad understanding of, and increase support for, ongoing indigenous struggles over land, resources, and self-determination. I will do this by describing what I see as four elements central to this idea of a critical indigenous geography. Before doing so, however, it is perhaps important to

⁸⁸ My sense of trepidation here comes the recognition that the term ‘critical’ is perhaps overused, and its application not always clear or warranted. As Blomley points out with respect to the term ‘critical geography’, its widespread use raises the danger that it has in fact become uncritical. I address this here by seeking to explain more clearly the meaning I attach to this term. See Nicholas Blomley, “Uncritical Critical Geography?” *Progress in Human Geography* 30 (2006): 87-94.

briefly sketch out a definition of ‘critical geography.’⁸⁹ Perhaps most useful in this context is to cite the description provided by the International Critical Geography Group, a group which emerged out of the inaugural International Conference on Critical Geography held in Vancouver in 1997. In its Statement of Purpose, described as “a deliberately polemical call to action”, the group spelled out its understanding of critical geography.⁹⁰ According to this statement, critical geography entails a commitment to “developing the theory and practice necessary for combating social exploitation and oppression” and critical geographers “demand and fight for social change aimed at dismantling prevalent systems of capitalist exploitation; oppression on the basis of gender, race and sexual preference; imperialism, neo-liberalism, national aggression and environmental destruction.” Further, critical geographers “refuse the self-imposed isolation of much academic research, believing that social science belongs to the people and not the increasingly corporate universities.”⁹¹ The term critical geography, then, refers to an approach to geographic analysis that draws on critical social theory (e.g., Marxist, feminist, postcolonial, antiracist, poststructuralist theory) to inform its work, and which involves a commitment to progressive social change to emancipatory politics

⁸⁹ As Blomley’s recent review of the concept suggests, the concept of ‘critical geography’ perhaps defies easy description. For the full review, see the above referenced article (“Uncritical Critical Geography?”) and two follow-up pieces: “Critical Geography: Anger and Hope,” *Progress in Human Geography* 31 (2007): 53-65 and “The Spaces of Critical Geography,” *Progress in Human Geography* 32 (2008): 285-293.

⁹⁰ Neil Smith and Caroline Desbiens, “The International Critical Geography Group: Forbidden Optimism?” *Environment and Planning D: Society and Space* 18 (1999): 379-382.

⁹¹ The Statement of Purpose can be viewed at: http://econgeog.misc.hit-u.ac.jp/icgg/Statement_ICGG.html. (Accessed June 20, 2008.)

within and beyond the discipline.⁹² With this definition in mind, let me now turn to the four elements that I see as central to a critical indigenous geography.

The first element, I believe, involves a recognition that indigenous people have a conception of geography that is distinct from the dominant (Western) understanding. By this I mean that indigenous peoples, such as the Hul'qumi'num, had, and continue to have, their own distinct ways of understanding, valuing, and organizing the places and spaces—their territories—that they occupied and used prior to the onset of colonialism and which they continue to occupy and use in certain ways. They had, and still have, for example, distinct ways of allocating land tenure or ownership within their territory, distinct ways of marking off boundaries, distinct approaches to land and resource use and management, and distinct ways of imbuing places and spaces with meaning (through naming, stories, and other forms of cultural elaboration). As a starting point, it is important to recognize and respect these distinct and rich indigenous geographies.

This is an area where anthropologists have perhaps made the greatest contribution (e.g., through traditional use studies), but geographers also have much to offer here. Those working within the fields of historical geography and postcolonial geography, for example, have provided some recognition of these indigenous geographies; I am thinking here of the work that scholars in these fields have carried out to document and map historical and (to a lesser extent) contemporary indigenous geographies, sometimes as part of an indigenous group's land claim.⁹³ Ken Brealey's work with the Xeni Gwet'in, a

⁹² Lucy Jarosz, "Political Ecology as Ethical Practice," *Political Geography* 23 (2004): 917-927.

⁹³ See, for example: Usher, "Environment, Race and Nation Reconsidered," 374-377; Harris, *The Resettlement of British Columbia*, especially chapters 3 and 4; and Sparke, "A Map that Roared," 472-77.

Tsilhqot'in group in BC's southern interior (Chilcotin) region, on their aboriginal title case in the BC Supreme Court is an excellent example of such work. Drawing from various sources—including early European accounts of travel to this region, early maps, and oral testimony from Xenigwet'in members—Brealey was able to produce maps which clearly showed the nature, extent, and depth of Xenigwet'in land use and occupancy. Presented in court, these maps proved influential in the judge's final decision in this case, which recognized Xenigwet'in aboriginal title claims to some 200,000 hectares of land.⁹⁴ If cartography functioned during the colonial era to map indigenous peoples 'out' of their territories, this was a case, as Brealey puts it, of an indigenous group being 'mapped back in.'⁹⁵

It is important to be clear that the recognition of distinctly indigenous geographies does not simply entail, as some might read it, the reification of 'traditional' indigenous ways of understanding and occupying space. As important as it is to recognize and document historic indigenous connections to lands and territories, and as important as these traditional understandings continue to be for many indigenous people, recognizing *only* these historical geographies can serve to perpetuate the persistent and problematic image of aboriginal peoples as being stuck in the past. As discussed in the previous chapter, the danger here is one of essentializing indigenous identity, of limiting understandings of indigeneity to a pre-modern or 'traditional' realm and denying the modern realities of indigenous life. In the elaboration of a critical indigenous geography, then, it is important to pay close attention to the complex and dynamic nature of

⁹⁴ *Tsilhqot'in Nation v. British Columbia* (2007), BCSC 1700.

⁹⁵ Ken Brealey, "Mapped Back in: Xenigwet'in Cartography and the Proof of Aboriginal Title in *William v. HMTQ*," paper presented at the Canadian Association of Geographers annual meeting, 20-24 May, 2008, Quebec City.

contemporary indigenous geographies, and to recognize that indigenous attachments to place and indigenous understandings of territory and space have changed dramatically over time. In turn, these new understandings of indigenous space shape and reflect new senses of indigenous identity. Such an approach would allow for the recognition and valuing of a broad spectrum of indigenous understandings of geography, including those that span rural and urban locales, those that extend beyond territorial and political borders, and those that draw on diverse cultural perspectives and traditions.

A second element central to a critical indigenous geography involves documenting the ways in which indigenous geographies were displaced by a European geography. Of primary importance here is coming to terms with the nuance and detail of colonial histories and geographies of places like British Columbia and Canada for, as Harris notes, at the most basic level colonialism in these places involved “the forced displacement of a people” and a process whereby “[o]ne human geography was being superceded by another, both on the ground and in the imagination.”⁹⁶ Furthering understanding of the workings of colonialism—the complex deployment of power (state and military, capital, culture and discourse) and techniques (maps, laws) to displace, dispossess, and marginalize indigenous peoples—is an important intellectual and political project. Here the work of historical geographers, and particularly that of Cole Harris, has been particularly valuable. Indigenous peoples seek, it seems to me, a broader public recognition of this historical geography, of the historical injustices that they have experienced and their spatial impact, as a key part of their contemporary struggles for land, resources, and self-determination.

⁹⁶ Harris, *Making Native Space*, xvii.

As important as it is to develop a better understanding of the colonial history and geography of particular places, this, by itself, is clearly not sufficient. All too often, this work tends to locate colonialism and dispossession only in the past, as something that happened long ago, and fails to clearly and meaningfully connect the colonial past with the contemporary struggles of indigenous peoples. This leads to the third important element in critical indigenous geographies: paying close attention, as we are reminded to do by those working with postcolonial theory, to the continuities between the colonial past and the colonial present, and to the ways that indigenous peoples continue to be subject to displacements, dispossessions, and marginalizations. I have come to understand that dispossession is not something that happened long ago when Europeans first came and resettled indigenous lands; dispossession continues to happen today, whether in the disturbance and despoiling of sacred places (burial grounds, bathing sites) for residential and commercial developments, the clearcutting and fencing-off of hunting territories, the depletion of fisheries and clam beds, or the marking-off of provincial and national parks. Symbolically, displacement and marginalization occurs today in the failure of non-indigenous governments to recognize and respect indigenous connections to, interests in, and jurisdiction over the lands and resources within their territories. These contemporary material and symbolic acts, notes Braun, “simply reiterate other, earlier displacements that have receded from memory”.⁹⁷

The work of scholars in the field of legal geography is important in this context because of the central role that law has played, and continues to play, in the displacement of indigenous peoples and places. Harris describes the centrality of English common law,

⁹⁷ Braun, *The Intemperate Rainforest*, 23.

and particularly English property law, to both the displacement of indigenous geographies and to the subsequent “management” of the process of dispossession; law was, and remains, a key disciplinary strategy in the governing of indigenous peoples and space.⁹⁸ There are a few important points to make here. First, it should be recognized that law is a social and political (and historical) construct and not something pre-political or closed off from social life; and as such, it is open to contestation. Second, it is important to understand the ways that law operates through space—through the delineation and policing of different kinds of boundaries, for example—so that we can get a better sense of how these can be undermined and contested. Property is critically important here, as this particular manifestation of the law-space-power nexus acts to shape space and constrain possibilities for change. It is important to see property, as Blomley puts it, as “not a static, pre-given entity” but rather as dependent on “a continual, active ‘doing’.”⁹⁹ It is also important to uncover the violent and unjust origins of contemporary property regimes in places like British Columbia, and pay attention to the ways they continue, in the present, to displace and dispossess indigenous communities.

Like law, nature presents another fruitful point of entry for the examination of historic and contemporary indigenous struggles. Analogous to the emergence of a critical geography analysis of law, there is now an important body of literature on nature from a critical geography perspective. More specifically, geographers drawing on ideas from political ecology and from social nature theory have usefully explored the highly political relationship between indigeneity and nature. There are many important aspects to this work, including a consideration of the effects of environmental change (e.g., forest loss,

⁹⁸ Harris, “How Did Colonialism Dispossession?” 176-78.

⁹⁹ Blomley, “Law, Property and the Violence of Geography,” 122.

land degradation, fisheries depletion) on indigenous communities, an examination of the mobilization of indigenous voices in environmental protests, and a critical analysis of the different ways that ideas about indigeneity are tied to specific notions of nature within contemporary environmental discourses. In perhaps the most salient work in this area, Braun brings together ideas from postcolonial theory, social nature, and political ecology in an attempt to define a “critical environmentalism” that addresses questions of ecological sustainability *and* social justice, with the subversion of colonial framings of indigenous geographies being a key goal of the latter.¹⁰⁰

A fourth, and final, element in a critical indigenous geography involves a commitment to fully recognizing and documenting the agency of indigenous actors. All too often, indigenous peoples are portrayed as passive, immobile and undifferentiated (and unnamed) actors, a kind of inert and generic ground over which flow an array of mobile, fully-formed and aggressive European (or Euro-Canadian) forces. While many scholars acknowledge the existence and importance of indigenous resistance, the nature and effect of such resistance is generally poorly developed and articulated in the geography literature. This is perhaps not surprising, given the relative absence of indigenous voices recorded in archival sources, the challenges facing researchers (particularly non-indigenous researchers) seeking to carry out research in contemporary indigenous communities, and the lack of indigenous scholars working in geography. Whatever the reasons, there is a clear gap here that needs to be addressed, pointing to the need for geographers to engage more fully and openly, and in a more consistent and sustained manner, with indigenous peoples and their concerns.

¹⁰⁰ Braun, *The Intemperate Rainforest*, 9-10.

Part of the task of recognizing and documenting the agency of indigenous actors involves an acknowledgement of social differentiation within indigenous communities. Indigenous peoples are not reducible to a single, unified identity and voice, but rather are fractured and along a variety of social axes (e.g., gender, social class) and speak with multiple and sometimes contradictory voices. Thus, as noted earlier, while allies work to support the broad struggles of indigenous people—for land and self-determination, for example—they must also be sensitive to the struggles that go on within these communities, struggles that are also often focused on matters of social and economic justice. Decolonization, then, requires not only the transformation of relations between indigenous and non-indigenous societies but also the transformation of relations between individuals and groups within each of these broader social categories.¹⁰¹ This question of the overlap between external and internal struggles has perhaps been most thoroughly explored in works by scholars drawing from the intersection of postcolonial and feminist theories, where it is argued that for women the promise of postcolonialism has largely “been a history of hopes postponed.”¹⁰² The point made here is simply that, all too often, the replacement of a ‘colonial’ regime of authority by a ‘postcolonial’ regime has all too often failed to also transform the very unequal social, economic, and political relations that exist between men and women in the colonized group. Understanding and intervening in these complex internal struggles is not easy, and this is particularly

¹⁰¹ For an analysis of the need to incorporate gender analysis into the decolonization struggles of indigenous peoples in North America, see: Renya Ramirez, “Race, Tribal Nation, and Gender: A Native Feminist Approach to Belonging,” *Meridians: Feminism, Race, Transnationalism* 7 (Spring 2007): 22-40.

¹⁰² Anne McClintock, *Imperial Leather: Race, Gender, and Sexuality in the Colonial Conquest* (New York and London: Routledge, 1995), 13.

difficult and fraught territory for those located ‘outside’ these communities, yet it is important at least to acknowledge that such struggles exist.

There is wide scope here, and an exciting research agenda, for scholars drawing on any of the fields described in this chapter to develop and elaborate critical perspectives on indigenous geography. This is important and challenging work, part of a larger intellectual project of bringing indigenous peoples and their concerns into more central focus and of subverting and displacing the colonial attitudes that continue to characterize relations between indigenous and non-indigenous peoples. Finally, although I may have covered much scholarly ground in this chapter, by no means have I mapped out the entire intellectual terrain that a critical indigenous geography would encompass. For example, while I have briefly discussed the question of gender—a category of analysis that is strongly developed in at least two (postcolonial theory and political ecology) of the four fields of geography examined here, and which is more centrally the focus of work within feminist geography—this is clearly an area of central importance to the development of a critical indigenous geography.¹⁰³ Also important, as Evelyn Peters has argued, is a focus on the urban geography of indigenous peoples.¹⁰⁴ In addition, as noted earlier, conducting research in indigenous communities can pose particular challenges for both the

¹⁰³ There is a large and well-developed literature exploring the links between race and gender in colonial contexts. In addition to the work by McClintock (cited above), see: Alison Blunt and Gillian Rose, eds., *Writing Women and Space: Colonial and Postcolonial Geographies* (New York and London: The Guilford Press, 1994); Catherine Hall, ed., *Cultures of Empire: A Reader* (London: Taylor & Francis, 2000); Andrea Smith, *Conquest: Sexual Violence and American Indian Genocide* (Cambridge, MA: South End Press, 2005); and Ann Laura Stoler, *Haunted by Empire: Geographies of Intimacy in North American History* (Durham, NC: Duke University Press, 2006). For an analysis focused on British Columbia, see: Adele Perry, *On the Edge of Empire: Gender, Race, and the Making of British Columbia, 1849-1871* (Toronto: University of Toronto Press, 2001).

¹⁰⁴ Peters, “Conceptually Unclad,” 254-57.

'researcher' and the 'researched', suggesting that a critical indigenous geography will require that close attention be paid to methodological issues. The point here is not that any particular study need address all these concerns and facts, but rather that a fully developed critical indigenous geography would accommodate, and require, a diversity of such approaches. In the concluding chapter I will return to this discussion of critical indigenous geography and explore the contribution that this approach might make to processes of decolonization within the discipline of geography and, more broadly, in a settler society like Canada.

PART 1

Historic Struggles: Colonization and Dispossession

As described in the introduction of this study, this project has its origins in a meeting I had with members of the Hul'qumi'num Treaty Group during the summer of 2005. The purpose of the meeting was to discuss the possibility of focusing my dissertation project on some aspect of the land issue in Hul'qumi'num territory, preferably on some topic that would be of interest and use to the treaty group's own work. This meeting led to the identification of the history of the Esquimalt & Nanaimo Railway land grant as the central focus of my dissertation project. As I began to work on this issue, however, it quickly became apparent that the E&N land grant represented only one part of the broader story of colonization and dispossession in this territory. As important and as central as the story of the railway land grant is, it could only be fully understood if one also explored the colonial processes that preceded it and which ultimately made it possible.

The following four chapters, then, present this broader story, paying attention to the various forces that led to the opening up of Hul'qumi'num territory to colonial authority and white resettlement and to the ways that Hul'qumi'num peoples resisted the dispossession of their lands. Buttressed by colonial ideas about the superiority of European culture and made possible by British military power, colonization and dispossession in Hul'qumi'num territory was ultimately driven by the desire for land on the part of white settlers, land speculators, and private capital. In this first part of the study I cover the period roughly between 1850 and 1900, from the initial European forays

into Hul'qumi'num territory to the point when, following the finalization of the E&N land grant, much of the territory was being carved up into parcels of private land and offered for sale on the international real estate market. The intent here is to tell in some detail the story of colonization and dispossession in this territory, while also providing a broader context in which this particular story can be situated and understood.

CHAPTER 3

Land, Property, and Civilization: Colonizing Vancouver Island

A life-sized statue of Captain George Vancouver, coated in gold, occupies a prominent position atop the British Columbia Parliament Buildings in downtown Victoria. From this privileged perch, the English explorer looks down on Victoria's inner harbour and beyond over the broader urban landscape of Greater Victoria. On this particular day, June 22, 2007, Vancouver surveys a lively scene: the frequent arrival and departure of seaplanes and boats in the harbour, the continuous flow of cars, buses, and kabuki cabs, and throngs of tourists milling about the hotels, restaurants, and attractions that dominate the city's downtown tourist core. The day is a special one for Vancouver, the 250th anniversary of his birth⁴, but, apart from a few low-key events in the two cities named after this English explorer—Vancouver, British Columbia and Vancouver, Washington—there is little fanfare to mark the day. This is somewhat surprising given the central role played by this master mariner, according to the standard histories of British Columbia, in the founding of this province. Vancouver is generally credited with putting the Northwest coast of North America on the global map. His charting of this coast in the late eighteenth century, what was then a remote edge of the British Empire, was meticulous, and the resulting map (Figure 3.1) was detailed and highly accurate, remaining the standard map used by mariners for a century after its production.

⁴ Vancouver was born June 22, 1757 in King's Lynn, Norfolk, England. See Robin Fisher, *Vancouver's Voyage: Charting the Northwest Coast, 1791-1795* (Vancouver/Toronto: Douglas & McIntyre, 1992).

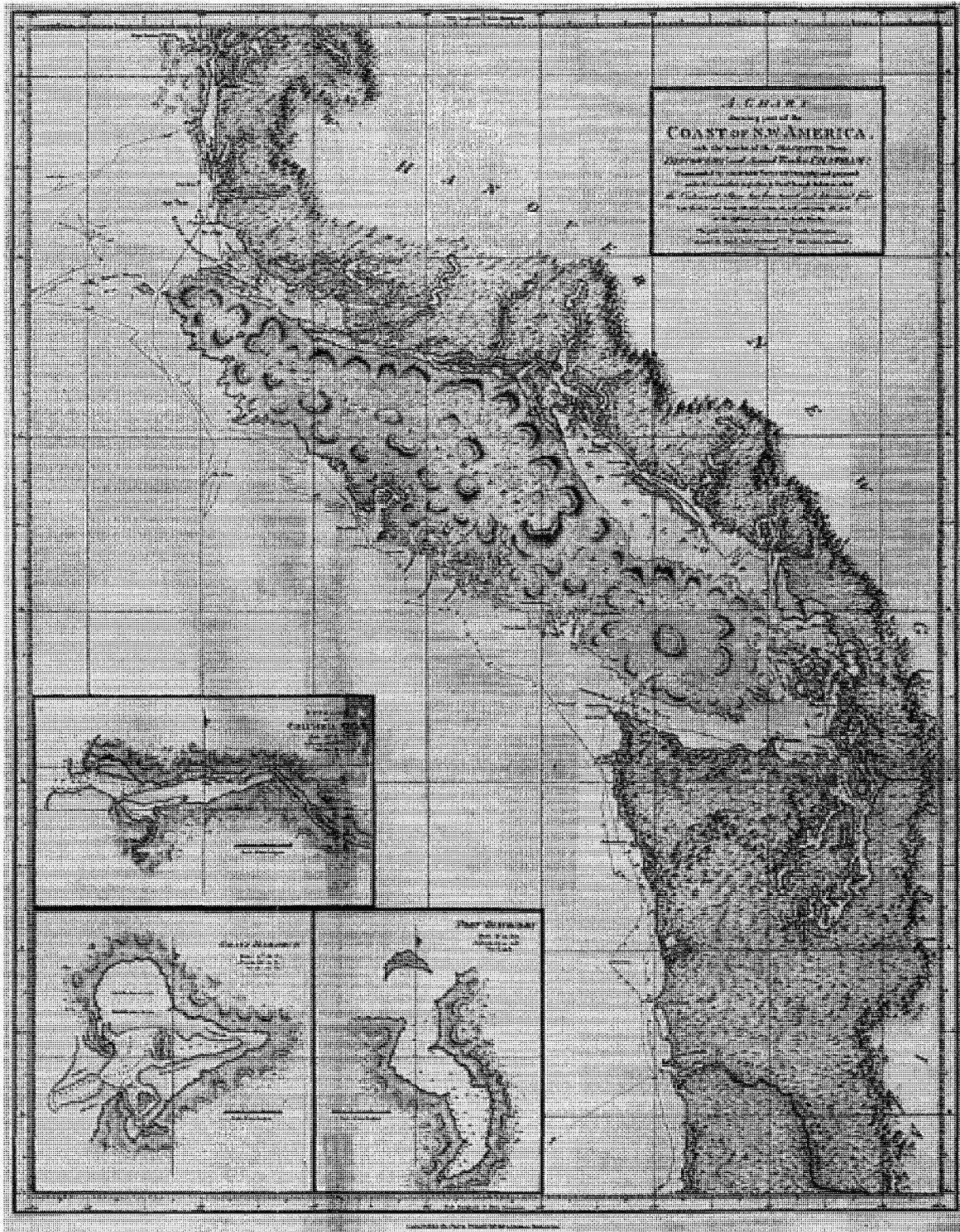


Figure 3.1: Map of Vancouver Island by George Vancouver, 1798. (Source: Library and Archives Canada/NMC 135085.)

Vancouver died in 1798, the same year that his famous map was produced, and did not live to see the island named after him become a formal English colony, nor did he witness the establishment of an English settlement on Victoria's inner harbour. He was nonetheless a key figure in what Daniel Clayton has referred to as the "imperial fashioning" of Vancouver Island.² Vancouver's cartographic work, which Clayton argues should be understood first and foremost as a project of representation, was part of a process paving the way for formal colonialism in this part of the world. His expedition to the Northwest coast had a diplomatic as well as a geographic purpose; he was dispatched by imperial Britain not only to make a detailed survey of the entire coastline (in an effort to find a northwest passage that would connect the Pacific with the Atlantic) but also to resolve a dispute with Spain over sovereignty of this distant (from Europe, that is) part of the world. While the negotiated resolution of this dispute, in the form of the 'Nootka Convention', did not fix precise imperial boundaries in this area, it did raise the idea, Clayton notes, "that Native peoples might one day be subjects of European rule."³ The detailed information collected by Vancouver and his crew, as well as by other European explorers who came before and after him, fed into a project of producing—or "fashioning"—Vancouver Island in the European imagination. Edward Said argued that such representational practices constituted a form of "geographical violence", a way of

² Clayton, *Islands of Truth*, the term "imperial fashioning" comes from the book's subtitle.

³ *Ibid.*, 188. Clayton notes that while Spain and Britain disagreed about who did or did not have sovereignty over these lands, neither questioned Europe's right to make such claims over foreign (indigenous) lands. Europeans simply did not consider indigenous residents to have anything to say with respect to sovereignty that they (the Europeans) needed to listen to or pay any heed of. Indigenous peoples were deemed not to have any legal rights (with respect to property at least) to be protected by European rules; they were simply seen as subjects of European power and sovereignty.

seizing and devouring space from a distance.⁴ Vancouver Island was objectified “as a space to be delineated and carved up”, argues Clayton, and this apparatus of representation served to pry land away from indigenous peoples, symbolically at least, long before the advent of formal colonialism.⁵

Clayton emphasizes the importance of understanding places like Vancouver Island as “both products of the West and places with specific and irreducible identities.”⁶ Such places were produced by Western discourses, notes Clayton, yet these projects of cultural engagement and territorial appropriation also underwent translation; they were affected by local conditions, they met resistance and involved negotiation. Vancouver Island then, for Clayton, cannot be simply a product of imperial and colonial power, but rather something that emerges from the engagement of Western power with local cultures and ecologies. To say this is not to say that this engagement was, in the end, without violence and on any kind of equal footing. A number of factors, not least of which was superior British military power—its use, the threat of its use, and its continual presence—ultimately made the shaping of Vancouver Island a rather one-sided affair. Indigenous peoples did engage with this process; they actively sought trade and cultural exchange with Europeans, some even welcomed the establishment of trading posts within their territories, and, when trade shifted to colonization, they resisted the appropriation of their

⁴ Edward Said, *Culture and Imperialism* (New York: Alfred A. Knopf, 1993), 225.

⁵ Clayton, *Islands of Truth*, 180. Clayton does not limit his analysis to Vancouver’s role in the fashioning of Vancouver Island. He also explores Captain James Cook’s encounters with Nuu-chah-nulth peoples at Nootka Sound, on the west coast of Vancouver Island, in the 1770s, motivated as they were by interest in scientific exploration and discovery, as well as Western-indigenous engagements through the maritime fur trade (which peaked in the 1780s and 1790s), motivated by more material interests, and how these encounters helped shape Vancouver Island in the European imagination.

⁶ *Ibid.*, xii.

lands and resources. It is important to note that the various forms of indigenous resistance to imperialism and colonialism in this part of the world—from attacks against European ships and trading forts to the disruption of land resettlement schemes (e.g., removing survey stakes, threatening and attacking settlers, tearing down the fences erected by settlers and killing their livestock) to the peaceful petitioning of colonial and imperial authorities—was not without effect. However, as Cole Harris argues, indigenous agency in British Columbia was “exercised within the profound asymmetries of settler colonialism, a colonialism with relentless momentum and a comprehensive package of powers.”⁷

In *Islands of Truth*, Clayton is keen to dismantle the “traditional history” of Vancouver Island, erected by earlier scholars of this place, where a superior Western civilization bowled over primitive societies—a narrow kind of narrative that served to provide comfort to the inheritors of this colonial space. Such a limited narrative, argues Clayton, “both creates, and attempts to fill, a terra incognita with historical meaning”⁸ and in the process indigenous peoples are erased from the local historical imagination, a kind of “epistemic erasure.”⁹ A traditional history seeks to establish the origin of things, the mythical starting point of history, from which to trace a story of a continuous and unbroken development to the present, and to highlight momentous events, noble ideas, and heroic figures.¹⁰ For Vancouver Island such a history involved the myth of a white founding of this place, the celebration of the European explorers (Cook, Vancouver) who

⁷ Cole Harris, “How Did Colonialism Dispossess?” 180.

⁸ Clayton, *Islands of Truth*, 58.

⁹ Braun, *The Intemperate Rainforest*, 8.

¹⁰ Michel Foucault, “Nietzsche, Genealogy, History,” in Donald F. Bouchard, ed., *Language, Counter-memory, Practice: Selected Essays and Interviews by Michel Foucault* (Ithaca, NY: Cornell University Press, 1977).

founded it, and the easy and untroubled transformation of the island into a white domain. In *Islands of Truth*, Clayton's primary task is to lay out the imperial context for the colonization of Vancouver Island; how imperial power, acting through cartographic projects of representation and models of sovereignty, "induced and naturalized colonialism."¹¹ An imperial history of power, Clayton argues, bridges the pre-colonial and colonial eras and prompts us to rethink the nature and moment of colonialism."¹²

With an understanding of this imperial context and of the importance of this period of imperial outreach in shaping the eventual colonization of Vancouver Island, this study of historic and contemporary struggles over land and resources in Hul'qumi'num territory therefore begins with the onset of colonialism on Vancouver Island. Just as the imperial context is critical to the understanding of colonialism on Vancouver Island, so the broader context of colonialism on Vancouver Island is critical to understanding the colonization of Hul'qumi'num territory. This chapter seeks to provide this broader context, examining the founding and early development of an English settlement at Fort Victoria in the mid-nineteenth century and the forces that led to the extension of this white colony into Hul'qumi'num territory. Of particular interest here are early European representations of indigeneity, territory, and nature, the elaboration of social and economic relations between indigenous and non-indigenous peoples during the early phase of colonization, processes of conflict and negotiation over land and resources, and the gradual imposition of colonial forms of law and order.

From its initial founding in 1843 as an outpost of the Hudson's Bay Company's fur trade empire, Fort Victoria quickly emerged as the Company's headquarters on the

¹¹ Clayton, *Islands of Truth*, xx.

¹² *Ibid.*

Northwest Coast of North America and the capital of the colony of Vancouver Island, and then, in the late 1850s and early 1860s, into a rapidly growing white colony eager to expand into adjacent territories. Drawn to Fort Victoria to engage in economic and cultural exchange with the newly arrived white traders and settlers, indigenous peoples were critical to the establishment and early survival of the white colony. Over time, however, as the colony grew and as the white economy shifted from a focus on trade to one based on agriculture and the exploitation of land-based natural resources, indigenous peoples found themselves increasingly in conflict with the emerging settler society, and increasingly marginalized in economic and political affairs.

Finding Fort Victoria: “A Perfect Eden” and “Desperate Savages”

Just as the dispute between Britain and Spain spurred the “imperial fashioning” of Vancouver Island, so a similar geopolitical dispute spurred the planting of the first formal British colony in what would eventually become British Columbia. In the early 1840s, the long-simmering dispute between Britain and the United States of America over the control of Oregon territory in the Pacific Northwest—Britain had claimed the entire territory north of the Columbia River while America had claimed the territory south of the 49th parallel—had reached a boiling point, and this led the Hudson’s Bay Company (being the main British presence in the area) to reevaluate its operations in the region.¹³ Realizing that its operations south of the 49th parallel were in some jeopardy, Company officials made plans to move their headquarters, then located at Fort Vancouver, near the

¹³ The Oregon boundary dispute, as it was called, was resolved by the 1846 Treaty of Oregon, which set the 49th parallel as the border between the United States and British territory on the Northwest coast.

mouth of the Columbia River, further to the north. A number of different sites were discussed, including the southeast tip of Vancouver Island. James Douglas, a chief factor at Fort Vancouver and the man whom historians would later dub the “Father of British Columbia”¹⁴, visited the Vancouver Island site in 1842. In a letter to Company Secretary James Hargraves, Douglas was effusive in his praise of the place that would serve as the site of Fort Victoria and the Company’s new headquarters. “The place appears a perfect ‘Eden’, in the midst of the dreary wilderness of the North west coast”, wrote Douglas. It was “so different in its general aspect, from the wooded, rugged regions around,” Douglas went on, “that one might be pardoned for supposing it had dropped from the clouds into its present position.”¹⁵

Douglas took evident delight in the landscape, remarking on the growth of “indigenous vegetation ... more luxuriant than in any other place, I have seen in America”.¹⁶ He describes ranging “over fields knee deep in clover, tall grasses and ferns reaching above our heads”¹⁷—all indications, he hastened to add, of a fertile soil and an ideal site for an agrarian colony. The site seemed perfect in other respects: “Not a mosquito [sic] that plague of plagues did we feel, nor meet with molestation from the

¹⁴ Dorothy Blakey-Smith, *James Douglas: The Father of British Columbia* (Toronto: Oxford University Press, 1971).

¹⁵ Letter from James Douglas to James Hargrave, 5 February 1843. Letter reprinted in G.P. de T. Glazebrook, ed., *The Hargrave Correspondence, 1821-1843* (Toronto: The Champlain Society, 1938), 420.

¹⁶ *Ibid.*

¹⁷ John Sebastian Helmcken, the surgeon at Fort Victoria and Douglas’ son-in-law, noted that Douglas chose this spot to establish the English settlement “as much on account of the small prairies about it as anything else.” See: Dorothy Blakey-Smith, ed., *The Reminiscences of Doctor John Sebastian Helmcken* (Vancouver: University of British Columbia Press, 1975), 119.

natives.”¹⁸ Nonetheless, Douglas warned, the indigenous residents were “numerous and daring having as yet lost no trait of their natural barbarity”.¹⁹ He predicted “both trouble and anxiety in the first course of training” these local peoples, and bemoaned the difficulties of living amongst “these desperate savages.”²⁰ With the aid of Adolphus Lee Lewes, a Company surveyor and mapmaker, Douglas produced a map of the Fort Victoria landscape (Figure 3.2), which illustrated the extent of meadows and open woodlands (light coloured areas on the map) surrounded by more densely forested areas (darker areas).²¹ The small red square (lower centre of the map) indicated the proposed location of the Company fort on the inner harbour. Two tiny black dots at the head of a small bay (now known as Cadboro Bay) in the northeast corner (top right) of the map indicate the presence of a Songhees village.

On March 15, 1843, a year after his first visit, Douglas returned to the site with a crew of men to formally establish Fort Victoria.²² His diary entry for the following day describes his first encounter with the indigenous people whose territory he had entered: “Spoke to the Samose [Songhees] today and informed them of our intention of building in this place which appeared to please them very much”.²³ The journal also notes that he offered to pay the Songhees to supply the Company’s crew with the timber they needed

¹⁸ Douglas to Hargrave, 5 February 1843.

¹⁹ *Ibid.*

²⁰ *Ibid.*

²¹ See Derek Hayes, *Historical Atlas of British Columbia and the Pacific Northwest: Maps of Exploration: British Columbia, Washington, Oregon, Alaska, Yukon* (Vancouver: Cavendish Books, 1999), 125-26.

²² Douglas first named this site Fort Camosack, which no doubt reflected the importance of indigenous Camas (*Cammasia*) cultivation here. It was also briefly named Fort Alfred, before assuming the name of the young Queen of England.

²³ Cited in W. Kaye Lamb, “The Founding of Fort Victoria,” *British Columbia Historical Quarterly* 7 (1943): 71-92. Quote is from page 86.

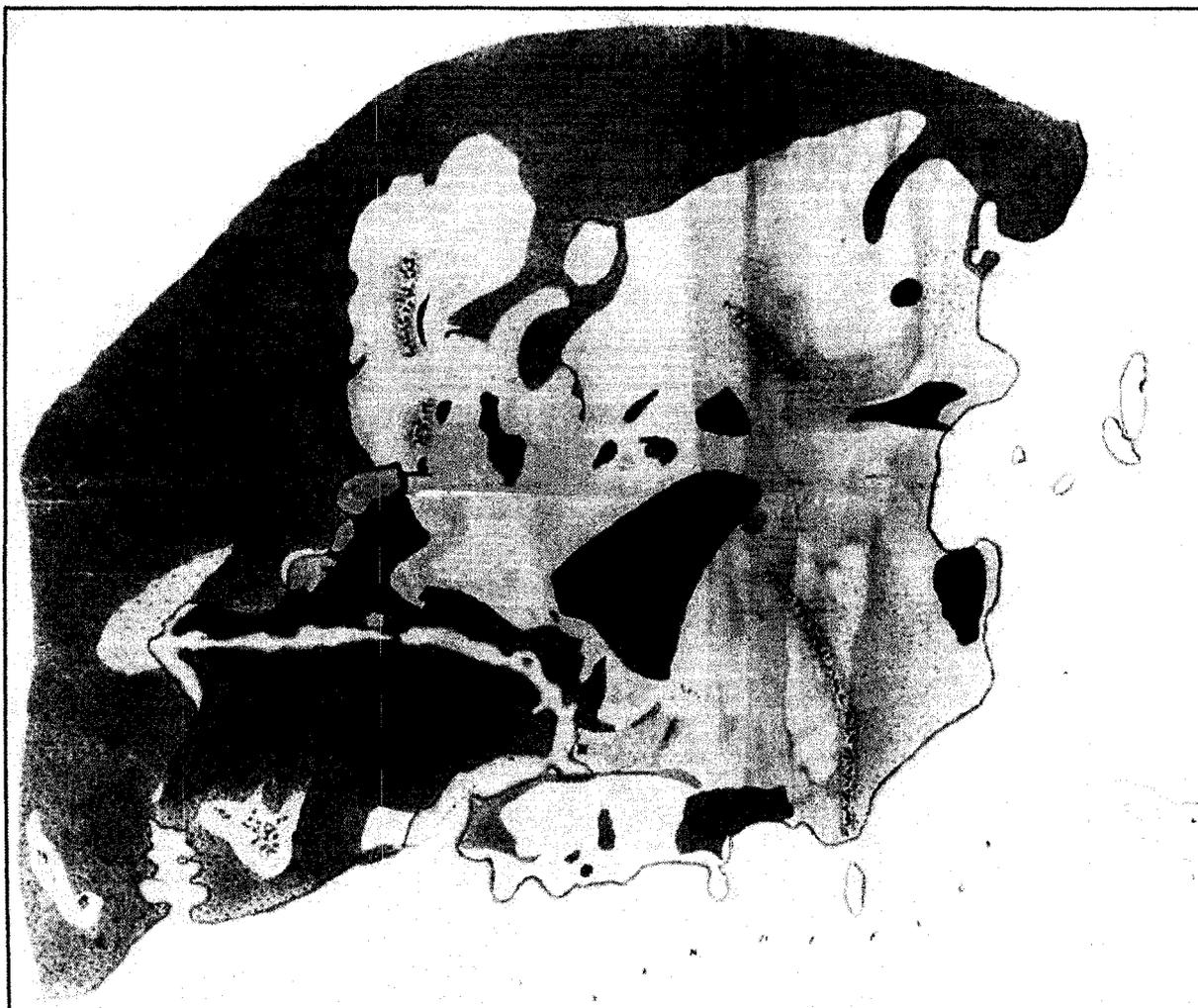


Figure 3.2: Ground plan of portion of Vancouver's Island selected for new establishment taken by James Douglas and Adolphus Lee Lewes, 1842. (Reproduced with permission of the Hudson's Bay Company Archives, Archives of Manitoba; Reference Number HBCA G.2/25.)

to build the fort. The Company crew immediately set to work building the fort at a site in the protected inner harbour, using materials provided by the local inhabitants. The activities of the white visitors drew considerable attention from local indigenous communities; Charles Ross, the man in charge of the fort's construction (and who would become the Company's first chief factor at Fort Victoria), noted during the construction of the fort that the "natives have been about us in great numbers" and complained that they give some "annoyance occasionally".²⁴ Ross expressed "great relief" once the walls of the fort had been erected "between ourselves and them."²⁵ Shortly after the fort was established, the Songhees, whose main village was located at Cadboro Bay (some distance northeast of the fort), moved to be close to the new fort, building a village on the southwest edge of the inner harbour, on a site close to the present-day location of the provincial parliament.

Douglas was certainly not the only newcomer to find the site of the new fort appealing. In 1844 Ross wrote that "[t]he landscape is beautiful & strongly reminds one of some of the noble domains at home."²⁶ And when the HMS Herald visited Fort Victoria in 1846, the ship's naturalist likened the landscape to "a natural park; noble oaks and ferns are seen in the greatest luxuriance, thickets of the hazel and the willow,

²⁴ Letter from Charles Ross to Donald Ross, January 10, 1844, in W. Kaye Lamb, "Five Letters of Charles Ross," *British Columbia Historical Quarterly* 7 (1943): 110. Cole Harris notes that the construction of a palisaded, well-defended fort was the first order of business in the establishment of a new fur trading post. This was a key part of the process of creating a familiar (Europeanized) and safe space out of which to operate, in the midst of a foreign (indigenous), and potentially hostile, territory. See Harris, *The Resettlement of British Columbia*, 34-39.

²⁵ *Ibid.*

²⁶ *Ibid.*, 111.

shrubberies of the poplar and the alder, are dotted about.”²⁷ To this naturalist, the area around Fort Victoria, which the newcomers were in the process of transforming, seemed man-made: “One could hardly believe that this was not a work of art; more particularly when finding signs of cultivation in every direction”.²⁸ All was not quite perfect, however, for as the naturalist was quick to point out “[c]ivilization had encroached upon the beautiful domain, and the savage could no longer exist in the filth and indolence of mere animal life.”²⁹ The early impressions of Fort Victoria, then, indicated both admiration and loathing for this place. Nature here was seen as open and lush, familiar and accommodating, seemingly newly fashioned to suit its new white residents. It was as if, as one observer noted, “progress had specially prepared the place, and the foundations of civilization were already laid.”³⁰ The presence of indigenous people here, however, seemed a blot on this otherwise inviting landscape.

The irony here, of course, was that the ‘natural’ landscape that Douglas and other white explorers and settlers so admired, and which they described as resembling a work of artifice, was in fact shaped by human hands. The landscape of meadows and open

²⁷ B. Seemann, *Narrative of the Voyage of H.M.S. Herald During the Years 1845-51* (London, 1853), I: 102. Cited in G.P.V. Akrigg and Helen B. Akrigg, *British Columbia Chronicle 1778-1846* (Victoria: Discovery Press, 1975), 392.

²⁸ Hubert Bancroft, a prominent early historian of the Northwest coast, would reiterate this image of the landscape around Fort Victoria as a work of art, though in combination with nature. “Though wholly natural, it did not seem so. It was not at all like pure art; but it was as though nature and art had combined to map and make one of the most pleasing prospects in the world. So park-like in appearance was the region round and back of the harbor, that the European first landing would scarcely have manifested surprise had he encountered workmen, who, while subduing that which was evil or ungainly, were yet subordinating art to nature, and striving with their artificial changes still to preserve nature’s beauties.” See: Hubert H. Bancroft, *History of British Columbia, 1792-1887* (San Francisco: The History Publishers, 1887), 94.

²⁹ B. Seemann, *Narrative of the Voyage*, 102.

³⁰ *Ibid.*

woodlands in the vicinity of Fort Victoria had long been intensively managed by local indigenous peoples so as to produce and sustain certain plant and animal species. On southeast Vancouver Island and the adjacent Gulf Islands, including around the Fort Victoria area, resident Coast Salish peoples depended not only on abundant fish and wildlife populations but also on a wide range of plants that they actively tended.³¹ Long before the arrival of the first European visitors, indigenous peoples on the Northwest coast employed a wide variety of plant cultivation techniques (e.g., propagation from seed, transplanting propagules, tilling and amendment of garden plots, weeding, pruning, selective harvesting, controlled burning, forms of shifting cultivation) to manage a large collection of plants. Douglas Deur and Nancy Turner note that, historically, Northwest coast peoples were “actively modifying many of the roughly 300 plant species that they used as foods, sources of material and medicines, and for spiritual purposes.”³² On southeast Vancouver Island and the adjacent Gulf Islands, perhaps the best known and of greatest importance were the two species of Camas (*Camassia quamash* and *Camassia leichtlinii*), whose starchy tubers provided an important food source and served as a valuable trade commodity.³³

These plant cultivation techniques were complemented by (and often overlapped with) indigenous practices designed to sustain terrestrial and marine animal populations. Controlled burning of landscapes, for example, served to enhance forage for ungulates

³¹ Nancy Turner, *Plant Technology of First Peoples in British Columbia* (Vancouver: UBC Press, 1998).

³² Douglas Deur and Nancy Turner, eds., *Keeping it Living: Traditions of Plant Use and Cultivation on the Northwest Coast of North America* (Vancouver and Toronto: UBC Press, 2005).

³³ Nancy Turner and Dawn C. Loewen, “The Original ‘Free Trade’”: Exchange of Botanical Products and Associated Plant Knowledge in Northwestern North America,” *Anthropologica* XL (1998): 49-70.

such as deer and elk that were important food sources.³⁴ Regular burning of certain parts of the landscape helped create places that indigenous peoples could rely on as productive hunting sites, producing the park-like landscapes of meadow and open forest that Europeans so admired. Clams were another important food staple for indigenous peoples on the Northwest coast, and scholars have only recently begun to understand and document forms of active management of clam beds. A recent book by Judith Williams documents the presence of extensive “clam gardens” along the Northwest Coast; these are sites where indigenous peoples actively managed clam beds to enhance clam production. The beds were ‘tilled’ through the removal of rocks and the use of selective harvest techniques, and were clearly delineated by stone walls which become visible at very low tides.³⁵ All of these marks on the landscape—the meadows and open woodlands, the lush plots of Camas and other food plants, the tilled clam beds—were seemingly unintelligible to white explorers and settlers, or at least unintelligible as products of human management.

The apparent inability of European newcomers to recognize the signs of indigenous landscape use and occupation indicated that Douglas and his men arrived not only with the metal tools they needed to build a trading post but also with certain mental tools that facilitated their construction of a white colony in indigenous territory, namely deeply held ideas about the superiority of Western civilization, the simplicity and savagery of indigenous peoples, and of their natural right, as members of the superior group, to insert themselves into this indigenous territory. Early histories of British Columbia would

³⁴ Robert Boyd, ed., *Indians, Fire, and the Land in the Pacific Northwest* (Corvallis, Oregon: Oregon State University Press, 1999).

³⁵ Judith Williams, *Clam Gardens: Aboriginal Mariculture on Canada's West Coast* (Vancouver: New Star Books, 2006).

describe the founding of Fort Victoria in glorious prose, as the planting of history and culture in a perfect primeval wilderness. The American historian and ethnologist Hubert H. Bancroft described the arrival of Douglas and his crew to a place where “[n]ot a human habitation was in sight, not a beast, scarcely a bird” and where “[e]ven the distant murmur of the voiceless wood was drowned by the gentle beating of the surf upon the shore.”³⁶ Prior to white colonization, Bancroft wrote, British Columbia

... was a silent wilderness. Its lords were natural, healthful, and free. Its wild beasts, birds, and fishes were multitudinous and fearless. Its forest-plumed hill-sides and its ravines whispered ceaselessly their soft psalmody; its plains and transfixed billows bared their breasts to the coveted warmth of the all-embracing sun; while its snow-silvered mountain-tops, a savage Olympus, marked the earth’s limits to the dusky intellects within their embrace...³⁷

For Bancroft, the innocent indigene—the “unenlightened red man” with his “dusky intellect” living in his “happy hunting grounds” and ignorant of the wider world—was doomed by the arrival of Western civilization; the indigene, and indeed this very pre-modern form of nature itself, was “impregnated with the poison of progress; for already the subtle, unfelt clutch of civilization was on the land.”³⁸ For Bancroft, Company trading posts, like Fort Victoria—representing “magazines of celestial comforts” to the “thoughtless red man”, but in truth “depots of compressed power”—were like “germs of the highest human type, which ... spring up and overspread the wilderness, causing it to wither beneath its fatal shade.”³⁹

³⁶ Bancroft, *History of British Columbia*, 94.

³⁷ *Ibid.*, 52-53.

³⁸ *Ibid.*, 53.

³⁹ *Ibid.* Bancroft’s conception of pre-colonial British Columbia, in which indigenous peoples are portrayed as primitive, innocent and helpless, can be contrasted with other chroniclers of his period who presented a more sinister image. J.B. Kerr, for example, attacks Bancroft’s work as “a muddled mass of misstatements and misrepresentations”. For Kerr, pre-colonial British Columbia “was a wild and trackless region peopled by fierce and hostile savages whose barbarous empire was only broken here and there at

Such discourses of nature, savagery, and civilization, whether imbued with disdain or sympathy for indigenous peoples, served to clearly delineate the historical disjuncture posited at the moment of colonization, obliterating decades of contact and trade, and cultural accommodation, between Europeans and indigenous peoples on the Northwest coast, and casting the latter group as static and incapable of adapting to cultural and economic change. This idea of indigenous peoples and cultures as doomed through infection with Western civilization was common through the nineteenth century, perhaps in part reflecting the catastrophic effect of introduced Western diseases (especially smallpox) on indigenous peoples at that time.⁴⁰ These discourses also served to highlight the gap constructed between white settlers and indigenous peoples and cultures, and more broadly between civilization and savagery. This was part of the practice, as Edward Said put it, of setting up a boundary to separate civilized space from an unfamiliar space beyond, a place called “the land of the barbarians.”⁴¹ Such discourses were productive for white settlers, obscuring historical continuities and myriad connections between white settlers and indigenous residents. No doubt Fort Victoria did serve as an attractant to indigenous peoples—the Songhees and other groups congregated in the Indian village

distant intervals in the boundless forest by a few scattered trading posts”. Rather than the country being “poisoned” by progress, for Kerr British Columbia’s transformation was a happy event, “a quiet and effectual redemption from savagery” without parallel in the British empire. Moreover, colonization of British Columbia was “a matter of easy and frictionless accomplishment.” J.B. Kerr, *Biographical Sketch of Well-Known British Columbians: With a Historical Sketch* (Vancouver: Kerr & Begg, 1890), 1-2.

⁴⁰ The first smallpox epidemic swept through the southwest coast of what is now British Columbia, including the Georgia Strait region, in 1782, a decade prior to Vancouver’s first exploration of the area. Thus, indigenous populations in this area were decimated even before European explorers began to arrive in these waters. See: Harris, *The Resettlement of British Columbia*, 3-30; and Robert Boyd, *The Coming of the Spirit of Pestilence: Introduced Infectious Diseases and Population Decline among Northwest Coast Indians, 1774-1874* (Seattle, Washington: University of Washington Press, 1999).

⁴¹ Said, *Orientalism*, 54.

that sprung up adjacent to the Hudson's Bay Company fort on the inner harbour—not because they viewed the fort as a mystical magazine of “celestial comforts”, as Bancroft would have it, but rather because they sought to engage in economic and cultural exchange with the white residents of the fort; the white residents had, after all, come to this place from afar specifically for that purpose, to engage in trade with local indigenous peoples. The Songhees moved their primary village from Cadboro Bay to the inner harbour because, as Clayton argues was the case for indigenous groups involved in the maritime fur trade on the west coast of Vancouver Island during the late eighteenth and early nineteenth centuries, they likely understood very well the economic and political advantages that would derive from situating themselves in a key position with respect to the white traders and other indigenous groups.⁴²

The Songhees and other indigenous groups in the area were certainly very familiar with the white trading economy prior to the establishment of Fort Victoria, through interaction with traders at Hudson's Bay Company posts at Fort Langley (on the Fraser River) and to the south in Washington and Oregon territory, and they were quickly and actively engaged in the economy of early Fort Victoria. Indigenous peoples sold all manner of goods (furs, timber, fish, game, potatoes) and services (construction labour, guiding) to the Company in exchange for European products (e.g., firearms, metal tools and cooking pots, cloth) that made their lives easier.⁴³ Indeed, particularly in its early development, the fort was highly dependent on the goods and services provided by

⁴² Clayton, *Islands of Truth*, see chapter 9.

⁴³ Richard S. Mackie, *Colonial Land, Indian Labour and Company Capital: The Economy of Vancouver Island, 1849-1858* (Master's Thesis, University of Victoria, 1984); and Richard S. Mackie, “The Colonization of Vancouver Island, 1849-1858,” *BC Studies* 96 (Winter 1992-93): 3-40.

indigenous peoples. As historian Robin Fisher points out, through the fur trade local peoples and European traders were engaged in an economy that was mutually beneficial, and, apart from the small areas they used to erect their forts, Europeans had no interest in taking control of indigenous land or disrupting their cultures.⁴⁴ Because of this, conflicts between Europeans and indigenous peoples during the fur-trade period tended to be relatively minor and were usually resolved fairly quickly. When Europeans sought to colonize and appropriate indigenous lands, however, conflicts between the two groups increased. Two incidents of conflict between white fur traders and resident indigenous peoples in the early years after Fort Victoria's creation, described below, serve to illustrate such clashes over land use and property.

The first conflict came about through the introduction of European livestock, which were brought up from Company posts to the south and then let free to graze outside the confines of the fort. In early 1844, a number of the Company's newly imported livestock went missing. It soon became apparent that the animals had been killed by an indigenous hunting party and subsequently served up as part of a feast.⁴⁵ In discussing this incident, Chris Arnett notes that since the animals were not inside the fort, which was recognized by indigenous peoples as the container of white property, but rather running loose on land they considered as part of their territory, indigenous residents likely viewed the animals as fair game for hunting.⁴⁶ Roderick Finlayson, newly appointed chief factor at Fort Victoria, did not share this view, and resolved to bring the perpetrators of this deed to

⁴⁴ Robin Fisher, *Contact and Conflict: Indian-European Relations in British Columbia, 1774-1890* (Vancouver: UBC Press, 1977).

⁴⁵ Native 'poaching' of white livestock was a common source of tension between white settlers and fur traders and local Native peoples.

⁴⁶ Chris Arnett, *The Terror of the Coast: Land Alienation and Colonial War on Vancouver Island and the Gulf Islands, 1849-1863* (Vancouver: Talonbooks, 1999), 27.

account. Finlayson was determined to act firmly to show local indigenous groups that they could not interfere with the white man's property, regardless of where it was found, without enduring the pain of a harsh penalty. When his demand that the guilty parties be brought forward for punishment failed to yield results, Finlayson cut off trade with local indigenous groups. The indigenous residents then formed an alliance with other local groups and launched an attack on the trading post, "riddling the stockade & roofs of the House with their musket balls."⁴⁷ Badly outnumbered and fearing an all-out war that would be disastrous for the newly established trading post, Finlayson chose to display the Company's military might by firing a cannon at an empty indigenous house located near the fort. The strategy proved effective; the house was quickly demolished by cannon fire and the indigenous residents soon returned to negotiations to resolve the dispute. Eventually, as the story is told, the indigenous groups agreed to pay for the animals killed and peaceful relations were reestablished. Finlayson expressed satisfaction at the outcome, feeling that the locals had been taught that they could not interfere with the white men or their property without risk of harsh punishment. The "training" of local indigenous peoples to white ways, as Douglas had referred to it, had begun.

Shortly after this matter was settled, another incident caused tension between the fur traders and the Songhees. A fire that was started near the Songhees village—perhaps as part of a common indigenous land management practice at the time, the burning of landscapes to manage plant and animal populations—began to spread through the woods and came near the fort. The fire was quickly extinguished, but Finlayson worried that a possible recurrence of such fires could threaten the fort. To avoid this, he sought to place

⁴⁷ Cited in Akrigg and Akrigg, *British Columbia Chronicle*, 370.

a greater distance between the trading post and the Songhees settlement, ordering the Songhees to move their village to the opposite (northwest) side of the harbour. The Songhees objected, pointing out that they owned the land and could live wherever they wanted. In the end, however, the Songhees consented with Finlayson's wish, providing the Company would agree to help dismantle and move their houses. The move was made, and this was the origin of the Songhees village, and Indian reserve, on the northwest side of the inner harbour.⁴⁸ Although the Songhees were thus further removed from the white fort and colony, as the town of Victoria grew many white residents would still find the proximity of the indigenous peoples troubling.

Early Colonial Land Policies and the 'Douglas Treaties'

Concerned about the possible annexation of British territory on the Northwest coast by an expanding United States, in 1849 Britain declared the whole of Vancouver Island a Crown colony and, almost immediately, granted the Hudson's Bay Company a ten-year lease to administer the colony. The key to upholding their claim to this territory in the face of American expansionism, according to British officials, was the planting of a British colony. Thus, the grant required that the Company establish one or more English settlements within five years of the grant being made. In making this colonial grant, Britain made it clear that the Company was charged with the protection and welfare of the indigenous peoples living in the colony's territory. The Company was instructed to respect the rights of these indigenous peoples to their land and resources; this meant that the requirement that the British government take measures to extinguish aboriginal title

⁴⁸ See: Grant Keddie, *Songhees Pictorial: A History of the Songhees People as Seen by Outsiders, 1790-1912* (Victoria: Royal British Columbia Museum, 2003).

prior to colonization, according to colonial policy of the time, was equally required of the Company. The creation of a British colony at Fort Victoria required taking possession of indigenous land, a fact acknowledged in a letter Douglas sent to Archibald Barclay, Secretary of the Company, in 1849; “Some arrangement should be made as soon as possible with the native Tribes for the purchase of their lands”, wrote Douglas.⁴⁹ This should be done to ensure peace in the colony, Douglas argued, as well as a measure of justice. Barclay wrote back, directing Douglas to enter into negotiations with “the chiefs of the tribes” and to consider “the natives as rightful possessors of such lands only as they are occupied by cultivation, or had houses built on them”.⁵⁰ All other land, he directed, was “to be regarded as waste, and applicable to the purposes of colonization.”⁵¹ Following precedent set in other British colonies, Douglas was to negotiate the purchase of lands from local indigenous groups in order to meet the needs of an expanding white colony.

In 1850 Douglas sought to purchase land from nine different indigenous groups around Fort Victoria, including different family groupings of the Songhees, Clallam, and Sooke peoples. “After considerable discussion,” Douglas reported, “it was arranged that the whole of their lands, forming as before stated the District of Victoria, should be sold

⁴⁹ James Douglas to Archibald Barclay, September 3, 1849. In Hartwell Bowsfield, ed., *Fort Victoria Letters, 1846-1851* (Winnipeg: Hudson’s Bay Records Society, Vol. 32, 1979). Although Douglas did not become Governor of the Colony of Vancouver Island until 1850, as chief factor of the HBC operation at Fort Victoria he wielded more power than the colony’s first Governor, Richard Blanshard, who occupied the post for only a short period.

⁵⁰ Archibald Barclay to James Douglas, December 16, 1849. Cited in Derek Pethick, *James Douglas: Servant of Two Empires* (Vancouver: Mitchell Press, 1969), 77-78.

⁵¹ *Ibid.*

to the Company, with the exception of Village sites and enclosed fields”.⁵² The text of the agreement stipulated that, apart from the exceptions noted (i.e., village sites and enclosed fields), the land would become “the Entire property of the White people for ever”.⁵³ Indigenous groups that signed on to such agreements were to be assured not only in their possession of certain lands, reserved for their exclusive use, but also of certain hunting and fishing rights; the agreement stated that “they were at liberty to hunt over the unoccupied lands, and to carry on their fisheries with the same freedom as when they were the sole occupants of the country”.⁵⁴

The meaning and significance of these land purchase agreements, which are generally referred to as the “Douglas treaties”, have been the subject of considerable legal contention and scholarly discussion.⁵⁵ It is important to note that even though Douglas did not use the word treaty to describe these land sale purchases, Canadian courts have subsequently described them as valid treaties between the British Crown and the indigenous groups involved. In this way, the Douglas treaties are seen as similar in nature, in a legal sense, to the treaties concluded in the same period between the colony

⁵² Douglas to Barclay, May 16, 1850. In addition to the nine land sale agreements in the Fort Victoria area, over the next four years, Douglas would sign similar land sale agreements with five other indigenous groups: with two Kwakiutl groups at Fort Rupert (on northern Vancouver Island) in 1851, with two Saanich groups on the Saanich Peninsula (northeast of Victoria) in 1852, and with one Snuneymuxw group at Nanaimo in 1854. See Paul Tennant, *Aboriginal Peoples and Politics: The Indian Land Question in British Columbia, 1849-1989* (Vancouver: UBC Press, 1990), 18-20.

⁵³ The full text of the treaties is included in Wilson Duff, “The Fort Victoria Treaties,” *BC Studies* Vol. 3 (Fall 1969): 3-57.

⁵⁴ *Ibid.*, 11.

⁵⁵ See, for example, Duff, “The Fort Victoria Treaties”; and James Hendrickson, *Journals of the Colonial Legislatures of the Colonies of Vancouver Island and British Columbia, 1851-1871* (Victoria: British Columbia Archives, 1980).

of Canada and indigenous peoples in Upper Canada.⁵⁶ Paul Tennant (1990) argues that the major significance of the Douglas treaties, at least in terms of the contemporary legal discourse around aboriginal title and rights in British Columbia, was the fact that they unequivocally recognized aboriginal title. Furthermore, he notes, Douglas recognized aboriginal title as existing not only on indigenous village sites but also across all the lands that he purchased. A map of the treaty areas around Fort Victoria, for example, indicates a space fully occupied and owned by indigenous groups.⁵⁷ In this way Douglas departed from the instructions provided by Barclay—who instructed that he should view all lands not directly and clearly occupied by indigenous peoples (i.e., villages and enclosed fields) as ‘waste’ (i.e., unoccupied) and open to white settlement—and instead recognized that all of the lands were used and owned by different indigenous groups.

More recently, Chris Arnett has argued that it is unlikely that the indigenous groups who signed the Douglas treaties were aware of the intentions of Douglas and other colonial authorities in making these agreements.⁵⁸ Difficulties in communication—few indigenous people spoke English at the time and fewer still could make any sense of written English, while few colonial officials spoke any of the local indigenous dialects—and different understandings of land ownership meant that the two groups signing these

⁵⁶ By 1850, treaties had been employed by the British in eastern North America to establish peaceful relations with indigenous groups (these ‘peace and friendship’ treaties were signed between 1725 and 1779) and, later, to clear lands of aboriginal title to allow for white settlement. (‘land cession’ treaties) The first land cession treaties were signed between the British and indigenous groups in Upper Canada between 1764 and 1836. The three “Province of Canada treaties”, covering parts of northern Ontario, were signed between 1850 and 1862; these were the first treaties to contain provisions for Indian reserves and for the continuation of indigenous hunting rights on unoccupied Crown lands. See Olive P. Dickason, *A Concise History of Canada’s First Nations* (Oxford and New York: Oxford University Press, 2006).

⁵⁷ See map in Duff, “The Fort Victoria Treaties,” *BC Studies* 3 (Fall 1969), 10.

⁵⁸ Arnett, *The Terror of the Coast*, 36-37.

agreements, colonial authorities on one hand and indigenous authorities on the other, likely had very different understandings of the meaning of the agreements. Arnett argues that indigenous peoples, interpreting these events through their own cultural lenses, believed the agreements were more like treaties to confirm their title and rights to land and resources, and to keep the peace. It was not until much later, according to this argument, that indigenous peoples understood that the agreements specified the taking away of their lands.⁵⁹

Property, Civilization, and Savagery

The text of the Douglas treaties reflects a uniquely English conception of property in land. The exclusion of indigenous “village sites and enclosed fields” from the agreements reflects an understanding of such places as unambiguously the property of the indigenous peoples who signed on to the agreements. This recognition drew on what was, by that time, a long-established English understanding of property as derived from the Lockean notion of “improvements” made to the land. According to this view, property was created through human labour applied to the land, such as the building of a house, cultivation and enclosure of the land, grazing livestock on enclosed land, and even releasing a domestic animal (cattle, horses) onto unfenced land.⁶⁰ Patricia Seed notes that the concept of

⁵⁹ *Ibid.*, 36-37. See also Keddie, *Songhees Pictorial*, 49.

⁶⁰ These ideas about property are most often traced to the work of John Locke, and in particular to his argument in *Two Treatises* in which he most clearly lays out his labour theory of property (i.e., that property is created through agrarian labour). Barbara Arneil argues that Locke’s definition of property, developed towards the end of the seventeenth century and which replaced a long-standing conception of property in England based on occupation, was specifically created to provide support for English colonization of North America. See Barbara Arneil, *John Locke and America: The Defence of English Colonialism* (Oxford: Clarendon Press, 1996).

improvement originated in 16th century England with the enclosure movement; to improve the land meant to enclose it and claim it for one's own agricultural or pastoral use.⁶¹ This practice was reproduced in English colonies, with the result that, as William Cronon observes for colonial New England, fences became the most important symbol of an "improved" landscape.⁶² Fencing the entire landscape was, of course, not always feasible; thus, Seed argues, the laying out and fencing of a small portion of the land that colonists claimed—i.e., a yard or garden—came to symbolize possession on a larger scale. Drawing on English custom and law, then, white colonists on Vancouver Island viewed unimproved (i.e., unfenced and what they saw as uncultivated) land as 'waste' and open for the taking. Thus, for Gilbert Malcolm Sproat, an early English settler on Vancouver Island, the "deliberate intrusion of a superior people into another country" could be legitimated based on "the use which the dispossessed or conquered people have made of the soil."⁶³ English occupation of Vancouver Island, according to Sproat, could be justified "by the fact of all the land lying waste without prospect of improvement."⁶⁴ Under such a scheme, however, English occupation and possession of indigenous peoples' village sites, or land cultivated by these peoples, could not be justified.

The symbols or markers that the English had to indicate or recognize possession of land were certainly not universal. While the act of releasing livestock to graze on open land around Fort Victoria may have been a clear marker of property to other Englishmen,

⁶¹ Patricia Seed, *Ceremonies of Possession in Europe's Conquest of the New World, 1492-1640* (Cambridge: Cambridge University Press, 1995).

⁶² William Cronon, *Changes in the Land: Indians, Colonists, and the Ecology of New England* (New York: Hill and Wang, 1983).

⁶³ Gilbert M. Sproat, *Scenes and Studies of Savage Life* (London: Smith Elder, 1868), 7-8.

⁶⁴ *Ibid.*

it was likely not intelligible as such to other cultures, including to the indigenous residents of this place. Similarly, the fence, an ubiquitous English marker of property boundaries, was unknown to indigenous peoples prior to colonization; in Coast Salish culture, territorial boundaries were generally marked by natural features (a particular mountain, a conspicuous rock) and communicated in language, place names, and stories. Just as English symbols of possession were unintelligible to indigenous peoples, so, one might conclude, markers of property used by indigenous peoples were unintelligible to English settlers. Although Coast Salish peoples, like the Songhees and the Hul'qumi'num, were highly mobile and traveled over great distances to gather resources and to trade—leading the English to see them as nomadic or, more harshly, as ‘vagrant’—they clearly recognized and identified territories (their own and that of other groups) within and across which they carried out their economic activities. Such activities—fishing, hunting, plant cultivation, gathering food and other materials—were governed by well-established rules of land tenure and property relations. The Coast Salish land tenure system had a two-fold structure, with residence groups (village or local groups, or sometimes referred to loosely as ‘tribes’) holding certain areas of land—often lands and waters close to the village—collectively as common property, and descent groups (family, related, kin) possessing exclusive rights to specific harvesting sites, which might be close to or some distance from villages.⁶⁵

In contrast to the perceptions of most early European explorers and settlers,⁶⁶ the Coast Salish tenure system was extensive and detailed, with virtually all important places

⁶⁵ Thom, *Coast Salish Senses of Place*, chapter 7.

⁶⁶ Some European settlers did recognize the existence of a Coast Salish system of ownership over certain lands and territories. For example, in 1883 William Lomas (the

in the territory named, 'owned' and governed in one way or another (e.g., by individuals or families, by communities, or shared between communities), and used intensively on a regular basis. Such important places included specific terrestrial hunting territories (e.g., for deer, elk, bear, mountain goat), places for hunting marine mammals (e.g., sea lions, seals), clam beds and shellfish harvesting sites, areas where nesting birds could be found and trapped, marine and freshwater fishing sites (e.g., places to erect fish traps, nets, and weirs), places for the cultivation and gathering of plant foods (e.g., camas beds, berry-picking areas), and areas where other important materials (e.g., cedar logs for canoes or houses, cedar barks and roots, minerals) could be found and collected. These areas were closely monitored and, if required, were actively defended from use by excluded groups (the Coast Salish tenure system provided clear rules for the exclusion or inclusion of any group or individual). The penalties for trespass on another group's place could be severe; often the trespasser would be killed and buried on the spot. Less severe penalties could include fines (gifts) being paid by the guilty party. While exclusion was possible and common, in general Coast Salish land tenure was based on an ethic of sharing, especially between members of the same broad cultural group; ownership protocols allowed for careful management of productive sites, and while use of these sites might have required

Indian Agent for the Cowichan district) wrote to the Superintendent of Indian Affairs about hunting territories in the Cowichan Valley: "In this hunting each family has its particular district to hunt over. This mutual arrangement of proprietorship has passed from father to son for generations, and trespass seldom occurs, indeed I have found it difficult to get an Indian to go with us over the hunting grounds of another" (Cited in Thom, *Coast Salish Senses of Place*, 312). Of course, early anthropologists working in this area recognized the existence of a Coast Salish land tenure system; see, for example, Franz Boas, "First General Report on the Indians of British Columbia," in *Report of the Fifty Ninth Meeting of the British Association for the Advancement of Science* (London: British Association for the Advancement of Science, 1890).

permission such requests were rarely denied.⁶⁷ Further, sharing of resource harvesting sites was institutionalized through extensive kin connections that crosscut communities and territories; having a kin connection to a particular community (e.g., a son or daughter who had married into that community) conferred the right to use that community's land. Acting as hosts to outside guests was common practice; this not only enhanced the prestige and power of the hosts but also paved the way for the hosts to act as guests when they traveled to their guests' territory.⁶⁸

The sense of a larger indigenous territory, and of the distinct territories of adjacent groups, reflects a broader level of social organization (i.e., beyond the family and village), and was ultimately derived from the land tenure system. This notion of a larger territory, which we can view as analogous to the contemporary description of a "traditional territory", was produced through the aggregation of many smaller tenures or territories held by family and descent groups. Brian Thom suggests that this larger territory was experienced with different intensities in different places; it was felt most strongly close to villages and it weakened as one moved away from sites of dense occupation and use. For many Coast Salish groups, a precise and fixed boundary line between their territory and those of adjacent groups was not recognized, but rather only broadly identified by local landmarks which served as markers of territorial divisions. To the extent that they were recognized, territorial boundaries were fuzzy and permeable; the edges of territories were places of overlap and shared jurisdiction. Finally, such territories

⁶⁷ Nancy Turner, Robin Smith, and James Jones, "A Fine Line Between Two Nations: Ownership Patterns for Plant Resources among Northwest Coast Indigenous Groups", in Douglas Deur and Nancy Turner, eds., *Keeping it Living: Traditions of Plant Use and Cultivation on the Northwest Coast of North America* (Vancouver and Toronto: UBC Press, 2005), 151-178.

⁶⁸ Thom, *Coast Salish Senses of Place*, chapter 7.

were seen to be part of a larger Coast Salish world, an area that encompasses lands and waters in southwest British Columbia and northwest Washington, extending through Puget Sound, the Juan de Fuca Strait, the lower Fraser Valley, and most of Georgia Strait.⁶⁹ Coast Salish peoples traveled regularly throughout this larger territory, engaging in a wide range of social, cultural, economic, and political activities.

While some white settlers, particularly those who had close contact with indigenous communities, had some understanding of this complex land tenure system, the dominant impression was that indigenous peoples had no organized form of tenure or property in land, nor indeed any proper (in the English sense) form of governance. Here, English ideas about property meshed neatly with notions of civilization and savagery. Barbara Arneil argues that, in the English discussion about colonization of distant places, questions about property were central to the general dichotomy constructed between the realms of savagery and civilization.⁷⁰ Holding an English conception of property—specifically, a Blackstonian notion of private property (that is, property held by an individual)—was constructed as a key indicator of the civil state; the absence of such a conception of property, on the other hand, was an indicator of a savage state of being. These ideas are ultimately traced to Locke, who was keen to articulate the ends of civil—that is European—government, the most important of which, in his mind, was the protection of private property. Arneil argues that Locke’s ideas about property, and about civilization and savagery, were drawn from the study of English colonization of North America. Drawing on the tradition of natural law—natural law is considered to be the law of nature; that is, that some things are as they are because that is how they are, they are

⁶⁹ *Ibid.*, chapter 8.

⁷⁰ Arneil, *John Locke and America*.

self-evident and universal—Locke defined the indigenous peoples of North America as living examples of “natural man”, that is, people living in a state of nature and governed by natural (rather than human) laws. A central precept of natural law was that, at the outset, all land was held in common; the progression from natural man to civil man came with the conversion of common property to private property. This progression was also marked by the abandonment of superstition and habit (or custom) and the adoption by natural man of reason and law.

The colonial encounter between English colonists and indigenous peoples in North America was characterized by Locke as an encounter between civil man and natural man, and, as such, a key question for English settlers was how to legitimate the taking possession of lands occupied by indigenous peoples. Locke’s idea that land could be possessed only through the application of labour—that is, through “improvement” (e.g., enclosure, cultivation)—allowed English colonists to argue that indigenous peoples, who after all (they surmised) relied on a hunting and gathering way of life, did not actually possess the land. As will be discussed in more detail in chapter 5, such ideas about land and property, developed by Locke at the end of the seventeenth century during the period when England was colonizing the eastern seaboard of North America, were clearly evident in the discourses of those who settled the colonies of Vancouver Island and British Columbia in the nineteenth century.

An Expanding Colony and the Increased Demand for Land and Resources

The white colony at Fort Victoria grew slowly through the 1840s and most of the 1850s. In truth, British colonial officials did not place much stock in the new colony of

Vancouver Island; it was considered remote and inconsequential, truly lying on the distant edge of the empire. The slow pace of colonization on Vancouver Island was attributed in part to the high price of land set by colonial authorities; land at Fort Victoria could be purchased at a price of £1/acre, with the minimum size of parcels being 20 acres.⁷¹ This was far higher than the price of land to the south in Washington, Oregon, or California. Critics also argued that the Hudson's Bay Company itself did little to encourage colonization, as it was much more interested in pursuing trade with indigenous peoples—which had long been its *raison d'être*—rather than establishing agrarian colonies.⁷² In any case, until the late 1850s it was mostly the Company itself and Company employees who purchased land around Fort Victoria, and much of this was for speculative purposes.⁷³

Despite the slow pace of colonization, it is clear that a fundamental shift was underway on Vancouver Island during this period. Richard Mackie argues that the 1850s marked a transitional phase in the economy of Vancouver Island, signaling by a shift

⁷¹ The relatively high price of land at Fort Victoria derived from a model of colonization, developed and promoted by Edward Gibbon Wakefield, which sought to manage and shape the development of colonies through the control of land prices and the rate of immigration. See Harris, *Making Native Space*, 5.

⁷² See, for example, James Edward Fitzgerald, *An Examination of the Charter and Proceedings of the Hudson's Bay Company with Reference to the Grant of Vancouver's Island* (London: Trelawney Saunders, 1849).

⁷³ The Puget Sound Agricultural Company, a joint-stock company created in 1840 (as a subsidiary of the Hudson's Bay Company), established four large farms in the Fort Victoria. Much of the remaining land around Fort Victoria was purchased by Company officials and employees. Governor Douglas purchased land on the shore of James Bay (on the inner harbour), where he built his house, and a larger parcel east of Beacon Hill. Joseph Despard Pemberton, the colony's surveyor, purchased a large block of land in what is now Fairfield and Oak Bay (east of downtown Victoria). John Tod, John Work, and William Fraser Tolmie—all prominent Company officials—bought large tracts of land to the northeast of the fort. See Terry Reksten, *"More English than the English": A Very Social History of Victoria* (Victoria: Orca Book Publishers, 1986).

away from the fur trade and towards the exploitation of a broader range of natural resources.⁷⁴ The 1850s saw the expansion in the production and trade, locally and internationally, of salmon and other fish, timber, coal and minerals, and a variety of food plants (especially potatoes, cranberries). Perhaps most importantly, at least in terms of the implications for indigenous peoples, the 1850s also saw the emergence of a market in land. The 1850s, then, saw the emergence of a fully-grounded colonial economy, one that began to produce significant physical and socio-cultural changes on the ground. The changing economy brought changes to indigenous economies and transformed social relations between Europeans and indigenous peoples. The pre-colonial period, marked by exploration and trade, was a period where interchange between Europeans and indigenous peoples was on a relatively equal footing, with neither side being much more powerful than the other and conflicts being relatively minor. The shift to a colonial economy, in which Europeans sought to appropriate indigenous land and resources, resulted in increasing conflict between these two groups.⁷⁵ With the grounding of the colonial economy on southeast Vancouver Island, with the expansion of agriculture and the emergence of forestry and mining industries, and with the development of a pool of

⁷⁴ Mackie. *Colonial Land, Indian Labour and Company Capital*.

⁷⁵ As Clayton (*Islands of Truth*, xviii) notes, for indigenous peoples “there were palpable differences between the presence of traders and the arrival of colonists. Traders could not afford to drive Native groups away, whereas colonists sought their own economy and harboured explicitly racist attitudes towards Native peoples. Between the 1770s and the 1850s there emerged a cross-cultural economy of contact, or mediation. In the second half of the nineteenth century Native-White relations became rooted in a conflictual economy of colonizer and colonized—an order of exclusion.”

European workers skilled in these trades, the labour and services provided by indigenous peoples came to be less important to the survival and prosperity of the colony.⁷⁶

By the mid-1850s, non-indigenous communities on Vancouver Island were still small in number and population: there were about 200 non-indigenous inhabitants at Fort Victoria, with another 350 living on nearby farms, approximately 150 non-indigenous inhabitants at Nanaimo (where coal mining had begun in the early 1850s), and smaller numbers at Fort Rupert on the northeast coast of the island.⁷⁷ In 1858, however, the sleepy and isolated colony was vaulted into the spotlight when word spread that gold had been ‘discovered’ on the Fraser and Thompson Rivers, in the British Columbia interior, triggering a massive influx of fortune-seekers into the colony.⁷⁸ More than twenty thousand prospective miners landed at Fort Victoria that summer, most coming from California where an earlier gold rush was coming to an end. The small colony at Fort Victoria, which came to serve as the jumping off point for the interior gold fields, was transformed. A tent city sprung up around the small village and business boomed as miners sought to provision themselves for the journey to the interior. Historians point to

⁷⁶ The role of indigenous labour in colonial and early postcolonial British Columbia has been explored in some detail by Rolf Knight. Rather than being simply displaced by the colonial economy and, once confined to their reserves, becoming irrelevant to the provincial economy (a conventional view in BC’s traditional history), Knight argues that, between 1858 and 1930, indigenous people were integrated in large numbers into the certain sectors of the economy, especially fishing, forestry, and farming. See Rolf Knight, *Indian at Work: An Informal History of Native Indian Labour in British Columbia* (Vancouver: New Star Books, 1996).

⁷⁷ Jean Barman, *The West Beyond the West: A History of British Columbia* (Toronto: University of Toronto Press, 2004), 61.

⁷⁸ The 1858 gold rush was triggered not so much by the ‘discovery’ of gold by white prospectors, as the conventional story is often told—indigenous peoples had been collecting small amounts of gold from the Fraser and Thompson for many years and trading it to the Hudson’s Bay Company—but by the rapid spread of news that gold had been found in this area. See Barman, *The West Beyond the West*, 61-63.

the gold rush as playing a formative role in the early development of British Columbia, leading to a large increase in the non-indigenous population and marking the beginning of the end of Hudson's Bay Company rule in this part of North America.⁷⁹ For the indigenous residents of this place, the gold rush had a number of effects, some immediate and others more long term. The influx of white prospectors into indigenous territories along the Fraser and Thompson rivers resulted in a steep spike in conflicts between the two groups.⁸⁰ More importantly perhaps, the large increase in the white population—many of whom quickly abandoned the gold fields and sought others way to make a living in the colony—accelerated pressure on colonial authorities to make more land available for agrarian resettlement.⁸¹

This pressure for land did not only come from settlers who wanted land for agrarian purposes. The influx of white settlers that came with the gold rush sparked a real estate boom in the Victoria area, from which many sought to profit through speculation in land. In the midst of this boom some Victoria residents eyed the Songhees Indian village, and more particularly the land it sat on—the Songhees Indian reserve occupied a prime location on the northwest side of the inner harbour, directly across from the growing village of Victoria, which had by this time spread well beyond the confines of the original

⁷⁹ Barman (*The West Beyond the West*, 69-71) notes that the gold rush forced Britain to take a more direct responsibility for its territories on the Pacific coast of North America. Fearing American annexation of the mainland region, in 1858 the new colony of British Columbia was created (alongside the existing colony of Vancouver Island), with Douglas also appointed as Governor. To assume this role Douglas was forced to resign his post with the HBC. In May of the following year, the HBC lease to Vancouver Island expired, leaving Britain with full responsibility for both colonies.

⁸⁰ Harris, *The Resettlement of British Columbia*, 109-114.

⁸¹ Richard Mackie (*Colonial Land, Indian Labour and Company Capital*, 237) notes that by 1858 some 17,000 acres of land in the vicinity of Fort Victoria, comprising the best agricultural areas, had been taken up by whites, mostly by HBC employees.

Hudson's Bay Company fort—with increasing interest. Over the years the Songhees village had expanded considerably as indigenous peoples from across the British Columbia coast—including large contingents from indigenous groups on the north coast—arrived, set up their own settlements, and sought to interact with the white economy. Indeed, throughout the 1850s and into the early 1860s, the indigenous population at Fort Victoria greatly outnumbered the non-indigenous population, a fact that generated considerable uneasiness among white residents.⁸² Tensions between different indigenous groups congregated in close proximity to each other occasionally erupted into violence. Attacks on colonists or their property were rare, but when they did occur they sparked great concern, even panic, among the white populace, a situation made worse by the tendency of the colony's fledgling presses to exhaustively report even minor incidents of indigenous unlawfulness or unrest.⁸³

Within this context of the growing demand to open up more land for white resettlement, a boom in real estate sales and prices, and simmering settler anxiety about the strong indigenous presence in the inner harbour, a movement emerged among some prominent Victorians to remove the Songhees and other indigenous groups from the inner harbour altogether and make the land encompassed by the Indian reserve available for white settlers. In the spring of 1859, at the first sitting of Vancouver Island's newly

⁸² In the late 1850s there were as many as 3,000 indigenous people occupying the Indian village adjacent to Fort Victoria; this included local peoples who resided in the village on a more-or-less permanent basis as well as large numbers who came from across the coast to live in the village for varying lengths of time. See Charles Lillard, *Seven Shillings a Year: The History of Vancouver Island* (Ganges, BC: Horsdal and Schubart, 1986), 140.

⁸³ The 1853 murder of a white Hudson's Bay Company employee by a group of indigenous men from Cowichan and Nanaimo, for example, sparked fear among Fort Victoria's white population that an all-out attack on the town by indigenous people was imminent.

created House of Assembly, the Songhees Indian reserve was the first item brought up for discussion. A number of members of the assembly called on Douglas to purchase the reserve and remove the Songhees to another site. James Yates, a persistent critic of Douglas and the Hudson's Bay Company, argued that "the Indians ought and could be removed by purchase to another reserve and then the present reserve sold and the proceeds devoted to improvements in Victoria."⁸⁴ The Indians are "a nuisance", he continued, and "often insulting to the modesty of females or families." Besides, he argued, their proximity to Victoria was to their own detriment: "Whilst the Indians remained in a position where spirits could so easily be had, nothing could be done in the way of civilising them."⁸⁵ Yates' case was bolstered by an editorial in the *Victoria Gazette* which called for the removal of the indigenous population.⁸⁶ Douglas rejected the idea of removal, arguing it would be "unjust and impolitic to remove the Indians from there summarily" noting that the Songhees' rights to the land was provided for in the treaty he had signed with them in 1850. Despite this, opposition to the presence of the indigenous settlement in the inner harbour remained; indeed, it grew increasingly insistent during the final decades of the nineteenth century. Eventually, in 1912, the Songhees would agree to sell their land on the inner harbour and to have their village relocated further away from Victoria.⁸⁷ More pertinent to this study, by the late 1850s and early 1860s colonial officials found themselves under increasing pressure to make lands

⁸⁴ Keddie, *Songhees Pictorial*, 61

⁸⁵ *Ibid.*, 62.

⁸⁶ *Victoria Gazette*, 24 February 1859.

⁸⁷ Through most of the twentieth century this land, located only a short walk to downtown Victoria, remained largely undeveloped. Today, the 'Songhees lands' (as they are still called) are undergoing intensive redevelopment, with a half-dozen luxury condominium development either underway or slated to begin shortly.

outside of the immediate Fort Victoria area, and particularly land in the Cowichan and Chemainus regions as well as on the southern Gulf Islands—all important parts of Hul'qumi'num territory—available for colonial resettlement.

Conclusion: Pushing Back the Frontier

Vancouver's map of the northwest coast (Figure 3.1), while far superior to any previous attempt to chart this area, was fundamentally limited in at least one respect: it provided only a view from the sea. The map depicts the coastline in great detail but the land itself remains a mystery. The interior of Vancouver Island, for example, appears as an amorphous, randomly textured surface devoid of detail, a space filled with squiggles: there are no rivers, no lakes, and mountain ranges are simply hinted at through the use of darkly-shaded curves and circles. On the mainland the depiction is even more severe: beyond a first wall of coastal mountains the interior land mass is a blank space.

Vancouver's map was designed for mariners, not for those who would seek to occupy the land. It was a surficial view, the product of one who passes through but does not stay, one who looks from a distance but does not engage with the land. Vancouver also largely sought to keep at a distance from the people he encountered on his journey; he admitted little understanding of or interest in the indigenous cultures of the northwest coast.⁸⁸ His was a distant and dispassionate gaze.

It fell to those who colonized the land, then, to fill in blank spaces on Vancouver's map. This filling-in process began in 1842 with Douglas' crude map showing vegetation types (i.e., distinguishing between meadow, open woodland, and dense forest) in the Fort

⁸⁸ Fisher, *Vancouver's Voyage*, 29-32.

Victoria area. This was a map produced to back Douglas' case, made to his superiors in the Hudson's Bay Company, that Fort Victoria would make an ideal site for a trading post and, eventually, a new headquarters for the Company. What was key to Douglas' argument, and this was the focus of the map, was the suitability of this place to the development of an agrarian colony. As the English colony at Fort Victoria grew, a new map quickly emerged, produced by a colonial surveyor, with curved lines to show lakes and rivers and hills, a rough grid of straight lines to delineate property boundaries, and with English toponyms indicating possession of the entire place (Figure 3.3). By the early 1860s, with Victoria's population rising rapidly, the property grid around the inner harbour had intensified; this growing grid of private property soon came to completely encircle the Songhees Indian reserve, which is represented on maps from this period as a blank, unfilled, and unpropertied space (Figure 3.4).

These cartographic representations of the Fort Victoria area track not only the colonization of this place, what had once been fully indigenous space, by an expanding grid of private property but also the extension of a colonial regime of law and order, displacing indigenous systems that had long governed this territory. This tight weaving together of law and property, deeply embedded in English thought,⁸⁹ underscored colonization in places like Vancouver Island: indigenous space was simultaneously drawn into private hands and into a foreign legal regime. The enactment or 'doing' of property—such as the clearing of land, the erection of fences, the planting of gardens by

⁸⁹ In 1843, the English philosopher Jeremy Bentham argued that property and law were inseparable, and that they could not exist independently of each other. According to Bentham, “[p]roperty and law are born together, and die together.” Jeremy Bentham, [1843] 1978. “Security and Equality of Property,” in C.B. MacPherson, ed., *Property: Mainstream and Critical Positions* (Toronto: University of Toronto Press, 1978), 39-58.

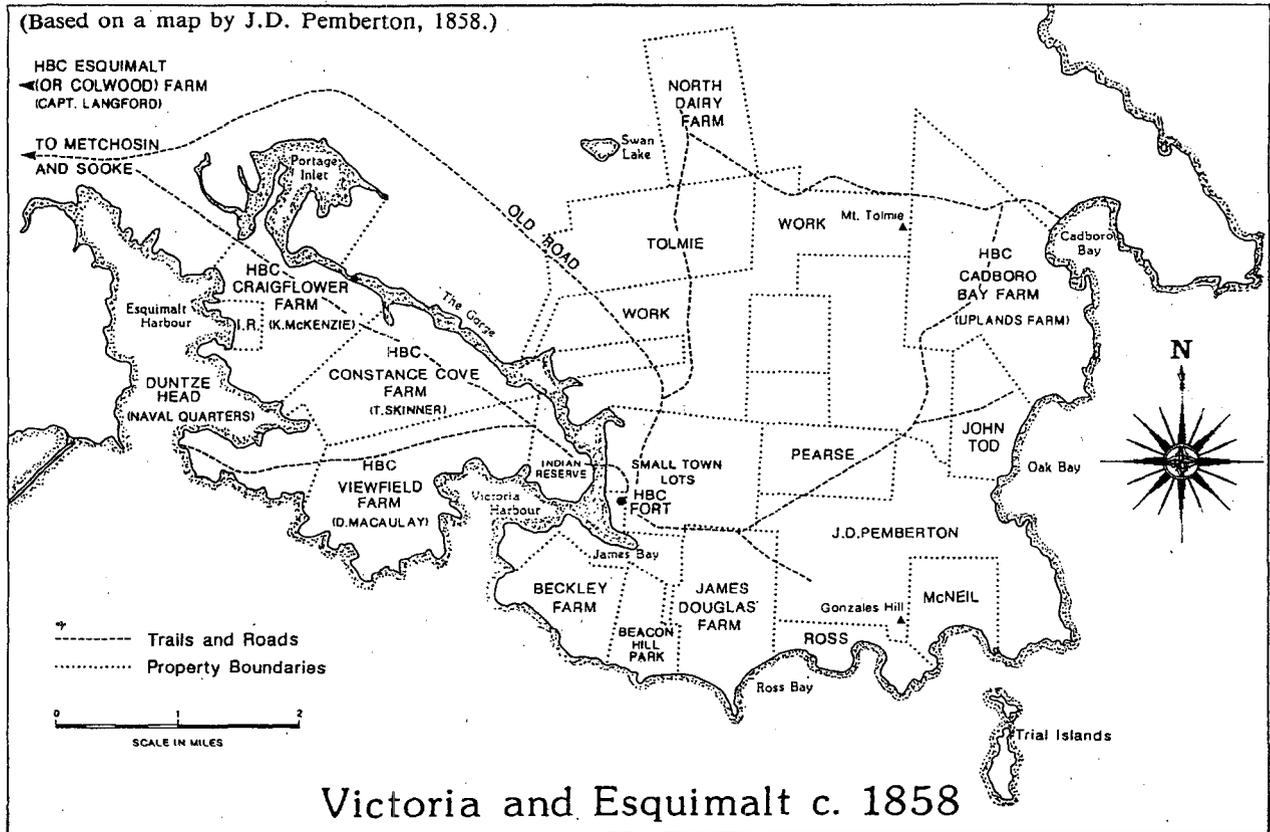


Figure 3.3: Fort Victoria region in late 1850s, showing early mapping of private lands. (Source: Reksten, Terry. *“More English than the English”*: A Very Social History of Victoria. Victoria: Orca Book Publishers, 1986. Reprinted with permission from the author’s estate.)

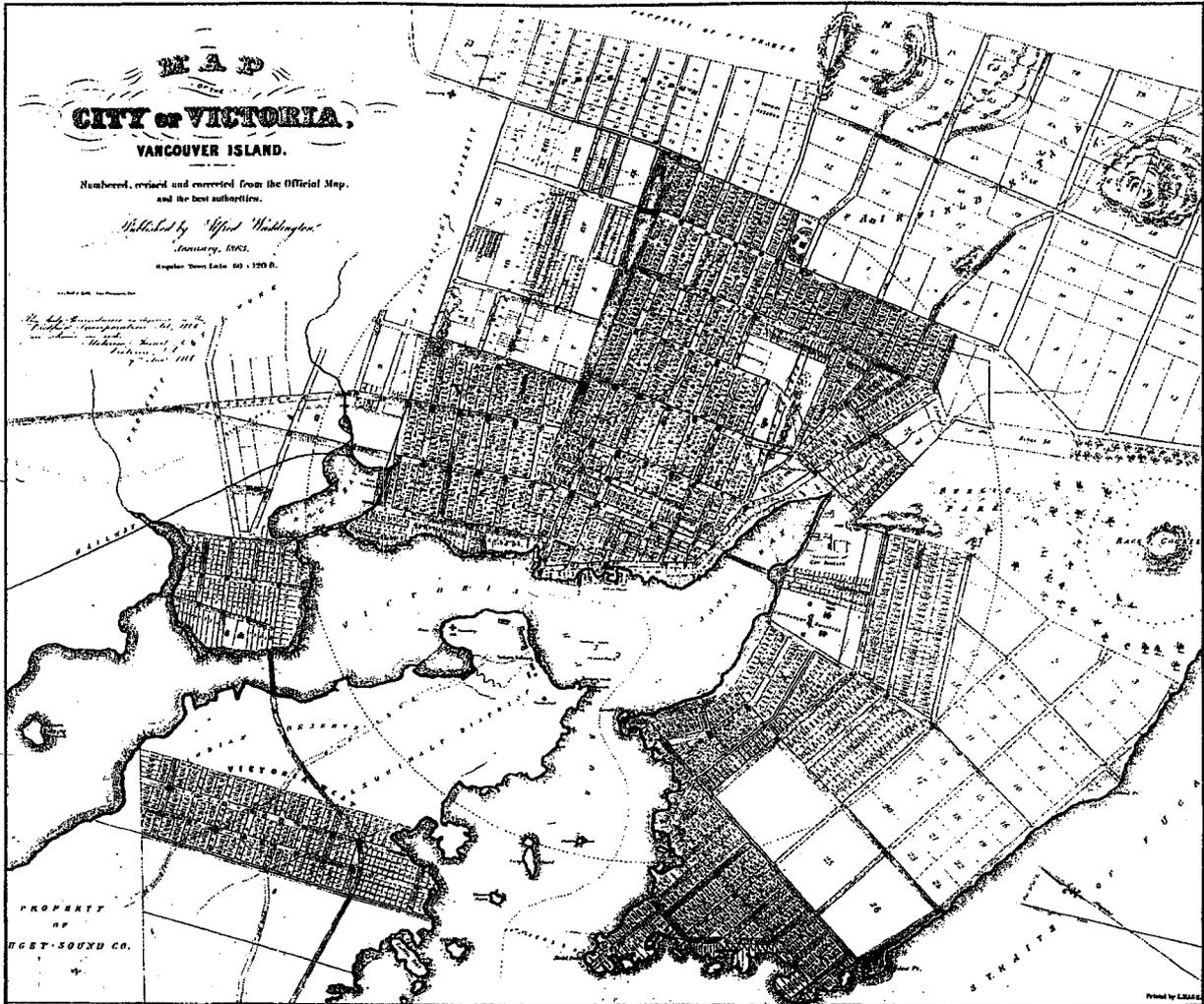


Figure 3.4: City of Victoria in 1863, showing growing grid of private property and Indian reserve in inner harbour. (Source: British Columbia Archives/CM B274.)

settlers—required a legal apparatus (e.g., the registry or lands, the policing of boundaries) to support it, and it allowed for the spatialization of law, for the extension of law into new realms. In short, the enactment of property, as Nicholas Blomley notes, helps constitute space, investing it with valences and political possibilities.⁹⁰ This intricate linking of property and law in colonial discourse allowed for the articulation of a clear boundary—the ‘frontier’, a potent concept in this discourse—between civil space and savage space, between a realm of lawfulness and nonlaw, between security and danger, between clearly drawn property lines and undifferentiated common space. Colonization, then, was seen to involve a continual pushing back of that frontier. On a more material level, white settler demands for land and for access to valuable natural resources (timber, minerals, game, fish) urged the pushing back of the frontier. In the context of colonial British Columbia, where Victoria was the primary white settlement, this meant expansion northward on Vancouver Island and onto the southern Gulf Islands, into what was sovereign Hul’qumi’num territory.

⁹⁰ Blomley, *Law, Property and the Geography of Violence*, 122.

CHAPTER 4

Law, Violence, and the Colonization of Hul'qumi'num Territory

By the early-1850s, Hul'qumi'num territory, and indeed most of Vancouver Island, still lay well beyond the colonial frontier. While there had been a few forays by white explorers and colonial officials into Hul'qumi'num territory, these had been brief and superficial. Colonial space on Vancouver Island at the time was limited to the area around Fort Victoria, to the Nanaimo area, where coal had been unearthed in the early 1850s and where mining was underway, and to the Fort Rupert area on the northeast tip of the island, which was also a focus of small-scale coal mining. This is not to say that Hul'qumi'num peoples existed in isolation of the small (but growing) white settler communities at Fort Victoria and Nanaimo; they certainly were engaged in economic and cultural relationships with these colonies. Yet one could argue that this engagement was largely on their own terms, that they sought out such relationships and that their territorial sovereignty remained largely intact. This was to change in the latter half of the 1850s as white settlers and colonial officials increasingly sought knowledge of Hul'qumi'num peoples and territory, in an effort to extend the reach of colonial power into Hul'qumi'num communities and, eventually, to assert possession of Hul'qumi'num land. This chapter explores this process of colonization, tracing early white efforts to define, rule, and possess Hul'qumi'num territory, and the resistance this generated.

Colonization is a complex and uneven process, with cultural, political, and economic dimensions. Ultimately, as Edward Said notes, colonization involves “thinking about, settling on, controlling land that you do not possess, that is distant, that is lived on and

owned by others.”¹ Colonization is ultimately about the taking possession of land, then, and about the dispossession of others of their land and resources. What makes such struggles over land and territory interesting, Edward Said notes, is that they are “not only about soldiers and cannons but also about ideas, about forms, about images and imagining.” In a recent paper, Cole Harris argues that postcolonial theorists have tended to treat culture “as a primary locus of colonial power” and as key to colonial processes of dispossession: the emphasis here is on the productivity of colonial discourses in the delineation of boundaries between civilization and savagery, for example, and in the conception of land as empty and awaiting European possession.² As important and useful as these analyses have been, argues Harris, there is a need to contextualize these cultural dimensions of colonial power alongside other modes of colonial domination and dispossession. It is important not to overlook the use of more brute forms of power—the “soldiers and the cannons” mentioned by Said—which ultimately underwrote colonialism and dispossession, and to pay attention to the ways that this form of power (‘sovereign power’ to use Foucault’s term, or the power to seize life and property) meshed with powerful colonial discourses of civilization and savagery, and of law and order. Also of importance is the recognition of the role of settler self-interest and of capitalism in the process of colonization and territorial dispossession: settlers and authorities sought to take possession of indigenous land not only (perhaps not even primarily) for agrarian purposes, but also to profit from the speculation in, and the exploitation of, that land.

If in the previous chapter I focused primarily on the cultural, ideological, and legal dimensions of colonial power, in this chapter I shift the focus more towards the more

¹ Said, *Culture and Imperialism*, 7.

² Harris, “How Did Colonialism Dispossession?” 165-66.

material and brute forms of power. Of course, these two forms are deeply entwined, and indeed inseparable from each other. What I argue here is that, in the case of Hul'qumi'num territory, while it was on the pretext of law and order (a form of cultural discourse) that the first colonial intrusions took place, it was ultimately the threat and use of brute force—the deployment of soldiers and gunships, the public display of violence (i.e., the torture and execution of indigenous prisoners)—that made the breaching of Hul'qumi'num sovereignty possible. Economic interests, the desire for land (for resettlement and speculative purposes) and to exploit natural resources, were also central to the “opening up” of Hul'qumi'num territory. Before turning to a consideration of these modes of colonial intrusion, however, let me begin with a brief description of Hul'qumi'num territory prior to its incorporation into the colonial realm.

Hul'qumi'num Territory Prior to European Resettlement

Archaeological evidence indicates continuous and intensive occupation of the Georgia Strait region for thousands of years.³ Within Hul'qumi'num territory alone, over one thousand archaeological sites have been identified that pre-date the arrival of the first European explorers on the British Columbia coast in the late eighteenth century.⁴ The Hul'qumi'num speak of living in this place since time immemorial, and their arrival and

³ A number of archaeological sites along the shore of Cowichan Bay and in the lower Cowichan Valley area have been unearthed, exposing ancient human burial sites and extensive shell middens, dating back between 2000 and 4500 years. See Daniel Marshall, *Those Who Fell from the Sky: A History of the Cowichan Peoples* (Duncan: Cowichan Community Land Trust Society. 1999).

⁴ Donald H. Mitchell, “Archaeology of the Gulf of Georgia Area: A Natural Region and its Cultural Types,” *Syesis*, Vol. 4, Supplement 1 (1971). Victoria: British Columbia Provincial Museum.

long history in this region is documented in the Hul'qumi'num language itself and through the many stories and names that link Hul'qumi'num peoples and places. Hul'qumi'num stories tell of the arrival of their first ancestors long ago, powerful figures that dropped from the sky at specific places leading to the peopling of the land, of the creation of distinctive landscape features, of the establishment of the first villages, and of innumerable other important events. These rich Hul'qumi'num narratives stitch together culture and landscape; places become imbued, through stories and names, with meaning and significance. Rights to use and occupy certain places are held and affirmed in stories and names, which are passed down through generations. Rules about proper conduct and about relating to the land and other people, including supernatural beings, are also elaborated through stories. Recognized as the source of wealth and power, and the dwelling place of powerful beings who could cause good and harm, the land had to be treated with care and respect.⁵

Like other indigenous peoples in the region, the Hul'qumi'num have had a long and complex relationship with the lands and resources in their territory. This relationship is an integral part of Hul'qumi'num culture and identity, and is documented in Hul'qumi'num

⁵ Some of the rich oral tradition of the Hul'qumi'num has been documented in English texts and made available to a wider audience. Daniel Marshall (*Those who Fell from the Sky*), for example, provides a written history of the Cowichan peoples, including the arrival of the first Cowichan people, a description of important events (such as great floods and the creation of landscape features), and an account of early contact with European peoples. Other important sources include: David Rozen, *Place-Names of the Island Halkomelem Indian People* (MA Thesis, UBC Department of Anthropology and Sociology, 1985); Beryl Cryer, *Flying Canoe: Legends of the Cowichan* (Victoria: J.P. Buckle Print Co., 1949); and Martha Douglas Harris, *History and Folklore of the Cowichan Indians* (Victoria: Colonist Print and Pub. Co., 1901).

stories and names.⁶ Hul'qumi'num place names often refer to mythical stories or the specific biological features of a place. For example, the passage between Gabriola Island and Valdes Island (now known as Gabriola Passage) was called *xwkáthelhp*, which means "place having ironwood trees." This was a place where ironwood, or oceanspray (*Holodiscus discolor*) as it is known to non-indigenous peoples—a hard wood that was used by all Hul'qumi'num peoples to make a variety of tools and implements, such as bows, arrows, spear and harpoon shafts, digging sticks, and herring rakes—was plentiful.⁷ The extent and intensity of the relationship between Hul'qumi'num peoples and their lands and resources, however, was not often appreciated by early European visitors to the region. For example, in his visit to the Puget Sound and Georgia Strait region in 1792, Captain George Vancouver, described a bucolic landscape:

...a delightful prospect consisting chiefly of spacious meadows elegantly adorned with clumps of trees; among which the oak bore a very considerable proportion, in size from four to six feet in circumference. In these beautiful pastures...the deer were seen playing about in great numbers. Nature had here provided the well-stocked park...⁸

Vancouver, like the many Europeans that would follow him, apparently did not recognize the role of indigenous peoples in shaping the landscapes of this region. Of course, this landscape was not simply a product of “nature” (or at least not simply a product of *non-human* nature). Rather, as the term “well-stocked park” might hint at, this was very much a social landscape, one that reflected a good deal of manual labour in the form of active management of lands and resources by Coast Salish peoples.

⁶ In his study of Hul'qumi'num place names, conducted through interviews with Hul'qumi'num elders, David Rozen (*Place-Names of the Island Halkomelem*) provides a rich and detailed description of the complex patterns of land and resource use by Hul'qumi'num peoples.

⁷ *Ibid.*, 61.

⁸ Cited in W. Kaye Lamb, ed., *A Voyage of Discovery to the North Pacific Ocean and Round the World, 1791-1795* (London: Hakluyt Society, 1984), 568.

The focal point of Coast Salish life and culture, and the most conspicuous and enduring sign of human presence in the landscape, was the winter village. These were permanent settlements where Coast Salish peoples spent the winter months. The Hul'qumi'num, like other Coast Salish peoples, were highly mobile during summer months, often moving considerable distances to well-established 'camp sites', including to locations at the outer margins of the territory, in order to take advantage of seasonally available food sources. In contrast to such camp sites, winter villages were usually located in more central and strategic locations, at places valued for both resource procurement and defence purposes. At their historical peak, prior to the decimation of the Coast Salish population by European disease, these were often very impressive settlements, with a number of very large houses and many hundreds of residents.⁹ Within Coast Salish society, the 'house group'—consisting mostly of a collection of close relatives, who occupied a portion of a large house (or all of a smaller house)—formed the “highest unit of common allegiance” within a winter village. While house groups within any single village were linked together in various ways (including by blood ties), each house group acted independently and there was no overall village authority. (Kin and other ties often also linked house groups in one village with house groups in another.)

⁹ Although it is difficult to get a truly accurate picture of these pre-contact villages, the journals of early European visitors provide a glimpse into this time. For example, when he traveled the lower Fraser River and Georgia Strait region in 1808, Simon Fraser described Coast Salish villages as having as many as 700 residents. Fraser described one chief's house as being 640 feet in length and 60 feet in breadth. Given that a smallpox epidemic had raged through this area in 1782, killing a large proportion of the population, these villages must have had many more residents prior to Fraser's visit (see Boyd, *The Coming of the Spirit of Pestilence*). Keith Carlson suggests that, prior to contact and the introduction of European diseases, large Coast Salish villages may have had several thousand residents. See Keith Carlson, ed., *A Stó:lō-Coast Salish Historical Atlas* (Vancouver, BC: Douglas & McIntyre, 2001).

Thus, each village was a loose alliance of house groups; although these groups often worked together (e.g., in food gathering and village defence), there was no obligation to do so.

Status was very important in Coast Salish, with three distinct levels of status observed. The highest level, ‘high class people’, to which the majority belonged, were descended from distinguished ancestors and could thus claim the rights and privileges—including ownership of important names, resource procurement sites, songs, and rituals—that derived from this ancestry. Much smaller in number were ‘low class people’, who often lived in a separate part of the village and who were subservient to the high class group. These were people who could not trace their ancestry and thus could not claim the kind of privileges that high class people could. Finally, slaves occupied the lowest level of status; these were people who had been captured in war or purchased, and who were ‘owned’ by wealthy villagers.¹⁰ Social differentiation in Coast Salish society was evident along other axes as well, including on the basis of wealth, age, and gender. The Coast Salish developed elaborate cultural rituals, usually performed over winter months in winter villages, to establish and confirm status, to celebrate important life milestones (e.g., births, marriages), to confer traditional names and the rights that were attached to such names, and to redistribute wealth. The “potlatch”, a central institution in Northwest Coast culture, provided a venue for many such rituals, until it was vigorously repressed by the federal government.¹¹

¹⁰ Wayne Suttles, *Coast Salish Essays* (Vancouver: Talonbooks, 1987).

¹¹ Douglas Cole and Ira Chaikin, *An Iron Hand Upon the People: The Law Against the Potlatch on the Northwest Coast* (Vancouver: Douglas & McIntyre, 1990).

Prior to the arrival of Europeans on the Northwest coast, there were more than two dozen winter villages within the Hul'qumi'num traditional territory (Figure 4.1).¹² The lower Cowichan Valley was certainly the most densely populated part of Hul'qumi'num territory prior to European contact (as it is today).¹³ The Cowichan River is one of the most important streams in the Georgia Basin, and in combination with its main tributaries (Quamichan Creek and Somenos Creek) and the nearby Koksilah River, it provided ready access to an abundant food supply. The rivers supported large salmon and trout populations, the sea at Cowichan Bay was rich in shellfish as well as marine plants and marine mammals, and the land supported healthy wildlife (e.g., deer and elk) populations and a wide variety of plants useful for food, medicinal and other purposes. Extensive 'Garry oak ecosystems'—including verdant meadows and open woodlands—were once very common in this area, and were important places for the cultivation and gathering of plant foods.¹⁴

¹² Most of the information on Hul'qumi'num winter villages presented here comes from Rozen (*Place-Names of the Island Halkomelem*), who collected this data through interviews with Hul'qumi'num elders conducted in the 1970s. This is likely not a complete list of Hul'qumi'num permanent village sites. For example, there is evidence of additional village sites on Saltspring Island and Thetis Island, which are not well documented by Rozen.

¹³ The word Cowichan is derived from the Hul'qumi'num name for the prominent mountain—known in English as Mount Tzuhalem—on the northeast side of Cowichan Bay. This name, squw'utsun, which means “basking in the sun”, comes from the mountain's resemblance to a great frog basking in the sun.

¹⁴ Contemporary non-indigenous scientists and conservationists use the term 'Garry oak ecosystems' to refer to the complex mosaic of natural systems, including meadows and open woodlands, where Garry oak trees (*Quercus garryana*) predominate. In Canada, these systems are limited to the extreme southwest coast of British Columbia, on southeast Vancouver Islands, the southern Gulf Islands, and parts of the lower mainland. Due to the amount of urban development in these areas, Garry oak ecosystems are considered one of the most endangered ecosystem types in Canada. See Marilyn Fuchs, *Towards a Recovery Strategy for Garry Oak and Associated Ecosystems in Canada: Ecological Assessment and Literature Review*. Technical Report GBEI/EC-00-030

There were at least twelve Cowichan villages in the vicinity of the lower Cowichan Valley, located either along the banks of the Cowichan and Koksilah Rivers or along the shores of Cowichan Bay or Maple Bay. This dense collection of villages formed "a kind of contiguous cultural unit" where, no matter which village they came from, all residents defined themselves as Cowichan.¹⁵ The four largest Cowichan villages—*Qw'umiyequn* (Comiakem), *Lhumlhumuluts'* (Clemclemalits or Clem Clem), *Kwamutsun* (Quamichan), and *S'amunu* (Somena)—were all located on the lower reaches of Cowichan and Koksilah Rivers. There was also a village on the northeast side of Cowichan Lake, at the present-day site of the Cowichan Lake Indian Reserve. This village belonged to a group closely linked to, yet also distinct from, the Cowichan people from the lower Cowichan Valley.¹⁶

Mount Sicker is generally recognized as a marker of the boundary between the two broader categories of Hul'qumi'num: the Cowichan peoples and the Chemainus peoples. The latter group comprises not only members of the Chemainus First Nation but also those belonging to the Halalt, Penelakut, and Lyackson First Nations.¹⁷ The three permanent villages belonging to the Chemainus First Nation were in the northern portion of Hul'qumi'num territory, in the vicinity of the present-day town of Ladysmith:

¹⁵ Rozen, *Place-Names of the Island Halkomelem*, 144.

¹⁶ The Cowichan Lake area was a place where Hul'qumi'num peoples mixed with West Coast (Ditidhat and Pacheedaht) peoples. During the 19th Century the Cowichan Lake people were decimated by disease and conflict with neighbouring groups. See Sandra Ruth Isaac, *The Ethnohistory of the Cowichan Lake Indians. A Research Report Prepared on Behalf of the Cowichan Lake First Nation for the Hul'qumi'num Treaty Group* (Ladysmith, BC: Hul'qumi'num Treaty Group, 1997).

¹⁷ Arnett (*The Terror of the Coast*, 21) argues that it is inaccurate to lump all of these groups under the broad heading of Chemainus peoples, noting that they prefer to be known by the names of their winter village subgroups (i.e., Chemainus, Halalt, Lyackson, Penelakut).

Shts'um'inus (anglicized as Chemainus) in Kulleet Bay, *Thuq'mi'n* (Sicameen) at Shell Beach in Sibell Bay, and *Hwkwumluhwuthun* at Coffin Point.¹⁸ The Halalt people originate from the village of *Xulelthw*, which was once close to the present-day city of Duncan in the Cowichan Valley. In the early part of the nineteenth century the Halalt relocated to a village at the north end of Willy Island, just off the mouth of the Chemainus River, taking the village name with them.¹⁹ In the 1920s this group moved again, to a site (Westholme) on the lower Chemainus River, a village which was also known by this name (*Xulelthw*). The Penelakut people also had a winter village in the lower Chemainus Valley. This village, *Sun'uw'nets*, was located at Bare Point in Chemainus Bay, close to the present-day site of the town of Chemainus. Rozen notes that Penelakut elders speak with bitterness about how, in the early part of the twentieth century, the residents of this village were forcibly relocated to Kuper Island.²⁰

Prior to European contact, there were at least six winter village sites on the Gulf Islands within Hul'qumi'num territory. The Penelakut had three villages on Kuper Island. The largest of these villages (and, prior to contact, the largest Hul'qumi'num village on the Gulf Islands), a place called *Puneluxutth'* (anglicized as Penelakut), was at Penelakut Spit, on the northeast end of Kuper Island. The other Penelakut villages were *Yuxwula'us*, located at Telegraph Harbour on the northwest end of the Island, and *Hwlumelhtsu* (Lamalchi), in Lamalchi Bay on Kuper's southwest coast.²¹ The Lyackson had three

¹⁸ Rozen, *Place-Names of the Island Halkomelem*, 89-90.

¹⁹ *Ibid.* According to Cowichan oral history, the forefathers of both the Cowichan and Chemainus people (Siyóletse and St'êts'en respectively) originated from this village.

²⁰ *Ibid.*, 121.

²¹ *Ibid.*, 94-95. Rosen notes that there was also a small Penelakut village, called *Xínepsem* (or *Xixnupsum*), in the Race Point/Virago Point area on the northern tip of Galiano Island, although this was mostly occupied during summer months.

winter villages, all on Valdes Island. The largest Lyackson village was *T'ee't'qe* (Taitka, meaning 'place of many salal berries') located at what is now known as Shingle Point on the southwest coast of the island; prior to contact this was the second most populous Hul'qumi'num village on the Gulf Islands. The other Lyackson villages were located on the southern end of Valdes, a village called *Tth'hwumqsun* near Cayetano Point and a third village (*Tth'exul*) at Cardale Point.²² All three Lyackson villages were strategically located close to Porlier Pass, an important passage and travel route between Valdes Island and Galiano Island, and a place rich in marine resources.

The Hul'qumi'num have deep connections to places and peoples on British Columbia's mainland coast, particularly to areas and communities on the lower reaches of the Fraser River. Indeed, large numbers of Hul'qumi'num travelled to the lower mainland on a regular basis, to fish, trade and participate in social or cultural activities. The strong connections between the Hul'qumi'num and Coast Salish groups on the lower mainland, formalized through a diffuse web of kinship ties, are reflected in commonalities in culture and language.²³ The rich fisheries on the Fraser River drew a large number of Hul'qumi'num at certain times of the year, particularly during the late summer and early fall when huge numbers of salmon returned to the river to spawn. Over a four-day period in late September 1828, for example, a European fur trader on the lower Fraser River (at Fort Langley) counted 550 Cowichan canoes passing downriver, returning from the rich

²² *Ibid.*, 65.

²³ Wilson Duff, *The Indian History of British Columbia: the Impact of the White Man* (Victoria: Royal British Columbia Museum, 1997). Indigenous groups close to the mouth of the Fraser River, such as the Musqueam, as well as groups living further upstream (near present day Chilliwack and Maple Ridge, for example) spoke distinct dialects of the Hul'qumi'num (Halkomelem) language.

Fraser salmon fishing grounds.²⁴ Many Hul'qumi'num villages on southeast Vancouver Island and adjacent Gulf Islands were virtually abandoned at this time of year (late summer) as villagers migrated to the Fraser River salmon fishery, traveling as far up river as the present-day site of Yale in the lower Fraser canyon, an important site for catching and processing (drying and smoking) salmon. Figure 4.2 shows the location of Hul'qumi'num village and other sites on the lower Fraser River and delta region.

While this description has emphasized the existence of distinct winter villages for each Hul'qumi'num group, it must be emphasized that these villages were strongly linked together through social, cultural, and economic interchange. Hul'qumi'num elders speak, for example, of close links between villages in the Cowichan Valley and a number of villages on the Gulf Islands and other areas on Vancouver Island (e.g., in the Chemainus and Ladysmith areas); often these villages shared the same name and may have been owned by the same extended family group. At various times and for various reasons, large numbers of people (and sometimes entire villages) moved from one place to another. Because of flooding, for instance, people living in the lower Cowichan Valley occasionally moved their entire village (Coast Salish houses could be dismantled and moved) to other places, such as village sites on the Gulf Islands. Similarly, the threat of attack by rival indigenous groups from the north—during the first half of the 19th century, there were frequent raids on Hul'qumi'num villages by the southern Kwakiutl and allied groups—occasionally forced Hul'qumi'num people living on the Gulf Islands to seek security by living in the densely populated lower Cowichan Valley.

²⁴ Morag MacLachlan, ed., *The Fort Langley Journals, 1827-1830* (Vancouver: UBC Press, 1999).

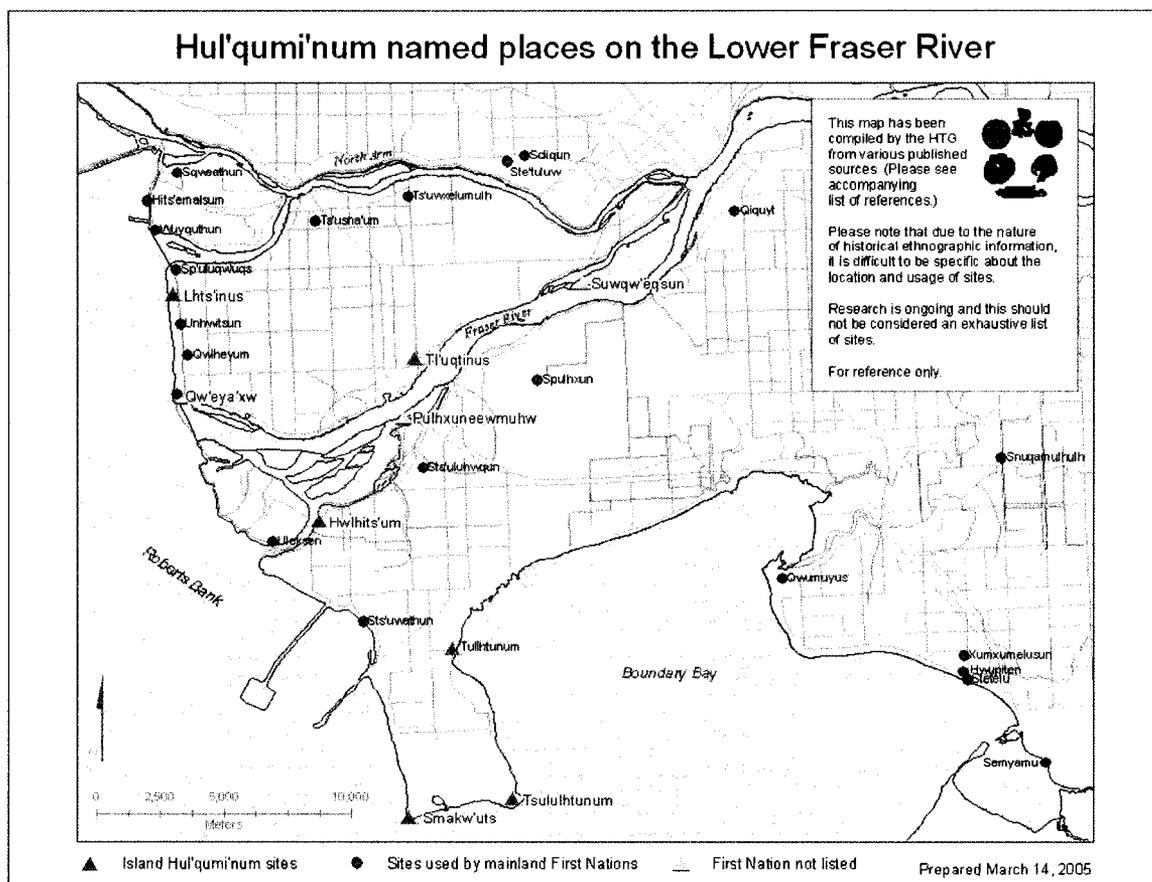


Figure 4.2: Hul'qumi'num winter village sites and other selected traditional use sites on lower Fraser River and adjacent delta area. NOTE: This map does not show all Hul'qumi'num sites in this region. (Reprinted with permission from the Hul'qumi'num Treaty Group.)

While permanent villages were the most visible sign of Hul'qumi'num occupation and use of the land, there are a large number of other sites within the territory that have great significance to the Hul'qumi'num, including areas used for food and resource gathering, seasonal villages, camping sites, and places of cultural or spiritual significance (e.g., burial grounds, ancestral origin sites, transformation places). Historically, the Hul'qumi'num were highly mobile and over the course of a year they moved from location to location to take advantage of seasonally abundant resources. For example, although there is scant written historical evidence of permanent villages on Thetis Island or Saltspring Island, it is clear from archaeological evidence and oral history that these islands were used intensively, and frequently, by Hul'qumi'num peoples. Indeed, for the southern Gulf Islands in particular, oral histories support there having been permanent villages in Fulford Harbour and Ganges Harbour and the archaeological sites in these locations are massive and extensive (if largely unexplored).²⁵

English Law and the Breaching of Hul'qumi'num Sovereignty

The earliest European impressions of Hul'qumi'num peoples and their territory likely came from Spanish and British ships that visited the Georgia Strait region in the final decade of the eighteenth century. In 1792, a decade after the first smallpox epidemic swept through this region, British and Spanish expeditions circumnavigated Vancouver Island. Crew on board the British expedition, led by Captain George Vancouver, observed a depopulated landscape in the southern Georgia Strait. They noted many

²⁵ For evidence from oral histories, see: Rozen, *Place-Names of the Island Halkomelem*, 132-137 (for Thetis Island) and 242-244 (for Saltspring Island). For the archaeological record, see Mitchell, "Archaeology of the Gulf of Georgia Area."

abandoned villages, well built and in good repair but becoming overgrown with vegetation, and great numbers of human skeletons scattered about on the beaches. Vancouver observed that many indigenous residents in the area were marked by the recent epidemic; “most of them had lost their right eye, and were much pitted with the small pox”.²⁶ Over the next few decades, the Hul’qumi’num likely had little contact with Europeans.²⁷ This changed with the establishment of the Hudson’s Bay Company trading post at Fort Langley in 1827. Located on the lower Fraser River, this was the Company’s first post in the Georgia Strait region. During their regular migrations up the Fraser River for the late summer and early fall salmon fishery,²⁸ large numbers of Hul’qumi’num soon came into regular contact with the Company traders. Fort Langley became an important site of commercial and cultural exchange between Hul’qumi’num (and other indigenous peoples) and Europeans; furs and other local products (fish, meat) were traded for blankets, firearms, and other manufactured European goods. Early European accounts of the Hul’qumi’num, and especially of the Cowichan, emphasized the strength of this group.²⁹

²⁶ Lamb, *A Voyage of Discovery*, 559.

²⁷ Few Europeans ventured into the Georgia Strait region in the first few decades of the nineteenth century. Simon Fraser, one of the few that did, passed through the area in 1808 and reported being told by indigenous residents that white men had already visited the area. He also noted evidence of smallpox. See W. Kaye Lamb, ed., *The Letters and Journals of Simon Fraser, 1806-1808* (Toronto: Macmillan, 1960), 94.

²⁸ In the late summer and early fall, vast numbers of Pacific salmon would migrate up the Fraser to spawn. This fishery drew not only the Hul’qumi’num but also indigenous peoples from across the Georgia Strait region, particularly to fish the highly valued sockeye runs. Large numbers of indigenous people would migrate to the area just below the Fraser canyon (near present-day Yale), where the salmon schooled before entering the rapids and where the river narrowed, allowing for easy fishing. The hot and dry conditions typical of late summer in this area also allowed for rapid drying of the catch.

²⁹ MacLachlan, *The Fort Langley Journals*.

The establishment of a new trading post at the southeast tip of Vancouver Island in the early 1840s, Fort Victoria, increased opportunities for contact and exchange between Europeans and Hul'qumi'num peoples. Early European accounts from Fort Victoria indicate that Hul'qumi'num peoples—usually referred to simply as Cowichans (or variant spellings, such as 'Cowegin' or 'Cowitchin')—were frequent visitors to the Songhees village on the inner harbour and to the fort itself. A prominent Cowichan man Tzouhalem, for example, is identified as a leader in the indigenous attack on the fort in the early 1840s, an incident described in the previous chapter. As will be discussed later, this was not the last time a Hul'qumi'num visitor to the Fort Victoria area would come into conflict with the white colonists.

Colonization of Vancouver Island proceeded slowly through the early- and mid-1850s, and was mostly concentrated around Fort Victoria. The sale of land in the colony, an important source of revenue for the Hudson's Bay Company, was slow; there were few independent colonists on Vancouver island, and most of the land purchased from indigenous groups around Fort Victoria was taken up by employees of the Company. In the early 1850s, in the search for new sources of revenue for the Company, Governor Douglas turned his attention to lands outside of the Fort Victoria region, including to Hul'qumi'num territory. At this point Douglas already had some knowledge of Hul'qumi'num peoples and of the land and resource capabilities of Hul'qumi'num territory. In a letter to Archibald Barclay, written in September 1849, Douglas noted that he had been informed by local indigenous people that the Cowichan Valley was “much superior to this part of Vancouver's Island [i.e., Fort Victoria] in respect to extent of

cultivated land.”³⁰ Douglas was also certainly aware of the reputation of the Cowichan Valley for potato production.³¹ In addition, Douglas received favourable reports from a few early white visitors to Hul’qumi’num territory, including from two Hudson’s Bay employees who were sent to the Cowichan Valley in 1851 to assess the agricultural potential of the area. While realizing the agrarian potential of Hul’qumi’num territory, Douglas was also certainly aware of the Cowichans’ reputation, among other indigenous groups, as formidable warriors and defenders of their territory.³² Thus, while Douglas was increasingly drawn to Hul’qumi’num territory by news of rich lands and resources, he was also aware that colonization of Hul’qumi’num territory would not be an easy or simple project.

In August 1852, Douglas led a canoe expedition from Fort Victoria northward up the east coast of Vancouver Island, what was in effect a reconnaissance of the lands, resources, and peoples to be found in Hul’qumi’num territory as well as areas further up-island. The expedition passed to the west of Saltspring Island, explored the lower reaches

³⁰ Douglas to Barclay, 3 September 1849. Cited in Bowsfield, *Fort Victoria Letters*, 42.

³¹ Having obtained potato seeds from the Hudson’s Bay trading post at Fort Langley in the late 1820s and already having a well-established tradition of root cultivation and gathering—of camas and wapato, for example—by the 1840s the Cowichan had become expert at potato production (See Arnett, *The Terror of the Coast*, 38). Potatoes had thus become an important food staple for the Cowichan and an important trade commodity (for trade with whites and other indigenous groups).

³² Their independence and their resistance to the intrusion of white people and culture was made clear in the experience of the first white person who attempted to settle in the Cowichan Valley. Father Honore Timothy Lempfrit, of the Catholic order Oblates des Mary Immaculate, went to the Cowichan Valley in October 1851 in an effort to establish a mission. Lempfrit’s mission work was short-lived, however, and he was eventually forced to abandon his place due to problems between himself and his intended flock. Fearing that the missionary’s presence would endanger the peace of the colony, in May of 1852 Douglas dispatched a constable and ten men to extract Lempfrit from his precarious position. See Graham Brazier, “How the Queen’s Law Came to Cowichan,” *The Beaver* (December 2001/January 2002): 31-36.

of the Cowichan and Chemainus Valleys, and examined the coal fields further to the north, near the present-day site of Nanaimo (Douglas had received reports of rich coal deposits in this area from indigenous informants). The trip explored a territory that few non-indigenous people had seen and which was poorly represented on European maps; Douglas remarked, in his report to Sir John Packington, on the “extreme incorrectness” of the latest map of Vancouver Island when it came to this part of the coast.³³ In the lower Cowichan Valley, Douglas reported the presence of “many large and well kept fields of potatoes, in a very flourishing state.”³⁴ Clearly, an important objective of the expedition was to examine reported coal deposits near Nanaimo, which proved better than Douglas had hoped for, stimulating in him “a feeling of exultation in beholding so huge a mass of mineral wealth.”³⁵ On return to Victoria, Douglas acted quickly to assert control over the coal fields; by September of 1852, only a month after the expedition, coal was being mined at Nanaimo and shipped to Victoria. Over the next few years, a fort was built at Nanaimo and a small white colony was established. A crude form of coal mining developed at Nanaimo with local indigenous people providing much of the labour of digging out the coal and loading it onto British ships. The treaty Douglas signed with indigenous people at Nanaimo in 1854 was designed to secure possession of these valuable coal deposits.³⁶

While white settlements continued to grow at Victoria and Nanaimo through the early 1850s, the region in between remained largely beyond the reach and influence of white

³³ Douglas to Sir John Packington, 17 August 1852. Cited in W.H. Olsen, *Water Over the Wheel* (Chemainus, BC: Chemainus Historical Society, 1963), 15.

³⁴ Douglas to Packington, 17 August 1852.

³⁵ *Ibid.*

³⁶ Arnett, *The Terror of the Coast*, 48-50.

settlers and the colonial administration. The isolation of Hul'qumi'num territory and peoples from colonial power and rule was, however, soon to come to an end. The first significant intrusion of colonial power into Hul'qumi'num territory came in early 1853, following the murder (in late 1852) of a white shepherd, Peter Brown (an employee of the Hudson's Bay Company), near Fort Victoria. Two indigenous men, a Nanaimo man named 'Siamsit' and a Cowichan man named 'Sque-is', were identified as the prime suspects in the slaying of Brown.³⁷ Believing that forceful prosecution of indigenous people accused of crimes against whites was critical to the security of the colony—indeed, the killing generated widespread fear in the small white colony that an all-out attack on the colony by Cowichan warriors was imminent—Douglas acted quickly. He employed a variety of tactics, including suspending all trade with Cowichan and Nanaimo people, and issuing ultimatums to Cowichan and Nanaimo leaders, in an attempt to elicit the voluntary surrender of the suspects. When this failed he resolved to undertake a military expedition to apprehend the two indigenous suspects. Douglas assembled a military force consisting of 130 British soldiers and a small militia of local volunteers and, in early January 1853, set sail for Hul'qumi'num territory.³⁸

The military force landed in Cowichan Bay and set up camp near the village of Comiaken. Douglas met with Cowichan leaders in an effort to arrange for the surrender of the suspect, at one point apparently demanding of the Cowichan: "Give up the murderer, and let there be peace between our peoples, or I will burn out your lodges and

³⁷ Hamar Foster, "The Queen's Law is Better than Yours: International Homicide in Early British Columbia," in Jim Phillips, Tina Loo, and Susan Lewthwaite, eds., *Essays in the History of Canadian Law: Volume 5, Crime and Criminal Justice* (Toronto: University of Toronto Press and The Osgoode Society, 1994), 61-63.

³⁸ Bruce A. McKelvie and Willard E. Ireland, "The Victoria Voltigeurs," *British Columbia Historical Quarterly* 6 (1942): 189-207.

trample out your tribes.’³⁹ According to Douglas’s account of the affair, the negotiations were difficult and involved “a good deal of trouble”; he describes the arrival of “two large canoes crowded with the relatives and friends of the murderer, hideously painted, and evidently prepared to defend him to the last extremity” whose “demeanour was altogether so hostile that the marines were with little restrained from opening fire upon them.”⁴⁰ Eventually, the Cowichan surrendered a man into Douglas’s custody. One account of this incident has the Cowichan surrendering a slave into Douglas’ custody, apparently as compensation for the death of Brown; a trade that was deemed, in Coast Salish culture, a fair measure of compensation; another interpretation suggests that it was the suspect Sque-is that was turned over.⁴¹ In any event, Douglas declared himself satisfied with the outcome and proceeded to distribute gifts to the Cowichan chiefs to acknowledge their assistance and signify peaceful relations. Douglas then delivered a speech to the assembled indigenous residents in an effort to explain and reinforce their relationship to the colony and the British Crown:

I informed them that the whole of their country was a possession of the British crown, and that her Majesty the Queen had given me a special charge, to treat them with justice and humanity and to protect them against violence of all foreign nations which might attempt to molest them, so long as they remained at peace with the [white] settlements. I told them to apply to me for redress, if they met with any injury or injustice at the hands of the Colonists and not to retaliate and above all things, I undertook to impress upon the minds of the chiefs that they must respect Her Majesty’s warrant, and surrender any criminal belonging to their respective tribes, on demand of

³⁹ Admiral John Moresby, *Two Admirals: Sir Fairfax Moresby, John Moresby: A Record of a Hundred Years* (London: Methuen, 1913), 110.

⁴⁰ Letter from Douglas to Barclay, 20 January 20 1853. Quoted in Bruce A. McKelvie, “The Defiance of Otcheewun.” In *Tales of Conflict* (Vancouver: Vancouver Daily Province, 1949), 226.

⁴¹ Graham Brazier argues that a slave was surrendered; see Graham Brazier, “How the Queen’s Law Came to Cowichan,” *The Beaver* (December 2001/January 2002): 31-36. In contrast, Hamar Foster (“The Queen’s Law is Better than Yours,” 62), reports that it was Sque-is who was surrendered.

the Court Magistrate and that resistance to the Civil power would expose them to be considered enemies.⁴²

The affair thus concluded, Douglas and his men then proceeded to the Nanaimo area where the Nanaimo man, Siamasit, was soon apprehended. Both suspects, Siamasit and the man apprehended at Comiakén, were given a brief trial in front of a jury of naval officers, pronounced guilty of murder, and sentenced to death. They were hanged in Nanaimo Harbour, within sight of the coal fields and in front of “the whole Nanaimo [tribe], the scene appearing to make a deep impression on their minds.”⁴³ These were the first executions under British civil rule in the colony of Vancouver Island.

This first intrusion of white authority into Hul’qumi’num territory can be interpreted in a number of ways. Douglas considered the venture a great success, particularly the apprehension of the Cowichan man. “The surrender of a criminal,” noted Douglas, “as in the case of the Cowegin murderer, without bloodshed, by the most numerous and warlike of the Native Tribes on Vancouver’s Island, at the demand of the Civil powers may be considered, as an epoch, in the history of our Indian relations, which augers well for the future peace and prosperity of the Colony.” He noted, however, that this goal “could not have been effected without the exhibition of a powerful force.”⁴⁴ From this perspective, the trial and execution can be seen as a critical ‘turning point’ in the legal history of

⁴² Douglas Diary, 7 January 1853, “Private Papers of James Douglas, First Series,” 34-35, BC Archives.

⁴³ Douglas to Pakington, 21 January 1853. CO 305/4. One of the sailors present that day noted that the executions prompted yells and cries from the assembled villagers as mournful as “it has ever fallen to the ears of men to hear.” Letter from Lieutenant John Moresby to Admiral Fairfax Moresby, 4 February 1853; published in *The Week*, 15 July 1911.

⁴⁴ Douglas to John Tod, 7 January 1853. Private Papers of James Douglas, First Series, 37, BC Archives.

British Columbia, marking the first application of English criminal law to indigenous persons.⁴⁵

From a Hul'qumi'num perspective, however, it is also possible that the resolution of this matter was viewed with some degree of satisfaction. While the intrusion of a white military force deep into their territory could not have been anything but worrisome, the Hul'qumi'num might have taken comfort in the fact that the matter had been settled largely in accordance with Hul'qumi'num law. The surrender of the slave (if indeed this is what took place), a person deemed to be of similar social standing as the shepherd who was killed, and the receipt of a gift of tobacco from Douglas, may have represented an equitable outcome. The execution of the slave and the Nanaimo man outside of Cowichan territory was likely of little concern to the Cowichan. Indeed, Graham Brazier argues that the resolution of this matter "confirmed the supremacy of traditional Cowichan customs over the laws of the far-off [English] queen."⁴⁶

In 1856, another incident of violence provided Douglas with a second opportunity to assert colonial power in Hul'qumi'num territory. By this time, there were a few white settlers living in the Cowichan Valley, whose presence was tolerated for one reason or another, either because they had married into a Hul'qumi'num family (which provided them with rights to land through their kin connections) or because they provided some important service to local indigenous communities (e.g., a source of European trade goods). In August of 1856 one of the white settlers, a former Company employee named Thomas Williams, was shot by a Cowichan man named 'Tathlasut', apparently in a

⁴⁵ Foster, "The Queen's Law is Better than Yours," 61.

⁴⁶ Graham Brazier, "How the Queen's Law Came to Cowichan," *The Beaver* (December 2001/January 2002): 31-36; quote is from p. 31. See also Hamar Foster, Alan Grove, and Bill White, "The First Hanging," *Islander Magazine*, 23 April 1995.

dispute over a Cowichan woman.⁴⁷ Williams was brought to Fort Victoria in critical condition, with a bullet wounds to his arm and chest. Douglas assembled a force of over 450 soldiers and set sail on board two heavily armed British navy vessels for the Cowichan Valley. Again using a combination of persuasion and intimidation, Douglas sought to apprehend the Cowichan suspect.⁴⁸ As before, these tactics worked; eventually the suspect was captured and turned over to Douglas through the actions of one influential Cowichan leader, a man identified as 'Lohar', who was convinced that resistance to the white force would be futile and more harmful to his people than cooperation. After a speedy military trial, Tathlasut was pronounced guilty and executed by public hanging in Quamichan village, in front of his family and other members of the community. After the event, Douglas would report that he had been determined "to impress on the minds of the Natives that the terrors of the law would be let loose on the guilty only, and not on the tribe at large, provided they took no part in resisting the Queen's authority nor in protecting the Criminal from justice."⁴⁹ Douglas rationalized the use of military display and force by arguing that it was only "by resorting to prompt and decisive measures of punishment ... that life and property can be protected and the Native Tribes of this Colony kept in a proper state of subordination."⁵⁰

⁴⁷ The man described as "Thomas Williams' was better known as 'Tomo Antoine' (or more commonly 'Tomo'), the son of an Iroquois voyageur and a Chinook mother, and a man employed by the Hudson's Bay Company for various tasks. Indeed, Tomo had been dispatched by Douglas to the Cowichan Valley to search for good land that might be suitable for colonization. Foster, "The Queen's Law is Better than Yours," 64.

⁴⁸ Arnett (*The Terror of the Coast*, 56) notes that according to Cowichan oral history, the white expeditionary force bombarded a Cowichan village in an effort to effect the surrender of Tathlasut. Official (white) records do not mention such actions.

⁴⁹ James Douglas to Rt. Hon. Henry Labouchere, 6 September 1856. Quoted in Akrigg and Akrigg, *British Columbia Chronicle 1847-1871*, 89.

⁵⁰ *Ibid.*

The 1856 expedition represented the first application of the Queen's law in Hul'qumi'num territory. But there was more going on here than simply the application of a foreign law in Hul'qumi'num territory. While Douglas was intent on applying the Queen's law, his use of overwhelming military force to do so was designed to make "a deep and lasting impression on the people of Cowichan", to show that resistance to colonial power would come at a very high cost.⁵¹ The execution of Tathlasut clearly indicated to the Hul'qumi'num that white authorities would protect anyone they chose to define as a settler.⁵² For Douglas, the expedition no doubt served a broader purpose, to help pry open Hul'qumi'num territory for white resettlement and control. Shortly after the incident, Douglas expressed being surprised, and pleased, at the land he had seen in the Cowichan valley: it is, he wrote, "far more extensive and valuable as an agricultural country than I had any idea of."⁵³ In a further step to pave the way for colonization of Hul'qumi'num territory, Douglas arranged for the colonial surveyor, Joseph Despard Pemberton, to undertake a preliminary reconnaissance of the Cowichan Valley, carried out in 1857, and report on its suitability for white colonization. Finally, the establishment in 1858 of a Catholic mission in the Cowichan Valley was an important part of the process of opening up the territory to white resettlement, serving to undermine Hul'qumi'num culture and economy.⁵⁴ Thus, notes Brazier, by the late 1850s

⁵¹ Brazier, "How the Queen's Law Came to Cowichan," 36.

⁵² Foster, "The Queen's Law is Better than Yours," 65.

⁵³ James Douglas to James Murray Yale, September 5, 1856. Colonial Correspondence, BC Archives. Find proper citation.

⁵⁴ The role of missionaries in the colonization of the British Columbia, and their influence on indigenous peoples, has received considerable attention. The influence of missionaries is often described in negative terms, as undermining indigenous cultures and economies. But priests and missionaries also provided voice to indigenous concerns (about land and the illegal trade of alcohol, for example), and were often viewed by

Hul'qumi'num territory "was well on its way to becoming the first on Vancouver Island to be resettled without an agreement with its original inhabitants."⁵⁵

Early European Resettlement of Hul'qumi'num Territory

In 1858 colonial authorities began the process of opening up Hul'qumi'num territory to white resettlement. They began by issuing 'Cowichan scrip', which gave the holders the right, once the area had been properly surveyed, to purchase land in the Cowichan Valley at the rate of five dollars an acre. The scrip could be purchased at a fraction of this cost, with the balance payable once the question of aboriginal title to the land was settled.⁵⁶

The issuing of this scrip, argues Arnett, was designed to allow land speculators, particularly friends and associates of the Hudson's Bay Company at Fort Victoria, to secure the best agricultural lands in the Cowichan Valley.⁵⁷ In the spring of 1859, Pemberton, the colonial surveyor, and his assistant Oliver Wells led an expedition to the Cowichan area to carry out a preliminary land survey. By mid-May, five land districts in Hul'qumi'num territory—Shawnigan, Cowichan, Quamichan, Somenos, and Comiaken—had been mapped out, encompassing coastal lands in the lower Cowichan Valley and adjacent areas (Figure 4.3). These districts were marked out into a grid of one

settlers and colonial authorities as troublemakers, as putting ideas into the heads of indigenous people, or stirring up trouble where there was none. See Arnett, *The Terror of the Coast*, 66 and 83.

⁵⁵ Brazier, "How the Queen's Law Came to Cowichan," 36.

⁵⁶ The funds collected from the sale of the Cowichan scrip were supposed to be used by the colonial government to purchase aboriginal title in the Cowichan Valley, thus making the land fully available to settlers. In 1862, after resettlement of the Cowichan Valley had begun, a dispute arose between Cowichan settlers and the colonial government over the attempt by the latter to collect arrears from the land purchased by the former. The settlers argued that they should not have to pay the arrears until aboriginal title was extinguished. See: *British Colonist*, 28 October 1861 and 21 March 1862.

⁵⁷ Arnett, *The Terror of the Coast*, 70.

hundred acre lots (Figure 4.4). In his report summarizing the results of the survey, Wells provided detailed descriptions of the natural resources of the region, including soils, water, timber, fisheries and game, and assessed the area's potential to support an agrarian resettlement scheme. He described the crops that could be produced—wheat, beans, turnips, red clover, barley, oats, rye, buckwheat, peas, potatoes, carrots, and “the usual garden vegetables”—and expressed confidence “that apples, pears, plums, cherries, and all our hardy fruits, may be grown to perfection.”⁵⁸ Wells concluded that there was enough good land in the Cowichan Valley “to provide farms for a population of from 500 to 600 families, at an average of 100 acres each”.⁵⁹

The survey report pays scant attention to the human presence in the landscape. Early on in the report there are a few passing glimpses of this being a place inhabited by people: of indigenous people cultivating “abundant crops” of potatoes, taking fish of various kinds “in quantities”, and even providing the survey crew with a constant supply of game. In the final paragraph of the report, Wells acknowledges the human presence more directly in a few bland and reassuring sentences:

Along the rivers there are nine Indian villages, as follows:--three Clemelematus, two Comiakem, one Taitka, one Quamichan, one Somenos, and one Koksilah. The number of families, after careful investigation, has been set down at 250, and the whole population at about 1,000 to 1,100 souls. The Indians have shown throughout a perfectly friendly disposition, and a strong desire to see the white men settled among them. Their services may prove of utility to the early settlers by way of cheap labour.⁶⁰

This representation of indigenous peoples and perspectives is notable not only for its brevity but also for inaccuracy and its misreading (deliberate or not) of Hul'qumi'num

⁵⁸ Oliver Wells, “General Report of the Survey of the Districts Shawnigan, Cowichan, Comiakem, Quamichan, and Somenos,” in *Vancouver's Island. Surveys of the Districts of Nanaimo and Cowichan Valley* (London: George E. Eyre and William Spottiswoode, 1859), 11.

⁵⁹ *Ibid.*, 14.

⁶⁰ *Ibid.*

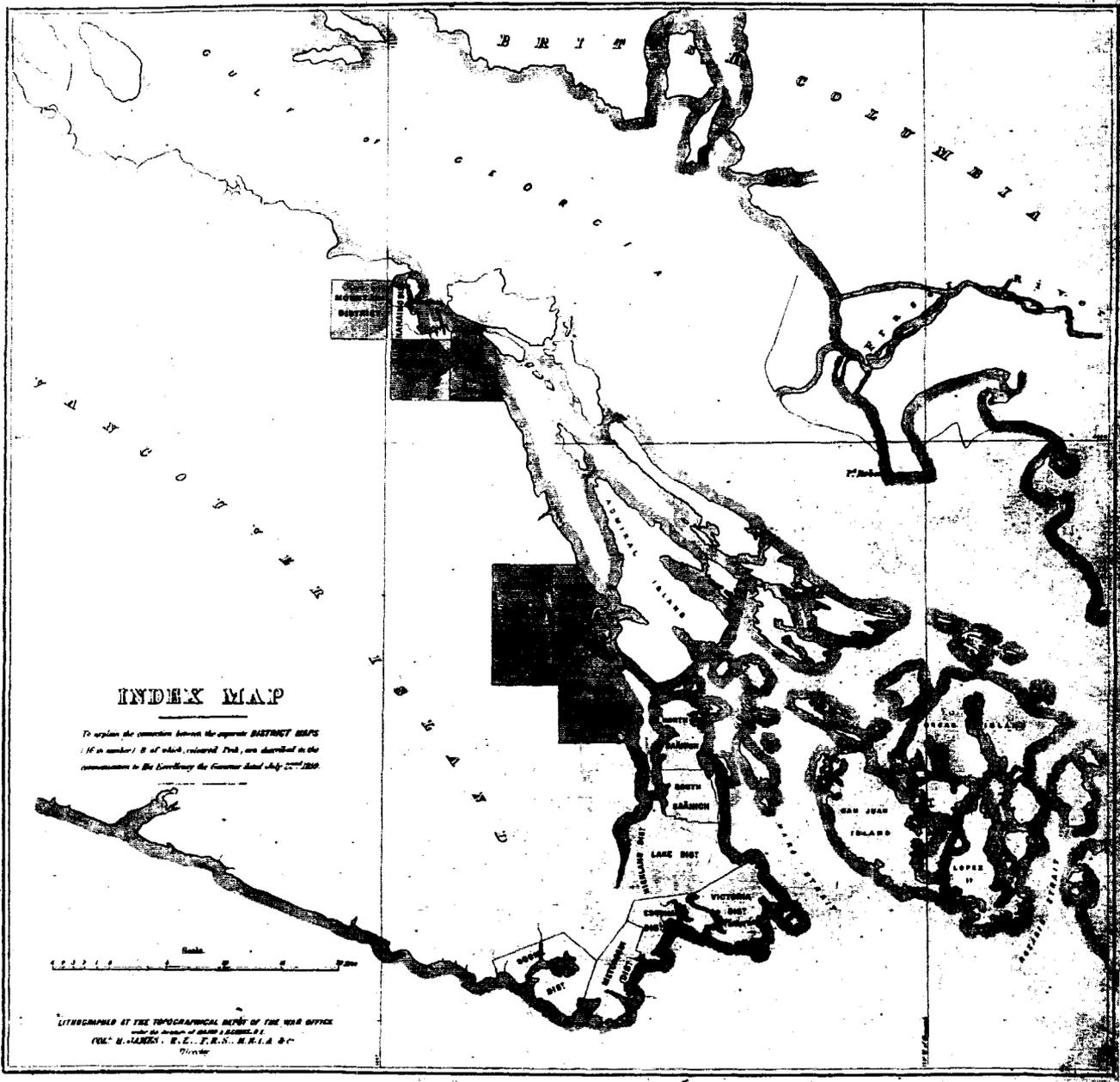


Figure 4.3: Land districts mapped out in Hul'qumi'num Territory, 1859. (Source: British Columbia Archives, Map Collection, CM A435)

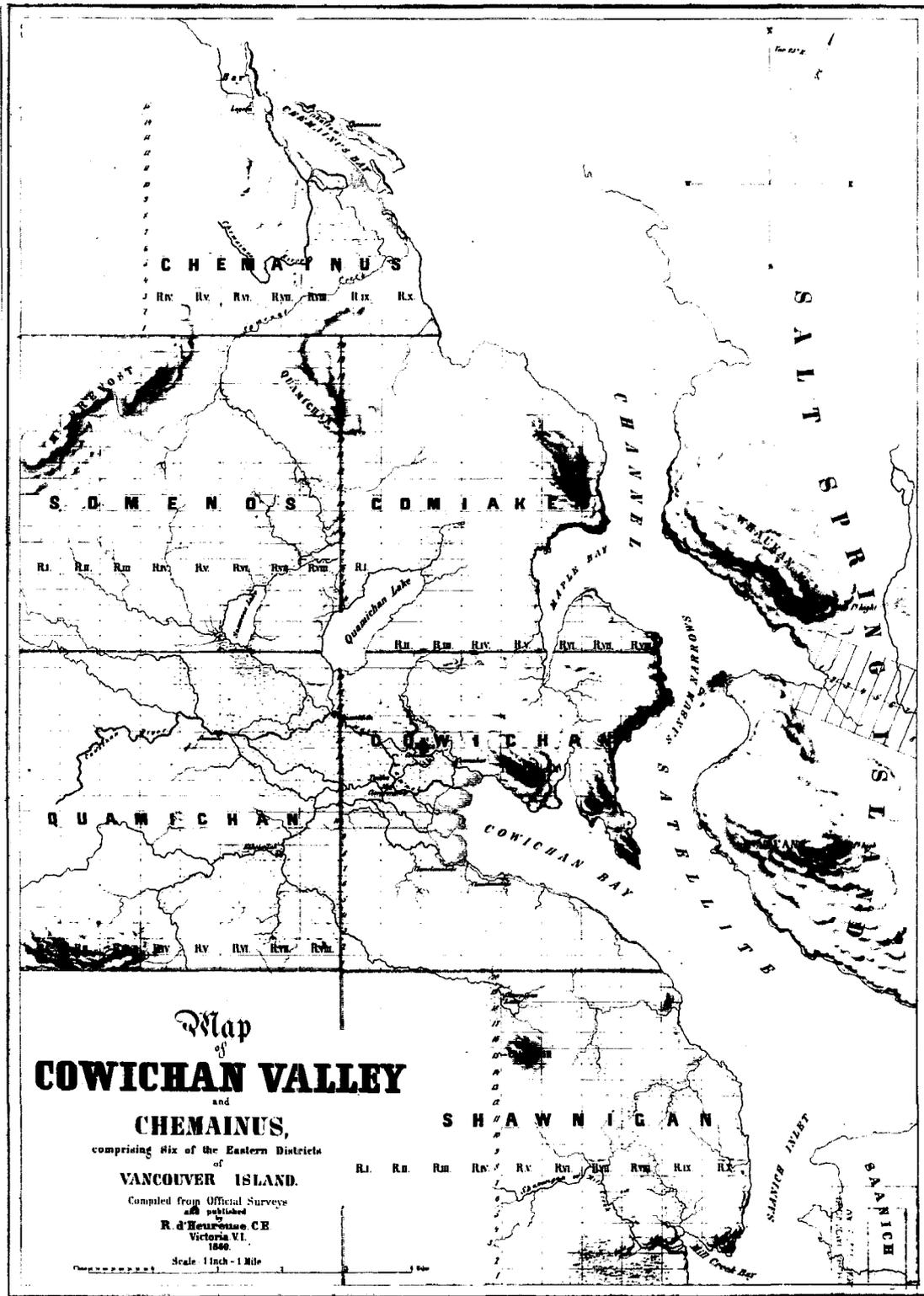


Figure 4.4: Emerging property grid in Hul'qumi'num territory, 1860.
 (Source: British Columbia Archives, Map Collection, CM A198.)

attitudes to white colonization of their territory. First, it is clear that Wells significantly underestimated the size of the Cowichan population; even Pemberton thought that Wells' population numbers were too low, noting that a large number of residents were away at the herring fishery when Wells conducted his "careful investigation" of the indigenous population. Second, one can only guess at the foundations of Wells' hopeful assertion that the Cowichan had "a strong desire to see the white man settled among them."⁶¹ While many of the Cowichan may have welcomed a closer trading relationship with white men, there was clearly a great deal of apprehension and hostility to the idea of large-scale white colonization of the territory. Douglas was well aware of this—noting that while one faction of the Cowichan was "in favour of a surrender of a part of their country for settlement ... another party comprising nearly all the younger men of the Tribe strongly oppose that measure and wish to retain possession of the whole country in their own hands"—and anticipated "much trouble in the adjustment of those disputes before the land can be acquired for settlement."⁶²

In the face of such opposition and in spite of the lack of any agreement having been reached for the purchase of Hul'qumi'num land, Douglas pressed on with plans to open up the territory to white colonization. Land sales continued, such that by July 1859

⁶¹ Wells' survey report is interesting for a number of reasons. On the surface, it is a simple description of the physical and ecological characteristics of the area, with an emphasis on its economic potential for farming and other activities. But such reports, and the activities they describe—the surveying and detailed mapping of a territory not yet under the full control of the colonial administration—form a key link in the complex process of taking possession of land, of dispossession of the historic owners of a territory. The report evokes the transformation of the landscape: it is not so much a description of the landscape as it really exists—although there are a few hints of indigenous use of the land—as much as an evocation of what it could be.

⁶² James Douglas to Sir Edward Bulwer Lytton (Colonial Secretary), 25 May 1859, CO 305/10.

almost 10,000 acres in Hul'qumi'num territory (referred to as the "Eastern Districts") had been sold.⁶³ All the same, colonial authorities came under increased pressure to make more lands available for resettlement. A petition was circulated in the summer of 1859 calling for the creation of a pre-emption system that would allow settlers, rather than land speculators, to secure land for a nominal fee and to acquire title to the land once the land had been "improved."⁶⁴ Recognizing that the lack of any land sale agreement with the indigenous owners of the land was a major stumbling block to white colonization, prospective settlers and land speculators urged Douglas to extinguish aboriginal title to lands in Hul'qumi'num territory, particularly to the Cowichan Valley. Similar pleas came from the editorial pages of the Victoria newspapers. In the July 4, 1859 edition of the *British Colonist*, the paper's founder and editor Amor de Cosmos wrote: "We want farmers—and the best way to get them is to open the lands of Cowitchen to actual settlers by extinguishing the Indian title."⁶⁵

Rather than moving forward with colonization of surveyed areas in the Cowichan Valley, colonial authorities authorized pre-emption and resettlement of lands on Salt Spring Island and in the Chemainus Valley, both of which had not yet been surveyed.⁶⁶

⁶³ *British Colonist*, 11 July 1859; Olsen, *Water Over the Wheel*, 19-20.

⁶⁴ *British Colonist*, 4 July 1859.

⁶⁵ As Tennant (*Aboriginal Peoples and Politics*, 25) notes, white settler public opinion—as expressed in petitions, in newspaper editorials, and in the discourse of colonial officials—clearly accepted the principle of aboriginal title and was in favour of purchasing that title in order to free up lands for resettlement by non-indigenous peoples.

⁶⁶ At this time, 25 individuals were authorized to pre-empt land on Salt Spring Island and another 212 were given the right to pre-empt land in the Chemainus Valley. The number of pre-emptions allowed at Chemainus proved wildly optimistic given the limited amount of land that might have actually been attractive or feasible for settlement. Arnett (*The Terror of the Coast*, 76) argues that colonial authorities "deliberately aimed the first pre-emption system in western Canada directly at the territories owned by those most actively opposed to hwunitum [white] settlement." Another suggestion is that authorities chose to

At the end of July in 1859, a group of eighteen men set out from Victoria to take possession of lands they had been allowed to pre-empt on the northeast coast of Salt Spring Island (close to the present-day site of Walker's Hook).⁶⁷ In November of the same year, fourteen pre-emptors set out to establish a colony in the Chemainus Valley. Both groups of resettlers received a largely hostile reception from the Hul'qumi'num peoples that occupied and used these lands. The attempt to colonize lands at Chemainus failed completely when, upon being informed in late February (of 1860) that their lives were in danger from Hul'qumi'num people deeply opposed to their presence in the territory, the pre-emptors were forced to abandon their claims and retreat to the Victoria area.⁶⁸ As one of the failed pre-emptors of the Chemainus Valley later noted, without the extinguishment of aboriginal title to these lands the land system was "only a farce, as the Indians occupy all the fronts of the small valleys, and their potato patches, although not exceeding ten acres, spread over as many thousand acres."⁶⁹ The Salt Spring Island group fared somewhat better, managing to remain on the land through a variety of strategies, primarily through marriage to Hul'qumi'num women but also by making themselves

target lands for pre-emption which they "had small hope of selling" (see E.B. Norcross, *The Warm Land* (Duncan: Island Books, 1959). The two explanations, of course, may not be in conflict.

⁶⁷ *British Colonist*, 27 July 1859.

⁶⁸ *Daily Press*, 19 April 1861.

⁶⁹ The pre-emptor was Robert Watson, and the quote is from an article in the *Daily Press*, 19 April 1861. It appears that the Chemainus were not entirely opposed to white settlement in their territory, but rather that they wanted to be the ones who decided where white settlement would occur. They had apparently set aside specific lands to be sold to white authorities for this purpose. At this time Douglas also made promises to the Chemainus people (including the Halalt, Sickameen, Penelakut, and Lamalcha) that he would purchase their land from them. See Arnett, *The Terror of the Coast*, 83.

useful to Hul'qumi'num communities (e.g., by opening small trading posts).⁷⁰ Many others who sought to settle on Salt Spring Island were met with hostility by the Hul'qumi'num land owners, who viewed them as trespassers, and were subjected to periodic theft and threats of violence. This hostile reception was perhaps the main reason for the high absenteeism and turnover of pre-emptions on Salt Spring Island during the early colonial period.⁷¹

Resettlement and Indigenous Resistance

Over the next few years, as white intrusion into, and resettlement of, Hul'qumi'num territory increased, indigenous resistance also grew. Incidents of violence against whites who came into Hul'qumi'num territory, whether to take possession of land or to exploit natural resources (game or fish, for example), also increased. In many cases, such attacks represented the enforcement of specific Hul'qumi'num laws, which called for the forceful expulsion of uninvited intruders. In other cases, violence may have stemmed from a more generalized concern about, and opposition to, colonization. In many cases, alcohol

⁷⁰ The marriage between white men and indigenous women was not at all uncommon during the fur trade and early colonial period. Fur traders often had an indigenous or 'country' wife, and children, who they might or might not take with them when they moved on to another fort or back to their home country. James Douglas himself had married a woman of mixed blood (Barman, *The West Beyond the West*, 46). As Cole Harris (*The Resettlement of British Columbia*, 47) notes, these 'marriages' often helped the flow of communication between fur traders and local indigenous groups, and thus helped stabilize relations between these two groups. For indigenous peoples, having a white person as kin could be useful and prestigious. For indigenous women, marriage to a white man could also confer prestige and make life easier. For a more detailed treatment of this phenomenon, see Sylvia Van Kirk, *'Many Tender Ties': Women in Fur Trade Society in Western Canada, 1670-1870* (Winnipeg: Watson & Dyer, 1980).

⁷¹ Arnett, *The Terror of the Coast*, 81.

contributed to the violence.⁷² Opposition to white encroachment was particularly strong in one particular Penelakut group; the Lamalcha from the village of the same name located at the south end of Kuper Island, whose lands on Salt Spring Island had been occupied by the first wave of white settlers who were awarded pre-emption rights there. According to Arnett, the Lamalcha village became the centre of opposition to white colonization of Hul'qumi'num territory and one figure, a Penelakut man named 'Acheewun', emerged as the leader of a small group intent on militant opposition to white encroachment on their territory.⁷³

Indigenous resistance made it difficult if not impossible for many settlers to take possession of lands they had been promised, either through pre-emption or purchase. It seems that Douglas had promised on several occasions to extinguish aboriginal title to lands in Hul'qumi'num territory, a fact pointed out on a number of occasions by both white and indigenous observers.⁷⁴ Indeed, at one point Douglas did seem intent on purchasing Hul'qumi'num lands. In 1860 he tried to convince the Vancouver Island House of Assembly that it would have to provide the funds, which he estimated at £3000,

⁷² Despite prohibitions against it, a number of unscrupulous whites were engaged in the highly profitable sale of alcohol to indigenous people. Some observers, including colonial officials and missionaries, viewed alcohol as one of the principal causes of the decline of indigenous culture and a major factor contributing to violence between indigenous peoples and white settlers.

⁷³ Arnett, *The Terror of the Coast*, 85-87.

⁷⁴ On June 11, 1863, an editorial in the *Victoria Daily Chronicle* noted that "promises were made both to Indians and settlers that compensation should be paid to the former for the loss of their summer homesteads, potato plots, and fishing stations, and broken and broken again; and to this day the redskin and the white man have not had that justice which common sense, truth, and honour ought to have compelled the Government to give them, without one day's necessary delay."

to extinguish (by purchase) aboriginal title to all lands in Hul'qumi'num territory.⁷⁵

Further, in 1861 he worked with the colony's governing body to draw up a petition to the British government asking for the funds required for this purpose. Douglas appended a letter to the petition noting the importance of extinguishing aboriginal title:

As the Native Indian population of Vancouver Island have distinct ideas of property in land, and mutually recognize their several exclusive possessory rights in certain districts, they would not fail to regard the occupation of such portions of the Colony by white settlers, unless with the full consent of the proprietary Tribes, as national wrongs; and the sense of injury might produce a feeling of irritation against the settlers, and perhaps disaffection to the Government.⁷⁶

Failure to extinguish aboriginal title, he was at pains to point out, "would endanger the peace of the country."⁷⁷ The request was denied, with British colonial authorities asserting that the acquisition of aboriginal title was a purely colonial interest and that the British taxpayer could not be burdened with this expense. Douglas then turned to the local (Vancouver Island) House of Assembly to secure the funds required to purchase aboriginal title in Hul'qumi'num territory. Although Douglas was successful in convincing the House of Assembly to allocate funds for this purpose in 1860, 1861, 1863, and 1864, the purchase of Hul'qumi'num lands, and the extinguishment of aboriginal title in Hul'qumi'num territory, to allow for white resettlement (or any other purpose for that

⁷⁵ Douglas argued that the House of Assembly "will have to provide the means for extinguishing, by purchase, the natives Title to the lands in the districts of Cowichan, Chemainus, and Salt Spring Island, which are now thrown open for settlement. The purchase should be effected without delay, as the Indians may otherwise regard the settlers as trespassers and become troublesome." James Hendrickson, *Journals of the Second House of Assembly, Vancouver Island, March 1, 1860 to February 27, 1863*, 157

⁷⁶ Thomas R. Berger, "Wilson Duff and Native Land Claims," in Donald Abbott, ed., *The World is as Sharp as a Knife: An Anthology in Honour of Wilson Duff* (Victoria: Royal British Columbia Museum, 1981), 54-55.

⁷⁷ *Ibid.*

matter) was never made.⁷⁸ According to several observers, the primary reason for the colonial government's failure to purchase land for white resettlement in Hul'qumi'num territory was the refusal of Hul'qumi'num leaders to consent to the sale of their lands at any price.⁷⁹ Unable to secure the purchase of Hul'qumi'num lands, colonial authorities had to seek other ways to open up the territory to white resettlement.

In the summer of 1862, having failed to secure the purchase of lands in the Cowichan Valley, colonial authorities nonetheless made plans to begin large-scale resettlement of the area. In mid-August, a group of approximately 100 settlers set sail for the Cowichan Valley to take possession of lands they had been allocated. As most of the Cowichan people were away at the Fraser River salmon fishery, the expedition met little initial resistance. Douglas promised those Cowichans who were present that they would be compensated for the taking of their lands by the settlers. Fearing trouble once the majority of the Cowichan population returned from the Fraser, Douglas ordered that a British gunboat be stationed at Cowichan Bay until mid-September, and thereafter visit the area regularly over the following months.

Over the next few years, relations between Hul'qumi'num people and the settlers were often strained and marked by conflict. Settlers often complained about threats made by local indigenous people to their physical security and to their property. As was the case

⁷⁸ In 1863, for example, the House of Assembly approved the expenditure of \$9700 to purchase indigenous lands on Vancouver Island, including lands in Hul'qumi'num territory. The same amount was authorized in 1864 for the purchase of lands in the Chemainus and Cowichan districts.

⁷⁹ Both Chris Arnett (*The Terror of the Coast*, 98) and Daniel Marshall (*Those Who Fell from the Sky*, 102) argue that this was the case. Arnett suggests that another factor was that "the aboriginal system of land tenure, whereby families owned houses in permanent villages and distant food and resource gathering areas, sometimes overlapping language boundaries, made negotiations impossible" (p. 98).

with earlier resettlement schemes at Chemainus and Salt Spring Island, many of those who had come to occupy land in the Cowichan were forced to abandon their claims due to the hostile reception they received and the lack of security they felt. Settlers often attributed this hostility and insecurity to the failure of the colonial government to extinguish aboriginal title.⁸⁰ For their part, Hul'qumi'num peoples found large areas of their land, areas important for various resource gathering activities, alienated from their use and control. They also found white settlers taking their fish and game, and the settlers' livestock wandering onto their lands and destroying their potato patches.⁸¹

In the spring of 1863, tensions between the Hul'qumi'num and white settlers flooding into the territory erupted into violence. In early April, a white man, Frederick Marks, and his 15-year old daughter, Caroline Harvey, were killed by a group of Penelakut—two men, Palluk and Allwhenuk, and two women, Semallee and Koltenaht—who came from the village of Lamalcha and encountered them while on a journey to Kulman, a food-

⁸⁰ An article in the *British Columbian* (13 May, 1863) noted that the government had been authorized to spend \$9000 to satisfy indigenous claims at Cowichan but had failed to do so, and asserted that this was the cause of the animosity indigenous peoples felt towards settlers. An article in the *Victoria Daily Chronicle* (7 August 1863) made a similar point about the government's failure to purchase indigenous land in the Chemainus region. The author of this article sympathized with indigenous discontent: "... what are the Indians to think of English morals, English probity and English law. Four years ago they were in undisturbed possession of [the] Chemainus Valley, now they find their peaceful territory disturbed—their crops destroyed by the cattle of the encroachers, and themselves defrauded out of their promised compensation."

⁸¹ Marshall (*Those Who Fell from the Sky*, 118) describes Cowichan resistance to colonization, including the removal of survey stakes, killing of colonists' cattle, and growing tensions between colonists and other "troubles with the Indians." Norcross (*The Warm Land*, 15-16) writes about tensions between the first settlers and indigenous peoples in the Cowichan Valley. She notes that indigenous people had learned not to take out their frustrations on settlers themselves (for fear of harsh punishment by colonial authorities) but, when they "found their potato patches being trampled and destroyed by the white man's cattle, they contented themselves with venting their resentment on the cattle in a few instances, and not on the settlers personally."

gathering site on the northwest portion of Saturna Island. A few days later, a group from Quamichan— three men, Thalaston, Stalehum, and Oalatz, and two women, Thostinah and Thask—came across and attacked two men, a white man, William Brady, and another of mixed blood, John Henley (part-white and part-Cherokee), near Pender Island; while Brady died of his wounds, Henley survived and, though badly wounded, escaped to tell the tale of the attack. The killing of three whites in the space of a few days generated considerable alarm and outrage among settlers, and calls for immediate retribution. While most white observers suggested personal gain (i.e., robbery) or simply the savage thirst for blood as motives for these attacks, there are other ways of interpreting these events, including understanding them as punishment meted out to whites for encroaching on Hul'qumi'num territory, as revenge for previous acts of violence by whites on Hul'qumi'num communities, or as general resistance to white colonization.⁸²

As with previous killings of whites by indigenous people, colonial authorities determined to act swiftly and with overwhelming force not only to apprehend and punish the suspected killers but also to reinforce the message that resistance to white authority would not be tolerated. Over a period of several weeks in the late spring of 1863, a military campaign made up of several British gunboats and a large contingent of British soldiers and armed militia scoured Hul'qumi'num territory in search of the culprits. As before, colonial authorities employed a combination of intimidation and persuasion to secure those suspected in the attacks. The capture of four of the Quamichan suspects—the three men, Thalaston, Stalehum, Oalatz, and one woman Thask (Stalehum's mother)—was effected quickly and with the aid of a local Catholic missionary. The fifth

⁸² Arnett, *The Terror of the Coast*, 118.

suspect, Thostinah (spouse of Thalaston), was never apprehended or charged with any crime. In mid-May, the four suspects were brought to trial in Victoria and all found guilty of murder. The three Quamichan men were sentenced to death and executed (by hanging) on the 23rd of May, an event witnessed by a large crowd, including family members of the Quamichan men who traveled down from the Cowichan Valley. Thask was granted mercy, spared execution but sentenced to life in prison.⁸³

The capture of the Lamalcha suspects was much more difficult, involving, at one point, a pitched battle between a British gunboat and warriors at Lamalcha Bay, in which one British sailor was killed and another injured. Later, British soldiers returned to the village, which had been abandoned, and burned it to the ground. Eventually, through the assistance of a number of Hul'qumi'num leaders who had their own grudges with the suspects, a total of 17 suspects were taken prisoner, including three of the four main suspects (the fourth, Palluk was killed in the course of the investigation, apparently in a fight with Hul'qumi'num foes) and members of their families, as well as assorted other Native peoples suspected of various crimes against whites. The prisoners were taken to Victoria to face the white legal system. Several of the prisoners, including the two women (Semallee and Koltenaht) who were present during the attack on Marks and Harvey, were given immunity from prosecution in exchange for the testimony against their fellow prisoners. In the end, four Lamalcha men—Shenasaluk, Qualataltan, Acheewun, and Allwhenuk—were found guilty of murder (the first three for the death of

⁸³ *Ibid.*, 173-192. Arnett reports that Hul'qumi'num opinion was divided on the question of the fairness of the sentences meted out to the Quamichan suspects. Some praised the execution of the men while others thought the sentences harsh, arguing that they could have accepted the execution of one Quamichan man for the murder of one white man but that taking the lives of three Native men to account for the death of one white man was unfair.

the British sailor and the latter for the death of Marks and Harvey) and sentenced to death, with the executions taking place on the 4th of July.⁸⁴

The trials and executions of the seven Hul'qumi'num men, carried out over a three month period in mid-1863, generated considerable public discussion and controversy in both white and Native circles, and raised important questions about the application of justice in cases involving aboriginal people. For many whites, who sought revenge for the killing of fellow settlers and who worried about their own safety in the face of indigenous resistance and hostility, the harsh sentences were welcomed. Some whites, however, found fault with the application of colonial justice in such cases, pointing out the cultural and language barriers that made the trial of Native suspects a problematic affair. The execution of the three Lamalchi men for the murder of the British sailor in the skirmish at Lamalchi Bay came under particular criticism by some white opinion leaders who argued that, in light of the lack of evidence linking these individuals to the sailor's death, the sentence was akin to judicial murder.⁸⁵ As noted earlier, Hul'qumi'num opinions on the trials and executions were also divided; some welcomed the harsh punishment meted out to the Native men, perhaps because of their own alliance with white authorities (e.g., the church or colonial officials) or because of their particular conflicts with these men and their allies, while others were outraged by the actions of colonial authorities. More broadly, the stringent application of colonial law in these cases—the relentless pursuit of suspects, the speedy trials, the harsh sentences—served to consolidate colonial authority and power. As Arnett argues, the execution of these seven Hul'qumi'num men was carried out not so much for the deaths of the four whites, “but as a warning to all

⁸⁴ *Ibid.*, 257-307.

⁸⁵ *Ibid.*, 291-92.

Hwulmuhw [indigenous] people of the futility of asserting their sovereignty in those areas where their aboriginal title had not been extinguished.”⁸⁶

The Vancouver Island Exploring Expedition

European interest in Hul’qumi’num territory was not limited to land for agrarian and resettlement purposes. There was also a strong interest in opening up this area to the development of natural resources, particularly coal and minerals but also, and increasingly, timber. To this end, in the early 1860s prominent settlers in Victoria began calling for a more comprehensive and thorough exploration of Vancouver Island to uncover its hidden natural treasures. An 1863 editorial in the *British Colonist* pointed out “the vast amount we have yet to learn concerning the country” and made a plea for such a project of exploration.⁸⁷ Although such pleas were often cast in the guise of a desire for a better understanding of the natural and cultural features of the island, a primary motivation was certainly the search for valuable resources, and for mineral resources in particular. Indeed, in 1863 colonial authorities had acknowledged the need for a geological survey of the colony and had set aside funds for this purpose.⁸⁸ It was in this context that, in 1864, the Vancouver Island Exploring Expedition (VIEE) was launched. Supported by the newly-appointed Governor of the colony, Arthur Edward Kennedy,

⁸⁶ *Ibid.*, 301. As both Arnett and Foster argue, the trial and execution of indigenous suspects in colonial British Columbia was hardly marked by clarity and fair process. Indigenous defendants often had no legal counsel and had a minimal understanding of the foreign (English) legal processes they were subject to. Translation was also often a serious problem, given that the proceedings were conducted in English.

⁸⁷ *British Colonist*, 8 June 1863.

⁸⁸ In 1863 colonial authorities had allocated \$6000 for a geological survey (which was unspent). Douglas himself had pointed out the importance of conducting a geological survey of the colony. See Hendrickson, *Journals of the Colonial Legislatures*, Vol. I, 104.

who agreed to subsidize the exploration project, a group of prominent citizens formed a committee and held a public meeting to drum up additional support and shape the exploration project.

On the first of June in 1864 the committee selected Robert Brown, a young Scot who had recently arrived in the colony, to lead the expedition. Only twenty-two years of age when he arrived in Victoria in 1863, Brown had trained in scientific pursuits at the University of Edinburgh. Eager to travel, Brown had signed on with the British Columbia Botanical Association of Edinburgh, which sponsored him to embark on a three-year trip to British Columbia. His position with the Botanical Association was as a collector of botanical specimens—he was to collect seeds, roots and plants for the association’s subscribers—but he saw himself as a serious scientist rather than merely a ‘seed collector.’⁸⁹ Brown jumped at the chance to head up the exploration of Vancouver Island. In flowery prose, Brown described the country to be explored:

It is in vain that we ask for some clue to that interior, so near at hand, yet, in knowledge, so far off. Trappers and hunters know nothing of it... Indians know less, for they all live on the coast, and are scared when out of sight of their villages.⁹⁰

The objective of the expedition, in Brown’s eyes, was no less than geographic truth: “We are searching for truth & that we will find.”⁹¹ Notwithstanding Brown’s noble aspirations, the sponsors of the expedition had more mundane objectives in mind, primary among

⁸⁹ John Hayman describes how Brown resented his limited role as a collector of botanical specimens while in the field, and continually sought to engage in a broader range of scientific studies. Neglect of his collecting duties eventually led his sponsor to discontinue its support of his work. See John Hayman, ed., *Robert Brown and the Vancouver Island Exploring Expedition* (Vancouver: University of British Columbia Press, 1989).

⁹⁰ Robert Brown, “First Journey Across Vancouver Island,” in H.W. Bates, ed., *Illustrated Travels: A Record of Discovery, Geography, and Adventure* (London: Cassell, Petter, and Galpin, 1869), 254-55.

⁹¹ Robert Brown. Brown Collection, III, 2, British Columbia Archives.

them being the ‘discovery’ and documenting of the island’s natural wealth. The expedition’s first journey was to the Cowichan Valley, where they would ascend the Cowichan River to Cowichan Lake and then descend to Nitinat on the west coast of the island. Brown’s journal of the Cowichan journey is peppered with reports of traces of gold found in rivers and creeks, indications of coal seams, and descriptions of stands of timber “of the most magnificent description.”⁹² The most spectacular result of the VIEE, which lasted four months in the summer and fall of 1864, was the finding of gold on the Leech River (in the vicinity of Sooke, northwest of Victoria).

Although certainly not explicitly described as such by its organizers, the VIEE represented an attempt to extend white knowledge of, and control over, indigenous territories on Vancouver Island, including Hul’qumi’num territory. As the members of the VIEE moved across this terrain, they recorded detailed descriptions of natural features, drew maps of the areas they explored, attached new (English) names to places and natural features, and reconfigured the landscape in their imaginations. Brown was clearly struck by the beauty and tranquility of Cowichan Lake, for example, where the explorers spent a full week examining the country. He describes their camping site, at the mouth of a creek on the north side of the lake, in glowing terms:

⁹² In his journal entry for entry June 15, 1864, Brown described the wealth of timber in the Cowichan Valley: “Within an area comprehended by our eye was an easy fortune for any man of the most moderate means. Spars of Douglas pine [Douglas-fir] & hemlock (*A. Bridgei kels.*) 100 to 150 feet in height and even higher, & from 2 to 3 feet in diameter, without a twig for 80 to 100 feet were shady in every direction, and the difficulty would not be in getting good ones, but in selecting among so many, all standing within a few yards of the River banks” (Cited in Hayman, *Robert Brown*, 61). Elsewhere, Brown (“First Journey,” 303) described the forests of the Cowichan Valley as being “composed of gigantic firs” with few of them “less than 250 feet in height, and area as straight as arrows, unbranched for sixty or seventy feet.”

shaded by gigantic cottonwoods & backed by fertile flats covered by Maples ... pines and cedar but so thin in places that you could run anywhere through the woods... Further back—mountains & some snow peaks—the haunt of herds of elk & deer. In front the summer lake merry with the leaping trout and salmon, & undulating wooded hills, & the music of the Brook ever in our ears. It would be a beautiful spot for a quiet summer retreat—a magnificent shooting box far from the haunts of man—a sort of “lodge in some vast wilderness.”⁹³

The campsite, Brown notes at the end of this passage, is at a creek “called Why-e-coot by the Samenaws.”⁹⁴ On his journey through the Cowichan, Brown’s party was guided by a Cowichan man, who he identifies as “Old Kakalatza”, a “chief” of the “Tsamena” (Somena) tribe. Through Kakalatza Brown provides glimpses of a landscape fully occupied and known by indigenous peoples. In his journal, Brown marvelled at the Cowichan man’s story-telling, noting that natural features and “every living thing” brought forth stories. He described indigenous use of the landscape throughout the Cowichan Valley: of how ‘Kakalatza’ and his family would travel up to the lake for six weeks or more every year to hunt elk, of the presence of indigenous hunting lodges along the Cowichan River, of racks for drying elk encountered throughout the landscape, of indigenous people moving through the territory transporting canoes full of berries.

In areas where white colonization was already under way—in the lower Cowichan and Chemainus Valleys—Brown also described ongoing conflicts between the settlers and the indigenous peoples who owned the land. He described the case of an Irishman named Patrick Brennan who had claimed 200 acres of land near the mouth of the Cowichan River, at least a portion of which was on land previously marked as an Indian reserve. According to Brown, who relied on reports from local missionaries, Brennan treated local indigenous people harshly, noting that he let his pigs “run out among the Indian potato

⁹³ Brown’s journal entry for June 16, 1864; cited in Hayman, *Robert Brown*, 64-65.

⁹⁴ *Ibid.*

patches and if they remonstrate they get nothing but abuse & ill usage".⁹⁵ Brown describes similar conflicts in the Chemainus Valley, where, in one case, the livestock of white settlers are reported to be trampling Indian potato patches and, in another, where indigenous groups are encroaching on land claimed by white settlers. In this latter case, a white settler named Mangey (or Minguay) launched a formal complaint to the effect that a "great inconvenience is felt by the white settlers from the constant, and in one instance forcible trespass of the Penal-a-Khuts" from Kuper Island onto their lands.⁹⁶ At the same time, Mangey acknowledged that these indigenous people had visited the Chemainus valley from time immemorial to fish and raise potatoes.⁹⁷ Brown notes that wherever he went on Vancouver Island indigenous peoples complained about the loss of their lands to white settlers and the lack of any compensation for this loss.⁹⁸ Such descriptions give some picture of the level of conflict between indigenous residents and settlers over the

⁹⁵ Brown visited "Samena" village on July 26, 1864 and met with one indigenous family living there. After answering questions about the new Governor (Douglas had just retired and been replaced by Kennedy) and ensuring them that Kennedy "was as good a friend to the Indians as Mr. Douglas", Brown took his leave noting that his indigenous hosts "were very well pleased but growled sadly at not being paid for their lands." Hayman, *Robert Brown*, 94-96.

⁹⁶ *Ibid.*, 114.

⁹⁷ Brown's journal entry, August 3 and 4, 1864. Cited in Hayman, *Robert Brown*, 100-101.

⁹⁸ During his trip to the Comox area (in September 1864), Brown reported: "Here as everywhere else the Indians are growling about payment for their land. The deer are fewer, and the berries are also & I noticed them cutting down the crab apple trees to get easier to the fruit. They never would do that before but now they think they may as well get as much out of their land as possible, as soon they will be altogether deprived of it. When traveling or sitting around the camp fire with them they always appeal to me on that subject & I assure you that it is no easy matter to answer the question satisfactorily when an intelligent [Indian] looks up in your face and asks 'had you no good land of your own that you come and deprive us of ours?'" Cited in Hayman, *Robert Brown*, 124.

occupation and use of lands in Hul'qumi'num territory, with each party complaining of encroachment and ill treatment by the other.⁹⁹

Brown's travels on Vancouver Island coincided with a change of leadership in the colonial government, with Douglas retiring in early 1864 and Arthur Kennedy appointed the new Governor of the colony of Vancouver Island,¹⁰⁰ and this evidently stirred interest and concern amongst the Hul'qumi'num peoples he met. On July 26, 1864, Brown visited Samena Village and found himself peppered with questions about the new Governor. Brown notes that he was requested to take a seat "in the place of honour in the lodge" and then asked about Kennedy: about "his appearance, his character, & policy to Indians."¹⁰¹ To his Indian hosts, Brown described Kennedy as a "very tall, strong man" having "a strong heart". Governor Kennedy, he said, "always spoke straight. Suppose he said 'I will do it,' he does it. Suppose he says 'I will punish you,' you will *be* punished. His tongue never lies." Brown went on to assure his hosts that the new Governor "was as good a friend to the Indians as Mr. Douglas". His hosts, Brown notes, "seemed very well pleased but growled sadly at not being paid for their lands."¹⁰²

⁹⁹ There are many other accounts of such conflicts between white settlers and indigenous people in Hul'qumi'num territory during this period. For example, William Smithe—one of the early settlers in the Cowichan Valley, and who later became a prominent political leader (elected to the colonial legislature in 1871 and serving as premier of the province between 1884 and 1887)—reported on such difficulties in articles published in the *Victoria Daily Chronicle* on June 3 and July 16, 1864.

¹⁰⁰ Frederick Seymour became the new Governor of the mainland colony of British Columbia.

¹⁰¹ Hayman, *Robert Brown*, 94.

¹⁰² *Ibid.*, 95.

Conclusion

The period from the mid-1850s to the mid-1860s represented a critical point in the colonization of Hul'qumi'num territory. While a few white men had ventured into the territory in the early 1850s, including Douglas himself in 1852, these were largely passing visits. Early 1853 saw the first intrusion of colonial military force into the heart of Hul'qumi'num territory, as Douglas and an armed force sought to apprehend a Cowichan man wanted for the murder of a Hudson's Bay Company herder. The descriptions of this encounter suggest a negotiated resolution of this matter, with Hul'qumi'num leaders perhaps offering Douglas the life of a slave in exchange for the loss of the herdsman, a deal which satisfied both colonial officials, eager to demonstrate their resolve to uphold English law, and Hul'qumi'num leaders who sought to uphold their own laws. The incursion of another colonial military force in 1856 into Hul'qumi'num territory, again in pursuit of a Cowichan man believed to have been involved in an attack on a white man, had a different result. The arrest of a prominent Cowichan man, Tathlasut, and his speedy trial and execution in front of his family and community members, suggests the assertion of colonial law in the heart of Hul'qumi'num territory and the breaching of Hul'qumi'num sovereignty. A similar assertion of colonial law and military power occurred in 1864, in the pursuit, seizure, trial and execution of Hul'qumi'num men from Comiaken, in the Cowichan Valley, and from the Penelakut village of Lamalcha, on Kuper Island, suspected in the killing of three whites. It was colonial law, then, and more specifically the speedy prosecution and punishment of indigenous peoples who violated such laws—in effect a regime of sovereign power,

which, as Cole Harris argues, prevailed in the early resettlement of British Columbia¹⁰³—which served as the vehicle for the initial breaching of Hul’qumi’num sovereignty. The clear goal of the colonial administration, deliberate and carefully pursued, was to use the law, backed by a superior military force, to attain control and domination of indigenous peoples.¹⁰⁴

Harris argues that English common law, the “Queen’s law”, was an adaptable and powerful tool in the colonization and dispossession processes, having the capacity to overwhelm other ways of being in the world.¹⁰⁵ English property law was particularly important in these processes, but also crucial, as indicated in this chapter, was the application of criminal laws. Indeed, it was the working together of this complex system of law, applying to criminal matters and to land, that had powerful effect. The harsh persecution and punishment of indigenous peoples convicted of violent crimes against those deemed by colonial authorities to be ‘settlers’—that is, those who came to take possession of indigenous lands—carried a powerful message. This was where, as Hamar Foster put it, the sovereignty shoe really pinched; the fact that indigenous lands were taken without compensation or treaty and that no system of law, neither the long-standing indigenous law (which might call for the violent expulsion of such people) nor the newly

¹⁰³ Harris, *The Resettlement of British Columbia*, 64-65.

¹⁰⁴ This goal, and the strategy for achieving it, was articulated by James Douglas in a letter, written in 1852, to the Secretary of the Hudson’s Bay Company. “As the white population increases in number,” Douglas wrote, “the Indians, will under prudent management, become submissive, and all apprehension of danger will cease; but in the meantime it is necessary to maintain our influence, which mainly depends on the belief of our ability to punish offences, by a display of physical force, capable of supporting the Laws, and of repressing the evil disposed. Letter from Douglas to Archibald Barclay, “On Affairs of Vancouver’s Island Colony,” from Fort Victoria, 27 April 1852, Colonial Correspondence, British Columbia Archives.

¹⁰⁵ Harris, “How Did Colonialism Disposse?” 176-77.

imposed foreign law, offered a remedy to this theft of their land.¹⁰⁶ This fundamental unfairness was noted by Robert Brown during his exploration of Vancouver Island in 1864:

The Indians have not been treated well by any means. There is continually an empty boast that they are British subjects, but yet have none of the privileges or the right [sic] of one. Their lands have never been paid for ... They are confined in their villages to certain places. Nor are any means taken to protect their rights of fishing & hunting & yet if an Indian kills another in obedience to their laws ... he is immediately taken up to Victoria.¹⁰⁷

Moreover, when Natives were brought up in front of the court in Victoria, in front of the Queen's law, they were confronted with a language, with ideas, with juridical procedures and rules which were all utterly foreign to them. As Harris put it: "Behind the law meted out in such incomprehensible circumstances were fines, jails, or gallows—ultimately, British disciplinary might."¹⁰⁸

In concert with this military and legal intrusion came a series of efforts to mark out Hul'qumi'num territory as open for colonization. Governor Douglas' exploratory visit to the territory in 1852, in which he took note of the agricultural potential of the lower Cowichan Valley, began this process. An initial reconnaissance of the Cowichan Valley by Joseph Despard Pemberton, the colonial surveyor, in 1857 was followed up by a more detailed survey in 1859, resulting in the inscription of an initial grid of property lines on the land and the production of a report reconfiguring the area as ideally suited for agrarian life and the local residents as eagerly awaiting the arrival of white settlers. Such surveys helped facilitate a "conceptual emptying of space"; through this process, "native space—dense with meanings, stories, and tenurial relations—could thus be conceptually

¹⁰⁶ Foster, "The Queen's Law is Better than Yours," 81.

¹⁰⁷ Brown's journal entry for June 9, 1864. Cited in Hayman, *Robert Brown*, 44.

¹⁰⁸ Harris, "How Did Colonialism Dispossess?" 178.

remapped as vacant land.”¹⁰⁹ Almost simultaneously, the products of this reconfiguration process—discrete units of land—were being offered for sale in Victoria, whether as ‘Cowichan scrip’ or as pre-emption rights. Thus, the transformation of Hul’qumi’num territory into parcels of private property was begun.

The occupation of such land, however, was not at all an easy and frictionless process; the Hul’qumi’num, who had neither participated in nor assented to this transformation process, often resisted and refused to recognize the claims of the settlers. This resistance was usually peaceful, but was occasionally marked by violence. Due to Hul’qumi’num resistance many settlers had to abandon their claims, if only temporarily, while others sought to validate their claims to land through more acceptable means (e.g., marriage into a Hul’qumi’num family or otherwise making themselves useful to Hul’qumi’num communities). This seems to indicate that the incorporation of Hul’qumi’num territory into the colonial realm was not at all clear or complete at this point, as Hul’qumi’num peoples continued to assert their jurisdiction in various ways and push back at colonial impingements. By the early 1860s the resettlement of Hul’qumi’num territory was well underway, bolstered by a growing apparatus of colonial power; not only the ever present British gunboats and soldiers but also a growing array of local colonial officials and missionaries who acted to police the legal and spatial boundaries that were being laid down. There was also a growing interest in other natural treasures that might be uncovered in Hul’qumi’num territory—particularly coal, minerals, and timber—and an expedition (the Vancouver Island Exploring Expedition) had been launched to identify these and to render the entire landscape more intelligible and accessible to those who

¹⁰⁹ Blomley, “Law, Property and the Geography of Violence,” 129.

sought to exploit its wealth. Interestingly, while Robert Brown's accounts of his travels through Hul'qumi'num territory served to make these 'unknown' spaces more accessible and intelligible to colonial official and white settlers, they also provided glimpses of the extent of Hul'qumi'num occupation, use, and ownership of this territory, as well as of widespread indigenous concern about, and resistance to, white colonization.

CHAPTER 5

Drawing the Primal Line: Indian Reserves in Hul'qumi'num Territory

Between 1850 and 1854, James Douglas negotiated land sale agreements with 14 different indigenous groups on Vancouver Island: nine with groups in the Fort Victoria area in 1850, two with groups near Fort Rupert (on northeast Vancouver Island) in 1851, two on the Saanich peninsula in 1852, and one at Nanaimo in 1854. However, Douglas ultimately failed to negotiate land sale agreements with any Hul'qumi'num group. Indeed, between 1854 and his retirement in 1864, Douglas did not reach agreement with any indigenous group, either on Vancouver Island or on the mainland colony of British Columbia,⁵ to purchase their lands. Scholars have puzzled over Douglas' failure to purchase any additional indigenous lands after 1854. One common explanation is that he lacked sufficient funds to do so.⁶ Another is that Douglas failed to do so for purely practical reasons: that he only sought to purchase indigenous lands as they were required for the expansion of colonial settlements, such as when land was needed near Fort Victoria in the early 1850s to accommodate a growing white settlement there, and at Nanaimo a few years later in order to take control of coal fields. According to the latter argument, the 14 treaties he had signed on Vancouver Island in the early 1850s provided enough land to meet the immediate demands of white colonists and thus he had no need

⁵ In 1858, in response to the gold rush on the Fraser and Thompson Rivers, the colony of British Columbia was created, encompassing the mainland of what is now British Columbia. James Douglas served as Governor of both colonies until his retirement in 1864. The colony of Vancouver Island was merged with the colony of British Columbia in 1866. Barman, *The West Beyond the West*, 69-71.

⁶ Fisher, *Contact and Conflict*, 152-53.

to pursue similar land sale agreements with indigenous groups in other regions.³ Neither of these explanations, however, seems to account for Douglas' failure to negotiate land sale agreements with Hul'qumi'num groups in the late 1850s or early 1860s. As noted in the previous chapter, Douglas had funds at his disposal in the colony's budget (at least during the early 1860s) to effect the purchase of Hul'qumi'num land. Furthermore, by the late 1850s and early 1860s Douglas was already under considerable pressure to purchase lands in Hul'qumi'num territory to allow for white colonization. Finally, Douglas himself indicated, in his speeches to the House of Assembly and in his correspondence with British officials, a desire to purchase Hul'qumi'num land.⁴ Of course, as noted in the previous chapter, another explanation for Douglas' failure, this one advanced by Chris Arnett and Daniel Marshall, is that the Hul'qumi'num simply refused to sell their land at any price.⁵

³ Harris, *Making Native Space*, 26. This may explain Douglas' refusal to pursue land sale agreements with Hul'qumi'num groups at an earlier point. After Douglas concluded land sale agreements with indigenous groups around Fort Victoria, word of this arrangement quickly spread to other indigenous communities. The Cowichan apparently expressed interest at this point in pursuing a land sale agreement with colonial officials. However, Douglas declined to pursue land sale agreements with Hul'qumi'num groups at this time, noting that the colony was not prepared, at that time, to enter into possession of these lands (see Arnett, *The Terror of the Coast*, 35).

⁴ In March of 1860, in his address to the House of Assembly of the Colony of Vancouver Island, Douglas maintained that the House of Assembly would have "to provide means for extinguishing, by purchase, the native Title to the lands in the districts of Cowichan, Chemainis, and Salt Spring Island, which are now thrown open for settlement. The purchase should be effected without delay," he argued, "as the Indians may otherwise regard the settlers as trespassers and become troublesome." (Hendrickson, *Journals of the Colonial Legislatures*, Vol. I, 157)

⁵ Another explanation comes from George Shankel, who argues that in the late 1850s Douglas had funds at his disposal and was prepared to purchase Hul'qumi'num land but "at that moment there were uprisings and the behaviour of the Indians was so bad that the Government was put to large expense." According to Shankel. Douglas told the Hul'qumi'num "that he would punish them by withholding payment until they redeemed their character by quiet and orderly living." The money set aside to purchase

Paul Tennant argues that, by the late 1850s, Douglas had adopted a new approach for dealing with indigenous peoples and their lands, and this might explain, in part, the failure to sign a land sale agreement with the Hul'qumi'num.⁶ According to this argument, late in his term Douglas came to deny (or at least downplay) recognition of aboriginal title, opting instead for the creation of a system of Indian reserves in order to secure for indigenous peoples a basic allotment of land to meet their economic and cultural needs. At the same time, Douglas ordered that indigenous peoples be given the right, the same as white settlers, to pre-empt additional unsurveyed Crown land. Tennant argues that Douglas developed this system in the late 1850s in consultation with (and with encouragement from) Sir Edward Bulwer Lytton, the British Colonial Secretary. Lytton argued, and Douglas seemed to agree, that the solution to the question of what to do with indigenous peoples lay in settling them permanently in villages.⁷ Through such settlement, argued Lytton, "civilization at once begins" and "[l]aw and religion would

Hul'qumi'num land, he argues, may well have been spent in "suppression of the trouble." See George Edgar Shankel, *The Development of Indian Policy in British Columbia* (PhD Dissertation, Department of History, University of Washington, 1945), 48.

⁶ Tennant, *Aboriginal Peoples and Politics*, 27-30.

⁷ The project of constructing a system of Indian reserves in British Columbia, which began with the first reserve created at Fort Victoria in 1850, derived in part from British colonial policy which sought to insulate indigenous peoples (in all British colonies) from the harmful effects of colonization. Colonization relied on the dispossession of indigenous peoples of much of their land, and thus proponents of colonization were presented with the question of what to do with such dispossessed people. The preferred solution was to allocate land (reserves) for these people. Proponents of this model, such as Herman Merivale, permanent undersecretary at the Colonial Office from 1848 to 1859 and an influential lecturer on colonialism, saw reserves as a temporary solution. The creation of distinct reserves for indigenous peoples would, in the short term, argued Merivale, insulate these peoples from the ill-effects of settler society. Over the longer term, the view (or hope) was that indigenous peoples would become 'civilized, and assimilate into settler society. For a fuller discussion of these ideas, see Harris, *Making Native Space*, 5-15.

become naturally induced amongst the red man”.⁸ Lytton cautioned Douglas, however, not to allocate too much space to indigenous peoples:

Whilst making ample provisions under the arrangements proposed for the future sustenance and improvement of the native tribes, you will I am persuaded, bear in mind the importance of exercising due care in laying out and defining the several reserves so as to avoid checking at a future day the progress of the white colonists.⁹

To minimize conflicts between indigenous peoples and white settlers, Douglas favoured what he referred to as “anticipatory reserves”; that is, establishing reserves in areas prior to the arrival of any white settlers, with reserves made large enough to support the traditional livelihoods of indigenous peoples, such as fishing, hunting, and gathering. Douglas indicated a concern about making the reserves large enough to satisfy what he understood to be indigenous land needs. Near the end of his tenure as Governor he even instructed his staff to allow indigenous communities to essentially mark out their own reserve boundaries. In some cases—in the Okanagan and Kamloops areas in the early 1860s, for example, and also in the lower Fraser Valley—Douglas’ instructions were carried out and large reserves were marked out based on the directions provided by local indigenous leaders. These reserves, notes Harris, “were the most generous ever identified in British Columbia.”¹⁰

These Indian reserves, however, and this approach, proved too generous for a settler society eager to assert control over as much land as possible. After his retirement in 1864, colonial officials acted quickly to disavow the “generous” reserves advocated by

⁸ Letter from Lytton to Douglas, December 30, 1858; in *British Columbia, Papers Connected to the Indian Land Question* (Victoria: R. Wolfenden, 1875), 15. In his letter Lytton makes reference to the successful use, in his view, of a similar approach in South Africa, where Sir George Gray (Governor of the Cape Colony) was seeking to settle Africans in villages.

⁹ *Ibid.*

¹⁰ Harris, *Making Native Space*, 42.

Douglas, and to reduce their size. Informing the affected indigenous groups that the Douglas reserves had no legal basis, colonial authorities ordered that the reserve boundaries be redrawn, making them much smaller. A number of other Indian reserves established by Douglas fell by the wayside altogether, never being given official recognition by subsequent administrations. Douglas' successors did continue to mark out Indian reserves—by 1871, when British Columbia joined the Dominion of Canada, over 100 reserves had been mapped out—but these tended to be small and were delineated hastily and without much consultation with the indigenous peoples to whom they were allocated.

Needless to say, such actions generated considerable concern and protest from indigenous groups around British Columbia. The creation of the Indian reserve system in British Columbia, then, was a highly political affair. During the colonial period, the Indian reserve system was first shaped by a Governor (i.e., Douglas) intent on ensuring that indigenous peoples had an adequate land base to carry out their traditional activities and then it was reshaped by colonial officials who were intent on minimizing the amount of land set aside for indigenous peoples and maximizing the space that would be available for white resettlement. After confederation, the shaping of the Indian reserve system became a source of political contention between provincial officials in Victoria and Dominion officials in Ottawa: the former seeking to minimize the amount of land allocated to reserves and the latter arguing for a more liberal allocation. Throughout the long period over which the Indian reserve system was fashioned in British Columbia, indigenous peoples sought to gain, through protest and petition, a more generous allocation of land for their needs; their voices, however, were largely marginalized in the

process, and their interests viewed as secondary to those of white settlers and to the establishment of harmonious relations between the Province and the Dominion.

In this chapter I examine the creation of a system of Indian reserves in Hul'qumi'num territory, focusing in particular on the work of the Joint Indian Reserve Commission (JIRC). Created in 1876, the JIRC was supposed to resolve the Indian land question in British Columbia by marking out Indian reserves for the exclusive use of indigenous groups in the province. I explore the work of the JIRC in Hul'qumi'num territory in early 1877, and assess the extent to which the decisions made by the commission reflected the land and resource needs and concerns of the Hul'qumi'num communities that they visited. As indicated in the reports produced by the commissioners, the JIRC found a territory where land disputes between whites and Hul'qumi'num residents were still common and unresolved. The commission sought to resolve such disputes by deciding which lands would be allocated to Indian reserves and which would be made available to white settlers. As they went about their work, the commissioners often denied requests made by Hul'qumi'num leaders to allocate specific areas to their exclusive use, usually because these areas were claimed by white settlers but often for reasons that were less clear. The commissioners clearly saw their role not only as resolving land disputes but also as training (or disciplining) indigenous subjects, especially encouraging proper conduct towards white settlers and their property. Ultimately, the reserve system mapped out by the commission proved wholly inadequate to the needs and desires of the Hul'qumi'num peoples, and generated further dissatisfaction and resistance within Hul'qumi'num communities.

The Evolution of the Indian Reserve System in British Columbia

In the absence of any land sale agreement or treaty, and with white settlers eagerly preempting land in the region, the Indian reserve system became the default method of dealing with indigenous land concerns in Hul'qumi'num territory. As early as 1860, colonial authorities had mapped out a reserve of almost 5000 acres in the lower Cowichan Valley.¹¹ Between 1860 and 1867, as white resettlement of the region proceeded, a small number of additional reserves were created in Hul'qumi'num territory, including at Lake Cowichan, on Saltspring Island, and in the lower Chemainus Valley.¹² Although the history of these early reserves is difficult to trace, it is clear that the boundaries of these lands were contested in various ways. Certainly, the boundaries likely meant little to the Hul'qumi'num, at least during the first few years of their existence, as they continued to move through and use the broad spectrum of lands that they were accustomed to using. As lands adjacent to the reserves were taken up by white settlers, however, the boundaries became more meaningful and a source of contention. As Hul'qumi'num groups sought to continue their use of traditional lands outside these reserve boundaries they increasingly came into conflict with white settlers who asserted their own of property claims, backed by colonial rules and authorities, based not on

¹¹ Harris (*Making Native Space*, Appendix on p. 327) indicates the establishment of a Cowichan reserve, of 4635 or 4799 acres, sometime in the period from 1859 to 1862. By 1867 the Cowichan reserve was shown as being only 2675 acres in size. Harris indicates some uncertainty about the size of this reserve and its date of creation.

¹² Harris (*Making Native Space*, Appendix pp. 327-334) indicates the creation, prior to 1864, of a reserve of 11 square miles on Saltspring Island, as well as small reserves for the Chemainus (Say-la-quas No. 10, a fishing station on the lower Chemainus River, 13-20 acres; and Squaw-hay-one No. 11, 100 acres in the lower Chemainus Valley), for the Penelakut (Tussie No. 6, 30 acres, also in the lower Chemainus Valley), and for the Halalt (Halalt Island No. 1, 139 acres; and Halalt No. 2, Westholme, 100 acres).

inheritance but on “little more than a few scratched lines on a slip of paper”.¹³ It is also clear that, during this early period, white settlers themselves often either ignored or contested the reserve boundaries, not only moving onto land marked out as Indian reserve but also seeking to shrink the size of Indian reserves to make more room for land-hungry settlers. Colonial authorities often turned a blind eye to these transgressions¹⁴.

The early allocation of land to Indian reserves did little to quell the simmering conflict between the Hul’qumi’num and white settlers. Throughout the 1860s and early 1870s there are numerous reports of such conflicts, including various forms of encroachment by white settlers onto Indian reserves as well as Hul’qumi’num occupation and use of lands claimed by white settlers. Overall, the picture that emerges is of widespread dissatisfaction on the part of Hul’qumi’num groups about white settlers coming into their territory and taking possession of their lands, and about the failure of colonial officials to compensate them for the loss of this land. As a result, this period was marked by ongoing tension between the Hul’qumi’num and white settlers, at times erupting into open conflict. The situation in Hul’qumi’num territory was certainly not unique; similar tensions were evident throughout the island and mainland colonies wherever white settlers were intruding into indigenous territories. Tensions increased greatly after Douglas’ retirement, as the new colonial administrators proved far more interested in promoting settlers interests than in addressing the concerns of indigenous peoples. Neither Arthur Kennedy, the new Governor of the Colony of Vancouver Island, nor Frederick Seymour, the new Governor of the Colony of British Columbia, showed much

¹³ Harris, *Making Native Space*, 76.

¹⁴ For an example, see Hayman, *Robert Brown*, 94-96.

interest in indigenous land issues.¹⁵ The British Colonial Office also showed little interest in this matter, leaving the formulation of colonial and indigenous land policies to local officials. From Douglas' retirement in 1864 until 1871, when British Columbia joined the Dominion of Canada, the shaping of colonial Native land policy fell largely to Joseph Trutch, the Chief Commissioner of Land and Works. Trutch, whom Robin Fisher has described as an "archetypal colonialist", had a dim view of indigenous peoples, seeing them as more animal than human.¹⁶

Representing settler interests, Trutch moved quickly to abandon those elements of Douglas' policy that he viewed as too generous to indigenous peoples or that might obstruct white settlement. Like Douglas, Trutch wanted to see Indian reserves marked out quickly; unlike Douglas, however, Trutch saw little need to consult with indigenous peoples in laying out reserves. Cole Harris describes the work of two colonial officials, working under Trutch's guidance, in marking out at least 11 Indian reserves in a period of less than three weeks (in 1870) in the Fraser Canyon. The men carried out their work, notes Harris, "defining the formal colonial spaces of Native life" with "extraordinary speed and detachment" knowing "next to nothing about ... the Native worlds they were

¹⁵ When the colonies of Vancouver Island and British Columbia were united in 1866, Frederick Seymour was appointed Governor of the newly created colony of British Columbia.

¹⁶ In 1850, Trutch expressed the opinion that Native peoples "are the ugliest & laziest creatures I ever saw, & we shod. [sic] as soon think of being afraid of our dogs as of them" (Joseph Trutch to Charlotte Trutch, 23 June 1850, Joseph Trutch Papers, University of British Columbia Library, folder A1.b. Cited in Fisher, *Contact and Conflict*, 161-62). This low opinion of Native peoples remained constant through his work as a colonial, and later a provincial, official; in 1872, shortly after being appointed as British Columbia's first Lieutenant Governor, Trutch wrote to the Prime Minister of Canada and expressed his opinion that Native peoples of the British Coast were "utter savages" (Joseph Trutch to Sir John A. Macdonald, 14 October 1872, Sir John A. Macdonald Papers, Public Archives of Canada, vol. 278.

rearranging.”¹⁷ Further, Trutch worked to reverse some of Douglas’ reserve allocations, arguing that they were too large and hindered white settlement. Many of the larger reserves that Douglas had ordered to be created in the southern interior (Okanagan, Thompson, Shuswap) and the lower Fraser Valley were revisited and greatly cut back; not only were the reserves decreased in size but often their boundaries were redrawn to free up the best land for white settlers, leaving the indigenous residents with the most marginal land. The effort to reduce and reconfigure these reserves generated considerable protest from the affected Native groups, and from some whites (e.g., missionaries) who supported them, but this had little effect.¹⁸ In an effort to develop a formal policy to guide the creation of Indian reserves, in 1867 Trutch instructed colonial officials (e.g., surveyors, local magistrates) to allocate land for Indian reserves based on the formula of about 10 acres per family (or per adult male)—Douglas had instructed a *minimum* of 10 acres per family, while Trutch took this as the *maximum*—around village sites and cultivated patches, and to mark them out so as to not interfere with the process of white settlement and colonization.¹⁹ Trutch also took steps to make the pre-emption of land by

¹⁷ Harris, *Making Native Space*, 64. The men were Peter O’Reilly, a magistrate based at Yale in the Fraser Canyon, and John Trutch, a surveyor and Joseph Trutch’s brother.

¹⁸ Fisher (*Contact and Conflict*, 167-69) cites a petition, one of many, from the Lower Fraser chiefs to Governor Seymour protesting the curtailment of a reserve (“only a small patch of land”) laid out according to Douglas’s instructions. This petition (dated December 6, 1868) notes that through the curtailment carried out by men under Trutch’s orders “not only they shortened our land but by their new paper they set aside our best land, some of our gardens, and gave us in place, some hilly and sandy land, where it is next to impossible to raise any potatoes: our hearts are full of grief day and night.”

¹⁹ Trutch to the Colonial Secretary, New Westminster, 19 November 1867; in British Columbia, *Papers*, 45-46.

indigenous people, a policy advocated by Douglas, all but impossible. At the same time, he increased the amount of land a white settler could pre-empt from 160 to 480 acres.²⁰

It is important to note that Trutch's views of indigenous peoples and his ideas about indigenous lands, abhorrent and misguided from today's perspective, were certainly not unusual for the time. Indeed, Trutch was broadly representative of the views of a settler society which saw indigenous peoples as savages wandering across the landscape without any organized sense of ownership of the land or any understanding of the 'proper' use of land. Indicative of this view, one colonial official of the time described indigenous land use as follows:

These Indians do nothing more with their land than cultivate a few patches of potatoes here and there; they are a vagrant people who live by fishing, hunting, and bartering skins; and the cultivation of their ground contributes no more to their livelihood than a few days digging of wild roots.²¹

Trutch himself argued that indigenous peoples "really have no right to the lands they claim, nor are they of any actual value or utility to them."²² Settlers saw indigenous peoples as a dwindling, and ultimately a doomed, race; these views legitimated settler beliefs that the displacement of indigenous culture and ways of life by European culture was only natural and inevitable.²³ With Trutch setting the colony's land policy, any recognition of aboriginal title was abandoned and no further treaties were pursued.

²⁰ This was made possible by an 1865 land ordinance; see Fisher, *Contact and Conflict*, 165.

²¹ P.H. Nind to A.N. Birch, Colonial Secretary, Lytton, 17 July 1865; in British Columbia, *Papers*, 29-30.

²² Trutch, Report on the Lower Fraser Indian Reserves, 28 August 1867; in British Columbia, *Papers*, 42.

²³ Between the late eighteenth and late nineteenth centuries, it has been estimated that the indigenous population of British Columbia declined by as much as 90 percent. This was largely due to introduced diseases, although warfare between different indigenous groups and the introduction of alcohol also contributed to this decline. For an overview on the impact of disease on Coast Salish peoples see Harris, *The Resettlement of British Columbia*, chapter 1.

Indigenous land policy became about mapping out Indian reserves, and colonial officials concerned themselves only with the number and size of these reserves. With white resettlement of indigenous territories the overriding objective, the number and size of Indian reserves was to be kept to a minimum. Few settlers found fault with Trutch's approach.

Such was the state of indigenous land policy when British Columbia agreed to join the Dominion of Canada in 1871. Under clause 13 of the Terms of Union, "the charge of the Indians, and the trusteeship and management of the lands reserved for their use and benefit" was to be assumed by the Dominion government. This clause also allowed for the transfer of "tracts of land of such an extent as it has hitherto been the practice of the British Columbia Government to appropriate for that purpose" from the provincial government to the Dominion government to allow for the creation of new Indian reserves. The clause further stated that, with respect to indigenous peoples and indigenous lands concerns, "a policy as liberal as that hitherto pursued by the British Columbia Government shall be continued by the Dominion Government after the union."²⁴ Historians have highlighted the curious wording of this clause, given that indigenous land policies in colonial British Columbia could hardly be described as "liberal".²⁵ The wording of this clause is generally attributed to Trutch, who represented British Columbia in negotiating the terms under which the colony became a Province in

²⁴ British Columbia, *British Columbia North America Act, 1867, Terms of Union with Canada, Rules and Orders of the Legislative Assembly* (Victoria: R. Wolfenden, 1881), 66.

²⁵ Shankel (*The Development of Indian Policy*, 93), for example, referred to this wording as a "grim joke".

the Dominion.²⁶ As Fisher argues, the wording of this clause likely represented an effort by Trutch (and other provincial officials) to maintain the status quo when it came to allocating land to Indian Reserves in British Columbia.²⁷ Trutch must have been aware that Dominion policies with respect to indigenous land concerns were far more liberal than those of British Columbia. Dominion officials, on the other hand, seemed not to be aware of the 'illiberal' nature of British Columbia policies towards indigenous people prior to confederation. Thus, the wording of clause 13 likely represented an effort to camouflage British Columbia miserly indigenous land policies.

After confederation, indigenous land policies quickly became a source of contention between Dominion and provincial officials. While indigenous land policies in British Columbia during the colonial era were ostensibly the responsibility of the Colonial Office in London, in reality by the early-1860s the Colonial Office was, by and large, leaving the elaboration and implementation of such policy in the hands of local officials. According to the Terms of Union, responsibility for indigenous peoples (and indigenous land policy) was to shift to the Dominion government. However, officials in British Columbia, including Trutch who was appointed the Province's first Lieutenant Governor, were reluctant to cede control over this matter and worked assiduously to thwart any effort on the part of Dominion officials to introduce a more liberal policy with respect to indigenous lands.²⁸ With the question of aboriginal title effectively off the table at this

²⁶ Robert Cail, *Land, Man and the Law: The Disposal of Crown Lands in British Columbia, 1871-1913* (Vancouver: UBC Press, 1974), 186.

²⁷ Fisher, *Contact and Conflict*, 176.

²⁸ In 1872, in a letter to Prime Minister Macdonald, Trutch (in his role as Lieutenant Governor of the new province) wrote: "I am of opinion, and that very strongly, that for some time to come at least the general charge and direction of all Indian affairs in B.C.

point, the dispute between the Dominion and provincial governments focused on the amount of land to be allocated to Indian reserves. Pointing to the wording of clause 13, provincial officials argued that they were under no obligation to transfer to the Dominion government, for the purpose of creating Indian reserves, any more than 10 acres of land per Indian family. Dominion officials, who were in the process of signing treaties on the prairies that allocated land to Indian reserves on the basis of 160 acres of land per family, found themselves in a difficult position; they sought some continuity in reserve size between British Columbia and areas east of the Rockies but at the same time they were reliant on the provincial government to convey to them the land they required to create Indian reserves. Faced with a provincial government intent on maintaining the status quo, by 1873 the Dominion government proposed that Indian reserves in British Columbia be allocated on the basis of eighty acres per family. In the face of provincial resistance, however, Dominion officials quickly backed down and, after some negotiation, the Province and Dominion finally agreed to a figure of twenty acres of land per family.

Despite this agreement, between 1871 and 1876 little progress was made in laying out new Indian reserves. When, in 1872, Dr. I.W. Powell, the man appointed by the Dominion to act as Superintendent of Indian Affairs in British Columbia, began working to map out new Indian reserves based on the formula of twenty acres per family, he found himself stymied by uncooperative provincial authorities. Pressed by his superiors in Ottawa who expressed a desire to mark out Indian reserves as quickly as possible, Powell found his way continually impeded by provincial authorities, making his work virtually impossible. Powell's frustrations were minor when compared to those of indigenous

should be vested in the Lt. Governor." Trutch to Macdonald, 14 October 1872, National Archives of Canada, Macdonald Papers, vol. 278.

peoples from across the province who, completely excluded from the discussions about reserve size, saw their lands being usurped by white settlers. By the mid-1870s, indigenous leaders were well aware of the discrepancy between indigenous land policies in British Columbia and those in other parts of North America and struggled to make their concerns known.²⁹ While their many protests and petitions were largely ignored by provincial officials, they found a more receptive audience among a small number of white people, particularly among missionaries, who came into close contact with them and often observed, at close quarters, the injustices suffered by indigenous peoples and the anger and despair this produced.³⁰ Dominion officials also, on occasion, were highly critical of provincial authorities.³¹

²⁹ Harris (*Making Native Space*, 76-86) documents Native resistance and protests during this period, citing texts from several petitions drawn up by Native leaders and sent to Dominion and provincial authorities. The central complaint was the loss of their lands and the inadequacy of the Indian reserves that were being mapped out.

³⁰ Perhaps the most prominent white critique of the Province's treatment of indigenous peoples during this period came from Father J.C. Grandidier, an Oblate priest based at Kamloops. Grandidier's critique was laid out in several long letters, one of which was published in the *Victoria Standard* (The text of this letter can be found in British Columbia, *Papers*, 145-48). Although the provincial government rejected all such criticisms, there was some support in the provincial legislature for more liberal policies on indigenous lands. In 1875, a committee made up of elected members of the provincial legislature prepared a report critical of the Province's policy on indigenous lands and recommended the adoption of the formula of 80 acres per family in determining the size of all Indian reserves. The report was suppressed by the provincial government.

³¹ The Governor General of Canada, Lord Dufferin, was highly critical of British Columbia's indigenous land policies. Lord Dufferin's concerns were laid out in his correspondence with Lord Carnarvon, the British secretary of state for the colonies. See, for example, Dufferin to Carnarvon, 4 December 1874, National Archives of Canada, RG 10, vol. 3611, file 3756-1 (reel C-10106). Lord Dufferin also expressed his concern about the Province's treatment of indigenous peoples in his public speech in Victoria, during his tour of British Columbia in 1876. The full text of this speech can be found in Molyneux St. John, *The Sea of Mountains: An Account of Lord Dufferin's Tour Throughout British Columbia in 1876. Vol II* (London: Hurst & Blackett Publishers.1877).

The impasse between the Dominion and provincial governments on the question of Indian reserves was eventually bridged by a proposal from William Duncan, a missionary who had achieved recognition for his work with the Tsimshian on British Columbia's north coast.³² Duncan's proposal called for the abandonment of any fixed formula to guide the allocation of land for reserves (i.e., a certain acreage per Indian family), and instead suggested a process whereby the number and size of Indian reserves would be determined separately for each indigenous group in the province. By early 1876 Dominion and provincial officials had hammered out an agreement that allowed for the appointment of a Joint Indian Reserve Commission to be made up of three commissioners—one to be appointed by the Dominion of Canada, Alexander Caulfield Anderson, one by British Columbia, Archibald McKinlay, with the third, Gilbert Malcolm Sproat, to be a joint appointment—to carry out the work of creating the reserves, following the principles laid out by Duncan. The commissioners would visit "each nation of Indians" and map out reserves—confirming existing reserves and creating new ones where needed—based on local factors such as the "habits, wants and pursuits" of the indigenous group in question, the availability of land in the area, and the land needs and claims of white settlers.³³ This approach to resolving the Indian land question represented a clear victory for the Province. In agreeing to this process, the Dominion government had given the Province an equal say in the creation of Indian reserves and had given up on the idea, at least temporarily, of recognizing aboriginal title.

³² For more on William Duncan, see Jean Usher, *William Duncan of Metlakatla: A Victorian Missionary in British Columbia* (Ottawa: National Museums of Canada, Publications in History 5, 1974).

³³ William Duncan to George Walkem (Premier of British Columbia), 16 July 1875; in British Columbia, *Papers*, appendix, 16.

For Dominion officials, the goal of establishing harmonious relations with the Province had clearly trumped its concern for, and its fiduciary duty to, indigenous peoples.

Mapping Out Indian Reserves in Hul'qumi'num Territory

In undertaking the task of allocating and mapping out Indian reserves in the province, the three commissioners that made up the JIRC were given considerable leeway; “[i]n a sense,” suggests Harris, “the reserve system in British Columbia was theirs to create.”³⁴ This is not to say, however, that the commissioners were able to act independently of their political masters. Provincial authorities in particular were anxious to control and direct the work of the commission. The Province instructed McKinlay, the commissioner appointed to represent its interests, to express to the indigenous groups he encountered “the anxious desire of the local [provincial] Government to deal justly and reasonably with them, and to see them raised both morally and physically until they are in a position to enjoy all the privileges and advantages belonging to their white brethren.”³⁵ The Province cautioned McKinlay, however, not to apportion “any unnecessarily large Reserves such as would interfere with the progress of white settlement.” In addition, he was told that “where possible without disturbing their minds or doing violence to old associations” he should seek to concentrate indigenous populations in a number of limited places. Provincial authorities sought, in other words, not only to minimize the amount of land allocated to Indian reserves but also to limit the distribution of such reserves across the landscape. Nevertheless, with such guidance in mind, it fell to the

³⁴ Harris, *Making Native Space*, 96.

³⁵ Memorandum of Instructions to Archibald McKinlay, 23 October 1876, from Deputy Provincial Secretary. British Columbia Archives, GR 494, box 1, file 1 (reel 11011).

commissioners to make decisions in the field, based on what they heard from local indigenous communities and from white settlers and using their own judgement, about the allocation of specific lands to the Indian reserve system.

The commission began its work in the fall of 1876 with a tour of indigenous communities in the Georgia Strait area. Accompanied by a surveyor, a census-taker, a cook, an interpreter, and two indigenous camp assistants, the commissioners traveled by boat from community to community, making decisions about lands that should be set aside for Indian reserves. Wherever they went, the commissioners followed a set procedure. After making camp, local indigenous leaders were summoned to an initial meeting, at which the commissioners would describe their mandate and seek to assure the assembled indigenous leaders of their intent to deal with them fairly.³⁶ The commissioners would then invite the indigenous representatives to express their concerns and desires with respect to land. Over the following days (or, in some cases, weeks), the commissioners would travel to visit sites of interest and concern, including existing Indian reserves and areas proposed by local indigenous people to be set aside for their exclusive use. Finally, the commissioners would meet with each other to make their decisions about the number and size of reserves to be allocated to the local indigenous groups, and convene a final meeting to communicate this to the locals. In some cases, the commissioners would adjust their decisions based on further feedback at this point from

³⁶ In his speech to the Musqueam (a Coast Salish group whose territory extends over what is now the lower mainland of British Columbia), McKinlay noted that the provincial government was selling land to white settlers but wanted to “give land to the Indians also.” The commissioners had come, he told them, “for the purpose of seeing how much land the Indians really require and we will give them as much as we think will do them good.” *Diary of Archibald McKinlay, 1876-77, British Columbia Archives, E/C/M21A, Part I, 96. Cited in Harris, Making Native Space, 108.*

indigenous leaders. During this process a census was taken of the local indigenous population, surveys were carried out to mark the boundaries of existing and new reserves, and the commissioners made a written record of their decisions.³⁷

In addition to their role in allocating and marking out Indian reserves, the commissioners saw it as their role to instruct indigenous peoples in proper forms of conduct and behaviour. They particularly emphasized the need for indigenous peoples to exhibit proper behaviour with respect to the white settlers who had recently taken possession of land in their territory. At the final meeting with the local indigenous people, after they had announced their decisions and after the new or existing reserves had been marked out, the commissioners would typically deliver a lecture to the assembled indigenous peoples on how to conduct themselves. Indigenous peoples were informed, for example, that they could hunt as usual on unoccupied land but should not encroach on the lands occupied by white settlers. They were entreated to live peacefully and on good term with their white neighbours. They were told that but that they should restrain their dogs from attacking the cattle of white men and that they should tear down any fences and structures they had erected on white men's land.

A review of the commission's reports and correspondence related to their work in Hul'qumi'num territory region during early 1877 provides a picture, albeit from a white perspective, of the nature of land and resource conflicts between settlers and indigenous peoples during this time, and of the process whereby reserves were mapped out and created. It also gives insight into white perspectives towards indigenous peoples at this

³⁷ For a more detailed account of the commission's work more generally, see Harris, *Making Native Space*, chapter 5.

time, to a considerable extent reflecting broader settler perspectives.³⁸ After visiting indigenous communities on the mainland coast (i.e., what are now the Lower Mainland and Sunshine Coast regions of British Columbia) and in the Comox and Nanaimo areas on central Vancouver Island, the commissioners began their work in Hul'qumi'num territory in early January of 1876. Up to this point only a few Indian reserves had been declared and marked out in Hul'qumi'num territory, and even here there was considerable confusion about the precise location and size of some of these reserves. As a result, a number of conflicts between white settlers and Hul'qumi'num peoples were evident, including conflicting opinions over the location of boundaries of the Indian reserves that had been created.

The commissioners worked from north to south in the territory, beginning by addressing the question of Indian reserves for the Lyackson people, whose land base was on Valdes Island. The commissioners traveled to Valdes Island where they counted a total of 49 Lyackson people living in five houses at a village located at Shingle Point on the island's southwest coast. In reporting on the commission's work on Valdes Island, Sproat suggested that the Lyackson population was in decline: "Judging from the massive posts and framework of the unoccupied and abandoned houses [at the Shingle Point village] the population was probably greater at some former time."³⁹ Sproat represented the Lyackson as having once been renegades:

³⁸ Of the three commissioners, Sproat produced the most extensive documentation of the commission's work, not only formal reports but also long letters. Because of this, and also perhaps because of his tendency (particularly during the later period of his work as commissioner) to be more sympathetic to indigenous concerns, analyses of the commission's work usually draw most heavily of Sproat's records (as I do here).

³⁹ Sproat's report from Chemainus, 8 January 1877, NAC, RG 10, vol. 11028 (reel T-3967).

Like other tribes in this neighbourhood, the Li-ick-sums [Lyackson] were a restless and aggressive tribe a few years ago. Severe critics, judging by civilized standards, might have classed them as pirates. They were not averse from the plunder of a stranded ship. Some 12 or 13 years ago, the Shingle Point village was bombarded by one of Her Majesty's gunboats, and the Indians abandoned it, but afterwards returned.⁴⁰

Despite the troubles of the past, the commissioners reported being informed that the Lyackson had mended their ways: "The Li-ick-sums said they were learning good lessons, and light had come to their eyes."

On the question of land, the Lyackson told the commissioners that they wished to have all of Valdes Island set aside for their sole use—an area of about 4000 to 4500 acres, though acknowledged by the commission to be mostly rocky land with thin soil and with scarcely any of it suitable for cultivation—and that they did not want any part of the island to be occupied by white men or other indigenous groups. The commissioners clearly viewed this as a "fancied claim" not worthy of serious consideration, and rejected it out of hand; after all, they argued, the Lyackson had not attempted to cultivate the island and had used it only as a hunting ground and a site for their villages.⁴¹ More specifically, the Lyackson expressed a desire to have the one white landowner on the island, a Captain Wake, removed from possession of the land. They argued that the land occupied by Wake—a block of 760 acres on the northern end of the island, the result of a pre-emption claim as well as a military grant—included land that they had previously used and occupied. This request was also denied, and the commission proceeded to mark out a reserve of about 1750 acres located immediately to the south of Wake's property, which they suggested could be used to cultivate crops and graze cattle. The commissioners also allocated two smaller reserves on the southern end of Valdes: a 79

⁴⁰ *Ibid.*

⁴¹ *Ibid.*

acre reserve around the village at Shingle point and a small (5 acre) reserve at the very southern tip of the island near Cayetano Point. This latter reserve, though small, occupied a strategic position overlooking the narrow channel—then called Cowichan Gap but today better known as Porlier Pass—between Valdes Island and Galiano Island to the south.⁴²

The commissioners then turned their attention to the task of allocating reserves for the Chemainus people. They visited Chemainus (or Kulleet) Bay and Oyster Bay (now better known as Ladysmith Harbour), reporting a total of 117 “Chemainus Indians” (or what the commissioners referred to as the “Chemainus Indians proper”) living in the village at Chemainus Bay and 36 “Lick-a-mun Indians” (Sicameen) living in Oyster Bay. Apart from one small fishing station on the Chemainus River,⁴³ located about 15 kilometres south of these villages, no reserves had yet been allocated for the Chemainus people in this area. The district remained largely unsurveyed and Sproat noted that there was some tension with respect to land, observing that the “non-existence of reserves for this large number of Indians in a district in which there are several squatters and settlers, and a good many men working in the woods has made matters uncomfortable in some respects for both the Indians and whites.”⁴⁴ Indeed, Sproat found it remarkable, given the uncertainty around the land question, “how well behaved both Indians and whites” had

⁴² Cowichan gap was (and is) an important marine travel route, particularly for indigenous groups traveling from Vancouver Island to the Fraser River. Today, the Lyackson have three reserves, all on Valdes Island: the reserve marked out south of Captain Wake’s property, known as Lyacksun No. 3, encompasses 710 hectares of land; the reserve at Shingle Point (Shingle Point No. 4) is 32 hectares in size; and the reserve at Cayetano Point (Porlier Pass No. 5), covering 2 hectares of land.

⁴³ Today, this reserve, known as Say-la-quas IR 10, encompasses 6 hectares of land along the north bank of the Chemainus River a short distance from the river’s mouth.

⁴⁴ Sproat’s report from Chemainus, 11 January 1877, NAC, RG 10, vol. 11028 (reel T-3967).

been; they praised “the good sense and good feeling of the white people in dealing with Indian matters” and noted that “[t]he Indians also were moderate and respectful in their demands, though they did not get [from the commissioners] all the land they expected.”⁴⁵

When it came to establishing reserves in the area, the commissioners reported that the Chemainus had “marked trees to show us the area which they thought they should have.”⁴⁶ One area marked out in this way included the whole area between Chemainus Bay and Oyster Harbour. The commissioners thought that this area was far too large, noting that “this area did not seem to be required, and its being made a reserve would have interfered with white settlers who had made improvements.”⁴⁷ Rejecting this demand, the commissioners instead marked out a reserve of about 1800 acres to be shared by residents of the two villages, and reported being able to “satisfy these Indians without handing over the whole peninsula to them, or largely disturbing white settlers who had worked upon the ground.”⁴⁸ The commissioners decided that several white squatters who had occupied land in this area—a Mr. Shotter, a Mr. McNaughton, and a Mr. Abbott—“should not be disturbed, but should be left to enjoy the fruits of their work ... and that the lines of the reserve should be drawn accordingly.”⁴⁹

While in the Chemainus area, the commission’s sought to resolve a land dispute between the Sicameen and several white settlers. The settlers, who had encroached onto an old Indian village site at the head of Oyster (Ladysmith) Harbour, were informed that they had to abandon the site. The commissioners proceeded to map out a reserve “of

⁴⁵ *Ibid.*

⁴⁶ *Ibid.*

⁴⁷ *Ibid.*

⁴⁸ This reserve is now known as Chemainus No. 13 and includes 1082 hectares of land between Ladysmith Harbour and Chemainus Bay.

⁴⁹ *Ibid.*

about 300 acres on the west side of the head of Oyster Harbour to include the old village site and formerly cultivated grounds of the Lick-a-mun [Sicameen] tribe, and also a little salmon stream which flows into a tiny bay on the west side of the harbour.”⁵⁰ The land included in these two reserves, Sproat noted, was not good enough to induce white settlers to make farms, but he noted that

a number of patches suitable for tillage by Indians may be found. Nearly the whole peninsula is wooded, and much of it is ridgy. A large part of the soil is a thin vegetable covering over a cold stiff clay, called ‘hardpan’ by white settlers, which is said to give out after the first crop.⁵¹

With respect to the pre-existing Chemainus fishing reserve on the Chemainus River, Sproat reported that a white settler, a Mr. Thomas, whose farm “surrounds it on three sides, and who, as an industrious and valuable settler, is entitled to consideration” had requested that the reserve be added to his farm.⁵² Thomas pointed out that the reserve lay between his farm and the river, and as such it prevented his livestock from reaching the river to drink water at the most convenient spot for them. He also argued that the “Indians only came there for but a short time every year, and that they did not cultivate the reserve though the soil was good and clear of trees.”⁵³ Furthermore, Thomas argued that the area was not a declared reserve. In this case, the commissioners informed the settler that because the reserve had already been gazetted (in 1867) they would be “unable to meet his wishes that the reserve be cut off.”⁵⁴

The commissioners then traveled to the lower reaches of the Chemainus River where they sought to allocate reserves for the Halalt people. In their report they provided a head

⁵⁰ *Ibid.* Today, this reserve, now known as Oyster Bay No. 12, includes 107 hectares of land near the head of Ladysmith Harbour.

⁵¹ *Ibid.*

⁵² *Ibid.*

⁵³ *Ibid.*

⁵⁴ *Ibid.*

count of 44 Halalt living in the area, and noted that they had confirmed the two Halalt reserves already in existence in the lower Chemainus Valley region and had added two adjacent reserves.⁵⁵ The existing reserves included 100 acres of land on the south bank of the Chemainus River—described as “excellent land” but subject to flooding and heavily wooded—and a rocky wooded island, with a total land area of 139.5 acres hectares, just off the mouth of the river. The commissioners reported adding two additional parcels of land to the existing reserve on the Chemainus River: “two adjacent unoccupied sections containing, each 100 acres ... [consisting of] forest land, rather ridgy, with a few small good spots in it.”⁵⁶ The commissioners also reported finding that the Halalt were asserting their claim to a larger land base. The Halalt, Sproat observed

had to a small extent been guilty of the very serious offence of fencing in as their own, a portion of land legally owned or occupied by white men. The deliberate overstepping the boundaries of other men’s lands, and enclosing portions with some vague notion of holding these portions by force, is a practice on the part of the Indians which should be checked at any cost. It is true kindness to check it, for the practice is sure to get the Indians into trouble.⁵⁷

After completing their work with the Halalt, the commission turned their attention to the Penelakut peoples, and it was here that the commission found the greatest degree of conflict over land and met with the most resistance to their work. The commissioners traveled to Kuper Island, the primary site of Penelakut villages, and recorded a total population of 239, with 194 “Pa-nel-a-kuts” (Penelakut), 28 from the “Ga-kwa-lass sub-tribe” (*Yexwelótes*) and 17 from the “Kivil-la-malth-sa sub-tribe” (Lamalchi). The

⁵⁵ Sproat’s report from Chemainus, 18 January 1877, NAC, RG 10, vol. 11028 (reel T-3967).

⁵⁶ *Ibid.* Today, the Halalt have two reserves: one in the lower Chemainus Valley (Halalt No. 2, 109 hectares in size) and one on Halalt (or Willy) Island (Halalt Island No. 1, 56 hectares).

⁵⁷ *Ibid.*

commissioners made particular note of the Lamalchi, which they noted had been a troublesome group in the past. As Sproat put it, the Lamalcha had been

a strong tribe 12 or 15 years ago, with a record against it of many murders and depredations. They attacked her Majesty's gunboat "Boxer", which had run aground, and shot a seaman. For this outrage their village was bombarded, and the Chief and three other Indians hanged. The smallpox, afterwards, got amongst them, and three men only of the whole tribe are now living.⁵⁸

Here Sproat was no doubt referring to the incident in 1863 where the Lamalchi came into conflict with a British military expedition, which was seeking the arrest of a number of Lamalchi men suspected in the killing of two white settlers. However, as discussed in the previous chapter, rather than running aground the British gunboat had deliberately approached the village in Lamalchi Bay seeking the surrender of the suspects. After firing on the village, the gunboat had been involved in a gun battle with Lamalchi warriors, resulting in the death of one British soldier and the eventual destruction of the village.⁵⁹

The commissioners noted that no reserves had been allocated on Kuper Island for the Penelakut and that there was only one white settler on the Island, a Mr. Conn who had a 100-acre parcel of land on the southwest coast of the island at the site of the former village of Lamalcha.⁶⁰ They did note, however, that the Penelakut had a small fishing station reserve on Vancouver Island at the mouth of Bonsall Creek. The commissioners spent considerable time dealing with the Penelakut and Sproat provided a lengthy report on the conflict over land in the lower Chemainus Valley between the Penelakut and white settlers, and the commissioners' efforts to resolve this matter. Sproat reported that

⁵⁸ Sproat's report Chemainus, 15 February 1877, NAC, RG 10, vol. 11028 (reel T-3967).

⁵⁹ For a full description of this incident see Arnett, *The Terror of the Coast*.

⁶⁰ Following the 1863 incident, Governor Douglas had ordered that the land around the Lamalchi village should remain unoccupied by indigenous peoples or whites. Nevertheless, Conn had claimed and occupied the land in 1867. According to Arnett (*The Terror of the Coast*, 314) a number of Lamalchi families also returned to the site and built houses on the south side of the bay.

“several of the tribes had seized and occupied the lands of white men” and that the Penelakut were the

chief offenders, having fenced in more than a mile in extent, and built houses on a spot which Colonel Powell [Superintendent of Indian Affairs in Victoria], two years ago, had told them was white man’s land. They knew quite well that they were breaking the law, and made no secret of their intention to do what they pleased.⁶¹

The commissioners evidently showed little support for the Penelakut’s land claim, with Sproat pointing out that they “practically enjoyed nearly the whole of Kuper Island ... they were comfortably off, and they had the fishing station reserve on the Chemainus River which had been provided for them by the Colonial Government.”⁶² Instead of using the fishing station reserve for the purpose for which it had been created, Sproat noted, the Penelakut had used it as “a basis for aggressive action against neighbouring lands legally held by white men.” The commissioners expressed concern that the white men were few in number and were “living without a proper feeling of security.” There existed in this portion of Chemainus district, as Sproat expressed it, “a state of affairs improper in any civilised country, and of very evil example to the Indian population on the whole coast.”⁶³

Determined to confront this resistance, the commissioners assembled the Penelakut leaders and lectured them about their conduct, being careful to be “very gentle and soft speaking, avoiding threats, and everything that could arouse their savage feelings.”⁶⁴ Despite the “gentle and soft” tone, it was made clear to the Penelakut that a satisfactory ruling on the land issue—i.e., ‘awarding’ them reserve lands—was dependent on their

⁶¹ Sproat’s report from Chemainus, 15 February 1877, NAC, RG 10, vol. 11028 (reel T-3967).

⁶² *Ibid.*

⁶³ *Ibid.*

⁶⁴ *Ibid.*

correct behaviour with respect to white law and the land claims of white settlers; in effect, the commissioners threatened to withhold the allotment of further reserves to the Penelakut, and even to take away the one reserve that had already been allocated to them, unless the Penelakut abandoned their claims to the disputed lands. The commissioners described the Penelakut as being divided between those who wished only to cooperate with the commission and another group, made up of “the majority of the oldest men of the tribe [who] refused to sanction any yielding to the requirements of the commissioners, and in fact stuck out to the last in a pugnacious manner.”⁶⁵

The lectures and veiled threats yielded little immediate fruit as the Penelakut showed little inclination to take down the fences that they had erected to contest and exclude white property claims. Faced with such determined resistance and resolved to assert their authority, the commissioners requested that a gunboat be dispatched to the area. The subsequent visit of Colonel Powell in a gunboat proved, as the commissioners put it, “a grand persuasive” and a work party was subsequently organized, made up of a few key leaders and a number of other “well-disposed Indians, and most of the young men of the tribe, [who] took down the houses and fences, with great reluctance, however, and after many attempted delays.”⁶⁶ Through their actions, Sproat reported, the commissioners felt that they had

vindicated the law, and, in a very efficient manner though in the way least offensive to a proud and lawless tribe made them pass under the yoke in the sight, so to speak, of all the Indians on the coast who were looking to see what was to be done with the Pa-nel-a-kuts.⁶⁷

⁶⁵ *Ibid.*

⁶⁶ *Ibid.*

⁶⁷ *Ibid.*

He went on to note that the Penelakut “no doubt deserved severe correction” for their behaviour, “but after all they were savages who had no real comprehension of the power which in opposing the law they braved.”⁶⁸

Sproat seemed particularly pleased about the way the matter was resolved, and reported on the effectiveness of the commission’s approach:

It may be asked, why was not the law in this case called in long ago, and why did not the Commissioners simply refer the aggrieved white settlers to the law for redress? To this I would answer that, under the course taken, the Indians of themselves did what the law would have made them do by force. Instead of subjecting the Indians to the compulsion of an arbitrary, resistless power, the commissioners made them pay homage to the law, as from their own minds, by recognizing its authority without it actually being put in force against them.⁶⁹

Given the need to call in a gunboat to enforce their orders, and given the history of military enforcement of the law in Hul’qumi’num territory, one must question the extent to which the Penelakut voluntarily paid homage to the law, as from their own minds. Nevertheless, Sproat clearly felt that this represented an important stage in the submission of the Hul’qumi’num, and of the Penelakut in particular, to white law and authority. After they had removed their houses and fences from the disputed lands, the commissioners called the Penelakut leaders together and announced, as if by way of a reward for their submission to the force of law, that they decided to allocate the whole of Kuper Island, save the 100 acres occupied by Mr. Conn, to them as an Indian reserve. The commissioners evidently did not have a very favourable view of the land allocated to the reserve, noting that “there are not more than two or three places on the Island suitable for the farms of white settlers.”⁷⁰ The commissioners also allotted Tent Island, a small

⁶⁸ *Ibid.*

⁶⁹ *Ibid.*

⁷⁰ *Ibid.*

island lying off the south end of Kuper Island—described by Sproat as “a small wasted unfertile island”—as a reserve for the Penelakut.⁷¹

The final task for the commission in Hul’qumi’num territory was to allocate Indian reserves for the Cowichan peoples, which they estimated as consisting of “800 or 900 souls”. The commissioners spent close to a month in the Cowichan area, from January 19 to February 17 in 1877, dealing with a variety of land issues. In their report they noted that the Cowichan had suffered under “a strange system of mismanagement” of their reserve lands, describing how the lands originally allocated to them by Governor Douglas had “been from time to time cut down by successive Governors (especially by the late Governor Seymour), in such wise that great dissatisfaction had arisen and all confidence in the sincerity of the Government seemed to have been destroyed.”⁷² Upon hearing that a group of Cowichan were intent on pressing them to restore the lands that had been alienated from their reserves, the commissioners were quick to reply that

while the Dominion Government, in unison with the Provincial Government, were solicitous to promote the interest of the Indians, and to satisfy them in every reasonable way, but no interference with the vested interests of the white settlers could be permitted—these having purchased their land in good faith, having made their improvements, and whose money had gone, with other moneys, to make the roads and build the bridges, by which the whole community had benefited, and the value of all the adjacent land, whether held by whites or Indians, enormously enhanced.⁷³

⁷¹ Today, the Penelakut have four reserves: including the main reserve on Kuper Island (Kuper Island No. 7, 557 hectares), Tent Island (34 hectares), the fishing station at the mouth of Bonsall Creek (Tussie No. 6, 15.5 hectares), and a small reserve on the northwest tip of Galiano Island (Galiano Island No. 9, 29 hectares).

⁷² Report of the Proceedings of the Joint Commission for the Settlement of the Indian Reserves in the Province of British Columbia, submitted to the Provincial Secretary, British Columbia Archives, GR494, box 1, file 22, 220-61 (reel 11011), 252-53.

⁷³ *Ibid.*, 253.

The commissioners reported the creation of new reserve lands for the Cowichan, including “a considerable area of good, though rocky, pasture land along the Cowichan Bay” and several fishing stations on the upper part of the river.⁷⁴

However, they also turned down a number of Cowichan requests for specific parcels of land to be added to their reserve. One case concerned a white settler named Munro who had been allotted 200 acres near the village of Somena which “cuts directly into the General Reserve.” Understanding that the “Indians hankered much after this place” Munro offered to sell the land to the government which could turn it over to the Cowichan. However, on finding out that a Somena man (who they referred to as ‘Sin-a-meetza’) had already fenced in and occupied the parcel, and that he had done this against the explicit orders of the Colonel Powell, the commissioners decided against purchasing the land and turning it over to the Somena as they considered that this would act as “a direct encouragement to future acts of a similar nature on the part of others, and at the same time operate to directly shake the influence of the superintendent, whose warnings had been disregarded.”⁷⁵

The commissioners also refused a request by leaders from the village of Clem Clem (or *Lhumlhumuluts*) to secure for them a 100-acre parcel of land held by a white settler named Dods. According to their report, the commissioners offered the Clem Clem leaders half of this parcel, but the leaders insisted on the whole piece and, as a result, the matter (as the commissioners put it) “was not concluded”.⁷⁶ Finally, the commissioners refused a request by the Quamichan to make a reserve at Maple Bay and a separate request by “an

⁷⁴ *Ibid.*, 258.

⁷⁵ *Ibid.*, 255.

⁷⁶ *Ibid.*, 257.

Indian known as Captain Verygood” to establish a reserve on Saltspring Island; the commissioners reported that “these small detached places occupied by one or two Indians are inconvenient, and have only been included in the reserves by the Commissioners in very special cases.”⁷⁷ At the end of their stay at Cowichan, the commissioners concluded that they had “dealt liberally with the Indians, by assigning them such unoccupied lands contiguous or adjacent to the Reserves as seemed desirable—in all having increased the curtailed Reserves so as to make the area somewhat more than the original dimensions.” The commissioners expressed the belief that they had left the Cowichan “quite satisfied”. They received assurances from Cowichan leaders, the commissioners noted, “that henceforth no question as to tenure of the white settlers should be permitted to arise.”⁷⁸

There is no evidence that the commissioners visited Cowichan Lake in early 1877 or made any arrangements at that time to confirm existing reserves or to allocate new reserves there. The reason for this oversight is unclear. It was certainly well known among the settler population at that time that a small group of indigenous people, related to the Cowichan people, lived at Cowichan Lake. Indeed, white explorers had come into contact with this group as early as 1860.⁷⁹ The historical record indicates that Governor Douglas had approved the creation of an 800-acre reserve at the eastern end of Cowichan

⁷⁷ *Ibid.*, 257.

⁷⁸ *Ibid.*, 258. Today, the Cowichan have 9 separate reserves: this includes the main reserve in the lower Cowichan Valley (Cowichan No. 1, 2254 hectares), three smaller reserves in the lower Cowichan Valley and in Cowichan Bay (Cowichan No. 9, 18 hectares; Theik No. 2, 30 hectares; Kil-pah-las, 21 hectares), four in the upper Cowichan Valley (Tzart-lam No. 5, 6.5 hectares; Kakalatzta No. 6, 10.5 hectares; Skutz No. 7 and No. 8, 7.3 and 15 hectares), and one reserve in the Shawhigan district (Est-patrolas No. 4, 28 hectares).

⁷⁹ A white explorer and gold prospector named Samuel Harris traveled to Cowichan Lake in 1860 and made contact with the Cowichan Lake group (who were suffering through an epidemic of smallpox at that time). An account of his trip was printed in the *Victoria Gazette* on 30 May 1860.

Lake, although it is unclear if this reserve was ever surveyed.⁸⁰ There is also evidence that additional lands, totalling some 320 acres, on the west side of the lake had been set aside during this same period. It appears that these reserves were never formally confirmed or surveyed and were later lost or greatly diminished in size as the area was remapped and resettled by white people.⁸¹

In summarizing their work in Hul'qumi'num territory, the commissioners provide a census count of 1256 Hul'qumi'num: 425 Chemainus (includes Chemainus, Halalt, Lyackson, and Penelakut peoples) and 831 Cowichan. They report that a total of 12,673 acres of land had been allocated to Indian reserves in the territory: 6643 acres to the four Chemainus groups and 6030 acres to the Cowichan. Although the Hul'qumi'num population has grown fivefold in the 130 years since the commission toured the area, the number and size of Indian reserves in Hul'qumi'num territory has changed very little. A map of the Indian reserves allocated out by the commission in 1876-77 would look little different from a contemporary map of Indian reserves in the territory (see Figure 1.2). A number of small areas of land have been removed and other small tracts added, yet the total amount of land in reserves remains largely unchanged: in 1877 the Joint Indian Reserve Commission reported the establishment of 12,673 acres, or 5128 hectares, of Indian reserve in Hul'qumi'num territory; today, Indian reserves in the territory encompass 5213 hectares of land.

⁸⁰ Sandra Ruth Isaac reports that a "map found at the Surveyor-General's office indicates that the "Indian Government Reserve" had been "lodged with the Select Standing Committee of the House on Crown Lands on December 2, 1863" and signed by Acting Surveyor General, B.W. Pearse." See: Sandra Ruth Isaac, *The Ethnohistory of the Cowichan Lake Indians* (Unpublished report prepared on behalf of the Cowichan Lake First Nation for the Hul'qumi'num Treaty Group, January 1997), 27.

⁸¹ *Ibid.*, 33. Today, the Lake Cowichan First Nation has one small reserve, a 18-hectare parcel of land at the northeast end of the lake.

Conclusion: A Primal and Durable Line

As the commission went about its work in the Strait of Georgia during the winter of 1876-77, it was evident that indigenous groups in the region were very concerned about the possibility that they would be removed from their lands and relocated to more centralized reservations. "It was evident to us, everywhere," the commissioners reported, "that the Indians were disturbed in their minds at the possibility of their being taken away from their old places, and congregated together in unfamiliar districts."⁸² Such worries were not without foundation for McKinley and Sproat had been instructed by provincial authorities to, as much as possible, concentrate indigenous groups in limited areas. Although the commissioners tried to do this, they reported that this was not possible "owing to the scarcity of land, and because of the strong attachment of the people to their old places of residence and resort."⁸³ The work of the commission was followed closely by indigenous groups in the region who, for the most part, welcomed the arrival of the commissioners in the hopes that their land concerns would be heard and addressed.

All of the Hul'qumi'num groups met the commissioners with specific demands for lands to be set aside for their use. In most cases, however, the commissioners acceded to only a portion of these demands. Indigenous claims and demands were rejected for a variety of reasons: most commonly because the lands were deemed excessive (in the commissioners' minds) to the needs of the Hul'qumi'num group in question or due to

⁸² Report by McKinley and Sproat to A.C. Elliott, Provincial Secretary, March 27, 1877. British Columbia Archives, GR 494 (reel 11011).

⁸³ *Ibid.*

competing claims made by white settlers.⁸⁴ As instructed, the commissioners were careful to map out Indian reserves such that they fit around the white properties that had been recently enacted in the territory and so that they included little arable land.

Hul'qumi'num claims and demands were also denied for seemingly trivial reasons, as in the case of the Cowichan request for land on Saltspring Island and in Maple Bay, which were simply judged "inconvenient". Hul'qumi'num land claims were also denied as a form of punishment or a discouragement of indigenous resistance or defiance of white authority, such as in the case of the Somena (in Cowichan) request to have land occupied by a settler returned to their reserve. Finally, the commissioners met stiff resistance to their work from certain groups and in certain areas of Hul'qumi'num territory, most particularly by Halalt and Penelakut peoples in the Chemainus Valley who resisted white encroachment on their lands. Here the commissioners withheld land allocations until the leaders of these groups had agreed to take down the fences and houses they had built on lands that had been claimed by white settlers. In one case, the threat of a gunboat was required to gain Hul'qumi'num compliance.⁸⁵

⁸⁴ At the end of their tour, the commissioners reported success in allocating reserves in such a way as to "avoid checking at a future day the progress of white settlers" (as they had been instructed to do), noting that, in all the lands they had allocated to Indian reserves in the Georgia Strait area there were "not a half dozen places that would be attractive to white settlers." Report by McKinley and Sproat to A.C. Elliott, Provincial Secretary, March 27, 1877. British Columbia Archives, GR 494, File 22 (reel 11011).

⁸⁵ It is important to note here that this reading of the Hul'qumi'num experience with the work of the JIRC during this period is entirely one-sided, drawn entirely from the reports prepared by the commission itself. These reports clearly present only a very partial, and very biased, understanding of Hul'qumi'num perspectives (i.e., their claims to specific lands, their resistance to the entire process), and as such they almost certainly fail to capture the full extent of Hul'qumi'num dissatisfaction with the land allocations recommended by the commission.

It is important to understand the larger context in which the JIRC operated. As the commissioners carried out their work in Hul'qumi'num territory, and more broadly throughout the Georgia Strait region, traveling by boat from one indigenous community to the next, recording population counts, methodically allocating lands for Indian reserves, the commissioners appeared secure in the knowledge of their superior position and of the rightness of their actions. The perspectives and claims of the indigenous peoples they met and dealt with, claims with respect to the size and location of Indian reserves, may have been sought and considered, but the commissioners saw it as their prerogative, and indeed well within their authority, to make the ultimate decisions about land allocations. Any notion of aboriginal title and rights to the land had been put aside some time ago, and so the task at hand was simply one of identifying tracts of land, preferably small tracts of land of marginal utility to white settlers, for indigenous peoples to live out their seemingly primitive and constricted lives. The denial of indigenous claims to lands for what would appear to be arbitrary reasons—the rejection of the requests for small reserves at Maple Bay and on Saltspring Island, for example, because of the “inconvenience” these would cause—is recorded unselfconsciously, as matters of little consequence.

The commissioners carried with them not only this sense of certainty about their power to dispose of indigenous lands but also a belief that it was part of their duty to instruct indigenous peoples in proper forms of conduct, stressing in particular the need for good behaviour towards the white settlers who were streaming into their territory in ever increasing numbers. In this sense, the commissioners were not only, as Harris puts it, “frontline agents of colonialism who were there to draw sharp lines of dispossession on

the land” but also agents of colonialism in the sense that they sought to internalize, within indigenous peoples and communities, the rules and laws and behaviours that colonialism required.⁸⁶ Indigenous peoples were encouraged, as the commissioners noted in the case of the Penelakut, to “pay homage to the law, as from their own minds”.⁸⁷ Failure to do so, they were instructed, carried a penalty: lands they cherished could be denied to them and, if this was not enough, military force could be drawn upon as the final persuasion. Like the land itself, then, the Natives were to be “improved” and the commissioners happily reported, at the end of their tour, progress in this regard:

Upon the whole, these Indians on the shores of the Gulf of Georgia gave us the idea of a vigorous, intelligent race capable of considerable improvement if they are judiciously encouraged in the efforts which they seem willing to make to overcome their old habits. Their progress, so far, is remarkable considering the savage condition in which they were a few years ago.⁸⁸

The life of the Joint Indian Reserve Commission, at least as it had been formulated in 1876, was short-lived. Almost as soon as it was established and began to do its work, the commission came under pressure from provincial authorities whose main concern was the speedy resettlement of the province by white settlers and who were concerned that the commission’s work might hinder this objective. Expressing concerns about the cost involved—and, in any case, generally not supportive of its work—in early 1877, even before the commission had completed its circuit of the Georgia Strait, the provincial government began to withdraw its support for the commission, calling for it to be disbanded. Provincial authorities proposed a more ad-hoc approach of having the Superintendent of Indian Affairs in British Columbia, representing the Dominion

⁸⁶ Harris, *Making Native Space*, 17.

⁸⁷ Sproat’s report from Chemainus, 15 February 1877, NAC, RG 10, vol. 11028 (reel T-3967).

⁸⁸ Report by McKinley and Sproat to A.C. Elliott, Provincial Secretary, March 27, 1877, British Columbia Archives, GR 494, File 22 (reel 11011).

government, work with provincial officials to establish reserves as needed (i.e., as white resettlement proceeded). The Dominion government agreed with this proposal and the commission was disbanded in 1877 at the end of its tour of the Georgia Strait region.

A few months later, however, with reports of an imminent uprising by indigenous groups in the province's southern interior, stemming from the outrage over the land issue, Dominion and provincial officials quickly called the three commissioners back into service and dispatched them to Kamloops to address the growing crisis. The commissioners managed to win the trust of key indigenous leaders in the southern interior, thus dividing indigenous forces and averting a full-scale uprising. They then proceeded to work through the summer and fall of 1877 to allocate and map out Indian reserves throughout the southern interior. Despite this, provincial authorities continued to express concerns about the cost of the commission and threatened to withdraw their support. Eventually, in 1878, with the indigenous uprising quelled and in response to provincial concerns, the commission was downsized to one, with Sproat retained as the sole joint commissioner. As he worked to address the indigenous land question, Sproat, whom Harris describes as "a colonizer who eventually listened", became increasingly sympathetic to the concerns of indigenous peoples and increasingly critical of Dominion and provincial attitudes and policies. Through his evident sympathy for the indigenous land cause and his outspoken critiques of government policies, Sproat soon lost the support of both provincial and Dominion officials and, in 1880, was forced to resign his position.⁸⁹

⁸⁹ See Harris (*Making Native Space*, 136-166) for a more detailed discussion of Sproat and his role on the commission.

Sproat was promptly replaced by Peter O'Reilly, a man with sentiments more in line with settler opinion in British Columbia.⁹⁰ Like Trutch and other prominent settlers, O'Reilly had a low opinion of indigenous people.⁹¹ O'Reilly served as Indian Reserve Commissioner from 1880 to 1898 and, more than any other single person, is responsible for the Indian Reserve system that currently exists in the province. Harris notes that O'Reilly worked quickly and with remarkable efficiency, allocating over 600 Indian reserves across the province during his tenure.⁹² Yet, unlike Sproat, O'Reilly often failed to hear or comprehend indigenous land concerns, and never took them seriously to heart. As a result, his decisions on the allocation of Indian reserves often created dismay and anger among the indigenous peoples he dealt with.⁹³ By the end of O'Reilly's tenure, the geography of Indian reserves in British Columbia had been largely fixed in place. The three decades that followed, from 1898 to 1938, saw continued debates between British Columbia and Canada about the process of allocating Indian reserves in the province—this included the establishment of a federal-provincial commission, the McKenna-McBride Commission (1912-1916), created to fashion a “final adjustment” of the Indian reserve system in British Columbia—and continued (and more concerted) resistance by

⁹⁰ Ken Brealey, “Travels from Point Ellice: Peter O'Reilly and the Indian Reserve System in British Columbia,” *BC Studies* No. 115/116 (Autumn/Winter 1997/98): 181-236.

⁹¹ In correspondence with the Superintendent General of Indian Affairs, for example, O'Reilly expressed the opinion that indigenous people were “lazy, dissolute, and immoral,” that they lived lives of “idleness, in the veriest filth,” and that many tribes “in consequences of their vices are fast decreasing in number” and would soon become extinct. O'Reilly to Secretary General of Indian Affairs, Victoria, 26 October 1886, Fed. Coll., M.O.D., vol. 11, 265-68, ILR# B-64646, INAC. O'Reilly to SGIA, Victoria, 20 October 1886, *ibid.*, vol. 11, 229-31. Cited in Harris, *Making Native Space*, 186.

⁹² Harris, *Making Native Space*, 172.

⁹³ For a description of indigenous contestation of O'Reilly's work, see Brealey, “Travels from Point Ellice,” 209-214.

indigenous peoples, yet the general pattern and size of the reserve system that had been established by O'Reilly would remain largely unchanged.

The ultimate result of this long-drawn out process of constructing the Indian reserve system—beginning with the first reserves being laid out in 1850 at Fort Victoria and culminating with the ratification, against the opposition of Native groups, of the McKenna-McBride report in 1924—was the division of British Columbia into “two vastly unequal parts that came to underlie all its other developments: a tiny fraction of the land set aside for Natives, the rest available, in various tenures, for development.”⁹⁴ In time, Indian reserve boundaries came to mark off fundamental differences in socio-economic and legal status between indigenous and non-indigenous peoples in the province. In a sense, Harris points out, Indian reserve boundaries became the “primal line on the land in British Columbia, the one that facilitated or constrained all others.”⁹⁵ For Native peoples in British Columbia, this colonial geography proved profoundly constricting, governing what they could and could not do: Indian reserves, in Harris’ words, “were fixed geographical points of reference, surrounded by clusters of permissions and inhibitions that affected most Native opportunities and movements.”⁹⁶ It’s important to note that this line was not always clear and unambiguous, and that it has been continually challenged in various ways by indigenous peoples. Nevertheless, this colonial geography has proven remarkably durable; despite the profound problems it has caused, it has remained relatively unchanged for a century.

⁹⁴ Harris, *Making Native Space*, xviii.

⁹⁵ Harris, *Making Native Space*, xviii.

⁹⁶ *Ibid.*, xxi.

CHAPTER 6

The 'Island Railway' and the Privatization of Hul'qumi'num Territory

Early on the morning of August 13, 1886, Prime Minister Sir John A. Macdonald and his wife, Lady Macdonald, made their way from Victoria to Esquimalt, a short trip across the inner harbour, where they boarded a train bound for Nanaimo. Macdonald had made the trip to the west coast to celebrate the completion of the Esquimalt and Nanaimo (E&N) Railway, a project that his government had helped fund. The train made its way to Cliffside, on the east side of Shawnigan Lake, where Macdonald and assorted dignitaries—including Robert Dunsmuir, the President of the E&N Railway Company, William Smithe, the Premier of British Columbia, other high-level government officials, prominent businessmen, and reporters—took part in a ceremony to mark the occasion. Using a silver hammer, Macdonald pounded a golden spike to officially complete the rail line. He then delivered a speech, expressing admiration for Dunsmuir's "pluck and courage" in building the railway and congratulating the community of Victoria for the "realization of their hope."⁷ The railway, he declared, would be the means "of settling this beautiful island and adding to the prosperity of the country at large." The train then continued on its way, its progress "a continual ovation, the settlers lining the road and cheering and waving their hats as it passed."⁸

A special welcome for the train had been organized on that day, near the spot where the rail line crossed the Cowichan River, a place referred to by settlers as 'Duncan's Crossing' after the name of the settler, W.C. Duncan, who had established a farm there.

⁷ *British Colonist*, 14 August 1886.

⁸ *Ibid.*

Here in the heart of the Cowichan Valley, three of the early settlers at this place—Duncan was accompanied by W.P. Jaynes and W.H. Lomas—had gone to great lengths in an effort to convince railway officials that a train station was needed at this spot. The men had assembled a crowd of hundreds to greet the train and dignitaries, including “a great number of Indians.”³ As part of the welcoming ceremony a “deputation of Indians” marshaled by Lomas came forward and addressed the Prime Minister. In his munificence, as the story is told in newspaper accounts of the day, Dunsmuir declared that a railway station would be built at the spot, thus marking the origin of ‘Duncan’, what would become the largest town in the region.⁴ After this brief stop, the train then continued on to the end of the line at Nanaimo where there were more celebrations and speeches.

The scenes acted out along the E&N Railway line that summer day, as momentous as they were for the people and communities along the southeast coast of Vancouver Island, must have seemed routine for Macdonald. No doubt the Prime Minister, under whose administration the Canadian Pacific Railway—the nation’s first transcontinental railway—had only recently been completed, had acted his part in numerous similar scenes across the country. Indeed, the last few decades of the nineteenth century were marked by a frenzy of railroad construction across Canada and North America, including the extension of rail lines across the western half of the continent. With the railroad came the transformation of the physical and human landscape, with the frontier “melting away before the onslaught of steel” as Pierre Berton, the most prominent chronicler of

³ *Ibid.*

⁴ *Ibid.*

Canada's railway history, has put it.⁵ Accompanying the railroad were property lines, laid down over the seemingly empty space of the frontier in order to produce new towns and farms. Drawn by the prospect of cheap land, eagerly hawked by a bevy of land speculators, settlers rode the new rails into the west to take up land. The railway, then, was both product and producer of "the national dream", a way of "annihilating space" and knitting disparate territories together.⁶

During this period, railroads captured the imagination of politicians, businessmen, and the public. Railroads certainly made for good politics, furthering the careers of politicians like Macdonald who used the idea and image of railroads, and particularly a transcontinental railway, to good effect. Railroads also made for good business, producing fortunes for many railroad entrepreneurs and land speculators. And, of course, railroads allowed for the combining of political and business interests in powerful ways, with politicians working closely with businessmen in the planning and construction of rail lines, which often led to charges of collusion and occasionally bloomed into full-scale scandal.⁷ Tightly linked to ideas of progress and nation-building, and particularly to the

⁵ Berton wrote two popular books on the building of the Canadian Pacific Railway—*The National Dream: The Great Railway, 1871-1881* (Toronto: McClelland and Stewart, 1970) and *The Last Spike: The Great Railway, 1881-1885* (Toronto: McClelland and Stewart, 1971)—which served as the basis for a popular TV miniseries broadcast on CBC in 1974. The phrase quoted here is from *The Last Spike*, 516.

⁶ Berton, *The National Dream*. The notion of railroads "annihilating space", or more fully that railroads led to "the annihilation of space by time", was expressed by early observers of railroad development in Britain. The phrase was later taken up by Marx in reference to the circulation of capital. See Michael Freeman, *Railways and the Victorian Imagination* (New Haven and London: Yale University Press, 1999), 21.

⁷ Indeed Canada's first political scandal, the so-called 'Pacific Scandal', came about through collusion between political and business leaders related to a railroad project. In 1873, Macdonald's Conservative party was accused of accepting financial contributions from businessmen seeking the contract to build the transcontinental railroad. The resulting scandal led to the downfall of Macdonald's government in late 1873. See W.

notion of ‘opening up’ western or northern frontiers, railroads also tended to be an easy sell to the general public, something railroad boosters were well aware of. However, it is clear that railroad projects were not always necessarily in the public interest. Indeed, peering beyond the railroad hype it becomes abundantly clear that railroad projects benefited some more than others. If politicians and businessmen benefited the most from railway schemes, one could argue that no single group in North America lost more from railroad development than indigenous peoples whose territories constituted the frontiers which melted away “before the onslaught of steel.”

North America’s railroad era, peaking in the late nineteenth century, is generally cast as a grand story of national struggle and transformation, of far-seeing politicians and plucky entrepreneurs making deals in the nation’s political and financial capitals, of heroic surveyors and engineers trekking out into the wilderness to seek out the rail line, and of the marshalling of armies of hardy workers migrating to the frontier to build the railroad and people the nation. Through the heroic efforts of these actors, the dispersed spaces of the continent—seemingly empty and unshaped—were joined together, filled with life, meaning, and value, and a new nation constructed. The local stories, about how particular places and peoples were transformed, and more particularly how indigenous places and peoples were affected, tend to get lost in such grand narratives. The goal in this chapter is to tell one such local story of railroad construction and its local effects, and in particular its effects on the indigenous peoples whose territory was transected by the railroad. How were the indigenous people on southeast Vancouver Island, and in particular the Hul’qumi’num, affected by the construction of the E&N Railway project?

As construction of the E&N Railway began, Dr. I.W. Powell, the Superintendent of Indian Affairs for British Columbia, admitted that the railway would have some minor negative impacts on indigenous peoples in the area. Overall, however, he suggested that indigenous communities would benefit from the railroad. The railroad would improve transportation links and access, Powell and others of his ilk believed, thus accelerating development of the region's rich natural resource base and providing employment and income for everyone, including indigenous people. Powell's optimism was misguided, as almost the exact opposite would come to occur. In the short term, the E&N Railway project would result in the further erosion of the Hul'qumi'num's already diminished land base, greatly reduced as it was by white resettlement of their territory and the meager allocations of land to the Indian reserve system set in place during the previous decade. In the longer term, the 'Island railway' project would, through the enactment of a massive land privatization scheme, separate the Hul'qumi'num from virtually their entire territory on Vancouver Island.

The Origins of the 'Island Railway'

Throughout the 1860s the colonies of Vancouver Island and British Columbia remained relatively small and isolated outposts of the British Empire. Although a rough wagon road had been constructed up the Fraser canyon, providing an improved route to the navigable rivers and lakes of the interior, no easy route existed from there across the formidable Rocky Mountains and the extensive prairies to the more populated and developed, at least from the perspectives of white settlers, eastern part of the continent. For coastal British Columbia, trade and passenger traffic flowed largely north and south

via maritime routes. By the late 1860s, however, a transcontinental rail link had been completed in the United States, making it possible to go by boat from coastal British Columbia to San Francisco and from there by train to Chicago and points in eastern North America. Nevertheless, these links were still difficult and expensive. Thus, for political and business leaders of the settler society that was being established on Vancouver Island and on mainland British Columbia, an improved transportation and communication link with the rest of the world, and especially with the eastern part of North America, was a primary concern.⁸

At the same time, colonial officials in Britain remained concerned about the future of their North American territories in the face of growing American power, and were anxious to knit together the disparate and dispersed British colonies into one nation. In 1867 the British parliament passed the *British North America Act*, which allowed for the union of four British colonies in eastern North America—Nova Scotia, New Brunswick, Quebec, and Ontario—to form the Dominion of Canada. A month later, the first government of the Dominion was elected, a Conservative administration under Prime Minister Sir John A. Macdonald. The formation of this union generated considerable interest in the newly united colony of British Columbia, contributing to a movement pressing for the colony to join the Dominion of Canada. Not everyone was in favour of confederation however, as there were also strong movements for British Columbia to join the United States or simply to remain as a British colony. The American purchase of Alaska from Russia in 1867, however, only heightened British concerns about the possible annexation of British Columbia by the United States, and reinforced the British

⁸ Barman, *The West Beyond the West*, 92.

resolve to see its Pacific colony become a part of the new nation of Canada. With the death of Governor Seymour in 1869, Britain appointed Anthony Musgrave as the new governor of the colony of British Columbia, and instructed him to work on convincing British Columbians to join the Dominion of Canada.⁹

Convincing white residents of British Columbia on the merits of becoming part of Canada was not a simple task. Even some of those who favoured confederation had some reservations; the most common concern was that British Columbia, being isolated from the rest of Canada by a seemingly impenetrable wall of mountains and a vast expanse of prairie, would become a distant and neglected corner of the Dominion without much influence in national affairs. To gain broad support for confederation, Musgrave proposed “bold terms” under which British Columbia would become part of Canada.¹⁰ In the early part of 1870 Musgrave met behind closed doors in Victoria with the executive committee of the colony’s legislative council to discuss such terms. What emerged from this meeting was a document that described the key conditions for the colony to join the Dominion. Of these conditions, one was paramount: that Canada agree to build a transportation link from eastern Canada to the Pacific coast.¹¹ Musgrave noted that, in negotiating the terms under which British Columbia would join Canada, “[i]f a Railway could be promised, scarcely any other question would be allowed to be a difficulty.”¹²

⁹ *Ibid.*, 95.

¹⁰ *Ibid.*, 96.

¹¹ The other two key conditions were, first, that the dominion government pay off British Columbia’s considerable debt and, second, that the Dominion provide the new province with a generous annual operating grant (along the lines offered to other provinces in the union).

¹² Cited in Margaret A. Ormsby, *British Columbia: A History* (Toronto: MacMillan of Canada, 1958), 245.

Although Musgrave and provincial officials expected a period of tough bargaining over these “bold terms”, Dominion officials readily accepted the terms put forward by British Columbia and an agreement was quickly reached. By this time, the Macdonald government was actively pursuing the development of a transcontinental railway, and so the railroad interests of British Columbia coincided with their own plans. The Dominion government may have been particularly anxious to build the rail link in part because of the recent troubles in Manitoba, namely the Red River Rebellion of 1869-70, led by Métis leader Louis Riel, which posed a challenge to Dominion control of the territories west of Ontario. The rail link would make it easier to govern these far-flung and unruly corners of the newly emerging nation. Under section 11 of the “terms of union”, the document that described the conditions under which British Columbia would join the Dominion of Canada, the Dominion government promised to

secure the commencement simultaneously, within two years from the date of union, of the construction of a railway from the Pacific towards the Rocky Mountains, and from such point as may be selected, east of the Rocky Mountains, towards the Pacific, to connect the seaboard of British Columbia with the Railway system of Canada, and, further, to secure the completion of such Railway within ten years from the date of the Union.¹³

Section 11 also specified that the Province would provide the Dominion government with a grant of land to aid in the construction of the railway. Here, the new government of British Columbia would agree to

convey to the Dominion Government in trust, to be appropriated in such a manner as the Dominion Government may deem advisable in the furtherance of the construction of the said railway, a similar extent of public land along the line of the railway, throughout its entire length in British Columbia, not to exceed, however, twenty (20) miles on each side of the said line.¹⁴

¹³ F.W. Howay and E.O.S. Scholefield, *British Columbia from the Earliest Times to the Present* (Vancouver: S.J. Clarke Publishing, 1914), Vol. II, Appendix VI, 695-97.

¹⁴ *Ibid.*

With the terms of union set in ink, British Columbia officially joined the Dominion of Canada on July 20, 1871.

Despite the promises spelled out in the terms of union document, political and business leaders in British Columbia soon found reasons for concern about the Dominion's commitment to building a rail link to the Pacific coast. By the summer of 1873, with the deadline (as set in the Terms of Union agreement) fast approaching for the start of construction of the railway in the province, there was little sign that this was to happen. Further, there was also growing apprehension, at least for those living in Victoria (the provincial capital as well as the commercial centre of the new province at that time), that, instead of having Victoria set as its grand terminus, the railway route might bypass the provincial capital altogether.¹⁵ Indeed, despite assurances from the Dominion government, it began to appear that the transcontinental railway might not reach Vancouver Island at all.¹⁶ Victoria as the Pacific terminus of the national railway had

¹⁵ In fact, concerns were being expressed as early as 1870 that the transcontinental railway promised by the Dominion government might not reach Victoria or Vancouver Island. In an article published in the *Daily Standard* on October 17, 1870, Amor de Cosmos, a well-known public figure and critic, worried that the Dominion's commitment, contained in section 11 of the Terms of Union, "to connect the seaboard of British Columbia with the Railway system of Canada" was too vague. De Cosmos led a campaign to pressure the Dominion government to commit to having Victoria serve as the terminus of the transcontinental railway. Joseph Roberts notes, that for these citizens of Victoria "the terminus meant a position as a first class city, without it nothing was more obvious than her position as a second-class city—she would cease to become the chief commercial city of British Columbia." Indeed, Victorians had ambitions that their city would become the pre-eminent commercial centre on the Pacific coast of North America, rivaling (or even displacing) San Francisco. See Joseph Roberts, *The Origins of the Esquimalt and Nanaimo Railway: A Problem in British Columbia Politics* (MA Thesis, Department of History, University of British Columbia, 1937), 14.

¹⁶ *Ibid.*, 20. In early June 1873, just prior to the deadline for the start of construction of the railway within British Columbia, the Macdonald government passed an Order in Council declaring that Esquimalt be fixed as the terminus of the Canadian Pacific Railway. In mid-July, the Dominion government dispatched a surveying crew to

become an *idée fixe* among the political and business elite in the provincial capital, and this expectation was lumped together with the idea of an 'Island Railway', a rail line that would run along the east coast of Vancouver Island from Victoria to Nanaimo and beyond to the Comox Valley, linking and supporting the emerging settler communities in this area. The expectation was that the transcontinental railway would run along this route on Vancouver Island and then cross over to the mainland at Seymour Narrows (near the present-day town of Campbell River) where it would pass through Bute Inlet and up through the Coast Mountains into the British Columbia interior, following the Fraser River through to the Yellowhead pass in the Rocky Mountains. Although such a route may appear wildly impracticable to us today, given the need for numerous bridges to cross from Vancouver Island to the mainland and the rugged terrain to navigate in Bute Inlet, it was nonetheless one of the routes initially considered for the transcontinental railway.

Despite a high profile lobby mounted by prominent citizens of Victoria, led by Amor de Cosmos (who was elected M.P. for Victoria in 1871), the Dominion government eventually rejected the Bute Inlet route and determined that a competing route passing down through the Fraser Canyon—itsself a formidable obstacle to railway construction—and reaching the Pacific at Burrard Inlet (near present-day Vancouver), was more feasible.¹⁷ The delay in starting construction on the railway combined with the outrage, in

Esquimalt to mark out the line for the proposed railway. This token effort, Ottawa would argue, fulfilled its obligations under the terms of union. This, however, proved just a tactic to appease the Victoria lobby and had no lasting effect (beyond briefly raising the hopes of those who lobbied so hard on Victoria's behalf).

¹⁷ The route through the Fraser Canyon was confirmed through an Order-in-Council passed by the Dominion government on May 23, 1878. See British Columbia, Legislative Assembly, *Sessional Papers 1878*, 704.

Victoria at any rate, that the line would not extend to Vancouver Island, fed a growing rift between British Columbia and the Dominion. During the ten-year period between 1873 and 1883, the railway question dominated federal-provincial politics. Over this period, provincial leaders tried a number of strategies to force successive Dominion governments—Macdonald's Conservative government was replaced in late 1873 by the administration of Alexander Mackenzie, with Macdonald returning to power in 1878—to commit to extending the transcontinental railway to Vancouver Island, including petitioning British authorities and threatening to secede.¹⁸ For their part, Dominion politicians stood firm in their rejection of the idea of Victoria as a terminus of the transcontinental railway but did offer, at the prompting of the British Colonial Secretary, to help fund a separate railway on Vancouver Island.¹⁹ The 'Island Railway', as it was called, would run from Esquimalt to Nanaimo, and was proposed as a form of compensation to the Province for the lack of progress on building the transcontinental railway. The Island Railway project itself became a political football, kicked back and forth between Ottawa and Victoria for many years before the two sides managed to reach agreement in 1883.

The Deal to Build the Island Railway

The deal struck in 1883 called for the construction of a railway between Esquimalt and Nanaimo, a distance of about 75 miles (120 kilometres), with the Dominion government

¹⁸ The Province petitioned the Queen in both 1874 and 1881, seeking to have the British government intervene on their behalf.

¹⁹ In 1874, the Colonial Secretary, Lord Carnarvon, offered to act as an arbitrator on the railway question. He proposed a compromise which included a commitment by Ottawa to commence construction of the railway from Esquimalt to Nanaimo "as soon as possible." British Columbia, Legislative Assembly, *Sessional Papers 1875*, 538.

contributing \$750,000 towards construction costs. For its part, the Province agreed to help subsidize the railway through a land grant. A specific area of land on southeast Vancouver Island, land through which the rail line would run, was to be first conveyed to the Dominion, with the Dominion in turn transferring the land to the company that built the rail line.²⁰ The agreement was ratified by the provincial legislature in December 1883, through a piece of legislation which came to be known as the “Settlement Act”.²¹ The Dominion government ratified the deal through companion legislation, passed in April of 1884.²² The agreement also called for the constitution of a corporate body, The Esquimalt and Nanaimo Railway Company, to undertake construction of the railway. In late April of 1884, at a meeting in downtown Victoria, the E&N Railway Company was formally established. The key figure was Robert Dunsmuir, the Company’s single largest shareholder, holding just less than 50 percent of the shares issued to float the venture, and selected as President of the Company. The other key figures were four American railroad tycoons—Charles Crocker, Leland Stanford, C.P. Huntington, and C.F. Crocker—who,

²⁰ The agreement also contained other provisions, such as the transfer of 3.5 million acres (1.4 million hectares) of provincial Crown land in the Peace River region to the Dominion government, which were unrelated to the Island Railway project but which nonetheless made the deal possible. The 3.5 million acres in the Peace River district was requested by the Dominion government in part to make up for the poor quality of the land (much of it was steep and not suited for agriculture or settlement) included in the land grant associated with the CPR line through British Columbia. Roberts (*The Origins of the Esquimalt and Nanaimo Railway*, 67) notes that 800,000 acres of this land was to compensate for this fact with the remaining 2.7 million acres being compensation to the Dominion as compensation for its subsidization of the construction of the Esquimalt and Nanaimo Railway.

²¹ The formal name was An Act relating to the Island Railway, the Graving Dock and the Railway Lands of the Province, 1883.

²² An Act respecting the Vancouver Island Railway, the Esquimalt Graving Dock, and Certain Railway Lands of the Province of British Columbia, granted to the Dominion.

together, held a 50 percent share in the venture.²³ The Americans, however, were simply investors brought on board to float the venture and had little direct involvement in the operation of the Company; Dunsmuir was the driving force behind the venture and the one who made the decisions about the day-to-day operations of the Company.²⁴

If the agreement to build the Island Railway was, on the surface, a deal struck between the Province and the Dominion, it is clear that Dunsmuir played an instrumental role. Arriving on Vancouver Island from Scotland in 1851, Dunsmuir had made his fortune from mining coal at Nanaimo. By the time of the founding of the E&N Railway Company, Dunsmuir was already the richest man in the province, and a tremendously powerful and influential figure in provincial business and politics. In fact, when the deal to build the railroad was finalized, Dunsmuir was also a member of the provincial legislature, elected in 1882 as a representative for Nanaimo, and sitting on the government side of the house. Widely regarded as 'a man who could get things done', both provincial and Dominion officials had approached Dunsmuir on several occasions to

²³ Donald MacLachlan (*The Esquimalt and Nanaimo Railway*, 16) reports that \$1.5 million in initial capital was raised by issuing 15,000 shares in the Esquimalt and Nanaimo Railway Company at \$100 each: the subscribers were Robert Dunsmuir (7450 shares), Charles Crocker (1875), Leland Stanford (1875), C.P. Huntington (1875), C.F. Crocker (1875), James Dunsmuir (25), and J. Bryden (25). Stanford, Huntington and Charles Crocker made up three of "The Big Four" (the fourth was Mark Hopkins), men who famously made their fortunes through the construction of the Central Pacific Railroad, the western leg of the first transcontinental railroad across the United States. See Donald F. MacLachlan, *The Esquimalt and Nanaimo Railway: The Dunsmuir Years, 1884-1905* (Victoria: BC Railway Historical Association, 1986).

²⁴ The American investors were bought out in 1902 by Dunsmuir's son James, who, after an internal struggle with family members (including his mother), assumed control of the Company after Robert Dunsmuir's death in 1889. See Terry Reksten, *The Dunsmuir Saga* (Vancouver: Douglas & McIntyre, 1991).

seek his involvement in the railroad project.²⁵ While Dunsmuir preferred to be seen publicly as only marginally interested and involved in the project and, indeed, as resisting the calls for him to take on the railroad venture—not surprising, given his compromising position as a sitting member of the provincial legislature—in reality, canny businessman that he was, he was all the while working behind the scenes to shape the project to his own ends.

Dunsmuir’s interest in the venture dates back at least to 1881 when he met with Sir Charles Tupper, the Dominion Minister of Railways and Canals, during the latter’s visit to Victoria. After the meeting, Dunsmuir sent Tupper a five-page draft contract describing how his mining company would build the Island Railway in exchange for a swath of land 20 miles wide along the rail route.²⁶ Over the next few years, Dunsmuir continued to pursue the railway project, meeting with Dominion officials on several occasions to negotiate the terms of a deal.²⁷ Dunsmuir made good use of his business and

²⁵ When Dunsmuir came under criticism for his involvement in the railway deal, one correspondent to the *Colonist* newspaper, signing his letter “Progress”, argued that “[w]e want more Dunsmuirs, more men of action, less men of straw and cheek, and more men of brains and energy to complete our provincial destiny.” Cited in Reksten, *The Dunsmuir Saga*, 61.

²⁶ Reksten, *The Dunsmuir Saga*, 56.

²⁷ Dunsmuir visited Ottawa in early 1882 to further press his interest in the railway project and to develop support for his bid. In late October of 1882 he met with the Marquis de Lorne, the Governor General, during the latter’s visit to Victoria and again pushed his proposal. After the meeting, Lorne wrote to Macdonald to say that Dunsmuir “desires to make the Esquimalt & Nanaimo Railroad, but his terms are at present the acquisition of all the ‘Railway Belt’ from Esquimalt to Seymour Narrows ... and dealing with the Dominion and not the Provincial government.” Cited in Reksten, *The Dunsmuir Saga*, 60. Margaret Ormsby (*British Columbia*, 289) reports that Dominion officials found Dunsmuir’s conditions for undertaking the project unacceptable: “In addition to the coalfields, he wanted the land included in the Indian reserves at Nanaimo, Esquimalt and Victoria, as well as a money subsidy and other concessions which included freedom for taxation for the railway lands. It would take a grant of at least 1,900,000 acres to satisfy him.”

political ties to secure the railroad contract; for example, he drew on Joseph Trutch, by then the Ottawa government's official BC agent and a confidential advisor to Prime Minister Macdonald, to lobby the Dominion government on his behalf.²⁸ Indeed, the details of the final agreement struck between British Columbia and Canada, and enacted in the Settlement Act of 1883, were negotiated between Dunsmuir and Dominion officials over a period of several years and finalized in the summer of 1883.²⁹ Despite the fact that Dunsmuir was a representative of the Province as these negotiations were going on, one could argue that provincial interests were marginalized in the process; Dunsmuir clearly placed his own interests ahead of those of the province, or perhaps he saw them simply as one and the same.

With provincial and federal legislation in place and with the Esquimalt and Nanaimo Railway Company formed and capitalized, Dunsmuir wasted no time in starting work on the railroad. Surveying of the rail line began in early May of 1884, a contract to build the first section of the line (a 25-mile stretch from Nanaimo to the Chemainus River) was awarded in September, and construction of this northern section of the railway began in January 1885. A month later, in February 1885, the contract for construction of the

²⁸ In February 1882, Trutch wrote two letters to Prime Minister Macdonald notifying him of Dunsmuir's interest in the project and recommending him as a man with "an undoubted reputation for integrity and trustworthiness." Cited in Reksten, *The Dunsmuir Saga*, 58. Trutch's interest in supporting Dunsmuir no doubt derived in good part from the fact that Trutch had invested in a number of Dunsmuir's businesses, including a foundry in Victoria (The Albion Iron Works) that would certainly profit from the railway construction project. Trutch's role as an intermediary between Dunsmuir and the Dominion government undoubtedly helped shape the final agreement.

²⁹ The agreement negotiated between Dunsmuir and his associates (i.e., his American partners) and the Dominion government is attached to the federal legislation that paved the way for the constitution of the E&N Railway Company and the construction of the railway. This agreement was worked out and signed between the 'Dunsmuir Syndicate' and Sir Alexander Campbell, the Dominion Minister of Justice, in August 1883. See Ormsby, *British Columbia*, 290.

southern section of the railway was awarded and construction began soon after. By July of 1885, there were 600 men working on the railway, including a large contingent of Chinese labourers.³⁰ The railway was completed in the summer of 1886 with Prime Minister Macdonald arriving to drive the “last spike” on August 16 at Cliffside on the east side of Shawnigan Lake. Passenger service between Esquimalt and Nanaimo began in September 1886.³¹

The E&N Railway Land Grant

Although railroads were popular with politicians and the public, they were expensive undertakings and could involve a fair amount of financial risk for the group that sought to capitalize them, especially when the rail lines were being built in areas where the population was sparse and scattered. To minimize the risk to public coffers, and to political careers one might add, governments in North America during this period tended to seek private investors to finance and undertake railroad construction, with various forms of government subsidies provided as incentives to those that would take on such projects. Subsidies for railroad construction typically came in the form of cash (often based on a fixed amount per mile of track) and grants in land; often railway promoters were offered both cash and land to subsidize projects. Land grants were attractive to

³⁰ Chinese men came to British Columbia in the late nineteenth century seeking work in mining (Dunsmuir employed many Chinese men in his Nanaimo coal mining operations), railway construction, and other industries. Many men came to the province from the United States (particularly from California) while others came directly from China, their arrival often organized by local employers who sought low-cost labour. For an overview of this history, see: Patricia Roy, *A White Man's Province: British Columbia Politicians and Chinese and Japanese Immigrants, 1858-1914* (Vancouver: UBC Press, 1989).

³¹ See MacLachlan, *The Esquimalt and Nanaimo Railway*, for a fuller description of the construction of the railway, the last spike ceremony, and the initiation of passenger service.

governments for several reasons: first, because they minimized the amount of cash subsidies they would have to offer and, second, because they hoped that the railway company would sell the land to settlers and thus help ‘populate’ regions that were only sparsely settled (or at least sparsely settled by the kind of people they valued most, white settlers).³² During the latter half of the nineteenth century, governments in Canada and the United States granted massive tracts of land to private companies in an effort to encourage railroad construction. Between 1850 and 1870 alone, more than 50 million hectares of land in the United States was granted to 80 railroad companies, mostly in the western part of the country.³³ In Canada, approximately 18 million hectares of land was transferred into private hands through railway land grants during this period, the bulk of which (approximately 10 million hectares) was associated with the building of the Canadian Pacific Railway.³⁴ In British Columbia, about 3.3 million hectares of land were granted to private railway companies during the last few decades of the nineteenth century.³⁵

Like many other railroad developers of this era, Dunsmuir’s primary interest in the railway project was not in the railroad itself—although the rail line did improve transport of coal from his mines in Nanaimo to markets in Victoria—but rather in the land grant associated with the railroad. While others sought land for real estate speculation,

³² Referring to the Canadian Pacific Railway Company, the firm that would build the transcontinental rail line, Sir Alexander Campbell (a close associate of Sir John A. Macdonald’s and a member of his cabinet) noted that the railway company had “undertaken, in addition to constructing the railway, to people a continent.” Canada, Senate, Debates, 3 February 1881.

³³ John F. Stover, *The Routledge Historical Atlas of the American Railroads* (New York and London: Routledge, 1999), 32-33. .

³⁴ Lamb, *History of the Canadian Pacific Railway*, 70-73.

³⁵ Cail, *Land, Man, and the Law*, 162.

however, Dunsmuir's main interest was in the natural resources contained in the land. At heart, Dunsmuir was a coal miner and he was convinced that the land included in the E&N grant overlay rich deposits of coal. The dimensions of the E&N land grant were specified in section 3 the Settlement Act as

all that piece or parcel of land situate on Vancouver Island ... Bounded on the South by a straight line drawn from the head of Saanich Inlet to Muir Creek on the Strait of Fuca; On the West by a straight line drawn from Muir Creek aforesaid to Crown Mountain; On the North by a straight line drawn from Crown Mountain to Seymour Narrows; and On the East by the Coast line of Vancouver Island to the point of commencement.³⁶

The extent of the land grant is shown in Figure 6.1. Section 3 of the Settlement Act also specified the types of resources that would be included in the land grant: it was to include "all coal, coal oil, ores, stones, clay, marble, slate, mines, minerals, and substances whatsoever thereupon, therein, and thereunder."³⁷ Sections 4, 5 and 6 of the Act describe areas that are excepted from the grant. Section 4 notes that the portion of the parcel "lying to the northward of a line running East and West half way between the mouth of the Courtenay River (Comox District) and Seymour Narrows" is not included in the grant.³⁸ Section 5 provides that "the Government of Canada shall be entitled out of such excepted tract to lands equal in extent to those alienated up to the date of this Act by Crown grant, pre-emption, or otherwise, within the limits of the grant mentioned in section 3 of this Act."³⁹ Finally, section 6 notes that the land grant "shall not include any lands now held under Crown grant, lease, agreement for sale, or other alienated by the Crown, nor shall it include Indian reserves or settlements, nor Naval or Military

³⁶ An Act relating to the Island Railway, the Graving Dock and the Railway Lands of the Province, 1883, section 3.

³⁷ *Ibid.*

³⁸ *Ibid.*

³⁹ *Ibid.*

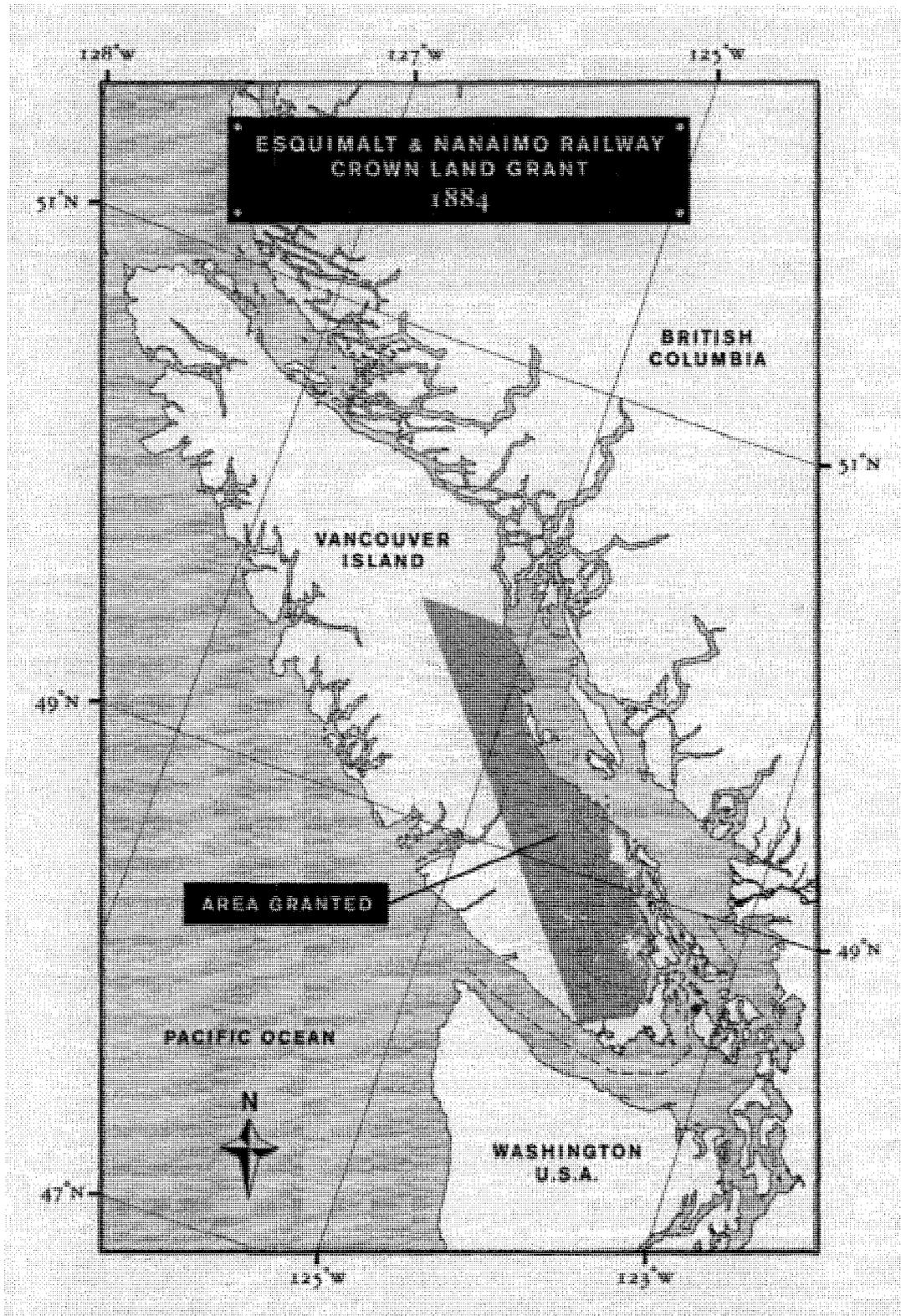


Figure 6.1: Vancouver Island, showing extent of the Esquimalt & Nanaimo Railway land grant. (Reprinted with permission of the Hul'qumi'num Treaty Group.)

reserves.”⁴⁰ The federal legislation that accompanied the Settlement Act specified that the land grant would also include “the foreshore rights in respect of all such lands ... and which border on the sea, together with the privilege of mining under the foreshore and sea opposite any such land.”⁴¹

On April 21, 1887, with the railway completed to the satisfaction of the federal government, the Dominion granted the lands specified in the legislation to the E&N Railway Company.⁴² However, while the boundaries of the land grant were described (as specified in the Settlement Act), the precise amount of land included in the grant was not. This was because of the difficulty calculating the precise amount of land that was exempted from the grant, particularly because of the difficulty getting accurate figures on the amount of land that had been alienated by “bona fide squatters”.⁴³ In fact, the Esquimalt and Nanaimo Railway land grant comprised four separate grants of land made over a 40-year period. The first land grant, made in 1887 and by far the largest, comprised the bulk of all the lands granted to the Company as part of the agreement. In the second grant, finalized in 1905, an additional 86,346 acres (34,943 hectares) of land, located in a block at the northern limit of the original grant, was transferred to the Dominion government, who then conveyed the land to the Company.⁴⁴ This grant was

⁴⁰ *Ibid.*

⁴¹ An Act respecting the Vancouver Island Railway, the Esquimalt Graving Dock, and certain Railway Lands of the Province of British Columbia, granted to the Dominion, section 3.

⁴² The land grant was recorded in the Victoria Land Registry on May 25, 1887.

⁴³ The term “bona fide squatters” was used in the legislation to refer to settlers who had occupied and improved lands within the land grant area for a period of one year prior to January 1, 1883.

⁴⁴ A Provincial Order in Council on June 30, 1905 (OIC #391) transferred the land to the Dominion, which conveyed the land to the Esquimalt and Nanaimo Railway Company on

made to compensate for the lands which had already been alienated by the Province prior to the Settlement of Act of 1884. The third and fourth land grants, made in 1910 and 1924, comprised smaller tracts of land—20,000 acres (8,000 hectares) and 10,157 acres (4,110 hectares) respectively—awarded to compensate the Company for additional lands they were deemed to be entitled to under the original agreement. Only the first grant affected land in Hul'qumi'num territory; the other three grants involved lands further north on Vancouver Island. In total, the amount of land granted to the E&N Railway Company for construction of the railway from Esquimalt to Nanaimo has been estimated at just over two million acres (approximately 800,000 hectares).⁴⁵ About one-third of the entire land grant, some 270,000 hectares, lay within Hul'qumi'num territory.⁴⁶

Although the deal to build the Island Railway, and the legislation that ratified this agreement, received approval in both provincial and federal parliaments, it did not do so without criticism. In Ottawa, the agreement was critiqued in the House of Commons by Members of Parliament from British Columbia and even by members of the governing Conservatives. One member of the government expressed disbelief at “the value of the property that is being given over to this alien.”⁴⁷ Although both Members of Parliament from Victoria supported the deal, MPs from elsewhere in British Columbia did not.

J.A.R. Homer, an MP from New Westminster, opposed the agreement, arguing that the deal was a great giveaway of provincial lands and resources. British Columbia “is being

October 4 of the same year (Dominion Grant No. 68, Fiat No. 114538). See MacLachlan, *The Esquimalt and Nanaimo Railway*.

⁴⁵ W.A. Taylor, *Crown Land Grants: A History of the Esquimalt and Nanaimo Railway Land Grants, The Railway Belt and The Peace River Block* (Victoria: Crown Land Registry Services, Province of British Columbia, 1975).

⁴⁶ This figure comes from the Hul'qumi'num Treaty Group web site; <http://www.hulquminum.bc.ca/>

⁴⁷ Reksten, *The Dunsmuir Saga*, 61.

relieved of property consisting of lands, timber, coal, and other minerals to the value of \$20,000,000,” Homer argued, “for which the Province is to receive a railway, seventy miles in length, involving a cost of above \$2,250,000.”⁴⁸ The MP for Vancouver, D.W. Gordon, opposed the deal on similar grounds; he reported that, based on calculations made by the Dominion geological surveyor, the land grants included 300 square miles of coal lands in the Comox area alone, containing an estimated 4.8 billion tons of coal.⁴⁹ E. Crowe Baker, a Victoria MP who supported the deal, suggested that the value of the land grant that the Dunsmuir Syndicate would receive would be much lower. To his mind, the 2 million acres of lands in the land grant would yield a value of \$4.63 million, including \$2.16 million in coal lands, \$1.35 million in timber lands, and \$1.12 million in agricultural lands.⁵⁰

In British Columbia, the Settlement Act came under heavy criticism for the deal that the Province had struck with the Dominion government and, by extension, with the ‘Dunsmuir Syndicate’ (a name applied to the group of investors behind the E&N Railway Company). In British Columbia some of the strongest criticism came from citizens in Dunsmuir’s own riding of Nanaimo, where there were expressions of astonishment that Dunsmuir and his colleagues would receive a subsidy of \$750,000 plus a land grant of almost 2 million acres, including all the coal that lay under that land and all the timber that grew upon it, in order to build a railroad only 75 miles long. Dunsmuir had made his share of enemies in Nanaimo, thanks in no small part to his ruthless business practices, and the railway deal provided fine fodder for his critics. At a public meeting in Nanaimo

⁴⁸ Canada, House of Commons, *Debates*, 1884, 1026-27.

⁴⁹ *Ibid.*

⁵⁰ *Ibid.*, 1034.

to protest the settlement, which Dunsmuir declined to attend, Dunsmuir's opponents charged that he was in cahoots with the legislature, that "the voice of the people [was] being overpowered by capitalists" and freedom was "giving way to monopoly and fraud".⁵¹

More broadly, there was concern about Dunsmuir's control over such a large tract of land and the resources contained within the area. The land grant encompassed much of the best land on Vancouver Island, land that was being actively resettled by whites and on which many others were seeking to settle. Reflecting some awareness of this general concern, those who had drafted the Settlement Act made specific provisions for people who had been settled on lands within the land grant area for some time but who had not yet secured any legal title to that land. Section 23 of the Settlement Act specified that people who had occupied and improved such lands for a period of one year prior to January 1, 1883—these people are referred to as "bona fide squatters" in the legislation—"shall be entitled to a grant of the freehold of the surface rights of the said squatted land, to the extent of 160 acres to each squatter, at the rate of one dollar an acre."⁵² The Settlement Act also made provision for the future settlement of lands within the land grant area; namely that lands within the block would be open for four years from the passing of the Act "to actual settlers, for agricultural purposes, at one dollar an acre, to

⁵¹ Even before the railway deal Dunsmuir came under criticism on a number of fronts, most notably for his intolerance of labour action by workers at his coal mines and for his hiring of Chinese mine workers as a way of reducing wage rates. See: Reksten, *The Dunsmuir Saga*, chapter 5.

⁵² An Act relating to the Island Railway, the Graving Dock and the Railway Lands of the Province, 1883, section 23.

the extent of 160 acres to each actual settler.”⁵³ Under this provision, however, settlers who acquired such lands in the grant areas would not have rights to coal or other minerals or to timber. In addition, the legislation provided the railway company with the right to cut timber on these lands for railway purposes and the right to a right of way across such lands for railway construction.⁵⁴ After the expiry of this four-year period, the E&N Railway Company was free to set the price for land sales on any of the lands it owned. The limitation of settlers’ land rights (i.e., to surface rights) in the land grant area—that is, to the use of the land for settlement or agricultural purposes only and excluding rights to timber and subsurface resources (e.g., coal, minerals)—caused considerable concern and protest.⁵⁵

Impact of the Island Railway on Indigenous Communities

While the terms of the railway deal prompted howls of protest from politicians and concerned citizens, and while the effects of the land grant on white settlers became a matter of considerable public discussion and concern, the impacts of the railway project

⁵³ *Ibid.* The term “actual settlers” referred to people who actually wished to settle on the land and “improve” (i.e., clear land, farm, build a house) rather than those simply seeking to acquire land for speculative purposes.

⁵⁴ The provision that pre-emptors were to only get surface rights, and not coal or timber or base metals, came to be seen as seriously prejudicial to the rights of the settlers who moved into the area at this time. This proved controversial and led settlers to press for claims to full land rights, including to timber and subsurface resources.

⁵⁵ The question of the land and resource rights of “bona fide squatters” as well as of settlers who purchased land in the E&N land grant area after passage of the Settlement Act, became the most controversial part of the land grant. The controversy stemmed from the exclusion of timber and subsurface rights in the lands granted to these “squatters” and settlers, a condition that was later challenged in court. The concerns and protests of these squatters and settlers grew stronger through the 1890s, eventually leading the provincial government to introduce a bill—the *Vancouver Island Settlers’ Rights Act of 1904*—that granted settlers (or at least those referred to previously as “bona fide squatters”) full rights to land and timber.

on the indigenous peoples whose territories the railway bisected received little attention. When a link *was* made between indigenous peoples and the railway project, the broad assumption seemed to have been that the railroad would be a boon to indigenous communities and that any negative impacts would be minor. Where the railroad impinged on Indian reserves, the assumption was that indigenous lands should simply give way to that which, dictated by law and upheld by public opinion, was in the broader national or provincial interest. Even those charged with looking after the interests of indigenous peoples, such as local Indian agents and other officials from Indian Affairs, the Dominion department responsible for Indian matters, seemed more interested in facilitating the progress of railway construction project than in seriously investigating indigenous concerns about the effects of the project on their communities and territories. This attitude was reflected by I.W. Powell, the Victoria-based Superintendent of Indian Affairs, who, in a letter to the Superintendent General of Indian Affairs, his supervisor in Ottawa, expressed the view that the railway would have only a slight negative impact on indigenous lands and communities and that the overall effect would be positive:

So far as I can learn there are only two or three reserves which will be affected, and as the damage will be slight the compensation involved is not of much moment. In fact, the reserves will be befitted by the passage of the Railway rather than damaged.⁵⁶

In this same letter, written in late April of 1885, Powell reported that the most important impact would be at the Indian reserve in Esquimalt where construction of the southern leg of the railway had begun and where the E&N Railway Company had envisioned building its terminus.

⁵⁶ Powell to the Superintendent General of Indian Affairs (SGIA), Victoria, 28 April 1885, National Archives of Canada (NAC), RG 10, vol 7670, file 22152-21 (reel C-11612).

The general lack of concern about the impacts of the railroad project on indigenous interests is illustrated in the case of the Indian reserve at Esquimalt, occupied by the Songhees and Esquimalt peoples. In mid-March of 1885, Powell reported to the Superintendent of Indian Affairs that the E&N Railway Company had gone ahead and begun construction of the railway line across the Indian reserve(s) at Esquimalt. He described how the Indians there were “anxious” as the Company had already “completely denuded” a portion of their land and was “threatening to pull down 2 Indian houses.”⁵⁷ Powell was instructed to explain section 31 of the *Indian Act* to the Songhees and Esquimalt people; this section allowed railway companies to expropriate land from Indian reserves for railway purposes but specified that compensation had to be paid for such expropriation. Powell wrote back explaining that he had explained section 31 to the Indians but he needed direction on how to get the Company to pay compensation for the lands affected: “[t]his course [i.e., the payment of compensation] was followed by the Company in respect to white settlers,” he wrote, “and the Indians cannot understand the reasons of delay in arranging with them.”⁵⁸ Robert Dunsmuir, Powell went on to explain, was claiming that he had made a deal with Sir Alexander Campbell—the Dominion Justice Minister with whom Dunsmuir had, in 1883, finalized the deal to build the railway—which would allow him to expropriate the entire reserve for the railway’s use. This deal, Dunsmuir argued, gave him the right (on behalf of the E&N Railway Company, that is) to take possession of the entire reserve at a cost of \$60,000 or,

⁵⁷ Powell to SGIA, Victoria, 17 March 1885, NAC, RG 10, vol 7670, file 22152-21 (reel C-11612).

⁵⁸ Powell to SIGA, Victoria, 9 April 1885, NAC, RG 10, vol 7670, file 22152-21 (reel C-11612).

alternatively, one-half of the reserve for \$20,000.⁵⁹ Powell informed Dunsmuir that this matter still had to be dealt with in accordance with the *Indian Act*, but the latter seemed untroubled by this bureaucratic necessity and made it clear that he intended to take possession of the entire reserve.⁶⁰ As an enticement, Dunsmuir offered to give Indian Affairs a parcel of land at Cadboro Bay as a place to move the indigenous residents of the reserve.⁶¹

This was not the first time that arguments had been put forward calling for the removal of indigenous peoples from the Indian reserve on Victoria's inner harbour in order to free up their land for other uses. As discussed briefly in chapter 3, at the first sitting of the colonial House of Assembly, in 1859, a group of prominent Victorians had tried to convince Governor Douglas to have the indigenous residents removed to some land further away from the inner harbour and to make the land available for the improvement of the growing white settlement. Such a move would be beneficial for the white settlement, it was argued at the time, as the indigenous residents were a nuisance and a hazard to white sensibilities. At the same time, these indigenous people would also benefit from the move, it was argued, as they would be further removed from the corrupting influences of baser aspects of white civilization.⁶² Although Douglas had rejected these pleas, noting that the Songhees and Esquimalt had possession of this land

⁵⁹ As Minister of Justice, Campbell had visited Victoria in the summer of 1883 and had worked out a deal with Dunsmuir which would see the latter win the contract to build the E&N Railway. No doubt Dunsmuir was suggesting that Campbell had made a deal at that time to allow him to expropriate the Indian reserve, although Dunsmuir was unable to produce any written evidence of such an agreement.

⁶⁰ Powell to SGIA, Victoria, 28 April 1885, NAC, RG 10, vol 7670, file 22152-21 (reel C-11612).

⁶¹ Letter from Charles E. Pooley, Secretary of the E&N Railway Company, to Powell, Victoria, 2 May 1885, NAC, RG 10, vol 7670, file 22152-21 (reel C-11612).

⁶² See Keddie, *Songhees Pictorial*, chapter 8.

by virtue of the treaty he had signed with them in 1850, efforts to have the indigenous residents removed and their reserve incorporated into the white settlement continued to surface over the ensuing years. Dunsmuir's effort to appropriate the reserve, then, was not something new. Dunsmuir did, however, have a new tool at his disposal; he could draw on Dominion legislation, specifically section 9 of the *Consolidated Railroad Act of 1879* and section 31 of the *Indian Act*, that would allow the E&N Railway Company to expropriate land on the Indian reserve for railway purposes. Dunsmuir used these legal levers to press his case for expropriation of the reserve, claiming that the entire reserve would be needed in order to construct the terminus of the E&N Railway. It is clear that such was not the case, but Dunsmuir used this argument in an effort to gain control of this very valuable piece of real estate.⁶³

Powell found himself in the middle of this issue, trying to mediate between the demands of Dunsmuir, the legal and bureaucratic requirements of the Department of Indian Affairs, and the desires of the Songhees and Esquimalt people. He seemed eager to comply with the demand by Dunsmuir, a demand that was supported by Indian Affairs officials in Ottawa, that the indigenous residents be removed and the land freed up for other uses. It is clear that he had directions from Indian Affairs in Ottawa to effect such a removal, including instructions to have the Songhees and Esquimalt people removed a

⁶³ Dunsmuir was certainly not unique in seeking to use the expropriation provisions of Dominion legislation to gain access to valuable real estate located on Indian reserves. In 1884, as the Canadian Pacific Railway Company was making plans to extend its rail line to English Bay in Vancouver, William Van Horne (then Vice-President of the Company) argued that the Company would need 11,000 acres of land around English Bay for its railway operations. Included in this land was the Kitsilano Indian reserve, which the Company succeeded in expropriating. This issue is described in the court judgment of *Canada (A.G.) v. Canadian Pacific Ltd.* (2002. BCCA 478).

specific distance away. In late April of 1885 he wrote to the Superintendent General to report on his progress with this matter:

I had hoped to have arranged for the removal of both the Esquimalt and Songhees Indians from their present reserves ere this, but the clause in your letter ... of the 16th October 1884 requiring that any place purchased for them should not be less than 20 miles from Victoria has prevented me from carrying out the proposal. [The] Indians cannot be prevailed upon to go so far away, and the difficulty of getting their consent is increased by insisting upon a place so far removed from their old house to which they are so much attached, indeed.⁶⁴

This idea that the indigenous residents of the Indian reserve on Victoria's inner harbour had to be removed "not less than 20 miles" from the white settlement was apparently based on a recommendation made by Campbell after his visit to Victoria in 1883. Such a distance, it seems, was required to limit moral and social contamination between indigenous peoples and white residents of the town.⁶⁵ As Powell's letter makes clear, however, neither the Songhees nor the Esquimalt had any desire to be relocated in such fashion; under the *Indian Act*, their consent would be required for such a wholesale removal. Although Dunsmuir continued to press his case for expropriation of the entire reserve he was ultimately unsuccessful. The E&N Railway Company was ultimately successful, however, in expropriating 19 acres of land from the reserve for its rail line and associated railroad infrastructure.⁶⁶

⁶⁴ Powell to SIGA, Victoria, 28 April 1885, NAC, RG 10, vol 7670, file 22152-21 (reel C-11612).

⁶⁵ Memo from Deputy Superintendent General of Indian Affairs to Honourable Sir John A. Macdonald, Prime Minister, Ottawa, 13 May 1885, National Archives of Canada, RG 10, vol 7670, file 22152-21 (reel C-11612).

⁶⁶ The claim by Dunsmuir and the E&N Railway Company to Indian reserve lands on Victoria's inner harbour sparked a decade of discussion between the company and government officials in Victoria and Ottawa. Even though the Company was allowed to expropriate 19 acres of land on the reserve in 1892 (for the railway terminus), by 1898 the affected indigenous groups had yet to receive a penny of compensation. At a meeting held on December 17, 1898, the Songhees band passed a resolution "that the Department [of Indian Affairs] be respectfully asked if any steps have been taken to secure from

Construction of the E&N Railway also passed through three Indian reserves in Hul'qumi'num territory: the Cowichan No. 1 (the main reserve in the lower Cowichan Valley), Halalt No. 2 in the lower Chemainus Valley, and Oyster Bay No. 12 near present-day Ladysmith. In each case the Company used provisions in the *Indian Act* and in the *Consolidated Railroad Act* to expropriate reserve lands for the rail line. As was the case with the Songhees and Esquimalt, the archival evidence indicates that there was little consultation with Hul'qumi'num people or leaders prior to starting construction on the line through these Indian Reserves. This clearly caused concern among the Hul'qumi'num groups whose lands and houses were affected by construction. The anxiety felt by these groups about railway construction and its impact on their lands and houses is evident in the correspondence between Powell and W.H. Lomas, the Indian Agent for the Cowichan district. On March 7, 1885, Lomas wrote to Powell, noting that

[t]he roadway for Island Railway has already been cut through two Indian Reserves and is about to go through another; Indians are applying to me to know what compensation will be paid them. I should be obliged if you will therefore instruct me how to act, as at Chemainus it passes through an Indian house and I have not received authority to treat with the party who is settling the claims of the white farmers.⁶⁷

Powell wrote to the Superintendent General of Indian Affairs in Ottawa, reporting that “Indians anxious respecting this matter” and seeking instruction for how to arrange compensation. In the end, a total of 11.38 acres (4.6 hectares) of land was expropriated by the E&N Railway Company from Cowichan I.R. No. 1, for which the Company

Esquimalt and Nanaimo Railway Co. any amount as well as interest for compensation of Right of way used by their line through the Songhees Reserve at Victoria and Esquimalt.” NAC, RG 10, vol 7670, file 22152-21 (reel C-11612). In 1977, according to the Songhees Indian Band Chief John Albany, the Company had still not paid compensation for the railway right of way. See *Daily Colonist* (Victoria), 30 December 1977.

⁶⁷ British Columbia Archives, RG 10 Series (reel B-5649).

agreed to pay a small sum in compensation.⁶⁸ An additional 15.15 acres was expropriated from the Halalt Indian Reserve on the Chemainus River, for which the company was to pay \$176.45 in compensation.⁶⁹

Conclusion: Privatizing Hul'qumi'num Territory

The initial leg of the E&N Railway, extending from Esquimalt to Nanaimo, was completed in the summer of 1886. Over the next few decades the E&N Railway was expanded across southern Vancouver Island. In the fall of 1886, the railway was extended the short distance from Esquimalt to Victoria West, across from downtown Victoria, and in 1887 an extension was built from Nanaimo to Wellington, the site of one of Dunsmuir's most important coal mines, a distance of about eight kilometres. In 1888, following a petition from Victoria's City Council, the railway was extended from Victoria West across the inner harbour into downtown Victoria. In the first decade of the twentieth century, after the E&N Railway had been purchased by the CPR, branch lines were built through the Cowichan Valley (from Cowichan Bay to Cowichan Lake), across

⁶⁸ In November of 1885, Lomas wrote to Powell noting that the E&N Railway Company had reached an agreement for expropriation of land on the main Cowichan reserve near Koksilah and Somenos. According to this report, a total of \$29.25 was to be paid to "Jean Baptiste" and "Quitquakly" for 5.85 acres of land removed at Somenos, \$60 to "Chief Ecloose" for a small portion of cultivated land removed near Koksilah, and an additional \$30.00 for a small portion of cultivated land owned by "Charley Tecutsont". British Columbia Archives, RG 10 Series (reel B-5649).

⁶⁹ W. Lomas, the Indian Agent for Cowichan, calculated that the E&N Railway Company should pay \$176.45 for 15.15 acres of land removed from the Halalt reserve for railway purposes and for the cost of the dismantling an Indian house and rebuilding it outside the railway right of way. In his letter to Powell, Lomas suggests that compensation should be paid directly to the people affected by the expropriation; this included \$88 to be paid to the "Indian Sparlsum Family" for removal of 1.1 acres improved land, \$53.45 to the "Hallalt Band" for the removal of 14.05 acres of "wild land", and \$35 to "Clarqueloe & Son" for the removal of a house and its re-erection outside the railway right of way. Lomas to Powell, Victoria, 8 May 1885, National Archives of Canada, RG 10, vol 7670, file 22152-21 (reel C-11612).

to Port Alberni on the west coast of the island, and further north to Courtenay and the Comox Valley. While the construction of the rail line itself, including the various extensions and branch lines, had a direct and immediate impact on indigenous communities and lands, resulting in the expropriation of land from Indian reserves in Hul'qumi'num territory and elsewhere, the more profound effects were felt over the longer term. The E&N Railway played a key role in the consolidation of non-indigenous control over Hul'qumi'num territory, and over southern Vancouver Island more generally, allowing for easier movement and communication between the growing non-indigenous settlements at Victoria and Nanaimo, the two centres of non-indigenous political and economic power in the region at this time. The railroad also provided the critical infrastructure needed to allow for, and to encourage, an increased inflow of non-indigenous settlers to the region, and to expand the exploitation of natural resources, particularly coal and timber, found in the region.

Once it had secured ownership of the land grant, a vast tract amounting to approximately one-quarter of the entire land area of Vancouver Island, the E&N Railway Company began the process of subdividing the land into smaller parcels to be offered for sale to prospective buyers. One brochure, published by the Company in 1896, announced that "The Esquimalt and Nanaimo Railway Co. Has a Large Area of Lands suitable for Farming on Vancouver Island to be Sold on Easy Terms."⁷⁰ By and large, the pamphlet reads like an early geography text, describing the physical and human geography of Vancouver Island, focusing in particular on the southeastern quarter of the island (the land grant area). The text describes soil conditions, climate, natural resources

⁷⁰ Esquimalt and Nanaimo Railway Company, *Vancouver Island as a Home for Settlers* (Victoria: Publisher unknown, 1896).

(agricultural, timber, fisheries, wildlife, minerals), existing economic activities, prices for agricultural produce and other natural resource commodities, towns and regions, and transportation infrastructure. No doubt targeted at potential settlers from Britain, the brochure seeks to describe a place that is new and promising yet at the same time familiar and comforting. Vancouver Island's climate, the text reads, "is spoken of as England without its east winds; in reality, it is Torquay in the Pacific."⁷¹ In its description of the Cowichan Valley, the brochure cites a report by the Department of Agriculture which notes that this "new and important district has such a variety of soil and climate that it is possible to raise all the ordinary crops and fruits."⁷²

The brochure is obviously a sales pitch, and what is for sale is indigenous land that the company had acquired through the E&N Railway land grant, a deal made without the knowledge or consent of these indigenous communities. Getting directly to the point, the first page of the booklet sets out the conditions of sale: here the land is confidently laid out as commodity, with parcels neatly located on a universal grid oriented to the cardinal points of the compass, and abstracted from the existing natural and human landscape. In unsurveyed districts, the brochure instructs, land is to be sold "in square blocks of 160 acres, bounded by North and South and East and West lines, and to be surveyed so as to conform with other surveys that may have been made previously in the vicinity, and not to leave jogs in the lines, nor small fractions of land unsold."⁷³ The reader is informed

⁷¹ *Ibid.*, 2. Torquay, a town on the south coast of England (in Devon), became a fashionable seaside resort in the nineteenth century. Known for its mild climate, this area was dubbed the 'English Riviera'.

⁷² *Ibid.*, 7.

⁷³ *Ibid.*

that purchasers “may obtain as many blocks of 160 acres as he wishes.”⁷⁴ The price is set at \$3.00 per acre in unsurveyed districts, with the purchaser to pay for conveyance and for the necessary survey, and \$3.25 in surveyed districts. Terms of payment are specified, the reservation of all mineral rights by the Company is noted, and maps and additional information is offered to prospective buyers. The maps which accompany the brochure lay out, at a variety of scales of detail, the Company’s lands on the Island, with the most detailed maps showing the subdivision of the area into a grid of surveyed parcels. Here we have the origins of a new map in this territory, one in which property in land takes center stage.

Land sales were evidently brisk during the two decades following completion of the rail line. By 1905, when the E&N Railway Company was purchased by the CPR, almost 138,000 hectares of the original land grant had been sold, yielding \$1.44 million in sales revenue for Dunsmuir and his associates. The CPR paid \$2.33 million for the E&N Railway Company in 1905, including the railway itself (the tracks, railbed, equipment, stations, and associated infrastructure) and 556,580 hectares of land from the land grant.⁷⁵ According to the sale document, \$1.25 million of the sale price was for the land. James Dunsmuir, who by this time had assumed full control of the E&N Railway Company, retained ownership of a number of the Company’s more profitable coal mining operations (and associated lands) and he also retained the coal rights to all the lands in the original land grant.⁷⁶ Upon assuming ownership of the E&N lands, the CPR began a process of

⁷⁴ *Ibid.*

⁷⁵ MacLachlan, *The Esquimalt and Nanaimo Railway*, 141.

⁷⁶ In 1910 Dunsmuir sold his coal mining interests, including the mines and his rights to all coal in the E&N land grant area, to Canadian Collieries Ltd for \$11 million. Reksten, *The Dunsmuir Saga*, 224.

surveying these lands to assess their economic potential. What was immediately clear was that, beyond the coal interests, this land held immense timber value. These were, and remain today, some of the most productive timber lands to be found anywhere in British Columbia and, indeed, anywhere in North America. The last few decades of the nineteenth century and the first few decades of the twentieth century saw the rapid rise in importance of the forest sector in British Columbia such that it came to dominate the provincial economy, and the E&N lands became, as much as any other region of the province, the focus for this growth.⁷⁷ Throughout most of the twentieth century, logging of the E&N lands and the processing of the resulting timber served as the backbone of the regional economy.

From a Hul'qumi'num perspective, then, the impacts of the E&N Railway project were most clearly felt over a longer period. From interviews with current Hul'qumi'num community members and representatives, it seems that the alienation of virtually their entire territory on Vancouver Island, through the E&N land grant, was not evident to Hul'qumi'num leaders at the time. Brian Thom, a Senior Negotiator with the treaty group, suggests that not only the Hul'qumi'num leadership of the day but also the white people who were in close contact with Hul'qumi'num leaders (i.e., missionaries and lawyers) largely failed to make the connection between the E&N Railway and land grant and what was happening with the Hul'qumi'num land base and territory. The E&N land

⁷⁷ Patricia Marchak notes that between 1871 and 1911, the population of BC increased by 700 percent and, during this same period, the forest industry became dominant. "The number of sawmills increased from 27 to 224; employment from 393 to nearly 15,400." By 1911, roughly half of all manufacturing jobs in the province were in the forest sector. The forest sector, like other manufacturing sectors at the time, was largely oriented to export markets. See Patricia Marchak, *Green Gold: The Forestry Industry in British Columbia* (Vancouver: UBC Press, 1983), 33.

grant, he notes, “the one massive real estate transaction, wasn’t focused on by the aboriginal leadership as an issue” rather it was “the subsequent subdivision and delineation of the land that sparked the very on-the-ground resistance and the political movement.”⁷⁸ In other words, while the increasing influx on non-indigenous settlers and the taking up of lands along the coast and the valley bottoms, areas that were intensively used by the Hul’qumi’num, were clearly visible and of great concern to the Hul’qumi’num—and this is where the conflicts over land between the Hul’qumi’num and settlers manifested themselves—the wholesale granting away of a huge portion of their territory through the signing of documents and through the actions of a small group of powerful people in Victoria and Ottawa was beyond their view. It would take some time for the full implications of the land grant to come into view. As Robert Morales describes it, the land grant probably didn’t make much difference in the early days:

if you were hunting or fishing or whatever, probably you were permitted to continue to do so. But as more and more people moved here, and as corporations began to put roadblocks or gates up or try and keep the general public off of their lands, it became more and more clear that this private land status was having an effect on the Hul’qumi’num peoples’ assertion of title and rights.⁷⁹

It was only over a longer period of time, however, as upland areas also came under development, through logging or mining, and as Hul’qumi’num access to these areas which they had long used for a variety of purposes (for hunting and gathering plant foods and materials for cultural and economic life) became more restricted, that the sense of a much broader territorial alienation became more apparent.

It was, then, only through the ‘enactment’ or the active ‘doing’ of private property—the erection of signs indicating ‘private property’ or ‘no trespass’, the building of fences

⁷⁸ Interview with Brian Thom, 26 October 2008.

⁷⁹ Interview with Robert Morales, 21 November 2006.

and gates to prevent entry, the demands that Hul'qumi'num people stay off these lands—that the full extent and impact of land privatization, due to the E&N land grant, became intelligible. Indeed, as became apparent during the course of this study, the history of the privatization of Hul'qumi'num territory on Vancouver Island—the history of the E&N land grant, that is, and the subsequent fragmentation of this tract into smaller parcels of land for resale and development—remained poorly understood within Hul'qumi'num communities. This is not to say that impacts of this alienation were not understood; clearly they were comprehended and felt in a direct and profound manner. But the act of privatization, the granting away of a huge portion of their territory, and its full effect on their lands and livelihoods, would not be fully appreciated until the end of the twentieth century as the Hul'qumi'num engaged with the BC treaty process in an effort to have their land rights recognized and affirmed.

PART 2

Contemporary Struggles: Treaty-Making and Reconciliation

In the first part of this study I sought to tell the story of colonization and dispossession in Hul'qumi'num territory, focusing on the period between 1850 and 1900. The story does not end here, of course, and I have noted my desire not to limit my analysis of struggles over land and resources in this territory only to the past. I seek, that is, to understand and document how the colonial history and geography of Hul'qumi'num territory continues to be felt in the present, and how the legacies from this earlier period shape and affect contemporary struggles over land and resources. Thus, in the second part of this study I focus on contemporary efforts to address the land question in Hul'qumi'num territory, both through the BC treaty process and, more broadly, through initiatives designed to achieve reconciliation between indigenous peoples and non-indigenous society.

Contemporary treaty and reconciliation processes have emerged and are driven, of course, in good part by a desire to address and come to terms with these colonial histories and geographies. Despite this, as I hope to show in the following chapters, these processes have tended to shy away from a direct engagement with the difficult stories of colonization and dispossession in place like Hul'qumi'num territory. Further, and perhaps in part because of their failure to look closely at and understand these colonial histories and geographies, these processes also tend to repeat or reiterate the mistakes of the past.

In Part 2, I pick up the story of struggles over land and resources in Hul'qumi'num territory towards the end of the twentieth century, beginning with the emergence of the BC treaty process and the Hul'qumi'num Treaty Group's entry into this process in 1993.

This leaves a large gap in the story, with much of the twentieth century left unexamined. Much of critical importance happened during this period, of course, even though the formal boundaries between Hul'qumi'num land and the rest of the territory—as laid out by the Joint Indian Reserve Commission—changed very little. While it is beyond the scope of this project to provide any detailed analysis of land and resource issues in the territory during this period, a couple of trends are worth noting. By the beginning of the twentieth century forestry had emerged as the dominant economic activity in the territory and would remain so for most of the century. Although exploitation of the region's rich forests buoyed the local economy, few of the benefits flowed to Hul'qumi'num communities. The twentieth century also witnessed a steady erosion of fisheries resources—including salmon and shellfish—due to overexploitation and habitat loss, and increasing restriction of Hul'qumi'num access to these important food and trade sources.¹ The effects of the unequal access to land and resources set in place during the last half of the nineteenth century, then, came to be more deeply felt through the twentieth century as an increasing number of non-indigenous people moved into the area and as the region's rich natural resources were gradually depleted.

It is also important to note that Hul'qumi'num resistance to the dispossession of their lands and resources continued throughout the twentieth century. Legal scholar Hamar Foster refers to the 'Cowichan Petition' of 1909, a legal petition calling for recognition of their aboriginal title rights submitted by the Cowichan (with the help of white supporters) to colonial authorities in Britain, as “the first legally sophisticated articulation of the

¹ Doug Harris, *Landing Native Fisheries: Indian Reserves and Fishing Rights in British Columbia, 1849-1925* (Vancouver: UBC Press, 2008).

doctrine of Aboriginal title on behalf of Aboriginal people in British Columbia”.²

Although this petition yielded no direct formal response from British officials, it kicked off the first large-scale legal campaign for aboriginal title ever mounted by indigenous peoples in British Columbia, a campaign that specifically sought resolution of the land question through appeal to the Canadian legal system. This campaign, which included several other legal petitions submitted to British authorities, ground to a halt in the late 1920s, in part due to the introduction of a new section (Section 141) to the *Indian Act* which effectively outlawed indigenous organizing on the land claims front and, for the ensuing quarter-century, prevented further efforts, and especially efforts to use the courts, to assert aboriginal title in the province.³ The repeal (in 1951) of this section of the *Indian Act*, led to the start of the second large-scale legal campaign for aboriginal title in British Columbia, which in turn led to the establishment of the BC treaty process.

² Hamar Foster, “We Are Not O’Meara’s Children: Law, Lawyers, and the First Campaign for Aboriginal Title in British Columbia, 1908-1928,” in *Let Right Be Done: Aboriginal Title, the Calder Case, and the Future of Indigenous Rights*, eds., Hamar Foster, Heather Raven, and Jeremy Webber (Vancouver: UBC Press, 2007), 66.

³ Tennant, *Aboriginal Peoples and Politics*, 112-13. Section 141 prohibited the raising of funds to be used for land claims work; portrayed as an effort to protect indigenous peoples from unscrupulous lawyers who might fleece them through promises of resolving their land claims in court, the section effectively prevented indigenous groups from hiring the legal help they needed to negotiate the Canadian court system.

CHAPTER 7

Sharing the Colonial Burden: Treaty-Making in Hul'qumi'num Territory

On October 15, 2007, Kim Baird, Chief of the Tsawwassen First Nation, delivered a speech to the members of the British Columbia legislative assembly, becoming only the second non-government official to be accorded that honour.⁹ The occasion was the introduction of legislation that, if passed, would provide for ratification by the provincial government of a treaty negotiated between the Province of British Columbia, the Tsawwassen First Nation, and the government of Canada. The Tsawwassen treaty agreement, the first to be finalized under the 15-year-old BC treaty process, had been ratified by the Tsawwassen people a few months earlier and would also be subject to debate and ratification by the House of Commons in Ottawa before passing into law. In her address to the assembly, Baird delivered a concise history of her people, sketching out the extent of Tsawwassen territory, describing pre-colonial patterns of land occupation and resource use, and listing the effects of colonial dispossession and postcolonial marginalization on her community. She used the language of geography to describe historic processes of dispossession and marginalization, noting how the “rights of newcomers were mapped over our territories, effectively erasing our presence and

⁹ The first to receive this honour was Joseph Gosnell, prominent leader of the Nisga'a people and a key figure in the negotiation of the Nisga'a treaty, who addressed the assembly in 1999 at the introduction of legislation to ratify the Nisga'a treaty. The Nisga'a treaty, which was negotiated outside of the BC treaty process, was the first and only treaty signed in British Columbia during the twentieth century.

marginalizing us to the fringes of our territory and broader society.”² Baird spoke, for example, of the bulldozing of a Tsawwassen longhouse for the construction of the BC Ferry terminal causeway, a busy highway which now bisects the Tsawwassen reserve. The end result of this long process of territorial reshaping and marginalization, she said, was a small community squeezed onto “a tiny postage stamp of a reserve ... fronting a dead body of water trapped between two massive industrial operations.”³

Baird spoke of the long and difficult process that led to the treaty agreement, and of the compromises that her community had to make in getting to this point. She acknowledged the limited options available through the treaty process, the Tsawwassen being a small group with a tiny land base in a highly industrialized and increasingly urbanized setting, and admitted that she found some aspects of the treaty agreement offensive. But, she said, the long hard work and the difficult compromises had been worth it, resulting in “a time of great hope and optimism”, “a time for revival and renewal ... when we will take back our rightful place as a community equal to others”.⁴ The treaty agreement achieves reconciliation between the Tsawwassen, Canada and British Columbia, Baird reported, providing “a framework that ensures we can enter the economic and political mainstream of Canada.”⁵ Furthermore, she added, the treaty proves to the world “that reasonable people can sit down and settle historical wrongs.”⁶

² Text of Baird’s speech is from: Province of British Columbia, Official Report of Debates in the Legislative Assembly (Hansard), 15 October 2007. Available online at: <http://www.leg.bc.ca/38th3rd/index.htm>

³ *Ibid.* The Tsawwassen First Nation’s contemporary landbase lies south of Vancouver, sandwiched between the busy Tsawwassen BC Ferry terminal and the large Deltaport shipping terminal. The Tsawwassen First Nation has approximately 350 members.

⁴ *Ibid.*

⁵ *Ibid.*

⁶ *Ibid.*

At a more material level, the treaty will provide the Tsawwassen with a badly needed economic boost: the agreement includes a land and cash component—the transfer of 434 hectares of Crown land (added to the existing 290-hectare Tsawwassen Indian reserve) and a ‘capital transfer’ of \$13.9 million over ten years—as well as a number of other provisions designed to meet the present and future socio-economic needs of the Tsawwassen people.⁷

The signing of the Tsawwassen treaty was hailed by some observers as a breakthrough for the beleaguered BC treaty process. BC Premier Gordon Campbell, who has invested considerable political capital in the negotiation of modern comprehensive treaties and in developing a new relationship between indigenous people and the BC government, referred to the treaty agreement as “a triumph of reconciliation, of recognition and really a triumph of self-determination”.⁸ Response to the finalization of the Tsawwassen treaty from indigenous leaders in British Columbia was mixed. Judith Sayers, Chief of the Hupacasath First Nation⁹ and a member of the political executive of the First Nations Summit—a group formed in the early 1990s to provide support to indigenous groups involved in the BC treaty process—described the agreement as “a huge step forward” for

⁷ The deal also provides for other benefits to the Tsawwassen, including allocations of certain natural resources (e.g., waterfowl, salmon, crab), small amounts of cash for natural resource management activities (wildlife, forestry), and a fiscal financing agreement (to fund implementation of the treaty and the operation of the new Tsawwassen government). Full text of the Tsawwassen Final Agreement is available on the BC Ministry of Aboriginal Relations and Reconciliation web site:

<http://www.gov.bc.ca/arr>

⁸ Jonathan Fowlie, “Tsawwassen Treaty Signals Time of Great Hope: Chief,” *Vancouver Sun*, 16 October 2007.

⁹ The Hupacasath, based near Port Alberni, are part of the larger Nuu-chah-nulth cultural group whose territory extends across west-central Vancouver Island.

both the Tsawwassen people and the treaty process.¹⁰ On the other hand, Stewart Phillip, head of the Union of BC Indian Chiefs—a group which views the treaty process as fundamentally flawed—saw little reason for celebration, suggesting that the Tsawwassen case was anomalous and that the treaty process had failed to address the concerns of the majority of indigenous groups in the province.¹¹ Most indigenous leaders in the province seemed to side with Phillip, believing that few other indigenous groups would sign on to a Tsawwassen-like deal and that the treaty process was in serious need of an overhaul.

In this chapter I explore the BC treaty process, which represents the contemporary attempt on the part of British Columbia and Canada to come to terms with unresolved questions about aboriginal title in British Columbia. The historic failure to sign treaties with indigenous peoples in this province, or to formalize—at least in a legal sense—the taking possession of indigenous territories in any other way, has given rise to difficult questions about who actually owns or has jurisdiction over much of the land found within the boundaries of this place called British Columbia. A century of rejecting the arguments put forward by indigenous peoples that they had legitimate claims to lands and resources in their traditional territories eventually gave way, in the 1980s, to a realization by

¹⁰ Rod Mickleburgh, “Sign Treaties, Jubilant Chief Urges Natives,” *Globe and Mail*, 27 July 2007.

¹¹ Phillip argued that the Tsawwassen viewed the treaty simply “as an economic opportunity” rather than anything to do with aboriginal title and rights; “They are basically grabbing the money and running”, argued Phillip. (See Justine Hunter, “NDP Divisions Widen Over Landmark Deal,” *Globe and Mail*, 16 October 2007.) Taiaiake Alfred, Director of the Indigenous Governance Program at the University of Victoria, argued that the Tsawwassen treaty made “no political or financial sense from a first nations perspective” and explained the treaty as resulting from a desire on the part of the Tsawwassen to “do whatever it takes, including surrendering their lands and sacred heritage, to shed themselves of their indigenous past in the hopes of becoming acceptable to white society.” (See Taiaiake Alfred, “Letter to the Editors,” *Globe and Mail*, 1 August 2007.)

provincial authorities that these claims would have to be addressed. The result was the creation, in the early 1990s, of the BC treaty process where the provincial and federal governments would seek to resolve the land question through the negotiation of modern comprehensive treaties with indigenous peoples in the province. In the first part of the chapter I examine the emergence of the treaty process and briefly trace its progress over the past 15 years, highlighting points of contention and key events that have shaped the negotiation process. In the second part of the chapter I turn to an examination of the Hul'qumi'num experience with the BC treaty process, discussing the particular challenges faced by Hul'qumi'num negotiators in trying to craft a treaty in their territory. Here I pay particular attention to one of the key legacies of the colonial history and geography of this place, the massive privatization of land effected by the Esquimalt and Nanaimo (E&N) Railway land grant, and explore the implications of this colonial act for modern treaty negotiations in this area. The failure of the treaty process to allow for a serious consideration of this place's unique historical geography, I argue, makes a fair resolution of the land question in Hul'qumi'num territory seem a dim possibility.

The British Columbia Treaty Process

As noted earlier, by the early 1860s colonial authorities in British Columbia had rejected the idea that indigenous peoples had any special claim or right to lands and resources outside of their clearly established village sites and apart from areas under some form of recognizably European land use and cultivation. The system of Indian reserves created over the final decades of the nineteenth and early part of the twentieth centuries and finalized through the work of the McKenna-McBride Commission (1912-1916), a body

which was created to achieve the “final adjustment” of the Indian land question in British Columbia,¹² represented the only recognition on the part of provincial authorities of indigenous rights to land and natural resources. The idea that indigenous peoples had any title or rights to broader territories, that is to lands and resources outside of Indian reserves, was categorically rejected by colonial authorities, particularly after the retirement of James Douglas, and this attitude continued to prevail once British Columbia became a province in the Dominion of Canada. The Province’s firm denial of aboriginal title would hold until the late 1980s when the government of British Columbia, under pressure on a number of fronts, finally realized that this was a question which could no longer be pushed aside.

A number of factors led to the shift in the Province’s position on aboriginal title. Broad public support for the just resolution of long-standing indigenous land claims was certainly one important factor. Another was the growing uncertainty over the development of Crown lands and resources due to widespread indigenous resistance, particularly the erection of blockades designed to halt resource development projects. Indigenous peoples in British Columbia had long protested the exploitation of lands and resources in their traditional territories, but the 1980s saw an escalation in this form of resistance.¹³ Of particular importance were two high-profile indigenous blockades of proposed logging operations that took place in the mid-1980s; by the Nuu-chah-nulth at Meares Island (in Clayoquot Sound) in 1984 and by the Haida at Lyell Island (on Haida

¹² Harris, *Making Native Space*, 229. Harris provides an analysis of the McKenna-McBride Commission, which was more formally known as the Royal Commission on Indian Affairs. For the report of the commission, see: British Columbia, Royal Commission on Indian Affairs, *Report of the Royal Commission on Indian Affairs for the Province of British Columbia* (Victoria: Acme Press, 1916).

¹³ Blomley, “Shut the Province Down.”

Gwaii/Queen Charlotte Islands) in 1986. The linking of indigenous land claims with ecological concerns in these protests, and especially with the idea of wilderness preservation (which enjoyed broad support among British Columbia's urban non-indigenous population), was a particularly important development.¹⁴

Perhaps the greatest factor in forcing a change in the Province's position, however, was the pressure applied by court rulings, which served to undermine the provincial government's legal justification for the denial of aboriginal title and created further uncertainty about the prospects for future resource development projects on Crown lands in the province. A legal ruling in support of the Nuu-chah-nulth in regards to their protest at Meares Island, for example, effectively prevented the Province from moving ahead with logging plans at this location.¹⁵ A central motivation for the Province to engage in treaty negotiations with indigenous groups in British Columbia, then, was to achieve 'certainty' in the natural resource sector. In this context, as Andrew Woolford points out, certainty meant that "first and foremost, conflicts between Aboriginal and Crown title be resolved so that there is clarity with regard to who owns and has jurisdiction over lands in British Columbia."¹⁶

In December 1990, BC Premier Bill Vander Zalm struck a task force composed of representatives from the provincial and federal governments and leading indigenous groups in British Columbia to develop a process to deal with the issue of land claims.

¹⁴ Tennant, *Aboriginal Peoples and Politics*, 208.

¹⁵ The Nuu-chah-nulth appealed to the courts for an injunction to halt logging on Meares Island until their aboriginal title claim had been resolved. The court (*Martin et al. v. Regina in Right of B.C. et al.* [1985]) ruled in favour of the Nuu-chah-nulth, a decision which undermined the Province's ability to unilaterally allocate natural resources to non-indigenous groups for economic development purposes.

¹⁶ Woolford, Andrew. 2005. *Between Justice and Certainty: Treaty Making in British Columbia*. Vancouver: UBC Press.

Central to the task force's mandate was to identify a way to reconcile the existence of aboriginal title, which was increasingly recognized and affirmed by the courts, with Crown sovereignty. The final report of the BC Claims Task Force, released in June 1991, recommended that "[t]he First Nations of British Columbia, Canada and British Columbia establish a new relationship based on mutual trust, respect and understanding—through political negotiations."¹⁷ This new relationship must be achieved, the task force argued, through "voluntary negotiations, fairly conducted, in which the First Nations, Canada, and British Columbia are equal participants."¹⁸ These negotiations, the task force proposed, would move through a six-stage process and conclude with the signing of "modern-day treaties", which "must be fair and honourable."¹⁹ These treaties should be comprehensive in nature, dealing not only with the central issue of authority over land and natural resources but also with questions of indigenous self-government, financial compensation to indigenous groups, and the provision of government services.

The task force report noted that all three parties had an interest in achieving certainty about the ownership and jurisdiction of land and natural resources. Importantly, the task force rejected the approach, used in the past, of achieving certainty through "blanket extinguishment" of aboriginal title and rights, arguing that such an approach runs counter to Section 35 of the Canadian constitution (*Constitution Act, 1982*) which recognizes and affirms aboriginal and treaty rights.²⁰ Certainty could be achieved, it was argued, without resort to extinguishment by elaborating treaties "which state precisely each party's duties,

¹⁷ BCCTF, *The Report of the British Columbia Claims Task Force* (Vancouver: British Columbia Claims Task Force, 1991), 8.

¹⁸ *Ibid.*

¹⁹ *Ibid.*

²⁰ *Ibid.*, 11.

rights and jurisdictions.”²¹ While the negotiations will alter existing rights and jurisdictions, the report pointed out, “those aboriginal rights not specifically dealt with in a treaty should not be considered extinguished or impaired.”²²

All three parties accepted all 19 recommendations put forward by the task force, leading to the formal establishment, on April 15, 1993, of the British Columbia Treaty Commission (BCTC), an independent body whose mandate was to assist with the treaty negotiation process. Once the treaty commission was established, a large number of indigenous groups soon entered into the treaty negotiation process, indeed far more than had been expected by the provincial and federal governments.²³ Within three years of its formation, some four dozen different indigenous groups, representing roughly two-thirds of the province’s aboriginal population, had entered the treaty process. The early years of the treaty process were marked by optimism that treaty agreements would come relatively quickly, as indigenous groups moved smoothly through the early and less challenging stages of negotiation. However, these years were also marked by critiques of the process, most prominently from non-indigenous groups concerned about the possible outcomes of treaty negotiations. Claims were made, for example, that the treaty process was secretive and excluded ‘third party’ interests such as non-indigenous citizens, local governments, and the private sector. There were also alarmist reports, widely reported in the media, that indigenous groups had claimed title to the entire province through the treaty process.²⁴ To calm such fears, the provincial government of the day, under New Democratic Party

²¹ *Ibid.*

²² *Ibid.*

²³ BCTC, *British Columbia Treaty Commission: Annual Report for 1995-96* (Vancouver: British Columbia Treaty Commission, 1996).

²⁴ Christopher McKee, *Treaty Talks in British Columbia: Negotiating a Mutually Beneficial Future, Second Edition* (Vancouver: UBC Press, 2000), 70.

Premier Michael Harcourt, announced a series of measures designed to make the process more open and transparent to public view. Harcourt also promised to set province-wide negotiation mandates and assured the public that resolution of all outstanding land claims in British Columbia would involve no more than about five percent of the province's total land area.²⁵

Groups with an interest in the province's land and natural resource base were particularly vocal in their concerns about the treaty process. In 1995, for example, the Council of Forest Industries (COFI), an influential group representing major forest companies in the province, released a report critiquing the Province's position on treaty negotiations. In the report, COFI suggested that forest companies and other "third party" interests were being marginalized in the treaty process and argued against the transfer of even a small portion (such as the five percent promised by Harcourt) of the province's land base to indigenous peoples. Furthermore, COFI argued, indigenous groups should be forced to make concessions in exchange for the land they would receive through treaties. Treaty agreements, COFI argued, should be predicated on indigenous peoples agreeing to the blanket extinguishment of their claims to aboriginal title and rights over all lands and resources within their traditional territory that were not specifically included in the treaty settlement (an approach that the BC Claims Task Force had already explicitly rejected).²⁶ The proper exchange, from COFI's point of view (and this was a perspective shared by many non-indigenous critics of the treaty process), was for indigenous people to receive, through a treaty agreement, strong recognition of aboriginal rights to land, resources, and

²⁵ *Ibid.*

²⁶ COFI, *Council of Forest Industries' Response to British Columbia's Discussion Paper Papers* (Vancouver: Council of Forest Industries, 1995).

self-government within a limited area—what would amount to fee simple ownership of perhaps five percent of their territorial claim (to use the figure provided by Harcourt)—while giving up all claims and attachments to their larger traditional territory. For many British Columbians, and particularly for non-indigenous business and political leaders, the approach to treaty making advocated by COFI was appealing. Only through the extinguishment of aboriginal title, it was argued, could the Crown, and those seeking to exploit the province's natural resource base, be provided with 'certainty' that their investments would not be disrupted by future claims that indigenous people might make.

The question of certainty, and how to achieve it, emerged as a major challenge and point of contention early on in the treaty process. While the "cede, surrender, and release" model advocated by COFI and other groups—a model which required the extinguishment of aboriginal title outside of treaty settlement lands—proved attractive to some, it was anathema to many indigenous people. In an often-quoted passage, Chief Edward John of the First Nations Summit described the difficulty that indigenous people had with this approach:

When government asks us to agree to surrender our title and agree to its extinguishment, they ask us to do away with our most basic sense of ourselves, and our relationship to the Creator, our territory and the other peoples of the worlds. We could no longer do that without agreeing that we no longer wish to exist as a distinct people. That is completely at odds with our intentions in negotiating treaties.²⁷

Rather than resulting in its extinguishment, John and other indigenous leaders argued, treaties should provide for a clear recognition and definition of aboriginal title. Reflecting the point made by the BC Claims Task Force report, indigenous leaders argued that certainty could best be provided not through surrender and extinguishment but through

²⁷ RCAP, *Treaty Making in the Spirit of Co-existence* (Ottawa: Minister of Supply and Services, 1995), 46.

acknowledgement of aboriginal title and a detailed description of what title means (and does not mean) when it comes to lands and natural resources in a particular indigenous territory. As others have noted, the gap between the position of federal and provincial government negotiators and that of indigenous groups on the question of how to achieve certainty reflected a fundamental difference in understanding of the concept of aboriginal title. While John describes aboriginal title as something inseparable from indigenous identity, governments tend to see it as “no more than a collection of quasi-property entitlements ... that can be traded once and for all to the Crown in return for treaty-based rights with respect to land governed by the treaty.”²⁸

By the late 1990s it was increasingly evident that the treaty process was facing serious challenges. When negotiators reached the later and more complex stages of negotiation, the stages where substantive issues had to be negotiated—issues relating to relating to land, natural resources, compensation, governance, and taxation—the pace of negotiations slowed and in some cases ground to a full stop. It soon became apparent that the resources that had been dedicated to the process were inadequate and that the gap in expectations between the negotiating parties, particularly with respect to the amount of land that would be included in treaty settlements, was quite large. Indigenous groups engaged in the process were increasingly frustrated by the slow pace of negotiations, which they attributed to the inflexible positions adopted by federal and provincial negotiators on a number of key points, such as on the questions of compensation and the way that certainty would be accomplished.²⁹ The frustrations of indigenous negotiators were amplified by concerns felt in many indigenous communities about their mounting

²⁸ McKee, *Treaty Talks*, 72.

²⁹ Woolford, *Between Justice and Certainty*, 118-19.

debt load, stemming from funds borrowed from the federal and provincial governments in order to support their negotiating teams.³⁰ Particularly troublesome for many indigenous groups was the fact that, while they were becoming increasingly indebted to the Crown (in order to fund their efforts to negotiate treaties *with* the Crown), their traditional territories continued to undergo development, with little of the wealth being generated by the exploitation of lands and natural resources trickling down to the benefit of their own communities, which continued to suffer from high rates of poverty and unemployment. Indigenous groups also felt that the process, focused as it was on creating future relationships, failed to adequately address the histories and geographies of colonialism that marked their lived experiences and which shaped their past and current relationships with the Crown.³¹

Treaty negotiations were complicated and delayed by a number of other events in the late 1990s and early 2000s, including landmark court rulings on aboriginal title and a changing of the political guard in Victoria. Particularly important at this time was the 1997 ruling of the Supreme Court of Canada in the *Delgamuukw* case, a court action launched in 1984 by members of the Gitksan and Wet'suwet'en First Nations as an assertion of aboriginal title over their traditional territory in northwestern British Columbia. The *Delgamuukw* decision played an important role in defining aboriginal title in British Columbia, ruling that aboriginal title meant a legal right to the land itself, and not just the right to hunt, fish and gather resources from the land. This ruling had

³⁰ By this point, indigenous groups in the treaty process had borrowed approximately \$120 million from the federal and provincial governments in order to pay for negotiations. See: BCTC, *British Columbia Treaty Commission: Annual Report for 1999* (Vancouver: British Columbia Treaty Commission, 2000).

³¹ Woolford, *Between Justice and Certainty*, 174.

enormous implications for Crown sovereignty over lands where aboriginal title existed (or was likely to exist), and served to shift the ground under the feet of treaty negotiators.³² However, Delgamuukw also played an important role in defining the appropriate relationship between the courts and the treaty process, arguing that it would be primarily through “negotiated settlements, with good faith and give and take on both sides” that “the reconciliation of the pre-existence of aboriginal societies with the sovereignty of the Crown” would be achieved.³³ Thus the decision, while favourable to indigenous people, pushed the task of resolving the conflict between aboriginal title and Crown sovereignty back to the negotiating table.

Treaty negotiations faced a further challenge with the election of the BC Liberal party in 2000, a party that had long criticized the treaty process and had even taken the previous provincial government to court, arguing that the Nisga’a treaty—an agreement signed in 1998 through negotiations that fell outside the BC treaty process—was unconstitutional. Under party leader Gordon Campbell, the BC Liberals had run on a platform that included a promise to review the treaty process and to hold a province-wide referendum to give the public a greater say in the treaty process. Treaty negotiations were delayed while the new provincial government held a divisive referendum and worked to clarify its position on the treaty process.³⁴ The treaty referendum was highly contentious, with a wide range of groups—indigenous and non-indigenous—coming out with harsh critiques of the process. Ultimately, the BC Liberal government used the referendum to

³² BCTC, *After Delgamuukw: The Legal and Political Landscape* (Vancouver: BC Treaty Commission, 1999).

³³ *Delgamuukw v. British Columbia* (1997), 3 SCR 1010.

³⁴ For a fuller description of the treaty referendum and its effects, see: Rossiter and Wood, “Fantastic Topographies.”

entrench a series of distinctly neo-liberal principles, including principles upholding the sanctity of private land and private interests, into the treaty process.

Eventually, however, as many had expected and hoped, the new government affirmed its commitment to the existing process and treaty negotiations resumed once again. Indeed, to virtually everyone's surprise, early in his second term as Premier, Campbell seemed to undergo a transformation of biblical proportions, becoming a champion of treaty negotiations and of developing a new relationship with indigenous peoples in the province based on a recognition of aboriginal title.³⁵ In early 2005 Campbell signed a "new relationship" accord with leading indigenous organizations in the province, in which he committed the BC government to the "reconciliation of Aboriginal and Crown titles and jurisdictions."³⁶ Anxious to see progress in treaty negotiations, the Campbell government focused much of its effort on a small number of treaty tables where agreements seemed possible in a relatively short time frame—so-called "breakthrough tables"—and this resulted in little or no progress at a much larger number of other negotiating tables.³⁷ By 2007 this strategy had yielded two treaties—agreements with the Tsawwassen and, shortly thereafter, with the Maa-nulth First Nations—with the

³⁵ One Hul'qumi'num member I interviewed referred to this as Campbell's "conversion on the road to Damascus", a reference to the biblical story of the conversion of Paul, struck by a bolt of light from the sky while traveling to Damascus to persecute Christians living in that city.

³⁶ The "new relationship accord" is spelled out in a five-page document (of the same name) drafted by the Province and three aboriginal groups, the Union of British Columbia Indian Chiefs, the First Nations Summit, and the Assembly of First Nations (BC Chapter). The document is available from the Ministry of Aboriginal Relations and Reconciliation web site: <http://www.gov.bc.ca/arr/>

³⁷ British Columbia, *Treaty Negotiations in British Columbia: An Assessment of the Effectiveness of British Columbia's Management and Administrative Processes* (Victoria: Office of the Auditor General, 2006). Available at: <http://bcauditor.com/AuditorGeneral.htm>

possibility of several others in the near future.³⁸

Despite the fanfare associated with the finalization of the Tsawwassen and Maa-nulth treaties, progress at most of the treaty tables in the province remained elusive and painfully slow, and the frustration of indigenous groups involved in the process, along with their debt loads, continued to mount.³⁹ Moreover, as will be discussed in greater detail in the next chapter, a major challenge facing the treaty process—a fundamental difference in vision, between indigenous groups and the Crown, about how certainty should be achieved and how aboriginal title should be reconciled with Crown sovereignty—remained unresolved. Before exploring these broader and more fundamental challenges facing the treaty process, however, I turn to an examination of the Hul'qumi'num experience with the treaty process in order to highlight some of the particular challenges faced by this group in seeking to engage with and move through the difficult process of negotiating a modern comprehensive treaty.

³⁸ The Maa-nulth—a coalition of five related indigenous groups on the west coast of Vancouver Island—signed a treaty in late 2007. After correcting for population size, the Tsawwassen and Maa-nulth treaties are similar, based on a template that provincial and federal negotiators seek to impose at all treaty tables.

³⁹ In November 2006, in a coordinated review of the BC treaty process, the provincial and federal auditors general highlighted concerns about the process, pointing out that after more than 12 years of talks and almost \$1 billion spent on negotiations (including \$300 million in debt accumulated by aboriginal groups involved in negotiations) the BC treaty process had yet to yield one final agreement. The auditors general were particularly critical of the provincial and federal governments, pointing to the lack of resources dedicated to negotiations and to the inflexibility of negotiating mandates. See: British Columbia, *Treaty Negotiations in British Columbia*, and Office of the Auditor General of Canada, *Matters of Special Importance—2006* (Ottawa: Minister of Public Works and Government Services, 2006).

Treaty Making in Hul'qumi'num Territory

On December 15, 1993, the Hul'qumi'num submitted their Statement of Intent (SOI) to the BC Treaty Commission, indicating their intention to enter into the BC treaty process. In the SOI, a simple two-page form, "the claimant" was identified as the membership of seven Hul'qumi'num speaking indigenous groups: the Cowichan Tribes, the Chemainus Band, the Lyackson Band, the Penelakut Band, the Halalt Band, the Malahat Band, and the Lake Cowichan Band.⁴⁰ The SOI noted that these groups had never signed a treaty with any colonial or Canadian government, and provided a description of the general territory to be encompassed in treaty negotiations. The territory, it stated, "runs from Dodds Narrows in the north, south to and including Goldstream Park, west to and including the surrounding area of Cowichan Lake, and east to Georgia Straits including the Gulf Islands."⁴¹ The SOI also reported that the group "owned territory, and shared resources, with mainland First Nations" and noted that this shared territory included "specified sites from the Georgia Strait, up the Fraser to Hope."⁴² A simple map was appended, which outlined the boundaries of the Hul'qumi'num territorial claim.

Submission of the SOI triggered the first meeting of the Hul'qumi'num treaty table, which took place on February 10, 1994 in Duncan.⁴³ Like most of the other indigenous groups that joined the treaty process soon after its formation, the Hul'qumi'num moved relatively quickly through the first three stages of the six-stage negotiation process. These

⁴⁰ The Malahat Band later left this group and joined the Te'Mexw Treaty Association, an alliance of five indigenous groups on southeastern Vancouver Island also in the treaty process, leaving the Hul'qumi'num Treaty Group with the six indigenous groups which currently make up its membership.

⁴¹ HTG, *Statement of Intent* (Ladysmith, BC: Hul'qumi'num Treaty Group, 1993).

⁴² *Ibid.*

⁴³ The treaty process requires that a first meeting of the negotiating parties take place within 45 days of submission of the SOI.

first three stages are relatively simple steps designed to prepare the parties for the more substantive negotiations that come later: the early stages involve the submission of the SOI (stage one), establishing that the parties are prepared to begin negotiations on a comprehensive treaty (stage two), and the negotiation of a ‘framework agreement’ (stage three), which is essentially a table of contents that identifies the issues that are to be negotiated and included in the treaty agreement. By 1998 the Hul’qumi’num had reached stage four of the process, where substantive negotiations were to begin on the full range of issues (e.g., land and resources, financial arrangements, self governance) identified in the framework agreement. The Hul’qumi’num, again like most other indigenous groups in the treaty process, have found it difficult to move beyond this stage; indeed, a decade after entering this stage of the process the Hul’qumi’num remain in stage four negotiations with little indication that an ‘agreement-in-principle’—the end point of this stage, where the negotiating parties have reached agreement on all aspects of the framework agreement—was anywhere near at hand.⁴⁴ In this remainder of this section I explore the Hul’qumi’num experience with the BC treaty process, highlighting this group’s process of engaging with the treaty process and some of the challenges that Hul’qumi’num negotiators face in seeking to negotiate a treaty that would be acceptable to its communities.

Entering the Treaty Process: Defining Hul’qumi’num Identity, Territory, and Objectives

As noted above, entry into the BC treaty process requires the identification of an indigenous ‘claimant’ and a traditional territory that was to become the focus of

⁴⁴ Stages five and six involve, respectively, finalization and ratification of the agreement and the implementation of the final treaty.

negotiations. For the Hul'qumi'num, as no doubt it was for other indigenous groups, neither of these tasks was entirely straight-forward. The contemporary organization of indigenous groups in the province is complex, involving the overlay of traditional forms of indigenous identity and governance (e.g., 'houses' and 'clans' where authority was exercised "through complex patterns of matrilineal or patrilineal systems") with systems imposed from outside, the most important of which is the band council system which was instituted by the federal government in the late nineteenth century.⁴⁵ The co-existence of traditional and imposed systems of political organization is further complicated by the formation of 'tribal councils', which are essentially political alliances among indigenous groups which share similar cultural backgrounds and territorial claims. Given this complexity, and the limited understanding non-indigenous peoples had (and have) of the nature of indigenous cultural and political organization, the architects of the treaty process argued that it should be left to indigenous peoples to decide how they wished to organize themselves for treaty negotiations.⁴⁶

The identification of an entity called 'Hul'qumi'num' (or 'Hul'qumi'num peoples') that was to enter into treaty negotiations with Canada and British Columbia involved the coming together of a number of indigenous groups or communities. Certainly, the six groups that eventually came together to constitute the Hul'qumi'num Treaty Group are strongly linked together in a variety of ways, including through commonalities of language, culture, history, attachments to place, and strong kinship ties; in this way, their

⁴⁵ RCAP, *Volume 1: Looking Forward, Looking Back* (Ottawa: Minister of Supply and Services, 1996), 274-276.

⁴⁶ BCCTF, *The Report of the British Columbia Claims Task Force*, 19.

joining together to pursue treaty negotiations was something ‘natural’.⁴⁷ However, each group is also distinct, something that is evident in Hul’qumi’num oral histories which describe the Cowichan and Chemainus peoples as having distinct ancestors, *Siyóletse* (or Syalutsa) and *St’êts’en* (or Stutsun) who fell from the sky, and of Big Sicker Mountain as the boundary between Chemainus and Cowichan territories.⁴⁸ In linguistic terms, a distinction can also be made between Cowichan and Chemainus peoples, although this is blurred by the long history of interchange between these two groups.

Although contemporary elders argue that there are no “borders” or “fences” between the different Hul’qumi’num communities and stress the importance of inter-family connections between all Hul’qumi’num peoples⁴⁹, it is clear that there are tensions within and between the six groups that make up the Hul’qumi’num and a considerable amount of effort is dedicated to creating and maintaining unity between these groups. This unity is to some extent troubled by the lopsided constitution of the Hul’qumi’num identity, given that the Cowichan Tribes—itsself an entity made up of seven sub-bands or “tribes”—makes up about 60 percent of the Hul’qumi’num membership while the smallest group, the Lake Cowichan First Nation, constitutes less than one percent. There is, therefore, a pronounced asymmetry of power and influence within the treaty group, which creates a certain dynamic that requires continual attention. My intention here is not to explore in any depth the constitution of this Hul’qumi’num identity—a complex task beyond the scope of this study—or to call into question its legitimacy, but rather simply to point out that this is a social and political identity with a particular history. This

⁴⁷ Interview with Joey Caro, 17 January 2008.

⁴⁸ Rozen, *Place Names of the Island Halkomelem*, 128.

⁴⁹ Thom, *Coast Salish Senses of Place*, chapter 9.

identity was constructed with a specific goal in mind, the negotiation of a comprehensive modern treaty with Canada and British Columbia, and eventually, should such a treaty be finalized and implemented, the creation of a Hul'qumi'num government. Like any other similar social entity, it should not be seen as monolithic but rather as fractured along a variety of lines of social difference, including gender, age, class, and in this case allegiance to a particular indigenous community.

This fracturing within Hul'qumi'num communities presents challenges for the treaty group, as they seek to pursue a treaty that addresses the needs and concerns of all the groups it represents. Kathleen Johnnie, the treaty group's Impact Assessment Coordinator—a position that involves assessing the impact of proposed development projects on Hul'qumi'num communities—describes some of the challenges she faces in trying to get the different Hul'qumi'num groups to work together and to speak with one voice to government when it comes to development projects proposed in Hul'qumi'num territory:

I'm not even worried about getting government to hear us yet, I'm worried about getting our six First Nations to work together. Because we have some very traditional First Nations that are very, no environmental damage whatsoever, we have some very contemporary First Nations that are very pro business-minded, very pro let's jump on board, let's use this [proposed development project] to better our community. So you have extremes, there are traditional and very contemporary First Nations, and they do not view the same [development] application with the same eye.⁵⁰

Johnnie argues that this lack of cohesion, not only between the different Hul'qumi'num First Nations but also within each individual First Nation, hinders effective action on a number of fronts. Thus, a key task is to bring these disparate elements together and find common positions from which to organize and speak.

⁵⁰ Interview with Kathleen Johnnie, 13 December 2007.

The mapping out of a Hul'qumi'num traditional territory, to be identified in the SOI as the object of political negotiation, was also far from a straight-forward task. Brian Thom, an employee of the treaty group who was involved in the revision of the Hul'qumi'num territorial map in 2001, has described the challenges associated with producing such a map.⁵¹ The requirement that the Hul'qumi'num map out such a territory within a Western cartographic framework, notes Thom, brought into focus the differences between Western and Coast Salish ideas about territories and boundaries. The treaty process required that the Hul'qumi'num create a map with clear and unambiguous lines to indicate the boundary between their traditional territory and that of neighbouring groups. While such boundary lines might make sense to Western eyes, accustomed as we are to clear boundaries between properties and political entities, for the Coast Salish, who tend to see boundaries as more flexible or permeable, the idea of such clearly delimited boundaries was a matter of considerable concern. Hul'qumi'num elders were particularly cognizant of the risks of this mapping project; the definition of such narrowly delimited social entities and territorial boundaries, a number of elders pointed out, disrupted understandings of themselves, and of their world, which are based on connections to other peoples and other places. These Hul'qumi'num elders see themselves as continually moving back and forth throughout the Coast Salish world, traveling across all sorts of boundaries created through colonialism and its aftermath (including the boundary between Canada and the United States) in the formation and maintenance of relationships with other Coast Salish families, communities, and territories. In Coast Salish culture,

⁵¹ A number of Hul'qumi'num elders felt that the original SOI map (the one submitted in 1993) excluded a number of important areas, and this led to the 2001 effort to redefine and remap Hul'qumi'num territory. For a fuller description of this remapping project, see Thom, *Coast Salish Senses of Place*, 380-404.

family ties, created through marriage and traced over generations of descent, serve to link families and communities together, and blur the boundaries between territories. Through such family connections, Thom points out, Hul'qumi'num members gain access to other territories, including rights to gather resources.⁵²

The requirement that a map of their traditional territory be drawn, with boundary lines cutting across their connections to other peoples and places they felt connected to, was unsettling and worrisome. They feared that such connections, so central to their sense of themselves as a people, might be severed or damaged by the mapping out of a distinct Hul'qumi'num traditional territory. A number of elders saw parallels, notes Thom, between this contemporary mapping process and colonial processes of defining Indian bands and confining these to closely delimited Indian reserves, which ultimately functioned to divide Coast Salish people from each other and to disperse their political and economic power.⁵³ There was a sense that the federal and provincial governments, in setting this precondition for entry into the treaty process, were seeking to do something similar, that is to “divide and conquer” the different Coast Salish groups. The process of mapping out these distinct traditional territories worried one elder—many of which would overlap with each other, since these groups have long shared certain areas—would create “bad feelings” amongst groups which were natural allies in so many ways.⁵⁴

Given these concerns, the definition of a distinct Hul'qumi'num traditional territory was undertaken with great caution. The challenge, Thom notes, was to come up with a map that balanced the Hul'qumi'num's “everyday, community-based interest in ideals of

⁵² Thom, *Coast Salish Senses of Place*, 289.

⁵³ *Ibid.*, 390.

⁵⁴ *Ibid.*, 403.

sharing amongst kin with the power of their proprietary and jurisdictional interests in territory.”⁵⁵ The representation of Hul’qumi’num territory had to perform several functions: it had to be intelligible within Western bureaucratic institutions—i.e., within agencies of the federal and provincial governments responsible for treaty negotiations—and yet it had to also reflect the Hul’qumi’num’s own understanding of themselves, the world they lived in, and their complex interconnections to people and places both near and far. The solution came in the form of a map that showed a Hul’qumi’num “core” territory—an area covering about 350,000 hectares of southeastern Vancouver Island, the southern Gulf Islands, and extending to the lower reaches of the Fraser River—situated within a more extensive “marine” territory (Figure 7.1). The core territory corresponds to the traditional territory identified in the Hul’qumi’num Statement of Intent under the BC treaty process. This is the area to which the HTG has expressed aboriginal title interests (including exclusive and joint title lands). These are the core land and marine areas used by Hul’qumi’num peoples to meet economic, social, and cultural needs. The marine territory—a region extending from the northern reaches of the Georgia Strait, inland along the Fraser River up to Yale, out to the western limit of the Juan de Fuca Strait, and south through Puget Sound to Everett in Washington State—is that larger area which

⁵⁵ *Ibid.*, p. 391.



Figure 7.1: Hul'qumi'num 'core' and 'marine' territory. (Reprinted with permission of the Hul'qumi'num Treaty Group.)

encompasses the various peoples and places the Hul'qumi'num are connected to, including areas to which they have travelled to get food and trade with other groups. This larger area, which includes areas that are shared with other Coast Salish groups, reflects a territory where the Hul'qumi'num have exercised their aboriginal rights.⁵⁶

This mapping of a core and extended territory, writes Thom, represents the efforts of contemporary Hul'qumi'num leaders "to represent the complexities of Coast Salish territorial assertions in the political milieu of negotiating their vision of place within the constitutional and institutional framework of the Canadian state."⁵⁷ The drawing of this map, in other words, represents an effort to resist the erection of fixed and constricting boundaries around the Hul'qumi'num social identity. This is an effort, as Julie Cruikshank might have it, to reconcile state narratives "about land as bounded units to be owned and operated for profit" with indigenous understandings of space where "stories crosscut maps."⁵⁸ The narratives here are those Hul'qumi'num stories which establish the connections between the Hul'qumi'num and neighbouring Coast Salish groups, and which emphasize the ethic of sharing (sharing places and names, for example) rather than exclusion.

The identification of an indigenous claimant and the mapping of a traditional territory, the two essential requirements admitting entry into the treaty process, symbolize the centrality of the land question to contemporary treaty making in British Columbia. There is little doubt that, for the Hul'qumi'num, a primary motivation for entering the treaty

⁵⁶ *Ibid.*, p. 397.

⁵⁷ *Ibid.*, p. 401.

⁵⁸ Julie Cruikshank, *The Social Life of Stories: Narratives and Knowledge in the Yukon Territory* (Lincoln: University of Nebraska Press, 1998), 16. Cited in Thom, *Coast Salish Senses of Place*, 401.

process was to seek a resolution of the land issue. The many other issues which form an integral part of a modern comprehensive treaty—issues to do with indigenous self-government and the post-treaty relationship between indigenous governments and the Crown, for example—while also important, were all seen as somewhat secondary to, or as flowing from, the land issue, at least in the early stages of the negotiation process. More particularly, the recovery of lost lands was, and to a great extent remains, the central burning issue at the treaty table for many Hul'qumi'num people. Hul'qumi'num leaders and community members seek, through the treaty process, to have their aboriginal title—their rights to land and resources in their traditional territory—fully recognized.

In their discourse, Hul'qumi'num leaders and members reiterate that they have never sold or ceded their land and thus assert that their aboriginal title remains unextinguished and undiminished. They relate the history of the land issue from their perspective, noting that James Douglas had agreed on several occasions during his tenure as Governor of the colony of Vancouver Island to purchase their lands from them but had reneged on this promise, and that the subsequent taking of their land by white settlers, under the authority of the Crown, was unjust and unlawful. Entry into the treaty process, then, was governed by what Brian Thom calls “a calculus of loss”, meaning that the Hul'qumi'num sought, and continue to seek, not only recognition of their continuing rights to the land and of the historical injustices they have suffered in the loss of these lands, but also some sort of calculation of the extent of this loss, of all of the resources and opportunities that have been lost over the last 150 years.⁵⁹ “I always got the sense,” reports Thom

that there was this calculus, by speaking with the leaders who were working [on the land claim] at the time, there was always a calculus of loss that was considered. And

⁵⁹ Interview with Brian Thom, 11 January 2008.

not only this issue of recognition—you know, they never gave the land up—but all of these resources and all of these opportunities have been lost over the 150 years and there needed to be some sort of calculation of that loss and compensation for it.⁶⁰

Thus, the Hul'qumi'num seek, through the treaty process, the settling of this sum through the return of their lands and through some form of compensation for the losses they have suffered.

In the late 1990s, after making limited progress in negotiating an agreement-in-principle and coming to the conclusion that they were not sufficiently prepared to negotiate effectively, the Hul'qumi'num temporarily withdrew from the treaty process. At this point the treaty group was restructured, the territorial map was redrawn, and a clearer mandate was sought from the community. What emerged from a process of consultation with Hul'qumi'num communities was the confirmation that land was the most critical priority in treaty negotiations. After this period of consultation and restructuring, and as the Hul'qumi'num returned to negotiations, the treaty group reported that “[o]ur people want title recognized to 100% of Hul'qumi'num territory, and we want greater control over or compensation for lands and resources within that territory.”⁶¹ The “calculus of loss” had yielded its sum, and the Hul'qumi'num treaty negotiators had been given a new mandate—that of “getting to 100%.” This mandate presented a major challenge for Hul'qumi'num negotiators, given that the treaty template favoured by federal and provincial governments typically sought to limit the amount of land included in a treaty settlement to about five percent of an indigenous group's traditional territory. Recognizing that the treaty process would never yield the return of 100 percent of the lands in their traditional territory, at least not in the form of outright

⁶⁰ *Ibid.*

⁶¹ HTG, *Getting to 100%* (Ladysmith, BC: Booklet Produced by the Hul'qumi'num Treaty Group, no date).

ownership of these lands, the Hul'qumi'num negotiators sought other ways to maintain some connection to, and to benefit from, 100 percent of their territory. Getting to 100 percent through treaty, Hul'qumi'num negotiators argued, could be achieved through some combination of confirming ownership of lands (treaty settlement lands), negotiating Hul'qumi'num jurisdiction (including forms of shared jurisdiction) and access to lands and resources, sharing in the revenues derived from lands and resources in the territory, and receiving compensation for lands and resources that had been lost. This was the mandate that Hul'qumi'num negotiators brought to the table when treaty negotiations resumed in 2001.

The Problems with Private Land

The predominance of private land holdings in Hul'qumi'num territory—a legacy of the E&N Railway land grant—has emerged as a key challenge at the Hul'qumi'num treaty negotiation table. When treaty negotiations began in 1993 there was apparently little awareness within Hul'qumi'num communities, including among community leaders who initiated the treaty process, of the extent of private land throughout the territory. The understanding at that time, according to those who are leading the negotiation effort today, was that while much of the more accessible portion of the territory—land in the towns, in the valley bottoms, and along the coast—was held privately by non-indigenous peoples and families, most of the land in the more distant and mountainous part of the territory was held by the Crown.⁶² Based on this understanding, the Hul'qumi'num expectation (or hope) was that a good portion of the Crown land in the mountains would

⁶² Interview with Brian Thom, 6 October 2006.

be recovered through the treaty process and that compensation would be received for the loss of the more accessible, and more valuable, lands. It appears that there was very little understanding or awareness within Hul'qumi'num communities at that time of the history of the E&N Railway land grant, or that virtually the entire Vancouver Island portion of their territory, from coastline to mountaintop, had been privatized at the time of the building of the railway. Indeed, it was not until they returned to the negotiating table in the early 2000s that the Hul'qumi'num began to gain a clearer picture of the legal status of lands in their territory, and began to understand the magnitude of the private land issue that faced them.

The picture that emerged, as the Hul'qumi'num Treaty Group researched the status of lands in the territory, was disconcerting. Not only was most of the land in low lying areas—along the coastal plain and in valley bottoms—in private hands, but most of the mountainous land was also privately held. Whereas private holdings in low lying areas tended to be relatively small in size, consisting largely of urban and rural parcels owned by individuals, the pattern in the mountains was much different. In the mountains, which comprise the bulk of the territory on Vancouver Island, they found that a small number of landowners owned vast tracts of land. In fact, most of the land in the mountainous portion of the territory, more than 190,000 hectares, was held by just three forest companies, which managed the land primarily for the production of timber. The pattern of land ownership on the Gulf Islands portion of the territory resembles that of the more developed, lowland portions on Vancouver Island; private land predominates here as well, but mostly in smaller parcels. This portion of the territory, the Gulf Islands, was not part of the E&N land grant, and so the land here came into private hands through pre-

emption by non-indigenous settlers, the awarding of Crown grants, and the workings of other colonial and postcolonial land policies. The overall picture that emerged from the treaty group's research on land status was of the contemporary territory being largely a private realm. Today, approximately 84 percent of the territory, more than 280,000 hectares, is held in private hands. Almost 60 percent of the territory is owned by three large forest companies, and fully one-third of the territory is owned by the TimberWest Forest Corporation, the single largest landowner. Only 14 percent of the territory (less than 50,000 hectares) is Crown land, and only 11.6 percent is made up of Crown land that is not already committed to parks and protected areas (Table 7.1). Most of the non-protected Crown land that does exist is found in the mountainous portion of the territory on Vancouver Island; these are lands originally included in the E&N land grant but which reverted to the Crown for various reasons (e.g., non-payment of taxes). The extent of private lands in the territory is illustrated by Figure 7.2.⁶³

The extent of private land in the territory poses a major problem for treaty negotiations in Hul'qumi'num territory in a number of ways. The first problem is that, under the BC treaty process, private lands are excluded from the negotiation process. Although the issue was not specifically addressed in any of the recommendations of the BC Claims Task Force, early in the process the federal and provincial governments made clear their perspectives on this question: private lands would not be on the table for negotiation. In a 1995 paper outlining its position on treaty negotiations, for example, British Columbia asserted that it would not "expropriate or interfere with privately owned

⁶³ HTG, *Shxunutun's Tu Suleluxwtst, In the Footsteps of our Ancestors: Interim Strategic Land Plan for the Hul'qumi'num Core Traditional Territory, 2005* (Ladysmith, BC: Hul'qumi'num Treaty Group, 2005), 19.

LAND STATUS	Land Area (ha)	Percent of Territory
Indian Reserves	6,400	1.9
Crown Lands	4,7647	14.2
Other Crown	38,823	11.6
Parks and Protected Areas	8,824	2.6
Major Private Land Holdings	197,866	59.0
Timberwest	114,129	34.0
Island Timberlands	65,255	19.4
Hancock Timber Group	13,107	3.9
North Cowichan Municipal Forest	5,374	1.6
Other Private Land Holders	83,665	24.9
Total HTG Core Territory	335,578	100.0

Table 7.1: Land Status in Hul'qumi'num Territory.

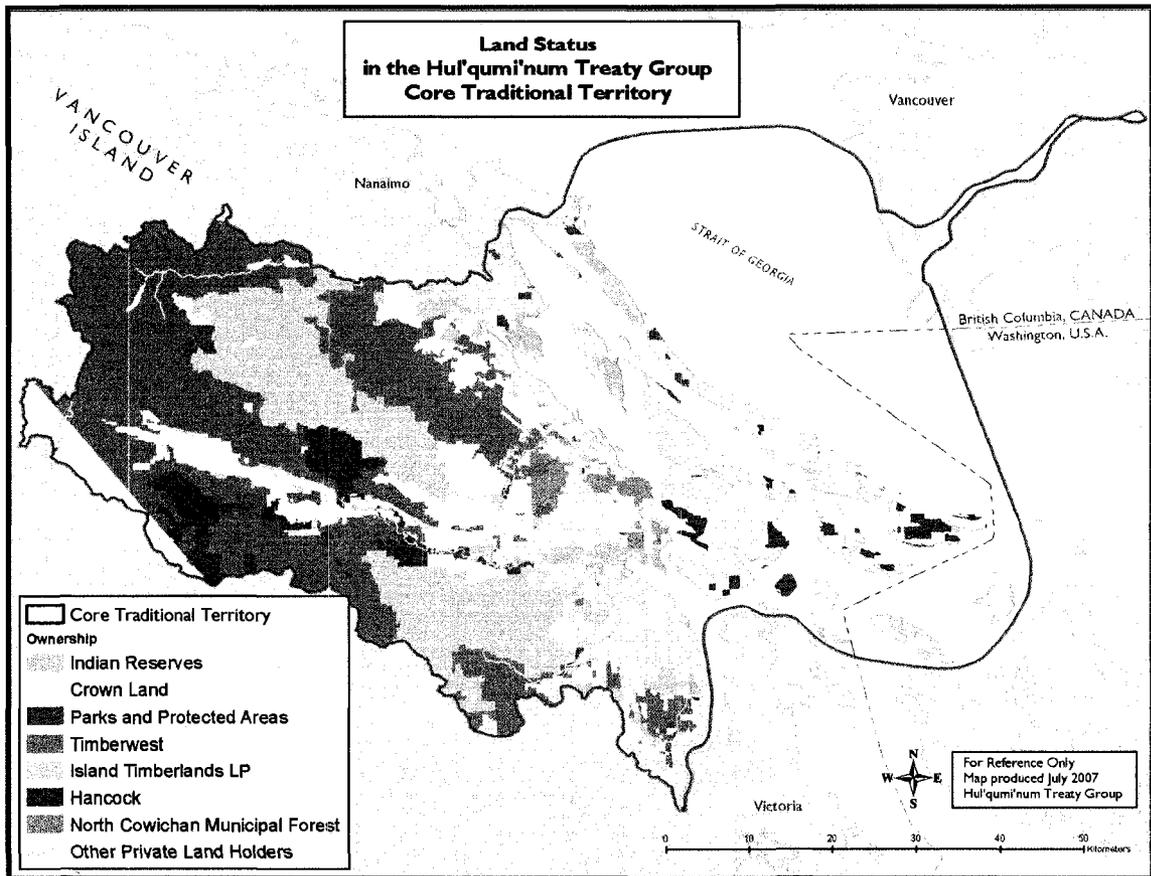


Figure 7.2: Land status in Hul'qumi'num territory, showing extent of Crown lands (including parks and protected areas), Indian reserves, and various private lands. (Reprinted with permission of the Hul'qumi'num Treaty Group.)

lands to conclude treaties.”⁶⁴ Furthermore, it noted that it would avoid, whenever possible, any “disruption to existing interests, including interests held by individuals, corporations, or local governments”.⁶⁵ The BC Liberals used the 2002 treaty referendum to further entrench the rights of private property holders, as well as those who hold private interests in Crown land, in the treaty process.⁶⁶ The issue of private land was one of the eight questions included in the BC Liberal government’s 2002 treaty referendum. Those who participated in the referendum—about 763,500 people, or 36 percent of eligible voters, actually returned their ballot—were asked to say ‘yes’ or ‘no’ to the following statement: “Private property should not be expropriated for treaty settlements.” Not surprisingly, an overwhelming majority (approximately 90 percent) of those who participated in the referendum (representing about one-third of those who were eligible to vote in the referendum) agreed with this statement. The Province used the vote to incorporate this principle, along with seven others that received the support of those who participated in the referendum, into the Province’s treaty negotiations mandate.

It should be noted that some indigenous groups involved in the treaty process have also stated their intention to respect the rights of private property holders. When the Nuu-chah-nulth (an indigenous group whose territory encompasses much of the west coast of Vancouver Island) first entered the treaty process in 1994, for example, they indicated that they would recognize the rights of fee simple title holders that were already

⁶⁴ British Columbia, *British Columbia’s Approach to Treaty Settlements, Lands, and Resources* (Victoria: Province of British Columbia, 1995), 3-5.

⁶⁵ *Ibid.*

⁶⁶ Private interest in Crown lands includes rights to lands and resources (e.g., timber, minerals, etc.) held by private companies or individuals through various arrangements (e.g., permits, licences, leases).

established at that time in their territory.⁶⁷ Other indigenous groups, particularly those whose territories include only small amounts of private land, have made similar commitments to respect existing private land holdings. However, a number of other groups, particularly those whose territories lie in more developed parts of the province (where private land holdings are more common and extensive), have challenged the idea that private lands should be excluded from treaty negotiations. For example, the Musqueam, a group whose territory lies largely within the highly urbanized lower mainland region, has long resisted the exclusion of private land from the treaty process. Since becoming aware that 84 percent of the land in their traditional territory is in private hands, the Hul'qumi'num have also sought to have private lands considered as part of the negotiation process.⁶⁸ It is important to note that neither of these groups are necessarily seeking the expropriation of private lands, but rather wish to have these lands taken into consideration when the treaty is being negotiated.

Although private lands are not on the table for negotiation, this does not mean that private lands may not ultimately contribute in some way to a treaty agreement. Both the federal and provincial governments have agreed that privately owned lands could be associated with treaty settlements in the sense that the voluntary sale of private land (to the government, for example) can free up lands which can then be transferred to an indigenous group as part of a treaty settlement package.⁶⁹ Thus, under such a 'willing buyer-willing seller' scenario, the Hul'qumi'num could conceivably regain control over a significant portion of their traditional territory through a treaty. The way that this would

⁶⁷ McKee, *Treaty Talks*, 47.

⁶⁸ Morales, "New Treaty, Same Old Problems."

⁶⁹ Canada, *British Columbia Treaty Negotiations: The Federal Perspective* (Vancouver: Federal Treaty Negotiations Office, 1995).

happen is that money that would form part of the sum paid to the Hul'qumi'num as part of a treaty settlement would be used to buy land for them. Here is where the second big problem comes into the picture: one major challenge in making such a 'willing seller-willing buyer' deal lies in the cost of the land in this region. Real estate prices in Hul'qumi'num territory are among the highest in the province, and this is particularly true for lowland and coastal areas (including on the Gulf Islands) where Hul'qumi'num historic attachments to place are strongest.⁷⁰ In a study conducted for the Hul'qumi'num Treaty Group in 2003, I estimated that it would cost between \$243 and \$357 million to buy enough land to meet only the most basic long-term (over a 100 year period) land needs of Hul'qumi'num communities.⁷¹ This amount of land, estimated at between 2100 and 2900 hectares, would address only basic community land needs; that is, land required for housing, community infrastructure (roads, schools, etc.), and for protection of a number of relatively small areas for cultural and ecological use. It would not include lands that would be needed to meet the long-term economic needs of Hul'qumi'num communities. Given that real estate prices in the region have increased by approximately 20 percent each year between 2004 and 2007, the cost of purchasing just this small

⁷⁰ A study conducted for the Hul'qumi'num in 2003 noted the great variation in real estate values in the territory, ranging from a low of \$290 per hectare for forest land in mountainous regions to \$7 million per acre for fully developed waterfront properties. See: Jana Kotaska, *Hul'qumi'num Land Selection Study: Volume II: Land and Resource Assessment* (Victoria: University of Victoria: POLIS Project on Ecological Governance, 2003), 63.

⁷¹ The amount of land required to meet basic community needs over the long-term was estimated to be between 2091 and 2897 hectares. See: Brian Egan, *Hul'qumi'num Land Selection Study: Volume I, Community Lands* (Victoria: University of Victoria: POLIS Project on Ecological Governance, 2003), 89-100.

amount of land today (in early 2008), in the more developed part of the territory, would be approximately \$500 to \$750 million.⁷²

In addition to the community lands described above, the Hul'qumi'num also seek to regain control over a larger extent of land in their territory in order to meet the long-term economic needs of their communities. They would likely seek a mix of different land types—forest, agricultural, recreational, commercial/industrial, residential—so as to provide for a variety of economic activities. The costs of purchasing such lands from private owners, in a quantity that would meet Hul'qumi'num expectations, would be high. The cost would be tempered to some extent by the lower costs of land in more remote and mountainous parts of the territory; on a per-hectare basis, for example, private forest land in the region can be purchased at a fraction of the cost of property in more developed areas, such as in valley bottoms and along the coastline. Nevertheless, given their desire to acquire a mix of land types, including extensive tracts of land in more developed parts of the territory, the cost of purchasing enough land on a 'willing seller-willing buyer' basis to address the Hul'qumi'num's long-term economic needs would certainly equal, if not exceed, that required to meet their long-term basic community lands needs. The cost to purchase enough land to meet all Hul'qumi'num expectations in a treaty deal, including land for basic community and economic development purposes, would probably exceed \$1 billion. Of course, if the Crown was willing to transfer a significant amount of Crown land to the Hul'qumi'num as part of a treaty agreement, the amount of private land that would have to be purchased on a 'willing buyer-willing

⁷² Current real estate prices derived from sales data for Cowichan region, available from the Vancouver Island Real Estate Board. See: <http://www.vireb.com/index.php>

seller' basis could be reduced and this could also reduce the amount of cash required to reach agreement on the land issue.

The Hul'qumi'num, then, find themselves in a difficult position at the treaty table, hemmed in on all sides by private land and constrained by the Crown's approach to treaty negotiations which fails to take into account the implications of this colonial history and geography. The lack of Crown land in the territory greatly restricts options for selecting lands to be included in a treaty settlement, something not faced by most other indigenous groups in the province; 95 percent of the province is Crown land, so most other groups have a large area to select from. The second challenge relates to the high price of land in the territory, a situation which the Crown seeks to use to its advantage in calculating land and cash components of a treaty agreement. Robert Morales describes the Hul'qumi'num perspective on this question:

... we are told at the [treaty] table, by government, ... that because Hul'qumi'num people live in a region of the province where the land is very expensive, that the treaty envelope is only so big and therefore the result of that is you only get a small amount of land because it is so expensive. Well the flip side of that argument has to also apply: you can't say, well on the one hand you are only going to get a little bit of land because your land is so expensive, but on the other hand, on the compensation, if that's what they are going to call capital transfers, compensation, you are going to be treated like every other First Nation in British Columbia, and it's going to be on a per capita basis of \$35,000 to \$45,000 per person. Well it doesn't really make sense that we would sign-off on any claims that we have if the land is worth a higher value. So the government wants to have their cake and eat it too. They want to give you a little bit of land because say your land is so expensive but they don't want to give you more compensation for it, they want to give it to you just like everybody else. So they really are trying to push us into that corner.⁷³

Relegated to the margins through colonization and dispossession, the Hul'qumi'num entered the treaty process hoping to find the space they need to move away from poverty

⁷³ Interview with Robert Morales, 21 November 2006.

and dependency. So far, it seems, the Crown's approach to treaty negotiations has served more to close off and than open up such space.

Conclusion: History, Geography, and the Colonial Burden

It is clear that the negotiating parties at the Hul'qumi'num treaty table are still far from reaching agreement on two of the key elements of any treaty agreement: land and cash. To date, the Crown seems only willing to offer about half as much land as the Hul'qumi'num are seeking. The parties are even further apart on the question of how much cash would flow to the Hul'qumi'num through a treaty (referred to as 'capital transfer' in treaty-speak): in this matter, the amount that the federal and provincial governments seem willing to offer is roughly one-quarter of what the Hul'qumi'num feel should be paid to them in recognition of the loss of their lands and resources.⁷⁴ The large gap in expectations between the parties on the question of land and cash to be included in the treaty reflects very different understandings of the purpose and meaning of the treaty process. From the outset, the federal and provincial governments have sought to frame the treaty process as a 'forward-looking' process, where the parties get together and seek to negotiate an agreement that will allow everyone—indigenous and non-indigenous peoples, and their respective governments—to live together in a future free of conflict over the question of who actually holds title to the land. In the words of the BC Claims Task Force, these were to be 'political negotiations' with the primary goal being to

⁷⁴ Interview with Brian Thom, 11 January 2008. While the Crown has not made a formal offer of land and cash to the Hul'qumi'num, one can assume that such an offer would be in line with that offered to the Tsawwassen. Based on the Tsawwassen template, the Crown would likely offer the Hul'qumi'num a treaty deal which included about 12,500 hectares of land and \$250 million in cash.

establish a new relationship between indigenous peoples, Canada, and British Columbia.⁷⁵ Negotiations were to be completely voluntary and the subject and object at the centre of the negotiation process, the self-identified indigenous group and the traditional territory identified in the group's SOI, were to be accepted into the process without questions being asked. With this approach to treaty making, the Crown has shown little interest in the particularities of the peoples and places with whom they are negotiating, seeking instead to impose a uniform formula at each treaty table; each indigenous group involved in the process was to be offered a certain amount of land and cash (calculated on a per capita basis) and a range of self-government powers, usually with a few other benefits thrown in to sweeten the pot (e.g., specific allocations of natural resources, some limited forms of co-management).

As negotiations proceeded, however, a number of indigenous groups began to express concern about the standardized approach being adopted by provincial and federal negotiators, and the lack of attention being paid to the particular histories and geographies that marked their territories and that shaped their relationships with the Crown. Unlike the Crown, they tended to see the recognition of their histories and geographies as a key part of the treaty negotiation process. They sought, in other words, a process that looked backwards as well as forwards, a process that would recognize the myriad injustices—the loss of their lands and resources, the suppression of their culture, the imposition of foreign legal and political regimes—that had shaped their lives, their identities, and their territories. From their perspective, treaty negotiations should be grounded in the recognition of their particular histories and geographies, and final treaty

⁷⁵ BCCTF, *The Report of the British Columbia Claims Task Force*, 8.

agreements would reflect and address the losses of the past. The Hul'qumi'num, then, came to the treaty table with a 'calculus of loss' in mind, a sense of what had been taken from them and what they should be able to regain—how they should be compensated, that is, for the historic injustices that have been thrust upon them—through treaty. The Hul'qumi'num were certainly not alone in this view. In its review of the treaty process in 2001, the BCTC pointed to the issue of compensation as a key point of contention in the treaty process more generally. While indigenous groups have argued that the issue of compensation is central to the project of developing a new relationship and thus should be addressed at the treaty table, Canada and British Columbia have steadfastly refused to consider this, insisting that compensation "is a legal concept and so has no place in a political negotiation, and that treaties are about the future, not about the past."⁷⁶ The matter of compensation, along with the particularities of history and geography, simply did not fit into the template the Crown had developed for treaties.

The Hul'qumi'num find themselves, like so many other indigenous groups in the province, stalled at the treaty table, stuck between their desire for a recognition of the past and the Crown's insistence to focus on the future. They have sought, without success, to bring the particular history and geography of their people and territory to the treaty table. They have sought to introduce, for example, the matter of the E&N Railway land grant to the table, and to discuss the terms of compensation for this privatization of their territory, only to be told that history and the issue of compensation can not be addressed in treaty negotiations. This refusal to look at the past speaks volumes about the treaty process and it helps explain why, after almost 15 years and over \$1 billion spent on

⁷⁶ BCTC, *Looking Back, Looking Forward*, 8.

negotiations at some four dozen treaty tables spread across the breadth of the province, only two indigenous groups have signed agreements with the Crown. The process is so highly constrained within the frames erected by the Crown—not only the refusal to acknowledge the impacts of the province’s colonial history and geography but also the insistence that all treaty agreements conform to a rigid and pre-determined template—that it can hardly be considered a process of negotiation. As Robert Morales, Chief Negotiator for the Hul’qumi’num Treaty Group and spokesperson for the Unity Protocol Group, a coalition of indigenous groups who seek to reform the treaty process, has put it, the reality “is that Canada and British Columbia have imposed rigid positions with pre-defined outcomes that are contrary to the sincere, good-faith negotiations that are a requirement for this process to be a success.”⁷⁷

The legacies of British Columbia’s colonial past continue to shape contemporary struggles over land and resources in various ways. In this chapter I’ve sought to explore some of the ways that these legacies inform and underlie the BC treaty process. The massive privatization of land in Hul’qumi’num territory, through the E&N land grant, and the effects of this on contemporary efforts to negotiate a treaty in this area is one clear example. Another clear example lies in the Crown’s simplistic and rigid approach to treaty negotiations, where all indigenous groups are to be treated exactly the same and where each treaty agreement must adhere to a strict formula in terms of what is to be

⁷⁷ Press Release, January 18, 2007. ‘First Nations Unity Protocol Agreement.’ Announcing that 5 more First Nations have signed on to the Unity Protocol Agreement, bring to 45 the number of First Nations (representing more than 25,000 First Nations people from across British Columbia) that have signed on to this agreement. These groups have pledge to work on developing “a proactive solution to remove the barriers that have slowed negotiations at many treaty tables across the province.” Source: accessed on February 26, 2007 at: <http://www.hulquminum.bc.ca/>

offered (e.g., land, cash, resources) to indigenous groups. While this “cookie-cutter” approach may be laudable in terms of the desire to treat all indigenous groups equally (on a per capita basis), it overlooks important differences that exist between such groups. The effects of colonialism and dispossession were different in different places, and it is important that the treaty group recognize this. It is important, I believe, that contemporary efforts to resolve indigenous land claims be grounded in an understanding of the histories and geographies of the different indigenous territories in British Columbia and in an understanding of how the legacies of these particular histories and geographies continue to be felt today. One thing is certain, the burdensome legacies of these colonial histories and geographies are not felt equally by all residents of the province, but rather are borne disproportionately by indigenous peoples. .

Hamar Foster has suggested that the fundamental issue at the heart of the treaty process has always been the question of “how are we going to share the burden of history our colonial past has bequeathed to us.”⁷⁸ Drawing on the language of law and justice, he continues, this question may be rephrased as follows: “how do we acknowledge the injustice and illegality of what happened in British Columbia but fashion a solution that is both workable and just in our own time?”⁷⁹ Upon closer examination and reflection, it is difficult not to see the BC treaty process, in its current form at least, as a deeply flawed and unfair endeavour. On the one side of the table sit the representatives of the Crown, with seemingly unlimited resources at their disposal (courtesy of Canadian and British Columbian taxpayers) and under little pressure to move from their entrenched positions.

⁷⁸ Hamar Foster, “Getting There!” in *Speaking Truth to Power: A Treaty Forum* (Ottawa: Minister of Public Works and Government Services, 2001), 165.

⁷⁹ *Ibid.*

On the other side are representatives of indigenous communities, among the most impoverished communities in the province and increasingly indebted to the Crown (to pay for negotiations), under intense pressure from their members to produce a treaty that will provide them with desperately needed benefits (e.g., land, cash, self-government). Indigenous negotiators are also under intense pressure from community members who fear that a treaty, by extinguishing their aboriginal title, will mean giving up forever any meaningful connection to their larger territory. Given this picture, it is not difficult to understand why there is such widespread dissatisfaction among indigenous peoples about the treaty process, and why the process has reached its current impasse. If, as Hamar Foster has suggested, the fundamental purpose of the treaty process is to figure out how “to share the burden of history our colonial past has bequeathed us”, then it has so far been a dismal failure. The treaty process has largely failed even to acknowledge this colonial past, let alone distribute the burden of this load more equitably among all those who call British Columbia home.

CHAPTER 8

'Ten-dollar Words' and the 'Desperation Dig': Reconciliation Talk

On Monday, October 1, 2007, at a special ceremony held on the grounds of the provincial legislature in Victoria, Steven Point was sworn in as the new Lieutenant Governor of British Columbia. It was, the media outlets assured us, an “historic day” as Point—a prominent member of the Sto:lo Nation and former head of the BC Treaty Commission—became the first indigenous person ever to hold this august, yet largely ceremonial, post. At the swearing-in ceremony, Point was clothed in the Lieutenant Governor’s viceregal attire—“a gold-brocade Windsor ensemble complete with ceremonial sword and a bicorn hat with ostrich feathers”¹⁰—as he met Gordon Campbell, the Premier of British Columbia, and inspected a parade of the RCMP Honour Guard on the steps of the legislature. As many observers, including Premier Campbell, noted, the appointment of Point to the Lieutenant Governor post was heavy with symbolism. “It says all kinds of positive things about what’s happening in British Columbia,” Campbell said, “how the Crown, the government of Canada and the Province feel about reconciliation.”¹¹

At least some indigenous leaders felt that the appointment symbolized a significant change in attitude on the part of the provincial government, and perhaps of the province more broadly, towards the province’s first peoples. British Columbia’s first Lieutenant Governor was Joseph Trutch, appointed when the province joined Canada in 1871, a man

¹⁰ Justine Hunter and Ian Bailey, “A Day of History, With Some Minutes of Anger: B.C. Premier Fumes after Hansard Instructed Not to Make Official Record of Swearing-in of Canada’s First Native Lieutenant-Governor,” *Globe and Mail*, 2 October 2007.

¹¹ Scott Sutherland, “Aboriginal Appointment a Symbol of Reconciliation, Premier Says,” *Globe and Mail*, 1 October 2007.

who has been described as an “archetypal colonialist” and who viewed indigenous people as more animal than human.³ In his role as commissioner of lands and works in colonial British Columbia, and later as Lieutenant Governor, Trutch was a key figure in the shaping of provincial policies that denied the recognition of aboriginal rights and title, and which minimized the allocation of lands and resources to indigenous peoples. Trutch was, one could say, an important part of the province’s foundation, built on the denial of aboriginal title, a foundation that remained in place, largely unshaken, for more than a century. Thus when viewed over the long sweep of British Columbia’s history, the transition from Joseph Trutch to Steven Point certainly represented, as was pointed out by Grand Chief Ed John, a member of the First Nations Summit political executive, “a dramatic change and shift.”⁴

Later that day, at the official swearing-in ceremony inside the legislature, Point vowed to fight against poverty and ignorance, and hoped that he could be an advocate “for better understanding among all peoples, for real reconciliation in our places of work and worship.”⁵ Point made repeated reference to the idea of reconciliation on the day of his appointment, noting that “reconciliation isn’t something that’s just going to take place in courtrooms, I hope, and certainly not going to take place just in negotiating rooms, but rather in the broader community, amongst all British Columbians.”⁶ Two weeks after Point’s swearing in, another prominent aboriginal leader was at the centre of another elaborate ceremony at the provincial legislature. As noted in the previous chapter, on

³ Fisher, *Contact and Conflict*, 162.

⁴ Jeff Rud, “First Nations Drums Welcome B.C.’s New Lieutenant-governor,” *Times Colonist*, 2 October 2007.

⁵ Hunter and Bailey, “A Day of History.”

⁶ *Ibid.*

October 15, 2007, Tsawwassen First Nation Chief Kim Baird delivered a speech to the provincial legislative assembly to mark the introduction of legislation to ratify her community's treaty agreement. Like Point, Baird would also make reference to the idea of reconciliation, asserting that, with the signing of the treaty, reconciliation had been achieved between Canada, British Columbia, and the Tsawwassen nation. Baird repeatedly referred to the notion of having achieved "true reconciliation" through the treaty, as if to distinguish this from some inferior or counterfeit brand that others might be peddling, and described the various characteristics that marked such an achievement. Baird asserted that, through the treaty agreement, the Tsawwassen were "decolonizing through accommodation of our differences, not assimilation", and this, she argued, was the "ultimate benefit of true reconciliation."⁷

As reflected in the utterances of Campbell, Point, and Baird, references to reconciliation are increasingly common in contemporary discussions of the relationship between indigenous and non-indigenous peoples in British Columbia. Such reference is particularly common by Campbell and members of his government—the agency with primary responsibility for aboriginal policy in the province, the Ministry of Aboriginal Relations and Reconciliation, has even been renamed to reflect this emphasis—but the term is also used by a number of indigenous leaders. It is clear that the notion of reconciliation between indigenous and non-indigenous societies has considerable potency in contemporary British Columbia. What is less clear is the meaning being attached to this term. What is it that is being reconciled between indigenous and non-indigenous peoples in British Columbia? And how is this reconciliation to be achieved?

⁷ British Columbia, *Hansard*, 15 October 2007.

In this concluding chapter, I explore this discourse of reconciliation and its possible meanings. Is British Columbia truly entering, as Baird and Campbell might have it, an age of reconciliation and decolonization? Or, as some critics suggest, is such talk little more than political rhetoric designed to obscure the continuing colonial relationship between indigenous and non-indigenous societies in British Columbia? I begin the chapter by briefly considering the emergence of reconciliation as a broader discourse, mobilized in many countries around the world (including in Canada), and how this discourse, and the various acts and practices associated with it, might be understood. I then turn to a closer examination of the notion of reconciliation as it has come to be used in the British Columbia context, including in Hul'qumi'num territory, and point out the different meanings that get attached to the term. My primary focus in this section, reflecting the overall emphasis in this study, is on the notion of reconciliation as it relates to questions about land and resources.

The Reconciliation Project: Addressing the Past, Rebuilding the Nation

The idea of reconciliation as a way of dealing with internal state conflict and injustice—including conflict and injustice in the recent as well as more distant past—and of rebuilding the nation, emerged in the late twentieth century. Particularly prominent was the case of South Africa where the transition from apartheid to a multi-racial democracy in the mid-1990s was eased through a national process of truth telling and reconciliation. Central to the function of the South African Truth and Reconciliation Commission, and to the work of similar commissions established in other nations, was the idea of coming to grips with violences and injustices of the past through the creation of a “social space” for

the public telling or confession of violent acts, on the part of state officials and other perpetrators of violence, and the granting of mercy and, in some cases, forgiveness on the part of the victims.⁸ Through this process, proponents of reconciliation processes have argued, the troubles of the past can be fully acknowledged, allowing formerly opposing factions, and the nation itself, to be healed and united, and paving the way for all parties to move forward together into a more hopeful future.⁹ Most truth and reconciliation processes have taken place in countries which have experienced recent violence between groups within national societies, particularly in Africa, Latin America, and Asia.

Reconciliation as a strategy to deal with historical injustice and rebuild the nation has also been taken up, to some extent, in settler societies. The most prominent example here is Australia, where the notion of achieving reconciliation between indigenous peoples and the wider society—and, in the process, of building a “united Australia”—came to the fore with the creation in 1991 of the Council for Aboriginal Reconciliation. Although the Council was disbanded in 2000, reconciliation efforts continue today in Australia, supported by a number of groups and initiatives. Reconciliation Australia, an independent, non-profit national organization whose mandate is “building and promoting reconciliation between Indigenous and non-Indigenous Australians for the well being of the nation”¹⁰ is one such group. Another important actor in the Australian context is the group Australians for Native Title and Reconciliation (or ANTaR), which is “a national network of mainly non-Indigenous organisations and individuals working in support of

⁸ John Paul Lederach, *Building Peace: Sustainable Reconciliation in Divided Societies* (Washington, D.C.: United States Institute of Peace Press, 1999).

⁹ Michael Humphrey, “Reconciliation and the Therapeutic State,” *Journal of Intercultural Studies* 26, 3 (2005): 203-220.

¹⁰ <http://www.reconciliationaustralia.org>

justice for Aboriginal and Torres Strait Islander peoples in Australia.”¹¹ The Australian experience with reconciliation has been a mixed one, with the idea welcomed and embraced by some—this support was perhaps most palpably demonstrated by a ‘Reconciliation Walk’ held in 2000 which attracted an estimated 250,000 participants¹²—even as it is contested or more provisionally accepted by others, including by the national government. Writing about the ‘official’ program of reconciliation during the 1990s, Damien Short has argued that the Australian government, in accordance with the interests of more conservative elements within Australian society, sought to define reconciliation in a very narrow way, so as to limit rather than expand aboriginal aspirations. Indeed, Short argues that this ‘official’ model of reconciliation in Australia should be understood “as but the latest phase in the colonial project.”¹³

Over the past decade, the concept of reconciliation has also become a more central part of discourse about indigenous issues in Canada. At the national level, the notion of reconciliation has most commonly, and most prominently, surfaced in recent discussions about the history of residential schools. For more than a century, roughly between the

¹¹ <http://www.antar.org.au/>

¹² In a postscript to her novel *The Secret River*, Australian novelist Kate Grenville writes about her participation in the reconciliation walk: “I was there for the same reason I suppose most people were: we were sorry about what had happened in the past, and wanted to acknowledge it. The walk was only a gesture, a piece of symbolism, but it was better than silence.” She describes how the walk, and particularly an encounter with an Aboriginal woman during the march, spurred her to explore her own relationship to Australia’s colonial history, which became a central subject of the novel.

¹³ Damien Short, “Australian ‘Aboriginal’ Reconciliation: The Latest Phase in the Colonial Project,” *Citizenship Studies* 7, 3 (2003): 291-312. Although it remains to be seen how the recent change in national government will affect reconciliation efforts in Australia over the longer term, the formal apology made to the nation’s indigenous “stolen generations”—delivered by Kevin Rudd, the new Prime Minister, in February 2008—is a hopeful sign.

1870s and the 1970s, tens of thousands of indigenous children from across Canada were taken from their homes and families and placed in residential schools run by the federal government, often in close cooperation with Christian churches. In recent decades it has come to the attention of the broader Canadian public that indigenous youth suffered various forms of abuse in the residential school system, not only repression of their language and culture but also physical and sexual abuse.¹⁴ In response to the coming to light of this national scandal, in 1998 the Canadian government issued a ‘Statement of Reconciliation’ in which it expressed its “profound regret for past actions” which contributed to “the erosion of the political, economic and social systems of Aboriginal people and nations” and committed itself to an ongoing process of reconciliation.¹⁵ In 2006, as part of a \$4-billion residential schools settlement agreement, the government of Canada agreed to the creation of a ‘Truth and Reconciliation Commission’ which would provide former students with a public venue to share their experiences of residential schools. One key goal of the commission is to shed light on this dark corner of Canada’s history. A second major objective, reconciliation between indigenous and non-indigenous people in Canada, will come—or so the theory goes—through talking openly about this shared history.¹⁶

¹⁴ John S. Milloy, *A National Crime: The Canadian Government and the Residential School System, 1879 to 1986* (Winnipeg: University of Manitoba Press, 1999).

¹⁵ The statement, which is posted on the web site of Indian and Northern Affairs Canada (http://www.ainc-inac.gc.ca/gs/rec_e.html), was part of the federal government’s ‘Aboriginal Action Plan’ which called for a renewed partnership with Aboriginal people based on recognizing past mistakes and injustices, the advancement of reconciliation, healing and renewal, and the building of a joint plan for the future. When it was released in 1998, the plan committed \$350 million to community-based healing processes for the victims of residential schools.

¹⁶ Catherine Rolfsen, “Reconciling the Truth,” *Edmonton Journal*, 3 June 2007.

There have also been other initiatives undertaken by the federal government in recent years, which, while not explicitly defined by the government as forms of reconciliation, could certainly be seen as part of a broader project of national reconciliation between indigenous and non-indigenous societies in Canada. Under the previous Liberal administration of Prime Minister Paul Martin, for example, the federal government contemplated a form of reconciliation with more narrowly defined socio-economic objectives. The goal here was to close the long-standing socio-economic gap between indigenous peoples and other Canadians. In late 2005, in the dying days of his tenure, Martin struck a deal with provincial and territorial leaders, and with the leadership of national indigenous groups, which called for the allocation of \$5 billion over ten years to a variety of social programs—primarily in education and training, health care, social services—designed to improve living conditions for indigenous peoples in Canada. The central goal of the ‘Kelowna Accord’, as the agreement came to be called, was to close “the gap in the quality of life that now exists between Aboriginal peoples and other Canadians.”¹⁷ Finally, and in specific relation to the question of control over land and resources, the federal government also engages in various land claim and treaty-making processes, including in the BC treaty process, in different parts of the country. These processes are designed to address questions related to treaty rights, where there are concerns about the violation of historic treaty rights, and to define the extent and scope of aboriginal rights and title in areas that have not been covered by historic treaty

¹⁷ The details of the Kelowna Accords were spelled out in a 30-page document—*First Ministers and National Aboriginal Leaders, Strengthening Relationships and Closing the Gap*—released at a meeting of indigenous leaders and First Ministers in Kelowna, British Columbia, in November 2005. A change of political faces in Ottawa—in early 2006 the Liberals were replaced by the Conservatives—led to the abandonment of the agreement.

agreements.¹⁸ Again, although not always described in this way, such processes may be considered elements of a broader national reconciliation project designed to bring a long-marginalized group—indigenous people—into the mainstream of Canadian society.

Scholars have interpreted the recent spate of reconciliation processes in nations around the world in a variety of ways. One interpretation has it that such processes are driven by the global spread of liberal democratic values in recent decades, including increased respect for human rights, and by a greater willingness of nations to acknowledge and address historical injustices. From this perspective, the widespread effort to “come to terms” with the past is “an extremely positive development”, reflecting the overthrow and collapse of racial hierarchies and dictatorial regimes and the emergence of new, previously marginalized voices now pressing for redress; in the Canadian context, the pressure to address past injustices is seen to flow from the fact that “internal colonialism over indigenous peoples is on the defensive”.¹⁹ Another interpretation has it that, rather than any moral imperative to address past wrongdoing, it is self-interest and self-preservation that drives reconciliation processes; here, apology and efforts to come to terms with past injustices serve to overcome threats to the stability and legitimacy of the state. In these reconciliation processes, this argument goes, questions of justice and restitution are all too often set aside or viewed as secondary to the primary objective,

¹⁸ The federal agency responsible for indigenous policy—Indian and Northern Affairs Canada—has two branches to deal with land claims. The specific claims branch deals with disputes or complaints related to land and rights associated with existing treaties. The comprehensive claims branch is responsible for negotiating the resolution of indigenous land claims in areas not already covered by treaties or other legal mechanisms.

¹⁹ Alan Cairns, “Coming to Terms with the Past,” in *Politics and the Past: On Repairing Historical Injustices*, ed. John Torpey, 63-90 (Lanham, Md.: Rowan and Littlefield, 2003).

namely the furtherance of state interests.²⁰ From this perspective, attempts by the Canadian state to address questions related to the suppression of the territorial and cultural rights of indigenous peoples may be seen to flow from political and economic imperatives, such as the desire to maintain control over lands, resources, and people, and to control and minimize the political and economic costs associated with these issues. A final perspective suggests that recent reconciliation efforts may be part of a broader social trend to focus on the past as a way of dealing with the uncertainty of the present and the future. According to this argument, there is a turning to memory for comfort in the face of an increasing complex and fast-changing world; “memory practices”, including truth and reconciliation processes, “express the growing need for spatial and temporal anchoring in a world of increasing flux in ever denser networks of compressed time and space.”²¹ Of course, such explanations need not be mutually exclusive; indeed, in many cases they likely overlap and reinforce each other to a considerable extent.

Contemporary efforts to reconcile indigenous and non-indigenous societies in British Columbia can be understood as part of these larger national and international discourses (and projects) of national reconciliation. Armed today with a somewhat better understanding of the nature of the divide between indigenous and non-indigenous societies and of its historic origins, many non-indigenous British Columbians exhibit sympathy for the concerns of indigenous people and express support for political action to address these concerns. This public sympathy and support is no doubt an important factor underlying the contemporary discourse on reconciliation. A factor of equal or

²⁰ Wole Soyinka, *The Burden of Memory, the Muse of Forgiveness* (Oxford: Oxford University Press, 1999).

²¹ Andreas Huyssen, “Present Pasts: Media, Politics, Amnesia,” *Public Culture* 12 (2000): 21-38. Quote is from p. 36.

perhaps greater importance, however, is the pressure applied on provincial and federal governments by a number of court rulings related to the question of aboriginal title. These court rulings, and particularly those which have come in the past two decades, have called into question the Crown's sovereignty over land and resources within its boundaries. In particular, it was the threat to the Province's legitimacy to make decisions about lands and natural resources which ultimately forced it to abandon, in the late 1980s, its long-held denial of aboriginal title and to enter into treaty negotiations with indigenous peoples, and it is this unresolved threat to its sovereignty, I believe, which largely explains the current discourse on reconciliation in the province.

Treaties and a New Relationship: Reconciliation Talk in British Columbia

In her analysis of the discourse of reconciliation associated with the negotiation of the Nisga'a treaty—a modern comprehensive treaty agreement negotiated between the Nisga'a Nation, Canada, and British Columbia in the late 1990s—Carole Blackburn identifies two distinct meanings of reconciliation in this context.²² The first meaning, she notes, is more specific, referring to the idea of reconciling aboriginal title and Crown sovereignty. This involves the detailed working out, usually through a process of treaty negotiation, of exclusive and shared jurisdictions over land, resources, and other matters of importance (e.g., health care, education, taxation) within indigenous and non-

²² It is important to note that the Nisga'a treaty was negotiated and finalized outside of the BC treaty process. Nevertheless, the treaty model adopted in the Nisga'a case was similar to that put forward by the federal and provincial governments in the BC treaty process. Thus, the Nisga'a treaty agreement has to a certain extent served as a template for the kinds of treaties the Crown seeks to negotiate through the BC treaty process. See Carole Blackburn, "Producing Legitimacy: Reconciliation and the Negotiation of Aboriginal Rights in Canada," *Journal of the Royal Anthropological Institute* (N.S.) 13 (2007): 621-638.

indigenous territories. This is reconciliation as a politico-legal project; the identification of legal and political rights held by indigenous and non-indigenous peoples and their governments within a particular space or territory. The second meaning is broader, relating to the effort to address and correct historical injustices and to build a new and more respectful relationship between indigenous and non-indigenous peoples. In this section I explore these different meanings of reconciliation as they are employed in British Columbia today. First, I look at the more specific meaning of reconciliation, that of reconciling aboriginal title and Crown sovereignty, as it is used in the BC treaty process. I then turn to the broader meaning of reconciliation, focusing on how this discourse on coming to terms with past mistakes lies at the heart of the Province's 'new relationship' initiative. As will be evident in the discussion that follows, it is not always easy to distinguish between these two meanings; they are often blended together in discussions about reconciliation.

The BC Treaty Process: Reconciling Aboriginal Title and Crown Sovereignty

In the previous chapter I provided a brief description of the emergence and evolution of the BC treaty process, identifying a number of the challenges faced by those engaged in treaty negotiations in the province. I highlighted the gap that exists between the negotiating parties when it comes to expectations about the amount of land, cash and other benefits (e.g., allocations to natural resources, revenue sharing) to be included in treaties, and I noted the particular challenge at the Hul'qumi'num treaty table posed by the exclusion of private land from the treaty negotiation process. These are not the only impediments to the finalization of treaties in the province, however. In this section I focus

on a set of broader and more fundamental challenges that have impeded progress on treaty negotiations in British Columbia, challenges that stem from a fundamental difference in vision, between indigenous groups and the Crown, about how aboriginal title should be reconciled with Crown sovereignty. While these differences were apparent to some extent during the early development of the treaty process, it was not until 2000 that the full nature of these differences was recognized and clearly articulated. Concerned about the slow pace of negotiations and about signs that indigenous peoples were increasingly dissatisfied with the process, in 2000 the BC Treaty Commission carried out a review of the treaty process. In reporting the results of this review, the BCTC proposed a number of solutions to the challenges facing treaty negotiators, including the idea of building treaties in an incremental fashion.²³ However, the BCTC also argued that a larger problem plagued the treaty negotiation process, pointing to “deep-seated differences” among the parties in negotiations due to what it referred to as “conflicting treaty visions.”²⁴ The different parties, the commission argued, seemed to have radically different, perhaps even contradictory, ideas about the nature of the treaties they were negotiating and how reconciliation would be achieved.

²³ Arguing that treaty negotiations are too complex to complete in a short period of time, the BCTC suggested the use of interim measures agreements to build treaties more slowly and over a longer period. Rather than seeing treaties as “a one-time achievement”—where fully formed and perfect treaty agreements would be crafted through a period of intense negotiations—the idea was to see treaties as “the embodiment of new relationships that can be built over time.” See: BCTC, *British Columbia Treaty Commission: Annual Report for 2000* (Vancouver: British Columbia Treaty Commission, 2000).

²⁴ *Ibid.*

In a paper presented at a forum organized by the BCTC in 2000, James Tully sought to describe the nature of these conflicting treaty visions.²⁵ The Crown, argued Tully, approached treaty negotiations with the assumption that indigenous groups are minorities existing in a subordinate relationship to the Crown. What differentiates indigenous people from other minorities, however, is that by having been here first they possess aboriginal title, which, while conferring certain rights to lands and natural resources—and self-governance—within their traditional territories, is nonetheless viewed by the Crown as poorly understood and ill-defined. The challenge for the Crown in dealing with indigenous peoples, then, is to dispel what it sees as the uncertainty that surrounds the idea of aboriginal title. Thus, for the Crown, a central goal of treaty negotiations is to achieve certainty with respect to aboriginal title; certainty, that is, with respect to indigenous jurisdiction over lands and resources.

As described in the previous chapter, until fairly recently the Crown sought to achieve certainty with respect to ownership and jurisdiction over land and resources through the extinguishment of aboriginal title and rights to all land and resources not specifically determined to be ‘treaty settlement lands’; that is, to all lands and resources not explicitly identified in a treaty agreement as falling under indigenous jurisdiction. (This is essentially the ‘cede, surrender, and release’ model described in the previous chapter.) In response to opposition from indigenous groups, the federal and provincial governments have backed away from the language of extinguishment as the route to achieve certainty. The Crown’s current legal model for achieving certainty, used in the Nisga’a treaty as well as the two treaties finalized within the BC treaty process, is referred to as the

²⁵ James Tully, “Reconsidering the B.C. Treaty Process,” in *Speaking Truth to Power: A Treaty Forum* (Vancouver: British Columbia Treaty Commission, 2001).

‘modification and release’ model. In this model, certainty is created through the transformation or ‘modification’ of aboriginal title and rights into treaty rights, which are then protected under Section 35 of the Canadian constitution. A key part of this model is the requirement that the indigenous group signing the treaty agree to ‘release’ (i.e., to not pursue) any aboriginal rights not specifically defined in the treaty document.

This model of treaty making has a spatial dimension that is appealing to the Crown. The model transforms aboriginal title from what the Crown sees as a vague and ill-defined notion of rights applying to an indigenous group’s entire traditional territory, an area which can be quite extensive, into a set of precisely defined aboriginal rights which apply only within a clearly delimited geographic area, a subset (perhaps five percent, as Premier Harcourt had suggested in the mid-1990s) of the group’s traditional territory.²⁶ This model of treaty thus functions somewhat like a complex real estate deal, in that it divides the traditional territory into two distinct parts: one part, by far the larger of the two, in which Crown jurisdiction is predominant (and in many cases exclusive) and another part, much smaller in extent, where the indigenous group gains a greater degree of jurisdictional control over lands and natural resources, as well as certain governmental powers.²⁷ The division between these two spheres is not always absolute, however, as

²⁶ Mark Stevenson (2000, 126-27) refers to this as the “exhaustive definition” model of treaty making; that is, the goal is to describe in exhaustive detail all of the Section 35 rights that the aboriginal groups is to possess, including the geographic extent of those rights and their limitations. From the Crown perspective, this will ensure that any future claim by the aboriginal party is limited to the rights specified in the treaty. See Mark L. Stevenson, “Visions of Certainty: Challenging Assumptions,” in *Speaking Truth to Power: A Treaty Forum* (Vancouver: British Columbia Treaty Commission, 2001).

²⁷ It is important to note, however, that under this model provincial laws come to apply on all lands held by aboriginal groups after the treaty is settled, unless specifically determined otherwise in the treaty document. This ‘concurrent law’ approach is a matter of some concern to many aboriginal people.

modern treaties often allow for some degree of shared management of lands and natural resources on what is determined to be the Crown portion of the territory, and the agreement may specify the allocation of specific Crown resources (e.g., certain allocations of fish, timber, water, or wildlife) to the indigenous group.

In her analysis of the Nisga'a treaty, Blackburn discusses the significance of this model of treaty making for the relationship between indigenous peoples and the Crown. Ultimately, Blackburn writes, the Nisga'a treaty was designed to make compatible rights that had previously been seen as incompatible; that is, to reconcile the rights of the Nisga'a and those of the Crown. The treaty, she writes, produced "a set of group-differentiated rights for the Nisga'a, including cultural, economic, and self-governing rights" and this was held up as proof that the state was able accommodate different indigenous societies and cultures, and recognize that these groups have a distinct set of aboriginal rights, without needing them to fully assimilate into the broader non-indigenous society.²⁸ Blackburn points out, however, that Nisga'a aboriginal rights did not pass through the treaty process unchanged. Rather, they were transformed in the process, modified in such a way so as to be compatible to the legal and political structures of the Canadian state. Nisga'a aboriginal title, for example, was transformed (some would say simplified) into fee simple property ownership of about seven percent of the territory that they had claimed, and the Nisga'a Nation was constituted, through the treaty, as a legal entity recognizable under Canadian law. Thus, the treaty model used in the Nisga'a case, and the model adopted by the Crown within the BC treaty process, requires that aboriginal title be reconciled *with* Crown sovereignty. Under this treaty

²⁸ Blackburn, "Producing Legitimacy," 622.

model, indigenous groups are incorporated into the Canadian state and it is incumbent on these groups, as Blackburn puts it, to “bear the brunt of accommodation” in order to achieve reconciliation and to ensure that Crown sovereignty remains unchallenged.²⁹

While the Nisga’a and Tsawwassen treaty agreements demonstrate that some indigenous groups in British Columbia have accepted and made progress with this model of treaty making, a much larger number of groups continues to resist this model. Indeed, many indigenous groups, representing about one-third of all aboriginal people in the province, have refused to participate in the process altogether³⁰ and many of those who have dedicated themselves to the process find the Crown’s approach deeply problematic in a number of ways. Many indigenous groups prefer to see themselves, Tully points out, as engaging in negotiations not in the position of minorities in a subordinate position to the Crown but rather on an equal footing, the proper relationship in their minds being that of nation to nation. Further, he argues, many indigenous people do not see the treaty process so much as a way to clarify the meaning of aboriginal title—they already possess a clear understanding of the meaning of aboriginal title, seeing it as their rights to the lands and resources in their traditional territory and to self determination—but rather as a venue in which they can assert these rights. Tully notes that most indigenous groups are willing to acknowledge that the Crown now also has some form of title (or sovereignty)

²⁹ *Ibid.*

³⁰ From the outset of the process, a significant number of First Nation groups, representing approximately one-third of the provincial First Nation population, refused to participate in the BC treaty process, arguing either that the process was irrelevant since aboriginal people have always held title to their land and still do, or that it is fundamentally flawed since treaties can only be negotiated between aboriginal groups and the federal government, with no proper role for the provincial government. Most of these groups remain outside the process today. See Andrew Woolford, *Between Justice and Certainty: Treaty Making in British Columbia* (Vancouver: UBC Press, 2005), 88.

within their territory and that provincial and federal governments exercise certain jurisdictional powers in this area. Given this, for many indigenous people, the purpose of treaty making is not about defining their rights and negotiating a complex real estate transaction where jurisdictions are carefully separated from each other, but rather about figuring out how to work out an arrangement to share land, resources and jurisdictions in their traditional territories. For many indigenous groups, Tully points out, the purpose of treaties is “to work out relations of *mutual sharing* among equal and co-existing partners.”³¹ A shift to this way of understanding the treaty process has spatial implications, suggesting that indigenous people could maintain some degree of connection—not necessarily in the form of full control or ownership of land but rather in a model of shared jurisdiction (or co-management) with the Crown—to a much larger portion (if not all) of their traditional territory, something that is appealing to many indigenous people but which the Crown to date has refused to consider.

There is also a temporal dimension to this difference in understanding of the treaty process. For the Crown, treaty making is typically seen as a way to achieve a ‘full and final settlement’ on the question of aboriginal land claims. The treaty agreement becomes the document that describes in exhaustive detail what kinds of aboriginal rights exist, and where, and through ratification of the treaty these become fully protected under section 35 of the Canadian constitution. The reconciliation of aboriginal title and Crown sovereignty—a central goal of the treaty process—is something that is achieved at the signing of the treaty agreement, and, once this is done, the treaty process is brought to a speedy conclusion. As one indigenous observer pointed out, the notion of reconciliation

³¹ Tully, “Reconsidering the B.C. Treaty Process,” 10 (emphasis in original).

embodied in the Crown's model of treaty making is more like a divorce than a marriage.³² An alternative approach, one that Tully sees as more attractive to indigenous peoples, is to view treaty making as an ongoing process of engagement and discussion, and a way to build new relationships. Rather than being completed and then set in stone, under this model treaties become living documents subject to review and renewal as conditions change and as relationships develop. The emphasis here is on co-existence, on learning about each other and how to live together in the same place. Viewed in this way, Tully argues, the treaty process becomes a

diplomacy of rituals and story-telling in which the participants explain to each other who they are, their cultures and ways, how they relate to the land, and how they might negotiate and join arms together while respecting these differences.³³

The vision here, then, is of treaty making as a way “to unseat deeply sedimented misunderstandings of history and relationships.”³⁴

Reconciliation and the New Relationship Initiative

In the final few months of 2007, residents of British Columbia witnessed several high profile symbolic acts of reconciliation, widely hailed as products of the provincial government's goal of building a new relationship with indigenous people, a goal embodied in the ‘new relationship’ accord signed in early 2005 between the premier and the province's indigenous leadership. Perhaps most prominent was the appointment of Steven Point as Lieutenant Governor, the first indigenous person to hold this post in the province, carried out with grand ceremony and much public fanfare. Under the Canadian political system, the Lieutenant Governor—the personification of the Crown in British

³² See Blackburn, “Producing Legitimacy,” 627.

³³ Tully, “Reconsidering the B.C. Treaty Process,” 11.

³⁴ *Ibid.*

Columbia—is the ultimate source of political power for the government of the day in the province. All laws, orders-in-councils, and official proclamations must be signed by the Lieutenant Governor, and the Crown’s representative is responsible for ensuring that there is at all times a functioning government in the province. However, although the power of the state resides symbolically in the person of the Lieutenant Governor, he or she is unable to wield any political power as it is the government of the day that decides how the power of the state is to be used. The role of the Lieutenant Governor, then, is tightly circumscribed and the duties are largely ceremonial. The Lieutenant Governor, notes the official web site, “attends many dinners, cultural events, military and civilian ceremonies, opens buildings and conferences, addresses gatherings of various kinds, visits schools, community events, and military establishments.”³⁵ Nonetheless, as Federal Indian Affairs Minister Chuck Strahl, in Victoria for the swearing-in ceremony, argued, the symbolism at play was important. “Symbolic things change people’s perceptions,” Strahl said. “I mean, there’s no actual handing over of power in these symbolic things. But what it does is, it puts people’s heads in a different space.”³⁶

While the historic day called for the display of certain symbols, with Point himself, dressed in vice-regal attire—the clothes of the colonizer, one might note—as the central point of focus, it also required the obscuring of others. Obscured on that day were a series of four murals painted on the walls of the rotunda in the heart of the legislative building. Painted by John Southwell in the 1930s and the subject of debate and controversy for a

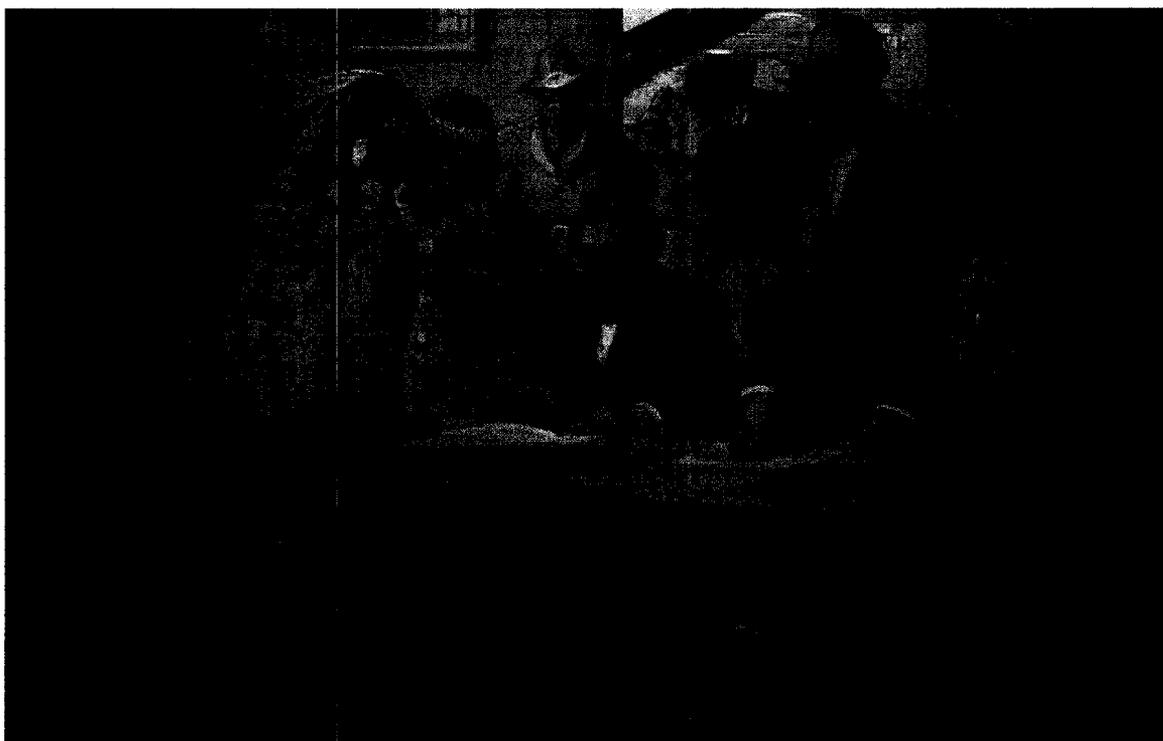
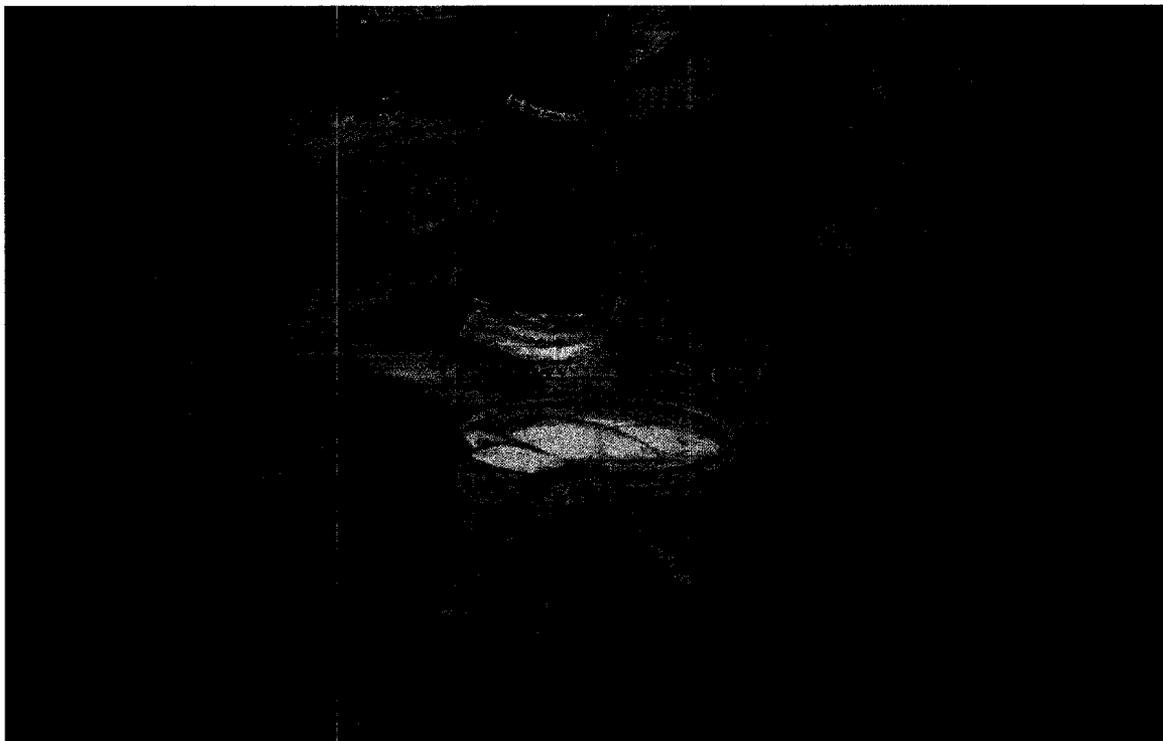
³⁵ Web site of the Lieutenant Governor of British Columbia, <http://www.ltgov.bc.ca/default.htm> (Accessed on October 17, 2007).

³⁶ Jeff Rud, “First Nations Drums Welcome B.C.’s New Lieutenant-governor,” *Times Colonist*, 2 October 2007.

number of years,³⁷ the murals depict scenes from early colonial British Columbia, including images of indigenous and European people engaged in various activities. One mural, which has drawn the most criticism, shows a number of indigenous people, including bare-breasted indigenous women, working alongside European men, carrying timbers and baskets of fish and shellfish (Figure 8.1). Another mural shows an indigenous man, dressed in Southwell's interpretation of full Indian regalia (feathered headdress, fringed buckskin clothing) with hands clasped behind his back, standing in front of a seated European man, presumably a colonial official, who is engaged in the preparation of a document (Figure 8.2). These figures are surrounded by a number of other standing indigenous and non-indigenous men, with one European man positioned behind the central indigenous figure and holding a rifle; all attention is focused on the documentation in progress. It is unclear what this image is meant to convey: perhaps the application of colonial law to this Native man?

From an indigenous perspective, the murals have been seen as offensive, depicting indigenous people in demeaning ways and in subservient positions. The location of the murals within the legislative buildings, the symbolic centre of state power, is particularly problematic for these critics. Sensitive to such critiques, in early May of 2007 the provincial legislature voted to remove the murals, a decision heralded by the BC government as part of the broader effort to develop a 'new relationship' with indigenous peoples, which in turn would contribute to reconciliation between indigenous and non-

³⁷ The murals were the subject of a debate in the legislature in 2000, although concerns about the murals extend over a much longer period.



Figures 8.1 (top) and 8.2 (bottom): Southwell murals in provincial legislature building
(Reprinted with permission of the photographer, Deededa Stemler.)

indigenous societies in the province.³⁸ Announcing the decision to remove the murals, Government House Leader Mike de Jong argued: “We can collectively reach for the brush of reconciliation and paint a new canvas.” Normally open to the public, on the day of Point’s swearing-in the murals were carefully hidden behind blue velvet curtains, out of respect for Point and other indigenous dignitaries visiting the legislature building on that day. Once the ceremonies had ended, the drapes were removed and the artwork was returned to public view.³⁹

The Province has undertaken other symbolic acts designed to establish the foundation for building a new relationship with indigenous peoples. In its 2003 speech from the throne, the provincial government expressed regret for “the mistakes that were made by governments of every political stripe over the course of our province's history... [and for] the tragic experiences visited upon First Nations through years of paternalistic policies that fostered inequity, intolerance, isolation and indifference.”⁴⁰ In talking about relations between indigenous and non-indigenous peoples, premier Campbell has repeatedly invoked the idea of moving beyond the denial that marked the province’s history and

³⁸ A study commissioned by the legislature in 2000 highlighted the difficulty in removing the murals, which are painted on walls that are eight feet thick. Removal, the report said, would require cutting out more than six tons of material from the walls of the central core of the legislature and might result in damage to the murals. The author of the report described the removal of the murals as “a radical and intrusive action” that would alter not only the murals but also the historical integrity of the building and the context of the surrounding architecture. See Cheryle A. Harrison, *Proposal: Southwell Mural Paintings, Lower Rotunda, Parliament. Report Submitted to Office of the Speaker, Parliament Buildings, Victoria, British Columbia* (Victoria: Province of British Columbia, Office of the Speaker, 2000).

³⁹ In 2008, the murals obscured behind walls constructed solely for that purpose.

⁴⁰ British Columbia, Throne Speech, February 11, 2003. 4th Session, 37th Parliament. Official Report of Debates of the Legislative Assembly of British Columbia, (Hansard) Volume 11, Number 1. Page 4700.

towards full recognition of aboriginal people and their rights. In a speech delivered at the Assembly of First Nations 2006 annual meeting, for example, Campbell argued that

[w]e must turn our back on the denial of the past. For 139 years we have not recognized the true contribution of First Nations and Aboriginal people across our country. In British Columbia we are determined not just to recognize but to reconcile with First Nations, to build a new relationship that opens up worlds of opportunities and recognizes the strength of First Nations in British Columbia in making us the place that we are as a province.⁴¹

Through the new relationship initiative, the Province has agreed to “a new government-to-government relationship [with aboriginal people] based on respect, recognition and accommodation of aboriginal rights and title.”⁴² The new relationship accord also expresses support for the recognition of aboriginal title “in its full form”, including the inherent right for the community to make decisions as to the use of the land, a right which flows from indigenous peoples’ “historical and sacred relationship with their territories.”⁴³

Amid all the symbolism and ceremony of such utterances and acts, the idea of reconciliation clearly emerges as a central theme, emphasized in particular by provincial officials but also by some indigenous leaders. But what was it that was being reconciled by these acts and utterances? Was this, as federal Indian Affairs minister Strahl suggested, simply an exercise in shifting perceptions? Certainly, the appointment of an indigenous person to such an august, if ceremonial, post as Lieutenant Governor created a perception that indigenous people, long banished to the margins, were being welcomed

⁴¹ Text of speech available from the BC Ministry of Aboriginal Relations and Reconciliation web site: <http://www.gov.bc.ca/arr/>

⁴² Quote is from the text of the ‘new relationship’ accord; this is the five-page document developed by the provincial government and provincial indigenous leaders in early 2005. Full text of the accord is available from the BC Ministry of Aboriginal Relations and Reconciliation web site: <http://www.gov.bc.ca/arr/>

⁴³ *Ibid.*

into the mainstream of British Columbian society. The obscuring of colonial imagery, and its eventual removal from the halls of government, might be seen as indicating a desire to move beyond the colonial nature of the relationship between indigenous people and the provincial government, and to create a new relationship built on “respect, recognition and accommodation” (as the new relationship accord promises). No doubt there is also another kind of reconciliation at play here, an attempt to harmonize public perceptions of the Campbell government, which had come into power on a platform hostile to the interests and claims of indigenous people, with this new aboriginal-friendly image. For Campbell, the symbolism of the day—the careful staging of ceremonies, the donning of colonial regalia by an indigenous leader, the soothing utterances of prominent figures, and the respectful obscuring of troublesome histories—and the capture of these symbolic displays in the media served to bolster the image, developed over the past two years, of him and his government as the best of friends to indigenous peoples.

These symbolic acts of reconciliation and the drafting of the new relationship accord were widely hailed by indigenous leaders as signs of progress, and as indicating a new level of respect on the part of provincial authorities for indigenous peoples and cultures. While important in shifting perceptions, symbolic acts alone clearly do not constitute reconciliation in any meaningful way; unless complemented by action to address the material struggles of indigenous peoples in the province, such symbolic acts quickly lose their powers of persuasion. In this context, it must be noted that on the material front the Province has taken some action designed to improve the lives of indigenous people in the province. Over the past few years the BC government has brought forward a variety of programs, in some cases alone and in other cases in partnership with the federal

government,⁴⁴ designed to improve socio-economic conditions for indigenous people. True to the original intent of the Kelowna Accord, most of the programs announced by the Province have been in the areas of education and training, health care, social services, and cultural support. However, there have also been some advances made in the sharing of revenues from natural resources and in the provision of indigenous communities with greater access to lands and natural resources. In terms of the sharing of resource revenues, perhaps the most significant development, at least in terms of the sheer number of revenue-sharing agreements that have been signed with indigenous groups, has been in the area of forestry; between 2003 and 2007, the Province signed over 120 separate agreements with indigenous groups in British Columbia—these are usually referred to as ‘Forest and Range Agreements’—all designed to provide indigenous communities with access to royalties and natural resources from ‘Crown’ forests.⁴⁵ The Province has also signed agreements with a much smaller number of individual indigenous groups to provide for the sharing of revenues from other resources, including from minerals and

⁴⁴ Although the federal government subsequently withdrew from the Kelowna Accord, the Campbell government expressed a commitment to uphold its part of the agreement to close the socio-economic gap between aboriginal and non-aboriginal peoples in the province. See: Campbell: ‘No More Excuses’. Text of a Speech by Premier Gordon Campbell, delivered in the BC legislature on May 4, 2006. Published in *The Tyee*, May 5, 2006. Accessed February 15, 2008:

<http://thetyee.ca/Views/2006/05/05/NoExcuses/print.html>

⁴⁵ Ben Parfitt, a resource policy analyst with the Canadian Centre for Policy Alternatives, describes the extent and limitations of these agreements, and argues for the province to adopt a much more comprehensive and substantial approach to the sharing of revenues from Crown forests (among other things, he argues for a 50/50 sharing of revenues between the province and indigenous groups). See Ben Parfitt, *True Partners: Charting a New Deal for BC, First Nations, and the Forests We Share* (Vancouver: Canadian Centre for Policy Alternatives, 2007).

from oil and gas development.⁴⁶ The BC government often points to specific land and resource use decisions, such as the landmark decisions on the province's central and north coasts which protected large areas for ecological and cultural purposes—including the allocation of lands and resources to meet the economic, social, and cultural needs of local indigenous communities—as indications of a new, more respectful attitude towards indigenous communities and their concerns.⁴⁷ Finally, in recent years the Province has negotiated a number of specific agreements with different indigenous groups in order to address particular land or resource problems; the Province has referred to some of these as “reconciliation agreements”.⁴⁸

As this brief, and partial, description of the myriad initiatives undertaken under the broad banner of the ‘new relationship initiative’ would seem to indicate, the provincial government has moved some considerable distance in the past five years towards a

⁴⁶ A description of such land and resource agreements can be found on the British Columbia Ministry of Aboriginal Relations and Reconciliation web site, at: <http://www.gov.bc.ca/arr/treaty/key/default.html>

⁴⁷ British Columbia. 2006. *A New Relationship with First Nations and Aboriginal People*. Pamphlet produced by the BC Ministry of Aboriginal Relations and Reconciliation (October 2006). Accessed February 15, 2008: <http://www.gov.bc.ca/arr/newrelationship/publications.html>

⁴⁸ Perhaps the most high-profile such deal, negotiated in late 2007, resolved a dispute between the Province and the Musqueam First Nation, and resulted in the transfer of approximately 80 hectares of land on the west side of Vancouver (in the Premier's own riding) to the Musqueam. Campbell called the deal “a concrete example of how the Province is building a New Relationship with the Musqueam.” (Office of the Premier, Ministry of Aboriginal Relations and Reconciliation, Musqueam Indian Band. 2007. *Reconciliation Agreement Reached with Musqueam Embargoed*. News Release, November 9, 2007. Available at: <http://www.musqueam.bc.ca>.) Another example is the “reconciliation protocol” which the province signed with the Hupacasath First Nation, a group whose territory lies in the Port Alberni region on central Vancouver Island, in which the province agreed to provide \$550,000 in funding to support “economic development, community relations and treaty negotiations”. (See: BC. 2007. *Province and Hupacasath Sign Reconciliation Protocol*. News Release, March 30, 2007. Victoria: Ministry of Aboriginal Relations and Reconciliation.)

recognition of indigenous peoples and their rights to land and natural resources. This recognition has come in the form of symbolic acts and, to some extent, through the provision of material benefits to indigenous communities. To date however, the material benefits have tended to be rather limited in scope. The Forest and Range Agreements, for example, while widespread offer minimal benefits to indigenous communities: these agreements are based on a population formula that provides for the payment of \$500 per-member of the indigenous group for each year that the agreement is in effect (typically for a five-year period). Many viewed this as a minimal contribution, especially considering the value of timber that has been, and continues to be, extracted from indigenous territories.⁴⁹ Where more substantial contributions have been made, such as in the case of the return of valuable lands to the original indigenous owners or the payment of significant sums in compensation for the taking of indigenous lands, these have tended to stem from court actions taken by indigenous peoples rather than any independent initiative of the provincial government.⁵⁰

Reconciliation talk in Hul'qumi'num territory

On January 9, 2008, Graham Bruce, a prominent citizen and politician from the Cowichan region, gave a speech to the Ladysmith Chamber of Commerce in which he admitted that he had done very little in his life to address the injustices that had been perpetrated against indigenous people. Bruce said that despite occupying a position of power for some 30 years—for 11 years (in the 1970s and 1980s) he was a councilor for

⁴⁹ Parfitt, *True Partners*, 18.

⁵⁰ The Musqueam reconciliation agreement described in the footnote above, for example, stemmed from court action taken by the Musqueam against the provincial government.

the Municipality of North Cowichan, including 8 years as mayor, and he then served several terms as the local representative (MLA) in the provincial legislative assembly, including holding several ministerial posts—he had not shown much interest in the concerns of indigenous people. He described the stark, apartheid-like divide that has long existed, and still exists, between indigenous and non-indigenous people in Hul’qumi’num territory, and the ongoing denial on the part of the white majority that they had anything to do with creating this division. In his speech Bruce neatly summarized the history of colonization in this place:

What we did was we took the land, then we took the kids, then we took the culture. And then we turned around, and said, ‘get over it.’⁵¹

Bruce lamented the lack of any real effort at reconciliation in the territory, and appealed to his (largely white) audience to put themselves in the shoes of the indigenous parents whose children were taken away and placed in residential schools. Treaties will not do anybody any good without reconciliation, he said, and suggested that non-indigenous residents make the effort to learn a few words of the Hul’qumi’num language as a meaningful step towards reconciliation.

That Graham Bruce would be engaged in such reconciliation talk, and in such a highly public way, is perhaps not surprising. After all, Bruce is a political ally of the current provincial government, a former MLA and minister in Gordon Campbell’s Liberal government between 2001 and 2005, and at the time of his speech was working as a consultant for the Cowichan Tribes, where he is described as “working for reconciliation.”⁵² Since leaving public office, then, it seems that Bruce has found himself

⁵¹ Sarah Buck, “Recognition Needed for Reconciliation,” *Cowichan News Leader Pictorial*, 19 January 2008.

⁵² *Ibid.*

a niche in the burgeoning indigenous consulting sector, and has even tapped into the productive discourse on reconciliation.⁵³ Having followed this high-level discourse for some time, I was curious to see how and to what extent the reconciliation talk had been picked up and received in the Hul'qumi'num Treaty Group and in Hul'qumi'num communities. In a series of interviews conducted in early 2008, I asked key members of the treaty group for their perspectives on this discourse on reconciliation talk. Joey Caro, the treaty group's communications director, characterized the reconciliation talk as "a lot of smoke and mirrors" and as "window dressing".⁵⁴ All this talk about reconciliation, he suggested, was primarily intended to provide a soothing public face to the government when it comes to the question of indigenous peoples and their rights to land and resources. "It's like people want to put on this nice image for the Olympics that we take care of our indigenous people," noted Caro, making reference here to the staging of the Olympic winter games in Vancouver and Whistler in 2010. The appointment of Steven Point serves to bolster the government's public image, he argued, allowing the government to point to him and say "Look we have this nice man Steven Point, up here with his nice costume on, walking around and saying nice things to everybody."

Despite all the talk of reconciliation, Caro argued, nothing much has changed on the ground in Hul'qumi'num communities and in Hul'qumi'num territory. He points out that development of lands and resources continues unabated throughout the territory, with logging companies now turning their attention to real estate development projects, with luxury resorts being developed on prime waterfront sites, and with land and resource

⁵³ In the 2005 provincial election, Bruce ran for re-election in the Cowichan-Ladysmith riding but was defeated by Doug Routley, the NDP candidate.

⁵⁴ Quotes and text in this and the following paragraphs come from an interview with Joey Caro conducted 17 January 2008.

developers lining up for a chance to exploit mineral, methane, and gas deposits. If the talk of reconciliation was sincere, Caro pointed out, there would be government people coming to the community and actually trying to help out “down in the trenches” at the community level where the help is badly needed. Caro reflected on the disjuncture between the soothing provincial discourse on reconciliation and the dire situation within the territory:

Like we have an uneven start, we have settlers [during the colonial period] getting 160 acres each and our people getting [land on a] floodplain, on a slope, on a rock, for a reserve. And reconcile that. Or, you know, reconcile the loss of language. Reconcile the long-term effects of residential school on the breakdown of the family unit, and the effect on the language and culture, and the suppression of the culture, and the loss of so much that way. Reconcile that. Or reconcile the environment, like where the spawning beds have been wiped out... Reconcile MacMillan Bloedel [a forestry company] being able to bulldoze burial box sites out on Valdes Island. You know, allowing resorts to develop or to build like crazy, and making it easy for them to happen while they destroy archaeological sites and everything.

Caro paints a grim picture of life in many Hul’qumi’num communities, of the everyday reality of deprivation and desperation that many community members experience, of domestic violence, child abuse, alcohol and drug use, of sky-high unemployment, of dilapidated and dangerous housing. He makes reference to what the locals refer to, in their grim humour, as the “desperation dig”: the digging of clams for the deputation plant, a facility that cleans the clams, removing the toxins from the clam tissues, so that they can be sold for human consumption. Hul’qumi’num people are out there in the dead of winter, he said, digging contaminated clams

desperately trying to make some money, and it’s fucking freezing and wet and they are hauling these bags out, and when they finally get them weighed up the band takes part of the money and the guy [the man who runs the deputation plant] is cutting into their money too, so they end up with just a little bit of dough for this back-breaking, terrible, miserable work they gotta do. I mean these are like, there’s young girls, people with heart problems, everything out there right now, out there doing that work.

What needs attention, Caro suggested, is this grim situation on the ground. In this context, he observed, reconciliation is “kind of a touchy word” among Hul’qumi’num community members.

Brian Thom, a senior negotiations support person with the treaty group, echoed Caro’s comments that the idea of reconciliation had little resonance within Hul’qumi’num communities. If anything, he noted, at the community level the idea of reconciliation would tend to be viewed somewhat cynically.⁵⁵ There’s a general distrust of these “ten-dollar words” that come down from above, he noted, and given the daily struggles of poverty in Hul’qumi’num communities these big ideas tend to be viewed as, at best, just another government program. Thom noted that the concept had been talked about to some extent by staff of the HTG and at the treaty table. He described his earliest memory of the word coming up at the treaty table, in 2002 or 2003, when a new negotiator appointed by the Province showed up and began talking about reconciliation. It turned out that this person had been involved in treaty talks in New Zealand and she explained how they had engaged in various symbolic acts of reconciliation as part of the negotiation process in that setting, and how this approach had proven quite powerful. One such symbolic act revolved around a disputed piece of territory, a mountain that was sacred to the Maori but which had been made into a national park. As part of a treaty agreement, as she described it (and as Thom recounted her story), full title to the mountain was returned to the Maori for a period of seven days, a term that was somehow meaningful to the Maori, and then the Maori gifted the mountain back to the state and it was declared a new national park to be co-managed by the Maori and the New Zealand government.

⁵⁵ Interview with Brian Thom, 22 January 2008.

This woman, in her role as a provincial negotiator at the Hul'qumi'num treaty table, suggested they explore similar symbolic acts of reconciliation—the return of Hul'qumi'num place names to important landscape features, for example, or some act related to the Hul'qumi'num language—that could be incorporated into the treaty agreement. Some time later, Thom said, the treaty group had explored some ideas about how reconciliation gestures could be incorporated into a treaty agreement. Several ideas were put forward, one being to have British Columbia commit itself to the complete remediation of the three major estuaries in the territories—Ladysmith Harbour, the Chemainus River estuary, and Cowichan Bay, areas highly valued by the Hul'qumi'num for food gathering and other uses—as part of a reconciliation gesture. Another idea was to seek a government commitment to create and sustain a centre for the revitalization of the Hul'qumi'num language. To date, neither of these initiatives has gone forward.

For Robert Morales, chief negotiator for the treaty group, reconciliation is only part of the picture, one element in what he refers to as the three Rs: recognition, restoration, and reconciliation. The starting point is recognition, he argued, meaning recognition of the rights of indigenous people to own the land in their territory and to govern themselves, recognition of indigenous jurisdiction or authority over their territories. There has to be a recognition and acceptance, Morales said,

by the general public, by the politicians, by the bureaucracy, that aboriginal people have these rights just like everybody else, and that we are not part of the melting pot of Canada. That we are distinct. That we are different. We're different from other immigrants, we're different from other ethnic minorities, because of this fact that we were here, and we owned land, and that we governed ourselves. We weren't just a bunch of independent nomads wandering around on this space ... doing our own thing independent of each other.⁵⁶

⁵⁶ Interview with Robert Morales, 28 January 2008.

With recognition, he noted, comes the need to deal with the historical injustices that have been imposed on indigenous people, with “the whole issue of 150 years of colonial attitudes and colonial destruction and denial of those two issues, ownership of land and jurisdiction.”⁵⁷

Out of recognition flows the imperative of restoration, of the need to restore to indigenous peoples something of what has been lost and taken from them. This means restoration of ownership over lands, restoration of jurisdiction over territories, restoration to wealth. Morales likes to refer to the fact that the Hul’qumi’num and other Coast Salish peoples were once wealthy societies, adept at living off the abundant resources in their territories and with time to engage in a broad range of cultural activities. The loss of lands and access to resources, along with displacement of indigenous modes of governance and jurisdiction, has meant the loss of that economic and cultural wealth. So there has to be some meaningful restoration of lands and jurisdiction, argued Morales, before you can talk about reconciliation; the three Rs have to come together, you can’t have reconciliation without recognition and you can’t achieve reconciliation without instituting some form of restoration or restitution.

These questions about recognition, restoration, and reconciliation tie back into challenges facing negotiators at the Hul’qumi’num treaty table, and indeed at treaty tables across British Columbia. For the Hul’qumi’num, the question of recognition comes through most clearly in their assertion that the Crown, Canada and British Columbia, must first recognize the history and geography of this place they refer to as Hul’qumi’num territory. First, they demand recognition that this is their homeland and

⁵⁷ *Ibid.*

they have lived here since time immemorial in organized self-governing societies with clear rules for the exclusive and shared use of lands and resources throughout the territory. Second, they demand recognition of the history and geography of colonialism in the territory, of the illegal taking of their lands and resources and of the denial of their jurisdiction, and of the effects of this on their people. Flowing from such recognition—which they clearly feel has not yet been provided by federal and provincial negotiators, to say nothing of the broader non-indigenous community—comes the discussion about restoration, about the restoration of Hul'qumi'num lands and resources, the restoration of Hul'qumi'num jurisdiction (i.e., the ability to govern themselves and their territory), and about the restoration of their wealth.⁵⁸

The question of restoration is a complex one in Hul'qumi'num territory because of the fact that private land is so extensive here. At most other treaty tables in the province there is lots of Crown land available to be transferred in a treaty to the indigenous group or where arrangements can be made to extend aboriginal jurisdiction over a significant part of the territory (e.g., through co-management or other forms of shared jurisdiction). In Hul'qumi'num territory, this is not the case, and so what will be required is either for the government to find a way to make a significant quantum of land available to the Hul'qumi'num (e.g., by purchasing or, less likely, by expropriating private lands) or to compensate, in a very significant manner, the Hul'qumi'num for the loss of those lands.

⁵⁸ Morales notes that some aboriginal groups argue that they should be compensated by government for the vast wealth—billions of dollars in timber, fish, minerals, and other resources—that has been extracted from their territories over the past century or more, something he sees as a highly unlikely. Interview with Robert Morales, 28 January 2008.

Conclusion

As Carole Blackburn points out, and as I have discussed in this chapter, two different meanings of reconciliation are at play in discussions about the relationship between indigenous and non-indigenous governments and people in British Columbia. The first meaning, that of the politico-legal project of reconciling aboriginal title and Crown sovereignty or, as Blackburn has framed it, of making aboriginal rights compatible with those of the Crown, is most clearly addressed in the BC treaty process.⁵⁹ The second meaning, referring to a broader and more profound (and longer-term) process of reconciliation between indigenous and non-indigenous societies, has begun to be addressed in diverse ways, such as through public statements of regret, the acknowledgement of past mistakes, and the honouring of indigenous peoples and perspectives (including the appointment of Steven Point). This second meaning of reconciliation is perhaps more clearly embodied in the new relationship initiative. Although these are different meanings and involve different projects or tasks, they are clearly related; indeed, they are inseparable in the sense that the latter, a broader reconciliation between indigenous and non-indigenous societies, is simply not possible without the former, the reconciliation of aboriginal and Crown titles in particular territories.

I have discussed in some detail the emergence and evolution of the BC treaty process, and have highlighted the difficulties encountered in seeking to reconcile aboriginal title and Crown sovereignty. In this chapter and the previous one I have noted some of the concerns that indigenous people have about the treaty negotiation process, including

⁵⁹ Blackburn, "Producing Legitimacy," 622.

about the Crown's approach to achieving certainty (through the use of the 'modification and release' model), the limited amount of land and cash that the Crown has been willing to put on the table, the unwillingness (and/or inability) of the federal and provincial governments to acknowledge and address the specific histories and geographies of the indigenous groups engaged in the treaty process, and the burgeoning debt loads of the indigenous negotiating parties. I have described the process as one that has been tightly framed and constricted by the federal and provincial governments—as Robert Morales has put it, it is hardly a process of negotiation at all as government negotiators arrive with fixed negotiating mandates which they are unable or unwilling to deviate from—and as one highly unfair to the indigenous groups that have come to the negotiating table in good faith. Andrew Woolford argues that there is an uneasy tension between two central objectives of the treaty process, that of creating certainty on the land—certainty, that is, about who owns and has jurisdiction over the land—and that of achieving justice for aboriginal peoples. To date, Woolford argues, the federal and provincial governments have been able to shape treaty talks in such a way as to ensure that the primary emphasis is placed on the question of certainty, and more particularly on their own idea of what certainty is and how it is to be created, rather than on matters of justice.⁶⁰ Certainty has trumped justice in the treaty process, so to speak, as the Crown has so far successfully avoided engaging in a serious discussion about justice, and about how to address historical injustices, with indigenous peoples in British Columbia.

Woolford also grapples with the notion of reconciliation, so central to the treaty process, and suggests that reconciliation occupies the space between justice and certainty.

⁶⁰ Woolford, *Between Justice and Certainty*, 174.

Reconciliation is a fluid concept, however, and he notes that there are “minimal” and “maximal” conceptions of reconciliation when it comes to addressing conflict between two parties.⁶¹ The minimal conception of reconciliation, he notes, means little more than peaceful co-existence between the parties, where “the wrongful actions that created a rift between the parties are not acknowledged or forgiven; rather, the parties simply learn to live side by side and ignore the sins of the past.”⁶² This is a notion of reconciliation in strictly legal terms, Woolford argues, and is most obvious in the treaty process where the primary focus is on achieving certainty from a Crown perspective. However, Woolford argues that this is

an insecure, or uncertain, reconciliation because it leaves the past largely unexamined and therefore does not address the resentment and anger that still festers over the crimes of colonialism. Without this acknowledgement of the past, it is difficult for the parties to establish a relationship in which they can slowly build trust in one another.⁶³

Maximal conceptions of reconciliation, on the other hand, suggest a more profound coming together of two parties or two people, where the wrongdoer acknowledges his misdeeds and repents and the wronged party provides forgiveness. This highly moral or spiritual vision of reconciliation is captured in the case of South Africa, as Woolford notes, by Desmond Tutu’s assertion that there is “no future without forgiveness.”⁶⁴ This maximal form of reconciliation suggests a merging of difference, the creation of a unitary identity (or a unitary and united nation); in the context of treaty negotiations in British Columbia, Woolford notes, it suggests an assimilation of aboriginal difference into the Canadian identity. Moreover, both of these conceptions of reconciliation are problematic,

⁶¹ Woolford draws on the work of Trudy Govier in his discussion of these minimal and maximal conceptions of reconciliation. See Trudy Govier, *Forgiveness and Revenge* (London: Routledge, 2002).

⁶² Woolford, *Between Justice and Certainty*, 179.

⁶³ *Ibid.*

⁶⁴ *Ibid.*

argues Woolford, in that they “imagine that things can be *reconciled*; that is, they can be settled once and for all.”⁶⁵ More productive, suggests Woolford, is an understanding of reconciliation as a process of ongoing engagement between the parties and “a living relationship that involves sharing and cooperation.”⁶⁶

Carole Blackburn argues that, all too often, the discourse of reconciliation seeks to impose closure—to move beyond difficult yet essential discussions of colonial history and geography, for example—where such closure is unwarranted.⁶⁷ She describes how the discourse around the Nisga’a treaty tended to move very quickly from cursory acknowledgement of the past—“the past is the past, and we can’t change it or what we did”—to a focus on a future ripe with promise, of “moving forward and building a modern relationship with aboriginal people in Canada.”⁶⁸ As Blackburn and other scholars of reconciliation processes note, this kind of reconciliation talk seeks to create a clear break with the past—indeed, between the past on one hand, and the present and the future on the other—and, as such, functions to bolster the legitimacy of the state. This kind of reconciliation talk—the brief penitent nod to a troubled and aberrant past followed by the self-congratulatory basking in the promise of a harmonious future—serves to wash away the taint of colonialism. While this may convince those who wish to be convinced, namely those non-indigenous people and governments who are eager to put this difficult and unpleasant history and geography behind them, it is less than convincing to most indigenous groups who continue to live in the difficult and constricting colonial present.

⁶⁵ *Ibid.*, 180.

⁶⁶ *Ibid.*

⁶⁷ Blackburn, “Producing Legitimacy,” 626-27.

⁶⁸ *Ibid.*, 625-626.

One can argue that the Crown's contemporary approach to achieving reconciliation with indigenous peoples draws on the legacies of colonialism in a number of ways. First, as Carole Blackburn points out, the model of reconciliation pursued through the Nisga'a treaty, which is also central to the BC treaty process, requires that indigenous people reconcile themselves (their identities, their territories, their rights) to the Crown. In this sense, this approach to reconciliation has much in common with long-standing Crown policies—originating in the colonial period and continuing through much of the twentieth century—which sought to assimilate indigenous peoples into the national body. Second, and seemingly working in contradiction to assimilationist objectives, the Crown's contemporary approach to reconciliation draws on a long-standing desire to clearly separate indigenous peoples and places from non-indigenous society. If the boundaries of Indian reserves marked the "primal line" between indigenous and non-indigenous spaces, then one can see the contemporary treaty process as one that simply seeks to redraw this line of separation, albeit in a way that is somewhat more favourable to indigenous communities. Indigenous connections to land and indigenous rights to resources and territories are to remain confined to a small portion (about five percent) of their larger territories and extinguished elsewhere. These contradictory push-pull objectives—push indigenous peoples away, yet also pull them into the broader body politic—reflect the Crown's, and the Canadian public's, deep ambivalence toward indigenous peoples, an ambivalence that can be traced back to the earliest encounters between those who have come to this place from away and those who were already living here.

CHAPTER 9

Conclusion: Colonization, Decolonization, and Indigenous Geography

The broad purpose of this research project has been to examine historic and contemporary struggles over land and natural resources in Hul'qumi'num territory. More specifically, the central objective of the study has been to develop a better understanding of how this territory, once a space under full indigenous control and jurisdiction, came to be transformed so that its original residents and 'owners', the Hul'qumi'num, were pushed to the margins—in the fullest sense of that word, the eco-spatial, socio-cultural, and political-economic margins—while those who had arrived more recently, 'white' or Euro-Canadian settlers, came to occupy and exert control over the largest part of the territory and the bulk of the area's natural wealth. The central task here was to document historic processes of colonial and postcolonial dispossession and marginalization, as well as Hul'qumi'num efforts to resist these forces. I have not been content, however, to locate this story only in the past but have also sought to explore the ways that the legacies of this colonial history and geography shape and constrain contemporary efforts to come to terms with dispossession and marginalization, paying attention both to Hul'qumi'num struggles to retain and regain control over a significant portion of their traditional territory and to the formal initiatives—primarily the BC treaty process—created to address the injustices of the past. The exploration of these historic and contemporary processes has provided the central narrative structure for this dissertation.

The structuring of this narrative, and particularly the heavy focus on historic processes of dispossession and marginalization, owes much to the original conception of this

research project. The project objectives, that is, were shaped to a considerable extent through consultation with staff from the Hul'qumi'num Treaty Group, who suggested that a study of the history of the land question in Hul'qumi'num territory would be of some use to their work in seeking a contemporary resolution of this issue. The starting point of this study, then, and the central narrative in this document, concerns the historical geography of this territory. In a sense, this study can be seen as part of a larger intellectual project underway in British Columbia, an effort to tell more fully, as Cole Harris puts it, the story of the colonial construction of space in this province.¹ An important function of this project is to deconstruct what Daniel Clayton has called the “white history” of this place; to do away with the notion, in other words, that the white ‘settlement’ of British Columbia was a simple and bloodless affair, one in which indigenous peoples quietly acquiesced.² The question, and questioning, of history, then, is a central theme in this study. Two other themes emerge in the telling of this story—violence and law—which, closely entwined, are key to understanding the stories of dispossession, marginalization, and resistance in this place.

I have two objectives in this concluding chapter, both of which speak to the specific contribution that this study makes to the scholarly literature on aboriginal peoples and their place in broader Canadian society. The first objective is to examine this study’s contribution to the aforementioned project of developing a better understanding of the colonial construction of space in British Columbia and Canada. What precisely does this case study of Hul'qumi'num territory study tell us about processes of colonization and

¹ Harris, *Making Native Space*.

² Clayton, *Islands of Truth*. The notion of a “white history” is similar to Razack’s idea (in *Race, Space, and the Law*) of “white settler mythologies.” Razack argues for the “unmapping” of white settler society.

dispossession? There is a supplementary question here, one that springs from my insistence on exploring the contemporary effects of colonization: How exactly do the legacies of this colonial history and geography manifest themselves in current struggles over land and resources in Hul'qumi'num territory? I address these questions in the first part of the chapter. In the second part I return to the discussion about geography's contemporary encounter with indigeneity. The objective here is to explore in more depth the contribution that a critical indigenous geography might make to processes of decolonization, both within the discipline of geography and beyond.

Colonization and Its Legacies

The past two decades has seen the emergence of a rich scholarly literature exploring processes of colonization and dispossession in British Columbia. The work of Cole Harris has been of central importance here, but there have been other important contributions as well. Daniel Clayton's work on the "imperial fashioning" of Vancouver Island, for example, examined how this place was initially drawn—through processes of mapping and exploration—into the British imperial realm.³ An important part of this process of penetration and incorporation, perhaps most clearly symbolized by the production of Captain George Vancouver's map of the Pacific Northwest coast, was the circulation of the idea—unquestioned and, indeed, hardly needing mention in European circles—that the British, or some other European people, would one day take possession of this territory and rule over the indigenous peoples that populated it. The colonization of Hul'qumi'num territory in the late 1850s, then, followed 'naturally' from such ideas

³ Clayton, "Islands of Truth."

and from the colonization of indigenous territories around Fort Victoria in the 1840s. For his part, Harris focuses on the grounding of European presence and power in British Columbia over a longer period, extending from the initial effects of exploration (e.g., smallpox epidemics) through to early resettlement processes during the colonial era and the production of separate indigenous and non-indigenous spheres during the creation of the Indian reserve system.⁴ In this work, Harris both maps out the broader contours of colonialism in British Columbia and its specific manifestation in certain localities.

In a recent paper, Harris sets out to understand, broadly, how colonialism functioned in British Columbia to dispossess indigenous peoples of their lands and territories⁵. He argues that colonialism's power to dispossess was underlain, in the British Columbia context at least, by a number of interrelated forces. It relied on the use and threat of physical force (violence) which was backed by the infrastructure (financial and strategic resources, soldiers, weapons) of the imperial state. It relied on the import and application of ideas—what he refers to as a “colonial culture”—that made dispossession something that was natural and inevitable, and that legitimated the use of violence in its support. Finally, dispossession was given its primary impetus by self-interest on the part of settlers, seeking land to better their lot in life, and by the interest of capital, pursuing profit through speculation in land and through the exploitation of natural resources. Dispossession was effected or “managed”, argues Harris, through a number of disciplinary technologies, the most important of which were maps, numbers (e.g., for managing indigenous populations and lands), and the law.

⁴ See, for example, Harris, *The Resettlement of British Columbia and Making Native Space*.

⁵ Harris, “How Did Colonialism Dispossession?”

This process of colonization and dispossession in Hul'qumi'num territory largely fits within the schema laid out by Harris, and I have sought to document in some detail the overlapping and reinforcing effects of these various forces and technologies in this particular place. Colonization and dispossession in Hul'qumi'num territory was certainly driven by a desire for land—on the part of land-hungry settlers, speculators, and private capital—and facilitated by colonial authorities who had the force of the British military at their disposal. The tools of surveying and mapping were certainly important here, serving to push back the colonial frontier and establish a private property regime in the territory, thus helping set the stage for white resettlement schemes. Colonial ideas about civilization and savagery provided an important legitimation for colonization and dispossession in this place, and for the imposition of European forms of rule. As Harris suggests was the case more generally, law was a particularly powerful tool in the process of opening up Hul'qumi'num territory to white resettlement and governance; extending the reach of colonial law into this indigenous space, in the pursuit of indigenous suspects for example, contributed to the breaching of Hul'qumi'num sovereignty and the incorporation of this region into an expanding colonial regime.⁶ The imposition of colonial law in Hul'qumi'num territory was accompanied by the entry of English ideas about property and possession. Hul'qumi'num territory, posited as a space of untamed nature and uncivilized human nature, was thus made safe and secure (for settlers and capital) by the imposition of a regime of private property.⁷

The imposition of this legal and property regime was, in turn, a form of violence against Hul'qumi'num peoples. Private property re-ordered this space so as to constrain

⁶ Blomley, "Law, Property, and the Geography of Violence," 121.

⁷ *Ibid.*, 124.

the mobility of Hul'qumi'num peoples, restricting their access to lands and natural resources on which they had long depended for economic and cultural sustenance. The new property regime not only helped to transform space but also worked to re-order relations between the people who were occupying this space. New rules of land ownership entailed a reallocation of rights and entitlements. Hul'qumi'num rights and entitlements were diminished while those of the new 'owners' were greatly expanded; thus this new property regime thus helped establish relations of privilege and deprivation. In Hul'qumi'num territory, in comparison to many other indigenous territories in the province, the imposition of a private property regime has been particularly extensive; thanks in large measure to the land grant associated with the construction of the Esquimalt and Nanaimo Railway in the mid-1880s, today almost 85 percent of Hul'qumi'num territory is in private hands. The relations between Hul'qumi'num peoples and those who have come to this territory more recently have been deeply affected by and indeed structured according to this property regime.

At the same time as the initial grid of property lines was being laid down in Hul'qumi'num territory, colonial authorities were mapping out reserves of land to be set aside for the indigenous residents of this region. By this time, the mid-1860s, the notion that indigenous peoples possessed aboriginal title to their larger territories had been set aside by colonial authorities and thus, rather than seeking to take possession of Hul'qumi'num territory through the negotiation of land purchase agreements or treaties, the colonial solution was to partition off lands for indigenous peoples and make the rest available for white 'resettlement' and development. The mapping out, first by colonial authorities and later by provincial and federal officials, of a 'postage stamp' Indian

reserve system—a series of small patches of land to isolate and contain the problematic Indian population—served to separate, in a spatial sense, indigenous peoples from the growing grid of white property and Crown lands. The line drawn to separate indigenous peoples and lands from non-indigenous peoples and lands became, as Harris puts it, “the primal line on the land in British Columbia”.⁸ This line became, he adds, the most important line of all in the province, a line “that facilitated or constrained all others” and around which “clusters of permissions and inhibitions” were organized that came to deeply affect the lives of virtually all indigenous peoples in the province.⁹ It is important to realize that, from an indigenous perspective, this primal line was little different from a property line: while Crown land came to be referred to as ‘public land’ in British Columbia, this was misleading. For most of the province’s history, public land was effectively white land, land under the jurisdiction of the non-indigenous public and its leaders and beyond the jurisdiction of indigenous peoples.¹⁰

From the earliest phases of the colonial project in British Columbia, indigenous peoples have resisted the drawing of this primal line between indigenous and non-indigenous space, or, perhaps more accurately, they have resisted the drawing of this line in such a clear and unequal way, something that I have tried to document, in the Hul’qumi’num case, throughout this study. As was the case elsewhere in British Columbia, during the period of this study Hul’qumi’num resistance took various forms,

⁸ Harris, *Making Native Space*, xviii.

⁹ *Ibid.*, xviii and xxi.

¹⁰ I draw here on an argument made by Lynn A. Staeheli and Don Mitchell that emphasizes the importance of looking at ‘public space’ (in their case in the urban context) not only as *space* but also as *property*. See Lynn A. Staeheli and Don Mitchell, *The People’s Property? Power, Politics, and the Public* (New York and London: Routledge, 2008).

including petition of colonial and provincial authorities, hostility towards and (occasionally) physical attacks against white settlers and ‘their properties’, disruption of survey work designed to mark out and fix property lines, and occupation of land that had been ‘sold’ to white settlers. While such resistance was not without effect, slowing the dispossession process and in some cases lessening its harshest effects, over the long term colonial power still won out, resulting in the marginalization of indigenous communities in Hul’qumi’num territory as well as elsewhere in the province.

At this point, let me turn to the question of the significance of this particular study: Why is the story I tell here important? First, it is important to note that this study provides a much fuller exploration and documentation of processes of colonization and dispossession in Hul’qumi’num territory than has previously been the case. Two recent works—by Arnett and Marshall¹¹—document important elements of this story, but neither provide for the kind of broad and detailed treatment that is presented here. This study is important then, in the sense that it tells the story of the colonial construction of space in this place and does so more fully than has previously been the case. Such local stories are important for a number of reasons. They are important to the people who live in these places, and this is particularly the case when, as in this case, the stories of a place are cut through with troubling questions about origins, ownership, and injustices. In such cases, local stories such as this play an important role in better understanding the foundations of contemporary challenges and in establishing grounds for their resolution. For the Hul’qumi’num, the hope is that a better understanding of the colonial history and

¹¹ Arnett, *The Terror of the Coast* and Marshall, *Those Who Fell From the Sky*.

geography of their territory might bolster public support for a fair resolution of their land claim.

Beyond its importance to the Hul'qumi'num and to others who live in or are otherwise particularly interested in this territory, this study makes a broader contribution to the scholarly literature in several ways. It contributes, as noted above, to a growing body of scholarly work on the history and geography of British Columbia and Canada, and, more particularly, to our understanding of the complex encounter between indigenous peoples and an emerging white settler society. More specific still, as a case study it contributes to a better understanding of the complex processes of colonization and dispossession, as well as indigenous resistance, that were central to this encounter. To truly understand colonialism, Cole Harris points out, it is "essential to investigate the sites where colonialism was actually practiced", as it is through the examination of such sites that "the details of colonial dispossessions and repossessions" are to be found.¹² This entails the positioning, he argues, of studies of colonialism "in the actuality and materiality of colonial experience."¹³ Focusing this analysis on Hul'qumi'num territory, then, allows for a close examination of colonization and dispossession, and of the strategies and tactics employed through these processes, as they have unfolded (and as they continue to unfold) 'on the ground' in this particular place. While stories of colonization and dispossession are widespread, they differ in important respects from one colonial site to another. Thus the importance of case studies such as this one, which offer, as Gillian Hart

¹² Harris, "How Did Colonialism Dispossess?" 166.

¹³ *Ibid.*

puts it, “windows into constitutive processes, and a means for reconfiguring understandings and practices.”¹⁴

What, then, does this particular case study tell us about the encounter between indigenous peoples and settler society, and about the ways that colonialism operated to dispossess indigenous peoples of their lands and territories? Part of the value of the Hul’qumi’num case, and what makes it important to document, relates to the early incorporation of this territory into colonial circuits of power. After Fort Victoria, colonial authorities turned much of their attention to Hul’qumi’num territory, employing a range of strategies to make it legible and amenable to white colonization. Much of this happened during the Douglas era, and during a time when the idea of aboriginal title had not been fully cast aside. Indeed, even as he sought to open up Hul’qumi’num territory to white resettlement Douglas recognized Hul’qumi’num claims to lands and resources in this region and sought an agreement with Hul’qumi’num leaders to purchase their lands. Further, the need to purchase aboriginal title was recognized, and demanded, by a considerable number of white opinion-makers and settlers at the time, who viewed this as the best way to open up Hul’qumi’num lands to white resettlement. There is also evidence that the Hul’qumi’num indicated, at least early in the colonization process, a willingness to enter into such an agreement with colonial authorities; that is, that they were willing to sell some of their lands—lands that they would identify and select—to the colony so as to be allocated to white settlers. What was important to the Hul’qumi’num in this case, it seemed, was that they exert some degree of control over which lands, and how much land, would be allocated for sale to white settlers.

¹⁴ Gillian Hart, “Geography and Development: Critical Ethnographies,” *Progress in Human Geography* 28, 1 (2004): 91-100. Quote of from p. 97.

All of this indicates a much more complicated relationship between indigenous peoples and settler society than that which comes to dominate in this area, and in British Columbia more broadly, in the ensuing decades. This study indicates that, at this early point in British Columbia's colonial history, the line between colonial power and indigenous sovereignty was much less clear. Throughout the 1850s and into the early 1860s, as Douglas and other colonial authorities worked to open up Hul'qumi'num territory to white rule and possession, they met stiff resistance and were forced to negotiate with Hul'qumi'num leaders to achieve their aims, whether this was the capture of Hul'qumi'num suspects or the insertion of white settlements. One can argue that the fundamental line posited to exist in this early colonial period, a line that clearly separated a space of white civilization (where law, order, and property ruled) and a space of indigenous savagery (where non-law, chaos, and an open commons were seen to prevail) was also more indistinct. Perhaps Mary Louise Pratt's concept of a "contact zone" is more useful here rather than the idea of a distinct line separating indigenous peoples and non-indigenous settlers in this place and at that time.¹⁵ For Pratt, the contact zone is the "space of colonial encounters, the space in which peoples geographically and historically separated come into contact with each other and establish ongoing relations".¹⁶ This is a space of ambivalence, transculturation, negotiation, although she does note that the colonial encounters that take place here usually involve "conditions of coercion, radical inequality, and intractable conflict."¹⁷

¹⁵ Mary Louise Pratt, *Imperial Eyes: Travel Writing and Transculturation* (London: Routledge, 1992).

¹⁶ *Ibid.*, 6.

¹⁷ *Ibid.*

To be sure, these lines between indigenous and non-indigenous space become more clear and fixed as the colonization process proceeds; this is well illustrated in the Hul'qumi'num case through the processes of dispossession associated with the white resettlement schemes in the 1860s and with the marking out of Indian reserves in the 1870s. But in the early phases of colonization, these lines were much more uncertain and fragile, and continually crossed and effaced by both the Hul'qumi'num and by white settlers. The crossing of these lines caused conflict—the destruction of Indian potato patches, the killing of white farmers' livestock—but also yielded some understanding. Thus the extension of colonial law into Hul'qumi'num territory, and the incorporation of this space into the colonial realm, was a gradual and messy process, one which relied on negotiation and dialogue but also, at various points, on the repeated use and threat of military violence. Over the longer term, one can argue that these lines that were drawn to separate indigenous space from non-indigenous space—or what Harris refers to as the province's "primal line"—remain, in some ways, indistinct and unrecognized. Hul'qumi'num elders and political leaders, for example, continue to point out that they have never sold or ceded their lands and thus that the lands still belong to them. Further, the privatization of their territory, through the E&N Railway land grant, is viewed as an invalid and illegal act, unauthorized by Hul'qumi'num leaders.

This study of Hul'qumi'num territory is also important because of the large amount of private land in the territory, stemming from the 1880s E&N Railway land grant. This makes Hul'qumi'num territory different from most other indigenous territories in the province, where private land constitutes only a small portion of the territory and where

Crown land is abundant.¹⁸ And it is here that I want to focus on tracing some of the legacies of colonization and dispossession into the present, focusing in particular on the implications of this history of land privatization on treaty negotiations in the territory. Treaty negotiations in Hul'qumi'num territory have been beset by a number of challenges. As I discuss in the final chapters of this study, to some extent the challenges faced by the Hul'qumi'num in seeking resolution of their land claim are the same as those faced by indigenous groups at other treaty tables in the province; these include the lack of resources dedicated to the process, the gap in expectations between the parties in terms of the amount of land and cash that will be included in treaty agreements, and broad disagreement between the parties on a number of key issues (e.g., taxation, fisheries allocations, how certainty is to be achieved). Also, as I've discussed, the lack of progress at many treaty tables can be traced to the fact that the main parties engaged in the treaty process—indigenous groups on one hand and the Crown on the other—seem to have very different understandings of the nature and purpose of the treaty negotiation process and of the way that aboriginal title and Crown sovereignty are to be reconciled. An additional major challenge in the Hul'qumi'num case—and this is one reason that the consideration of this case is important—relates to the extent of private land in this territory. The fact that the Crown has ruled that private land is off the treaty negotiation table makes a fair resolution of the land question in this territory, at least fair from a Hul'qumi'num perspective, very challenging.

¹⁸ The only other territories in British Columbia where private land is such a large issue are in urban areas (especially around Vancouver and on the lower mainland) and other territories on southeast Vancouver Island which are also encompassed within the E&N land grant.

Like many other indigenous groups in the province, the Hul'qumi'num reject the Crown's approach to treaty negotiations and reconciliation, which calls for the division of indigenous traditional territories into two distinct and separate sub-territories, with aboriginal title being extinguished over the vast majority of the territory, where the Crown comes to enjoy exclusive jurisdiction over lands and resources. In a sense, the contemporary treaty-making effort can be seen as an effort on the part of the Crown simply to redraw the province's "primal line"; the line drawn to clearly delineate and separate indigenous space from the space that would be taken up and occupied by non-indigenous society. Given the contemporary need, as directed by the courts, for the Crown to address the recognition of aboriginal title, this redrawing of the old line would allow somewhat more space for indigenous peoples than had been the case up to the present; full implementation of the treaty model, based on the current formula, would see the allocation of about 5 percent (rather than the current 0.3 percent) of the province's land base to indigenous communities in the province. The spatial division of the province would remain, in other words, highly lopsided. Moreover, this unequal division aside, the Crown's intent through the treaty process remains conceptually the same; to map out and maintain clearly separate indigenous and non-indigenous spaces. Reconciliation of aboriginal title and Crown sovereignty, a central goal of the treaty process, would be achieved by the careful separation of these two forms of territorial ownership and jurisdiction.¹⁹

¹⁹ While the Crown's intent may have been to separate Crown and indigenous jurisdictions completely, it is important to note that the treaties that have been signed to date within the B.C treaty process do allow for some small degree of overlap in indigenous and Crown jurisdictions; these agreements allow, for example, for some

The Hul'qumi'num, in concert with a number of other indigenous groups, have argued for a radically different model, one that would allow indigenous peoples to maintain some connection to their larger traditional territories. This model calls not for the complete separation of Crown sovereignty and aboriginal title but rather for their overlapping and co-existence throughout much (if not all) of an indigenous group's traditional territory. Perhaps the clearest articulation of this alternative model has come from the Hul'qumi'num Treaty Group, spelled out in a report produced in early 2008.²⁰ The authors of the treaty group report argue that the primary roadblock in the treaty process has been the failure of the federal and provincial governments to provide adequate recognition of the inalienable right of indigenous peoples to governance of their territories. While the existing approach to treaty making and reconciliation provides the Crown with certainty over the land base, they argue that it fails to provide indigenous groups with the certainty they require. As an alternative, the authors propose a model that allows for shared decision-making of natural resources across traditional territories; this model, they argue, "will result in a certainty model that responds to the Crown's desire to create a predictable environment for continued development and growth in the province without requesting First Nations to compromise their fundamental territorial governance rights."²¹ This alternative approach calls for the co-existence of indigenous and Crown territorial jurisdictions, and proposes a number of different structures operating at different scales, from the provincial to the local level, to shape and guide the shared

participation by indigenous groups in making decisions about lands and natural resources (e.g., fish and wildlife, protected areas) outside of treaty settlement lands.

²⁰ Brian Golding, Jessica Rogers, and Brian Thom, *A Call to Action: Shared Decision Making, A New Model of Reconciliation of First Nations Natural Resource Jurisdiction* (Ladysmith, BC: Hul'qumi'num Treaty Group, 2008).

²¹ *Ibid.*, 7.

decision-making process.²² In this model, reconciliation of aboriginal title and Crown sovereignty is to be achieved through the coming together of indigenous peoples and the Crown to make joint decisions about the use and management of lands and natural resources.

That it was the Hul'qumi'num Treaty Group that has sought to formally describe the nature of this alternative model and how it might operate is perhaps not surprising. While the capacity of the treaty group to undertake such work was no doubt an important factor here, so also is the predicament the treaty group finds itself in; trying to negotiate a treaty within the existing, highly-constrained framework of the BC treaty process, guided by a community mandate which calls for the Hul'qumi'num to retain some form of connection to 100 percent of their traditional territory, and faced with a situation where almost 84 percent of the traditional territory is held in private hands (and with private lands excluded from the treaty negotiation process). In this context, negotiating a treaty that would meet community expectations requires thinking beyond the frame that had been erected around the treaty process. It means looking beyond the 'fact' that Hul'qumi'num territory today is overwhelmingly a realm of private land, and struggling to find ways that aboriginal title can be exercised throughout such a segmented and privatized territory. It requires challenging the idea that private land is an inviolate realm, something that lies beyond public interest and intervention and that has effectively extinguished any form of aboriginal title or rights that may have once existed in these places. Given the dominance

²² The report calls for shared decision-making to be enabled through a provincial-level "Framework Agreement for Shared Decision-Making" and to be implemented through shared decision-making agreements negotiated at the local level with individual indigenous groups. It also calls for the creation of different bodies acting at the provincial, regional, and local levels to shape, implement, and monitor the shared governance of lands and natural resources.

of a particular idea of property in land in places like British Columbia—the ‘Blackstonian’ notion of property being individual, exclusive, and deeply private—this is not at all a simple task, nor one that will be accomplished quickly.²³ Federal and provincial governments have strongly resisted the inclusion of private property in treaty talks (except where the property owner expresses a willingness to sell his or her rights to the highest bidder) and one can rest assured that private land owners will use their full legal and political powers to resist any form of expropriation aimed at addressing the Indian land question. Ultimately, however, reconciliation of aboriginal title and Crown sovereignty in Hul’qumi’num territory, in the form sought by the Hul’qumi’num, may require such a profound shift in thinking about private property; it may require recognition and acceptance on the part of the Crown and, more broadly, of non-indigenous society that aboriginal title continues to exist not only on public lands but also on private lands.

If the recent Supreme Court of British Columbia decision in the *Tsilhqot’in Nation* case is any indication, this recognition may have already started.²⁴ In this decision, described by one law firm as “the most significant trial judgment on aboriginal title and rights since the Supreme Court of Canada decided the Delgamuukw case in 1997”²⁵, Judge David Vickers ruled not only that the Tsilhqot’in had proven aboriginal title to approximately 200,000 hectares of land in the province’s southwest interior (and that the provincial government had no jurisdiction over forests in that area) but also that

²³ Nicholas Blomley, “Remember Property?” *Progress in Human Geography* 29 (2005): 125-27.

²⁴ *Tsilhqot’in Nation v. British Columbia*, 2007 BCSC 1700 (November 20, 2007).

²⁵ Blakes, *The Tsilhqot’in Nation Decision on Aboriginal Title and Rights*, 1. Document available online at <http://www.blakes.com/english/view.asp?ID=1902>. (Accessed May 2, 2008).

aboriginal title continued to exist even in areas where private interests, such as private rights to use resources on Crown lands and even private (fee simple) ownership of land, had been created. Thus, Vickers wrote,

regardless of the private interests in the Claim Area (whether they are fee simple title, range agreements, water licences, or any other interests derived from the Province), those interests have not extinguished and cannot extinguish Tsilhqot'in rights, including Tsilhqot'in Aboriginal title.²⁶

Although Vickers was prevented, due to a legal technicality, from making a final declaration of aboriginal title in this case, his judgment was clearly a significant victory for the Tsilhqot'in and for all indigenous groups in British Columbia.

The court decision also clearly represented a rejection of what has been called the 'postage stamp' approach to aboriginal title; that is, the restriction of recognition of aboriginal title to a small portion of an indigenous group's traditional territory. It is clear, Vickers wrote, that

the impoverished view of Aboriginal title advanced by Canada and British Columbia, characterized by the plaintiff as a "postage stamp" approach to title, cannot be allowed to pervade and inhibit genuine negotiations. A tract of land is not just a hunting blind or a favourite fishing hole. Individual sites such as hunting blinds and fishing holes are but a part of the land that has provided "cultural security and continuity" to Tsilhqot'in people for better than two centuries.²⁷

The decision provided support for a much more expansive recognition, in spatial terms, of aboriginal title; this is evidenced by Vickers' recognition that the Tsilhqot'in had provided sufficient evidence for him to recognize their aboriginal title claim to almost 50 percent of the territory they had claimed (the 'claim area'). This decision, which is being appealed by the federal government, has effectively undermined the Crown's approach in the BC treaty process and given support to the argument for the creation of treaties which

²⁶ Tsilhqot'in Nation v. British Columbia, 322.

²⁷ *Ibid.*, 457.

allow for aboriginal jurisdiction, or shared aboriginal-Crown jurisdiction, over a much larger portion of an indigenous group's traditional territory.

Critical Indigenous Geography and Decolonization

By any number of accounts, geography's encounter with indigeneity appears to be widening and deepening. At the Association of American Geographers' 2008 annual conference in Boston, for example, the sessions organized by the Indigenous Peoples Specialty Group received unprecedented attention, thanks in part to the high profile given to the group's work in a recent AAG newsletter and in the conference program. The conference itself featured twenty six sessions sponsored by the specialty group, including the presentation of almost 100 papers and posters and seven panel discussions (nearly double the number of sessions and papers that had been sponsored in previous years) and covering topics ranging from the effects of climate change on indigenous communities, to indigenous research methodologies, to indigenous people and the colonial present. Long relegated to the margins of the discipline, there was a sense that indigenous geography had finally arrived to take its rightful place in the mainstream of geography. For those geographers concerned about the long struggles of indigenous peoples against social, economic, and political marginalization, struggles evident in many places around the world, the increased attention being paid to indigenous geographies was reason for some sense of satisfaction and hope. Certainly, the increasing number of scholars working on indigenous matters—and particularly growing group of younger or emerging scholars, a significant number of whom came from indigenous communities, working on these issues—is a hopeful sign. This groundswell of scholarly interest indicates, I believe, a

broader expansion in social awareness and support for the concerns of indigenous peoples, particularly evident in settler states such as Canada, the United States, Australia, and New Zealand.

Beyond reflecting this growing social awareness, however, how are we to understand the emergence of this sub-field called indigenous geography? Of course, in a discipline that seems to spawn sub-disciplines with startling regularity, one could be excused for greeting the creation of still another sub-discipline with some skepticism, seeing it as simply reflecting a clever career move by certain scholars to declare and map out (or colonize) new intellectual turf in an effort to move ahead in the academic game. Is there really something new and significant here, something that will make an important contribution to the discipline of geography? Further, can indigenous geography, and more particularly what I've called a critical indigenous geography, somehow contribute to processes of decolonization within the discipline of geography? Finally, what role (if any) can such scholarship play in broader processes of decolonization underway in society, and particularly in places like British Columbia and Canada which are founded on the colonization of indigenous space? In this final section of the study I will explore these questions, and argue that work from a critical indigenous geography perspective can contribute to discussions about the decolonization of geography. Where appropriate, I will draw from my research on the Hul'qumi'num case to support my argument.²⁸

²⁸ It is important to note that discussions about the decolonization of geography have been underway for some time, spurred on in large measure by the work of critical geographers. The discussion presented here, then, can be understood as an exploration of how a critical indigenous geography meshes with, and contributes to, this broader critical geography project.

Prior to moving on to this discussion of critical indigenous geography, however, it is important to note that the emergence of this sub-discipline came through the hard work of a small group of scholars who believe in the importance of work on indigenous issues and who have long argued that such work, and the issues it deals with, should receive more attention within the discipline of geography. The carving out of a larger and more prominent space for indigenous geography represents a hard fought victory of sorts and, importantly, creates a place for like-minded scholars to gather, to find support, and share ideas. Particularly important in this case, I believe, is that this sub-discipline has created a welcoming space within geography for scholars of indigenous descent. Given the poor representation of indigenous scholars and indigenous perspectives within the discipline of geography, this alone is an important development. One hopes that the creation of this disciplinary space, in combination with the production of high quality work on indigenous geography, will increase the likelihood that indigenous peoples and communities, and all others concerned about indigenous issues, will see geography as a field of study that has something important to contribute to the understanding of indigenous social, economic, political, and economic concerns. Making geography relevant to the lives and concerns of indigenous peoples is clearly a prerequisite for the recruitment of indigenous scholars and students into the discipline.

Geography has much to gain from a closer engagement with indigeneity. An important contribution in this respect comes through the feeding of new and challenging perspectives, different ideas and approaches drawn from various indigenous ways of seeing and knowing the world, into geography's mainstream. Critical here are indigenous ways of understanding place and space, what Daniel Wildcat has referred to as a

particularly “Indian sense of thinking in space”.²⁹ The argument here is that through long and close association with particular places—homelands or traditional territories—indigenous peoples have developed deep and complex understandings of these spaces, understandings that crosscut Western notions of culture and nature. One example of such perspectives comes through closer examination of the phrase “all our relations”, a phrase commonly employed in many indigenous traditions to make reference to the status of other beings in the cosmos. This phrase refers to an indigenous understanding of everything in nature—not only plants and animals but also what in the Western tradition we would consider to be inanimate nature (e.g., air, water, rocks)—being alive, imbued with spirit, and interrelated.³⁰ Consider the shift in thinking that would be required, notes Wildcat, if we thought of plants and animals and rocks and the air itself as our relatives rather than as resources that can easily (and impersonally) be exploited and fouled. In addition, indigenous cosmologies often describe the passage or transformation of human-being into animal-being, and vice versa, or human-being into some other part of the landscape (e.g., a mountain or a rock) often aided by supernatural beings. Such stories and understandings further break down the boundaries between humans and the rest of creation. If taken seriously, such perspectives, long relegated to the margins of Western thought, can offer challenges and fresh insight to the discipline of geography. Their relevance to work in political ecology and to social nature theory, for example, is immediately obvious, encouraging scholars in these fields to further expand the range of actors that must be considered when studying the politics of ecological struggles.

²⁹ Daniel Wildcat, “Indigenizing Spaces: Deep-Spatial Perspectives on Place,” Talk given at Association of American Geographers meeting, 15 April 2008, Boston, Mass.

³⁰ Shaw *et al.*, “Encountering Indigeneity,” 269-70.

More broadly, the “deep-spatial perspectives on place” that Wildcat speaks of—that is, the deep connections to places and homelands developed by indigenous peoples through a long period of living *in* rather than *on* the land—provide rich fodder for geographic inquiry.³¹ Tim Ingold notes that the distinction between living *in* the land and *on* the land is vitally important here, with the latter reflecting simple occupancy of land and space—reflecting Western ideas of demarcating space and possessing land—and the former grounded in the belief that humans come into being in relation to the land.³² The important point here, at least for this discussion, is the tight linking between land or place and a cultural understanding of self and identity (or of being). While carrying out interviews for this study I asked Joey Caro about this indigenous sense of connection and attachment to place and territory, and how this related to the Hul’qumi’num land claim and the treaty process. He responded by noting that those people who have come to this area (i.e., Hul’qumi’num territory) more recently, non-indigenous people that is, can all trace their lineage back to some other place (or places), whether to Ireland or Scotland or England, and could go back and visit their old homelands if they wished and, further, that they could find meaning in such visits. It is the same for the Hul’qumi’num, Caro noted, except that their homeland is right here. In describing the meaning of this homeland, he made reference to the fact that Hul’qumi’num culture and history is reflected in the land, and that this tight connection between land and culture and identity is articulated through stories and histories that are told again and again across generations:

We look at [Mount] Tzouhalem and we see the basking frog and the flood story. We see the mouth of the Cowichan River and we see the whale and the thunderbird fighting, and we see the stone heads over by the Comiaken church. We see all the

³¹ Wildcat, “Indigenizing Spaces.”

³² Ingold, *The Perception of the Environment*.

legends and battles and stories that have happened, and old village sites and burial sites, and our history is interwoven into the land. This is our home. This is us. We are it. This is home for us. We can't go to Ireland and feel that. We can't even go to Nisga'a [territory] and feel that. This is it here.³³

There is a deep understanding of land and place here that goes to the heart of the discipline of geography. For many of us, especially those of us that have come more recently to this place—whether this place is Hul'qumi'num territory, British Columbia or anywhere else in Canada—or whose ancestors came to this place from afar, our understandings of our current homeplaces are often much different, more distant and fleeting perhaps, often fractured and surficial. Thus, indigenous geography offers opportunities to study and learn about different notions of place and the social, cultural, political and ecological implications that flow from such different understandings of the world around us.

Andrew Baldwin suggests that geography comes down to “the practice of putting down lines, on land, on bodies and in the mind, lines that invariably seek to create order out of chaos by delineating the field of difference from the domain of the same.”³⁴ These are lines, he argues, that “chart the limits of the known and unknown worlds ... [and] lend a degree of predictability to human movement.”³⁵ More importantly, he suggests, geography is about asking questions about these lines, and about the spaces they create, and their effects: “... who put them there? And why? Why those lines and not others? Why do they appear where they do, when they do? Why do they change and why do they endure?” He points out that the drawing of such lines is a “deeply political undertaking” and “represents the power to set oneself apart from others, to secure the boundaries of the

³³ Interview with Joey Caro, 13 October 2006.

³⁴ Andrew Baldwin, *Recovering Borealia: The Social-nature of Canada's Boreal Forest* (PhD dissertation, Geography, Carleton University, 2006), 36-37.

³⁵ *Ibid.*

self, home and nation.” Finally, he argues that geography is about “understanding how the drawing of lines assists in the appropriation, regulation and control not only of certain spatial environments but, more poignantly, the human movements that occur within and across the fictional divides they create.” Baldwin’s definition of geography is useful in this particular context as it emphasizes a number of the key themes that have emerged in this study—the process of laying down lines over what was perceived to be chaotic and unknown space, the power of such lines to divide and secure space, and their role in impeding movement for some while simultaneously ‘opening up’ avenues of movement for other—and highlights questions that have been central to its purpose, namely about the appropriation and control of space. If we use this definition of geography as a starting point, then, I think we can begin to see how indigenous perspectives—articulated through the sub-discipline of indigenous geography—can contribute to discussions about the decolonization of geography.

Developing a better understanding of indigenous understandings of place and, more broadly, of territory can help us undercut some of the many lines that have been laid down through colonial and postcolonial processes of exploration, taking possession, nation-building, and development. Developing a better understanding, for example, of this indigenous geographic entity called “the Coast Salish World” (see Figure 1.1)—a space encompassing much of British Columbia’s south coast, the entire coast of Washington State, and extending across the Coast/Cascade ranges into the continent’s interior—serves to call into question the seeming solidity of the Canada-USA border, identifying this line as a recent social construct and highlighting the deeper and more ancient social and ecological connections that run through it. The Hul’qumi’num sense of

territory, a subunit within the larger Coast Salish World, similarly crosscuts modern political borders (see Figure 7.1), extending into Washington State. Abraham C. Joe, a Cowichan elder, talks about old connections to relatives south of the BC-Washington border:

Those old days the old people used to make canoes and travel all over. All the way past Seattle up into Tacoma to a big house there... No matter how far you go you've got relations. Down the United States you got relations. And they all got along good. [...] There's no such thing as borders, no I don't believe it.³⁶

Ultimately, then, indigenous assertions of their territorial rights and identities—of their aboriginal title, as it is more often referred to—brings into question conventional geographic understandings of more recent national identities and sovereignties, which are products of imperial and colonial processes.

Although such challenges to the legitimacy of contemporary political borders that define the territories of modern nation states, where they bisect and divide older indigenous nations and territories, is perhaps not yet well advanced, or at least not in this particular place, the same can no longer be said for such challenges to sovereignty within nation states. A series of recent court decisions in British Columbia, for example, has burdened or placed restrictions on our understandings of Crown sovereignty in places where aboriginal title has been deemed to exist (or even where there is a likelihood that it will be found to exist). Canadian courts have declared that it is incumbent on the Crown, in such cases, to consult with and accommodate the indigenous groups whose territory will be affected by planned development projects (e.g., logging, mining, road construction, etc.).³⁷ The decision in the recent *Tsilhqot'in* case seemed to go further still,

³⁶ Cited in Thom, *Coast Salish Senses of Place*, 387.

³⁷ See particularly *Haida Nation v. British Columbia (Minister of Forests)*, [2004] 3 S.C.R. 511, 2004 SCC 73 and *Taku River Tlingit First Nation v. British Columbia*

finding that the present provisions of the *Forest Act*, the main provincial law governing the use and management of Crown forests in British Columbia, do not apply in areas where aboriginal title has been proven.³⁸ The decision, although not legally binding at this point, suggests that provincial sovereignty—in this case, more specifically, the ability to unilaterally impose laws and regulations over places and peoples—over a significant portion of British Columbia’s land base can no longer be assumed. This decision, eloquently delivered by Judge Vickers, raises important and difficult questions about how aboriginal title and Crown sovereignty are to be reconciled. As with similar, earlier landmark judgments on aboriginal title, the judge suggested that this reconciliation should not come through the courts but rather through negotiations between indigenous peoples and non-indigenous governments at all levels.

Within the realm of law, then, including within courts and within broader legal discourses (e.g., legal scholarship),³⁹ there has been an attempt to come to grips with the lines laid down by colonial and postcolonial regimes in British Columbia—lines that demarcate Crown land from Indian Reserve land from private land—and how they may relate to the complex indigenous geographies that pre-date them. The Crown’s response to the challenges posed by recent court decisions on aboriginal title, and to the claims pressed so effectively by indigenous groups, has been primarily focused on the mobilization of yet another line-drawing exercise, namely the negotiation of modern comprehensive treaties that would in essence result in the re-drawing of the line between

(Project Assessment Director), [2004] 3 S.C.R. 550, 2004 SCC 74 which clearly set out the Crown’s duty to consult and accommodate indigenous groups before undertaking development projects in their territories.

³⁸ *Tsilhqot’in Nation v. British Columbia*, 317.

³⁹ See, for example: Brian Slattery, “The Metamorphosis of Aboriginal Title,” *Canadian Bar Review* 85 (2006): 255-286.

indigenous and non-indigenous space. While this re-drawing exercise, at least as it has been shaped by the Crown to date, would allow somewhat more space for indigenous communities, it nonetheless is ultimately more about closing off space and severing connections—about securing the borders between peoples and places—than it is about opening up space and allowing for greater connections between peoples and places.

The dangers of this line-drawing exercise were highlighted by Hul'qumi'num elders when, during internal discussions about creating a map of Hul'qumi'num territory to be submitted to the treaty commission (a required step for entry into the treaty process), they raised concerns about the divisive effects this might have. George Seymour, a member of the Chemainus First Nation, put it this way in reference to the requirement that they map out their territory:

As I mentioned before that the government is forcing us into things, drawing these little borders. When they first come and made a reserve they drew us the little borders and then 'divide and conquer' they call that I think. And we could see it again, just getting a little bit bigger that's all, and it's creating bad feelings amongst us. But we're still one people.⁴⁰

The concern here is that, just as the creation of different Indian bands (each assigned to their own Indian reserves) during the nineteenth century had functioned to sever connections and foster divisions between peoples who had always been closely related (e.g., through kin connections) and who had moved smoothly and frequently between communities and territories, so the modern treaty process would do the same.

The inability of the treaty process in its current form, based as it is on a Cartesian mapping of indigenous territories, to deal with indigenous senses of geography is further illustrated by the issue of 'territorial overlap'. Many of the territories mapped out by indigenous groups entering the treaty process show some degree of overlap with the

⁴⁰ Cited in Thom, *Coast Salish Senses of Place*, 403.

territories of adjacent indigenous groups. Such overlap reflects the long tradition of sharing between closely related groups, where certain places—often at the outer edges of territories, and where resources are abundant—are used by two or more groups. In Coast Salish culture, this sharing of space is often mediated through kin connections that cut across communities and territories. The drawing of a continuous line around adjacent indigenous territories, then, as is required in the treaty process, has meant that these lines often cross each other at certain points, thus producing a problematic ‘overlap’ on such maps. In places like the southern Georgia Strait, where indigenous populations are densely clustered, such shared territories are common, and thus there is a high degree of overlap when these territories are mapped using traditional cartographic methods (see Figure 9.1). Such overlaps have already led to conflicts between indigenous groups. The finalization of the Tsawwassen treaty agreement, to cite just one example, was opposed by the Sencot’en Alliance—an alliance made up of three indigenous groups on Vancouver Island and one on the lower mainland—which argued that the treaty infringed on their territorial claims in the southern Gulf Islands.⁴¹

From an indigenous perspective, then, the treaty process can be seen as a deeply colonial process, seeking to fix limits around aboriginal title and identity and, where these are recognized to exist, to embed them inside the legal and political confines of the Canadian state. Despite the recent treaties reached under this process, it is clear that most indigenous groups in the province have rejected this approach. The Tsilhqot’in decision, incorporating a rejection of the impoverished view of aboriginal title currently held by the Crown (i.e., the ‘postage stamp’ approach to dealing with aboriginal title claims), has

⁴¹ Lindsay Kines, “Native Groups Fight Treaty in Court,” *Times Colonist*, 15 September 2007.

no doubt further exposed the limitations of this approach. A recognition of the limits of this approach and its inability to come to terms with more fundamental questions about the continuing existence of aboriginal title and how this can be reconciled with the lines that have been laid across it over the past century and a half, opens up the possibility of exploring other options for understanding and governing contested space, including the idea of shared (or overlapping) Crown and aboriginal jurisdictions. Such an approach, recognizing the equal interests of Crown and indigenous peoples in the governance and management of the province's lands and resources, would represent an important step towards decolonization. This approach would allow for a recognition of the nation-to-nation relationship that exists between the Crown and indigenous nations, and would provide a basis for genuine dialogue and negotiation about how to share and care for the lands, resources, and peoples that live here.

Consistent through all of this discussion has been the importance of seeing beyond the lines and borders that have been laid down over the past century and a half, lines that work to divide and enclose, and of searching for the connections and relations that move across such demarcations. In this sense, work on critical indigenous geographies can contribute to broader discussions within the discipline geography, including those in which critical geographers are engaged, that seek to challenge conventional understandings of space. Thus, exploring indigenous struggles over land and natural resources in a particular site—Hul'qumi'num territory, for example—requires that one look not only at what these struggles involve and entail within the bounds of this site but also pay attention to the ways that these struggles are shaped by, and spill over into, places beyond this site. Understanding struggles over land and resources in

Hul'qumi'num territory during the last half of the nineteenth century, then, requires understanding broader processes of imperial outreach, capitalist penetration, and nation formation during this period, as well as the reworkings of space that these processes required.

The study of contemporary struggles requires a similar consideration of wider contexts. Today, Hul'qumi'num territory remains a site shaped by the circuits of global capital, subject to intensive speculation in land and feverish development of properties. The region is undergoing a transformation, with a declining forest industry being overtaken by newer modes of production and consumption. There is a new colonization process underway, with the region being resettled and reshaped by people who arrive with refined tastes for the area's land- and seascapes. Upscale housing and resort developments are sprouting up to cater to these newcomers. For example, on the north side of Mount Tzouhalem—a site of great cultural importance to the Hul'qumi'num—there's a new 72-lot subdivision “resort community” (“The Cliffs Over Maple Bay”) being carved into the mountain, complete with “a championship 18 hole signature golf course”.⁴² The Cowichan Valley, the heart of Hul'qumi'num territory, is rapidly being rebranded as a destination for ‘foodies’ and wine-lovers, and has been described as “one of Canada's hottest culinary destinations”—as the “new Napa’ or “Canada's Provence.”⁴³ Prohibitively expensive for the Hul'qumi'num, the land is considered a bargain for those plugged into global economic and real estate networks: “The burnt-out Toronto sous-chef can still afford to move here,” notes one Cowichan booster, “buy five acres of Cowichan

⁴² <http://www.cliffsovermaplebay.com/realestate.html> (June 19, 2008).

⁴³ Ilona Biro, “The ‘Napa of the North,’” *The Globe and Mail*, 30 September 2006.

scrub and start producing”.⁴⁴ Meanwhile, with most of the best timber in the territory now long gone the corporate holders of extensive private forest lands in the area—the inheritors of the land privatized through the E&N land grant of the 1880s—are turning their attention to real estate development to maintain corporate profits and boost share price.⁴⁵

Guided by neoliberal principles, the BC Liberal government works eagerly to support this regional transformation by providing the legal and physical infrastructure needed for new development. Deregulation of the forest sector, for example, makes it easier for forest companies to limit commitments to the processing logs at local mills, facilitating the export of logs to other places (including to mills outside the province), and allowing companies with private forest lands to convert these to other (“higher”) uses.⁴⁶ In terms of physical infrastructure, the Province has proposed a new highway between the Cowichan Valley and Victoria and is in the process of upgrading transmission lines to bring more electricity to Vancouver Island from the mainland. All of this development constrains Hul’qumi’num efforts to retain and regain connections to land and territory, and poses obstacles to their movement towards self-determination. Faced with assessing

⁴⁴ *Ibid.* The quote is from Paul Hadfield, publican of Spinnakers Gastro Brewpub, who sources food for his pub and restaurant from the Cowichan region.

⁴⁵ Timberwest Forest Corporation, for example, the single largest landowner in Hul’qumi’num territory with 114,000 hectares, is actively exploring the conversion of its forest land holdings to real estate development. The company reports that approximately seventeen percent of its Vancouver Island landholdings (which total 322,000 hectares) have “greater value as real estate properties and will progressively be made available for higher uses over the next ten to fifteen years.” See: <http://www.timberwest.com/> (Accessed June 24, 2008.)

⁴⁶ West Coast Environmental Law, *Timber Rules: Forest Regulations Lower Standards, Tie Government Hands and Reduce Accountability* (Vancouver: West Coast Environmental Law, 2004). Available online at <http://www.wcel.org/> (Accessed June 24, 2008.)

the impact of the new transmission line—a project referred to as the Vancouver Island Transmission Reinforcement (VITR) project—on Hul’qumi’num communities, Kathleen Johnnie paints a worrisome picture. The implication of the VITR project, she suggests

is the death by a million cuts scenario to our culture. It is just the slow bleeding off of our culture... and in my report [on the VITR project] that’s how I’m going to describe it, is that it’s not just death by a million cuts on that particular project, and because it is a major infrastructure project that will guarantee supply to the Vancouver Island area, it’s a big slice, it offers a big slice of opportunity for reducing our culture.⁴⁷

This is a familiar portrayal, of a local community—the term ‘local’ here denoting weak, isolated, and relatively powerless—facing the onslaught of development pressure that comes from without, a development juggernaut driven by global markets and supported by a pliant, centralized, neoliberal state.

At the same time, the Hul’qumi’num struggle for self-determination and to retain and regain some degree of control over their territory is certainly not bound within this particular space. The treaty group, for example, has proven adept at working at the provincial level to build an alliance—the Unity Protocol Group—with other indigenous groups to press for substantial changes to the treaty process. This alliance, encompassing most of the groups engaged in the treaty process, has had some success; in late 2007, the Unity Protocol Group convinced federal and provincial officials of the need to engage in high level talks with indigenous leaders from across the province in order to seek a path through the current treaty impasse. The talks at this “common table” began in June 2008, focusing on a number of the key issues that impede treaty negotiations, and it remains to be seen whether these discussions will be successful. The treaty group has also been working at the international level to press its land claim. In 2007 it submitted a petition to the Inter-American Commission on Human Rights, a commission of the Organization of

⁴⁷ Interview with Kathleen Johnnie, 13 December 2006.

American States, arguing that Canada, through its role in the E&N land grant, had violated the Hul'qumi'num peoples' basic human rights.⁴⁸ Here, the Hul'qumi'num are seeking to draw on an emerging body of international law relating to the rights of indigenous peoples, and particularly on such laws that recognize indigenous land and property rights. Thus, the Hul'qumi'num struggle for land, resources and self-determination is not confined to the territory alone but engages with movements and discourses at many scales (provincial, national, and international). The Hul'qumi'num struggle, in other words, is part of a much broader struggle by indigenous peoples, indeed part of a global indigenous rights movement.

If a critical indigenous geography calls on us to “look up” and pay close attention to the broader socio-political and spatial contexts in which indigenous struggles are enmeshed, it surely also asks that we acknowledge and examine the struggles that go on at more local and intimate scales. I'm referring here to the struggles that go on within communities, struggles that are often neglected when we focus on broader and more readily apparent axes of difference, such as conflicts between indigenous and non-indigenous societies. As I've noted elsewhere, like any kind of social grouping, indigenous communities are subject to internal fracturing along any number of lines of differences, including gender, age, wealth and socio-economic status, ideology, and community affiliation. Just as a critical geography seeks to understand and challenge axes of power at work more broadly in society and how these function to create and reinforce domination and violence, so a critical indigenous geography must also bring such critical analyses to indigenous communities. While such analyses may be difficult, and even

⁴⁸ Interview with Robert Morales, 28 January 2008.

politically unpopular in some circles, they are important nonetheless. Simply turning our heads from conflicts within indigenous societies will not do; the commitment to working for a better world, for more equal and just relations between peoples, must entail a commitment to work across all lines of differentiation.

Finally, doing critical indigenous geography involves a commitment to social change, which may involve crossing or straddling the line that is often drawn between scholar and activist, and considering novel and challenging methodological approaches. It may mean moving outside the academy and working directly in and/or with indigenous communities, which can pose any number of methodological and ethical challenges. Given the negative experiences that many indigenous communities have had with researchers who, as Linda Tuhiwai Smith puts it, come from outside seeking to “extract and claim ownership of our ways of knowing, our imagery, the things we create and produce”,⁴⁹ it is perhaps not surprising that even those who arrive professing to carry out work supportive of community aspirations are sometimes viewed with caution or suspicion. Thus, carrying out research in and/or with indigenous communities will likely require a greater investment of time, more flexibility and openness in developing and carrying out research projects, and a greater commitment to sharing the research results with such communities. It may require researchers to rely, for example, more on oral histories than textual sources, and to negotiate research protocols that balance the interests of researchers with those of indigenous communities. Such approaches can challenge geographers in useful ways, moving them towards the adoption of more careful and sensitive (and diverse) methods of data gathering and analysis, and prodding them to

⁴⁹ Smith, *Decolonizing Methodologies*, 1.

think more deeply about the effect and ownership of the knowledge they produce. It is important to note that critical indigenous geography need not entail working directly in or with indigenous communities; as Don Mitchell has argued, traditional scholarly writing based on “radical scholarship” is itself an important form of activism.⁵⁰

As the foregoing discussion suggests, there is tremendous scope for scholarly work within geography on indigenous matters, whether the research focus is on such issues within individual nations such as Canada—or indeed specific places with nations (like Hul’qumi’num territory or British Columbia)—or on the global dimensions of indigeneity (i.e., a transnational indigenous peoples movement). It strikes me that geography has much to offer in the investigation of such issues; topics of central interest to the discipline—the concern with matters of space and place, land and territory, environment and nature—are all also key to the struggles of indigenous peoples in many different contexts. Indeed, given these overlapping themes, it is somewhat surprising that geography has taken so long to more fully encounter indigenous issues. As Evelyn Peters has recently pointed out, there has long been a dearth of geographic research on indigenous peoples and issues in Canada.⁵¹ Although one can argue that the situation is somewhat better when it comes to British Columbia, it is still remarkable that more geographers are not working on indigenous issues here, especially given the contentious and high profile nature of indigenous issues in this province. As I’ve come to understand them, indigenous issues in places like British Columbia, and in Canada more broadly, are

⁵⁰ Don Mitchell, “Radical Scholarship: A Polemic on Making a Difference Outside the Academy,” in D. Fuller and R. Kitchin, eds., *Radical Theory/Critical Praxis: Making a Difference Beyond the Academy?* (Praxis (e)Press, 2004). 21-31. Cited in Blomley, “The Spaces of Critical Geography,” 285-86.

⁵¹ Peters, “Aboriginal People and Canadian Geography.”

challenging and contentious because they so often go to the very heart of the constitution of the province or the nation itself, and pose questions about the historic and geographic origins and shaping of these political territories. Questions about indigenous rights to lands and territories, and to self-determination, also raise questions about the rights of non-aboriginal peoples and their governments to the use of those same lands and resources, to the occupation of provincial and national space, and about what it means to identify oneself as 'Canadian' or 'British Columbian'.

What has become increasingly clear to me through the course of this research project is the more profound nature of the Indian land question in British Columbia. Most directly, the Indian land question is about who actually owns the land in British Columbia. Interpreted in this way, I think that we have actually come some way in finding an answer to this query, at least in general terms: the courts have clearly indicated that both indigenous and non-indigenous peoples have a claim to the land, and must work out how to reconcile these interests. With the first part of the question answered in this way, the more profound and more difficult, and more interesting, question becomes that of how to reconcile these overlapping interests and claims. As I have discussed, to date the Crown has sought to simply redraw the line that separates indigenous and non-indigenous space in British Columbia, to maintain two separate spaces and peoples, a kind of reconciliation through mutual exclusion. As difficult as this has proven to be, this is perhaps the easier or simpler response to this predicament, one that does not necessitate a careful examination of the province's colonial history and geography. A more challenging and perhaps more rewarding response lies in a kind of reconciliation that seeks to bring together these long separated spaces and peoples, that attempts to break up

or blur the lines that have long separated indigenous and non-indigenous societies in British Columbia. This means, as Jim Tully describes it, an understanding of reconciliation as a process allowing indigenous and non-indigenous peoples to learn about each other and about our shared histories and geographies; this is reconciliation as “an ongoing activity, a continuous process of cross-cultural dialogue”.⁵² This is a form of reconciliation that might allow for the emergence of a decolonized relationship between indigenous and non-indigenous peoples and, in turn, the development of decolonized spaces in British Columbia.

Geography (and geographers) can play a role in this broader process of decolonization. What is required in this respect, as I suggested earlier, is a geography that seeks to improve broad understanding of, and increase support for, ongoing indigenous struggles over land, resources, and self-determination. I have referred to this as a ‘critical indigenous geography’ and identified four elements that I considered central to such an approach: paying attention to particularly indigenous conceptions and understandings of geography, documenting colonial histories and geographies and their impacts, tracing the continuities of colonial histories and geographies into the present, and recognizing and documenting the perspectives and agencies of indigenous actors. The strength of what I have presented in this particular study, I would argue, lies in the clear commitment to the documentation of colonial histories and geographies and the linking of these to contemporary struggles, and the recognition of the continuation of colonial attitudes and relations into the present. All too often, indigenous geographies tend to situate indigenous peoples and places only in the past, and fail to engage seriously with contemporary

⁵² Tully, “Reconsidering the B.C. Treaty Process,” 13.

struggles. What I have tried to emphasize here is the fact that territorial dispossession is not something that happened only in the past; for many indigenous peoples, including for the Hul'qumi'num, dispossession is something that is ongoing in the present. What I have been somewhat less successful at doing, I feel, is drawing on and incorporating Hul'qumi'num perspectives into this story. However, this is something that I am committed to and will continue to work on as I pursue the next phase of this project.

In bringing this study to a conclusion, I feel it is important not to overstate the contribution that studies such as this, or a critical indigenous geography more broadly, can make to larger decolonization processes. This is not to undermine such work; clearly, I believe that scholars can make an important contribution to such processes, through the critiquing of dominant ideas and the lending of intellectual support to progressive and oppositional movements. Rather, my intention here is to point out the importance of focusing inward as well as outward, of paying attention to processes of internal decolonization. Decolonization on a larger social and spatial scale, a somewhat abstract concept, is ultimately grounded in decolonization at more personal and intimate scales. It requires, among other things and as many other geographers have pointed out, a decolonization of the discipline of geography. However, it also requires decolonization of a more personal nature, something that is perhaps less often addressed within the scholarly literature. And this, from my perspective, has been perhaps the most valuable part of this project; the opportunity and privilege I have enjoyed in studying and learning about this particular place, about the people who live here, and about their struggles and aspirations when it comes to questions of land, territory, natural resources, and self-determination. Through this project I have not only gained a greater appreciation of the

Hul'qumi'num people and their concerns but also a deeper and more complex understanding of the province and nation that I call home, and of my own particular place here.

In the end, this is perhaps the most important and fundamental purpose of projects such as this, to aid in the coming to terms with the histories and geographies that shape all of us. This is both a personal and societal project, one that calls on us to look both inwards and outwards and challenge the lines of division that we encounter. As Cole Harris and other historical geographers have argued, the line drawn to separate indigenous space from non-indigenous space is the most important and primal line ever drawn in British Columbia, providing the foundation on which the province took shape.⁵³ Challenging this line is central to the decolonization process. In speaking of the importance of recovering Hul'qumi'num culture, Joey Caro emphasizes the necessity of seeing the beyond this line of division:

We need the [Hul'qumi'num] language to be brought back up, the place names of those places, the stories, the songs, the cultural identity that's tied in with these lands. It's all that. It's the respect. [...] It's like a common history we are trying to protect. It's not just First Nations' history, it's almost like human history and it's BC's history for sure. That's something that everyone should be proud of, should identify with.⁵⁴

It is also about a common geography, I might add, one that we must learn to recognize, respect, protect, and share more equitably.

⁵³ Harris, *Making Native Space*, 323. See also Brealey, "Travels from Point Ellice," 231.

⁵⁴ Interview with Joey Caro, 13 October 2006.

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APPENDIX I

Research Contract Between Hul'qumi'num Treaty

Group and the Author

THIS AGREEMENT made and effective as of and from the _____ day of _____, 2007 (the “Effective Date”),

RESEARCH CONTRACT

BETWEEN:

HUL’QUMI’NUM TREATY GROUP, a society incorporated under the British Columbia *Society Act* and having administration offices at 12611B Trans Canada Hwy, Ladysmith, British Columbia, V0R 2E0

OF THE FIRST PART

(hereinafter referred to as the “Treaty Group”)

AND:

BRIAN EGAN, a doctoral student in the Department of Geography at Carleton University and residing at 944 Dunsmuir Road, Victoria, British Columbia, V9A 5C3

OF THE SECOND PART

(hereinafter referred to as “the Researcher”)

(Collectively referred to hereinafter as the “Parties”)

BACKGROUND:

- A. The Treaty Group is a non-profit organization representing the collective of Cowichan Tribes, Chemainus First Nation, Penelakut Tribe, Lyackson First Nation, Halalt First Nation and Lake Cowichan First Nation.
- B. The Treaty Group has agreed to support the doctoral research project carried out by the Researcher focused on “historic and contemporary struggles over land and resources in Hul’qumi’num territory”.
- C. The overall objective of the research project is to document and analyze historic and contemporary struggles over land and resources in Hul’qumi’num territory, including struggles related to the colonial and post-colonial dispossession of Hul’qumi’num lands and resources (such as that related to the Esquimalt and Nanaimo Railway land grant) as well as contemporary land and resources struggles related to treaty negotiation and other issues.
- D. The Researcher wishes to conduct research related to his doctoral research project, which is described in more detail in the attached research proposal (see Appendix 1).

- E. The Researcher has agreed that he will comply with the research protocols established by the Treaty Group (as described in this agreement) with respect to informed consent of interviewees, the disposition and ownership of research materials, the protection of customary or intangible property, the publication of scholarly works based on the information collected, ownership of Sxwi'em', confidentiality and royalties, and dispute resolution.
- F. The Treaty Group wishes to ensure that the Hul'qumi'num peoples' customary stories and related teachings do not become the property of the Researcher.
- G. The Treaty Group wishes to ensure that Hul'qumi'num peoples' laws relating to the transmission of teaching and knowledge are respected.
- H. The Treaty Group and the Researcher wish to clarify the terms and conditions of the ownership of the material the Researcher will extract from the Hul'qumi'num people.

NOW THEREFORE, this Agreement witnesses that in consideration of the premises, and of the agreements hereinafter set forth, the parties agree as follows:

DEFINITIONS

1. In this Agreement:
 - a) **Sxwi'em'** are any Hul'qumi'num stories, legends, myths or folklore.
 - b) **Customary Intangible Property** has three main categories. For clarity, a description follows of the three categories of Customary Intangible Property:
 - i. The first category would be *'si'win (ritual power words)* in the Hul'qumi'num language. They are special words in incantations, short songs, or other utterances, which invoke power of one's guardian spirit. This term is closely related to *snew'*.
 - ii. The second category would be *ts'exwtén* in the Hul'qumi'num language. This term does not translate well but is roughly "inherited ritual/ceremonial property". Coast Salish culture has a large complex set of rituals, songs, stories, masks, and masked dances, rattles, powerful dolls, stuffed animal rituals, supernatural fish, designs, symbolic representations and certain funeral rituals which are inheritable and for which there are very well-defined, well-respected criteria for the use, display and performance of.¹

¹ B.Thom, "Intangible Property within Coast Salish First Nations Communities, British Columbia" (WIPO North American Workshop on Intellectual Property and Traditional Knowledge, Ottawa, 9 September 2003) [Unpublished].

iii. The third category would be called *snew*’ in the Hul’qumi’num language and roughly translates as ‘private advice/knowledge’. This is inherited private knowledge that includes some rituals, spells, and a vast array of traditional knowledge including such things as food processing and highly specialized traditional manufacture (fish weirs and the like). Private knowledge often comes from myth stories, which are owned by families and not widely told outside the property holding group. In these myths, the first ancestors learn some private knowledge through their adventures and the telling of those stories ensures that the descendants learn this private knowledge.²

c) **Consent to Participate** is the form all Hul’qumi’num individual community members must sign before the Researcher engages in her research. Individual community members may add or delete restrictions to the Consent to Participate form.

TERMS OF THE AGREEMENT

Informed Consent

2. The Researcher will secure written informed consent from each individual community member before engaging in research and recordings with him or her.
3. The Researcher will endeavour to ensure that each individual community member he interviews has a reasonable understanding of the Consent to Participate form and agrees to its terms and conditions.
4. The Researcher will record any restrictions, which the individual community member adds to or deletes from the Consent to Participate. Any such restrictions will be deemed an amendment to the Consent to Participate.

Disposition and Ownership of Research Materials

5. Subject to the terms set out in this Agreement, the Treaty Group hereby grants the Researcher a licence to publish for scholarly and educational purposes the information collected during his participation in the Program.
6. The Treaty Group will have ownership and possession of originals of all audio/visual recordings (digital and analogue formats) resulting from the Researcher.

² *Ibid.*

7. The Treaty Group may keep copies of all notes, transcripts, photos, and other similar records of the Researcher's research.
8. The Researcher may keep copies of audio/visual recordings.
9. The Researcher will have ownership and possession of the originals of notes, transcripts, photos and other similar records that are not audio/visual recordings (digital and analogue formats). For greater clarity, the Researcher will have ownership of his analysis, original thoughts and other such creative work resulting from his research.
10. In publications resulting from this collaborative arrangement, the Researcher will not make a claim of copyright or exclusive ownership on *sxwi'em'* (Hul'qumi'num stories, legends, myths, and folklore) or Customary Intangible Property.
11. The Researcher will not receive any royalties or monies tantamount to royalties by publishing the *sxwi'em'* (Hul'qumi'num stories, legends, myths, and folklore), or Customary Intangible Property.
12. The Researcher will affirm the following statement by publishing it in a conspicuous part of any document, paper, lecture or other form of media he publishes that is founded on materials the Hul'qumi'num people provided to him during her research under this Program: "The text of the stories, myths, legends, and folklore belong to the Hul'qumi'num people and therefore no claim of copyright or exclusive rights is made upon them."
13. The Researcher will ensure that two copies of all publications, conference papers and other educational and scholarly materials he creates or is a part of creating, will be deposited with the Hul'qumi'num Treaty Group.

Protection of Customary Intangible Property

14. The Researcher will endeavour to, where reasonably possible, not record known Coast Salish Customary Intangible Properties such as *si'win* (*ritual power words*), or *ts'exwten* (*family-owned stories and ritual prerogatives*), or the details of *snew'* (*private family ritual and technical knowledge*) respecting private and confidential sacred matters.
15. The Researcher will not publish any Customary Intangible Property or take any actions that would have the effect of placing the Customary Intangible Property in the public domain.

Dispute Resolution

16. In case of a dispute arising from the implementation of this Agreement, the Parties shall exhaust alternative dispute resolution models such as negotiation and mediation before employing other forms of dispute resolution such as arbitration and adjudication. Parties shall act in good faith to resolve the dispute.

Termination

17. The Parties may terminate this Agreement in writing at any time subject to 30 days notice. But notwithstanding such termination, the protections of this Agreement for Customary Intangible Property will survive the termination of this Agreement.

General Provisos

18. The captions appearing within the body of this Agreement have been inserted as a matter of convenience and for reference only and in no way define, limit or enlarge the scope or meaning of this Agreement or any provision hereof.
19. This Agreement constitutes the entire Agreement between the Parties in respect of the Researcher's work in affiliation with the Treaty Group and cannot be modified, amended or waived except by an instrument in writing of equal formality to this Agreement, duly executed and delivered by the parties.
20. Time will be of the essence of this Agreement and of each of its terms.
21. No provision or provisions of this Agreement will limit the generality of any other provision or provisions of this Agreement.
22. The Researcher may not assign this Agreement.
23. For greater certainty this Agreement will be binding upon any successor in interest to, or assign of, either of the Parties.
24. Should any part of this Agreement be declared or held invalid for any reason such invalidity will not affect the validity of the remainder which will continue in full force and effect and be construed as if this Agreement had been executed without the invalid portion and it is hereby declared the intention of the parties that this Agreement would have been executed without reference to any part which may, for any reason, hereafter be declared or held invalid.
25. No condoning, excusing or overlooking by the Treaty Group of any default, breach or non-observance by the Researcher at any time or times in respect of any

of the covenants, provisions, or conditions herein contained will operate as a waiver of the Treaty Group's rights hereunder in respect of any continuing or subsequent default, breach or non-observance or so as to defeat or effect in any way the rights of the Treaty Group herein in respect of such continuing or subsequent default or breach, and no waiver will be inferred from or implied by anything done or omitted by the Treaty Group save only express waiver in writing.

26. All references to the singular shall be construed to include the plural where the context so admit and the feminine to include the masculine or any gender identification.

SIGNED BY THE PARTIES on the _____ day of _____, 2007.

Director of Operations
Hul'qumi'num Treaty Group

Brian Egan, Researcher
Doctoral Student
Department of Geography
Carleton University