

On Jurisdiction and Settler Colonialism:
The Algonquins of Barriere Lake
Against the Federal Land Claims Policy

by

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Abstract

This dissertation analyzes tensions between Indigenous and Canadian authority over land and governance through a critical inquiry into jurisdiction. I examine jurisdiction in the context of the Algonquins of Barriere Lake's territory, located about three hours north of Ottawa in the northernmost boreal region of Quebec. To undertake this study of overlapping jurisdiction, I analyze the struggle over resource management across the past thirty years on the territory and their struggle against the federal land claims policy. I map the ways in which space is differentiated under competing legal orders, where on the one hand, jurisdiction is produced by the sovereign territorial state through operations of economic and political calculation, and on the other, by the Algonquin nation through a kinship nexus of allocated hunting and trapping grounds, and by the daily caretaking practices associated with Anishnabe life on the territory. I raise questions as to how simultaneous operations of law may take place in a single area, across distinctive epistemological and ontological frameworks, and how jurisdictions are produced in this context. My dissertation examines how the Algonquins of Barriere Lake have contested the socio-spatial production of state sovereignty claims through the exercise of jurisdiction over their lands.

My focus on jurisdiction in this dissertation turns our attention to the practices of settler colonial sovereignty in Canada, and especially to the role Indigenous law plays in resisting intervention on their lands. I examine the role Indigenous law plays in shaping the political economy of this country, seeking to identify whether a “*distinct form of accumulation*” emerges in the dialectic of settler colonialism and Canada’s staple state economy. The interpretive framework of jurisdiction allows us to examine the overlapping authority claims between Indigenous, state, regional, and private interests, and to parse out the ways in which these jurisdictional claims produce different kinds of political space.

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of support for a community for which we share a deep love: I have only ever fought with my siblings more than I fought with you, but we are in this work forever, together now.

When I decided to return to my undergraduate interests in geography for doctoral work, I also returned to my hometown of Toronto and a vibrant scene of anti-colonial organizing. This environment has had profound effects on my developing sense of responsibility and accountability as a solidarity organizer, and in turn, as an academic. Organizing alongside people like Stefanie Gude, Corvin Russell, Syed Hussan, David Sone, Tannis Neilson, Crystal Sinclair, and Wanda Nanibush, and too many more to name, has taught me how to carry myself as a non-Indigenous person working to create the conditions necessary for Indigenous peoples to exercise self-determination over their lands. Of course, all blunders and missteps along this path are still my own.

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Finally, I dedicate this dissertation to Lior Isadora, my daughter who was born while I was writing this dissertation. To you, I owe everything. May you inherit the struggle as well as the strength to fight it.

Table of Contents

Terms of Reference	vii
Abbreviations	xi
List of Figures	xii
List of Appendices	xiii
PART I: INTRODUCTION	
Chapter One: Jurisdiction: Where Do Laws Meet?	1
Chapter Two: An Autobiography of Territory	31
PART II: THE TRILATERAL AGREEMENT	
Chapter Three: The Early History of Settler Accumulation	52
Chapter Four: “They’re Clear-Cutting Our Way of Life”	68
Chapter Five: The Trilateral Agreement is Born	80
Chapter Six: Coup D’Etat in Fourth World Canada	89
PART III: ONAKINAKEWIN	
Chapter Seven: Jurisdiction from the Ground Up: Law, Land & Leadership	108
Chapter Eight: The Social Relations of Jurisdiction: Traplines & Tenure	126
PART IV: SECURING THE STAPLE STATE ECONOMY	
Chapter Nine: The Customary Government Must Fall	146
Chapter Ten: Pacification & the Geography of Indigenous Lands	169
CONCLUSION	
Chapter Eleven: A Land Claim is Canada’s Claim: Against Extinguishment	196
APPENDICES	221
COPYRIGHT ACKNOWLEDGEMENTS	231
BIBLIOGRAPHY	232
ENDNOTES	243

Terms of Reference

In this dissertation, I alternate between several names for describing the Department responsible for Indian Affairs. These alternate names mostly correspond to historical changes to the name of the department. Since the time of confederation, “Indians” have been governed under nine differently-named administrative bodies, at times signally drastic regime changes in jurisdiction or governing strategies, at times merely changing some words around. The earliest incarnation of departmental responsibility for “Indians” was under the Department of the Secretary of the State of Canada (to 1869), followed by the Department of the Secretary of State for the Provinces (1869-1873), and the Department of the Interior (1873-1880). A long period followed when the Department of Indian Affairs (DIA) (1880-1936) emerged, devoted exclusively to Indians and their intensive management and relocation. Accordingly, the DIA plays a significant role in the early history at Barriere Lake. The intensification of land exploitation in relation to Indian lands is written as plainly as the next department name change to the Department of Mines and Resources (1936-1950), as was the attempt to distance land rights from the conceptualization of Indian people in the subsequent incarnation of the Department of Citizenship and Immigration (1950-1965). In 1966, the portfolio of the offices of the Minister of Citizenship and Immigration were divided between the new departments of the Minister of Indian Affairs and Northern Development (INAC) and the Minister of Energy, Mines and Resources. Also abbreviated as the Department of Indian Affairs and Northern Development (DIAND), this department name endured until June 13, 2011, when the department became Aboriginal Affairs and Northern Development Canada (AANDC). For the most part, I continue to call the department “DIA” throughout the period between 1936 and 1966, when it becomes INAC or DIAND, in order to avoid confusion.

Making sense of the names which non-Indigenous peoples have assigned to Indigenous peoples also necessitates some terminological clarification here. Non-Indigenous peoples have sorted the peoples of these lands by appearance, approximate geographic locations, trade relationships, language, racial epithets, misunderstood or mispronounced versions of the names Indigenous peoples call themselves, and political acts of subject-making and subordination. To describe generally the people who have made their homes here since before the settlement of Europeans, I use the term “Indigenous” to refer to the original peoples and governments of these lands.

The term “Indigenous” further links the history of colonization on these lands to the international struggle of peoples to assert their nationhood and jurisdiction over ancestral lands.

The United Nations has defined “indigenous peoples” as: “communities, peoples and nations... having a historical continuity with pre-invasion and pre-colonial societies that developed on their territories, consider themselves distinct from other sectors of societies now prevailing on those territories, or parts of them.”¹ Though, as we point out elsewhere:

It is difficult not to conceive of indigenous peoples in relation to colonial European conquerors or modern attempts at economic, social and political restructuring and assimilation. However, it is not helpful to think of indigenous peoples as opposite to an industrial, modern society, either. “Indigenous” connotes a *dynamic* people who are ancestrally, spiritually, and politically connected to a territory in a multiplicity of ways.²

Another umbrella term used to describe all the different “categories” of Indigenous peoples living in Canada is “Aboriginal.” Lumping together First Nations (formerly “Indians”), Métis, and Inuit, the umbrella term “Aboriginal” is used by the Canadian Government; I use the term “Aboriginal” in this dissertation when the word is attached to government policy, for example Aboriginal treaty rights or Aboriginal title. I avoid using the term “Aboriginal” more generally because, as Peters points out, assumptions about Indigenous peoples are embedded in such categories of interpolation, rendering it difficult to escape colonial frameworks.³ The census data, for example, is based on categories of status / non-status – depending on whether individuals are registered under the Indian Act – or by colonial categories of race, rather than by Indigenous cultural practices. Recent efforts have been made to use more sensitive terminology,⁴ but the categories themselves remain unchanged, since they are subject to federal legislation and any changes in terminology would effect the implementation of all policies towards these respective groups. The term “Indigenous” is free from these colonial categories of race, status, and legislative authority.

Occasionally, I have used the term “First Nations” to describe those peoples formerly described as “Indians,” as the key constituents of the land claims and other policy. In rare cases, I have used the term “Indian” to describe Indigenous peoples from the perspective of Canadian governments. As pointed out in previous writing, the derogatory connotations are purposefully left intact.⁵

In terms of the Algonquins of Barriere Lake, while they call themselves the Mitchikanibikok Inik, this name is difficult to pronounce for English readers. I refer to them alternately as Barriere Lakers, Barriere Lake Algonquins, or simple “Algonquins.” As I describe in Chapter 3, the French-originated name of “Barriere Lake” comes closest to translating Mitchikanibikok Inik, the People of the Stone Weir. But the definition of the “Algonquin” Nation has only come to take precision for non-Indigenous writers and researchers in recent years,

prompted largely by the incredible work of independent historian James Morrison. But even the common history of the Algonquins must be understood within a broader, dynamic network of relationships between nations. The Mitchikanibikok Inik tend to simply refer to themselves as Anishnabe – “human beings” – in which they are connected, first, to closer cousins who speak dialects of the same language, and then to all the other nations on earth.

Finally, a note on transcription of anishinabemowin here. Where I refer to my own research interviews, I am transcribing phonetically to the best of my ability, though I am not prescribed to a formalized transcription method. Partially, my inadequacies around transcription are due to my inexperience with the language. But I was also unavailed of resources for which I could refer to on transcription of the Barriere Lake dialect. As Sue Roark Calnek explained to me, “except for a short glossary of Lac Simon Algonquin (which is very close to Barriere Lake), the dictionaries I have are from Maniwaki (McGregor: Algonquin/English and English/Algonquin) and two from Oblate missionaries (Lemoine and Cuoq). Barriere Lake speech is more rapid, eliding some vowels, nasals, and glide consonants.” Sue helped me in parts to interpret what I was hearing based on her knowledge of the language, such as the section where Toby Decoursay is describing the relationship between land and belonging. But wherever problems remain, they are mine alone. Scott Nickels’ transcriptions were based on his knowledge of the language derived from Harry Wawatie, so they vary slightly from Roark Calnek’s. Doug Elias’ transcriptions borrow from the work of Nickels and Roark Calnek.

Abbreviations

AANDC – Aboriginal Affairs and Northern Development Canada

ABL – Algonquins of Barriere Lake

ANS – Algonquin Nation Secretariat

CLC – Comprehensive Land Claims

DIA – Department of Indian Affairs

DIAND – Department of Indian Affairs and Northern Development

INAC – Indian and Northern Affairs Canada

RCAP – Royal Commission on Aboriginal Peoples

RCMP – Royal Canadian Mounted Police

SQ – Sûreté du Québec

UN – United Nations

List of Figures

- Figure 1 – T-shirt at shop in Jerusalem's Ben Yehuda Street - page 35.
- Figure 2 – Yehudit Rapoport, Kibbutz Be'eri, Purim, circa 1955 - page 36.
- Figure 3 – Map of the Ottawa River Watershed - page 53.
- Figure 4 – Map of First Nations in and around the Ottawa Valley - page 55.
- Figure 5 – The three-figure wampum embroidered into Elder Toby Decoursay's jacket - page 58.
- Figure 6 – Feast on the Rapid Lake Reserve, June 2010 - page 123.
- Figure 7 – Harvesting jack pine roots for cradle baskets - Clayton, Brennan, and Shane Nottaway pictured - page 123.
- Figure 8 – Harvesting birch bark, May 2010. Marylynn Poucachiche, Clayton Nottaway, and John Corker pictured - page 124.
- Figure 9 – Gloria Decoursay and Deborah Jerome cutting up moose meat, July 2009 - page 124.
- Figure 10 – Tikinagan (baby carrier), made by Marylynn Poucachiche - page 125.
- Figure 11 – Tikinagan (baby carrier), made by Marylynn Poucachiche - page 125.
- Figure 12 – Map of ABL Traplines with Quebec Registered Traplines, Annex and Trilateral Agreement Territories (TAT) Boundaries and Beaver Preserve - page 135.
- Figure 13 – SQ Riot Police lined up on the access road from Rapid Lake Reserve to Highway 117, pushing community members back onto their reserve, October 2009 - page 170.

List of Appendices

- A. The Trilateral Agreement
- B. The Bilateral Agreement
- C. The Memorandum of Mutual Intent

PART I: INTRODUCTION

CHAPTER ONE - Jurisdiction: Where do laws meet?

There is a scene in Boyce Richardson's 1990 film *Blockade* that frames the problematic this dissertation attempts to address.⁶ Richardson went up to the Algonquin community of Barriere Lake to capture the moose hunt, but what he found instead were his documentary subjects lined up on the highway to protest clear-cut logging on their territory. At one blockade, he films a confrontation between customary Chief Jean Maurice Matchewan and an unidentified Sûreté du Québec (SQ) officer. The SQ officer asks Matchewan what his community's intentions are for being on the blockade that day and Matchewan responds that they are there to stop the logging. The SQ officer asks him what is their right to stop the logging. Matchewan responds: "A right to live. To have food on the table." Still unsure, the SQ officer persists: "Do you have some paper about that?" and Matchewan responds again, trying to make clear that he is not interested in engaging with the officer in empty abstractions. He says: "We're not talking about dealing with rights to the land. We're talking about food on the table and protecting the natural habitat. The wildlife. We're just trying to bring to the Canadian attention that this is a wildlife reserve that they're raping." Undeterred, the SQ officer once again misrecognizes Matchewan's grounds and tries one last time to confirm within the state's authority Matchewan's right to be there: "Do you have some documents to *prove* that you have the right to live here, something like that?" To which Matchewan affixes their conversation into the deep time of Algonquin life: "We've been around here for thousands of years. That gives us the right to live off this land."

This friction between the property rights based jurisdiction of Canadian society and the ontology of care embodied in Algonquin jurisdiction exposes a central dynamic of settler colonial society. The SQ officer demands "papers" in order to ascertain whether the Algonquins possess the legal authority to control logging operations on their territory. Matchewan responds with a different basis of authority for governance of the land – a basis of belonging formed by respect for the life-giving nature of the forest, a responsibility to protect the land, and on the Algonquins' deep knowledge of the territory. This dissertation analyzes tensions between Indigenous and Canadian authorities over land and governance through a critical inquiry into competing legal orders of jurisdiction on these lands. Jurisdiction is a claim to governance that refers to the legal relationship between a politically organized community and their space.⁷ I examine jurisdiction in the context of the Algonquins of Barriere Lake's territory, which is located approximately three hours north of Ottawa in the northernmost boreal region of Quebec. To undertake a study of

overlapping jurisdiction, I analyze the struggle over resource management on the territory over the past thirty years. I map the ways in which space is differentiated under competing legal orders, where on the one hand, jurisdiction enacts the authority of the Canadian sovereign through multiple, competing, and contradictory governance regimes, and on the other, by the Algonquin nation through a kinship nexus of allocated hunting and trapping grounds, and by the daily caretaking practices associated with Anishnabe life on the territory.

Under Canadian authority, Algonquin land has stood “in reserve” for exchange and exploitation; under Algonquin authority, land is under their jurisdiction by virtue of their responsibilities to all living things on the territory. This underpinning conflict over authority plays out at blockades across the country. But just as the technical production of maps has the potential to invisibilize contestation over lands, so too are jurisdictions (and jurisdictional conflicts) invisibilized when a plurality of legal systems are mapped as a single space.⁸ Therefore, I want to raise questions as to how simultaneous operations of law may take place in a single area, across distinctive epistemological and ontological frameworks, and how colonial space is produced in this context. This is not simply a theoretical inquiry. My focus on jurisdiction in this dissertation turns our attention to the practices of settler colonial sovereignty in Canada, and especially to the role Indigenous law plays in resisting dispossession of their lands. Most broadly, my dissertation examines how the Algonquins of Barriere Lake have contested the socio-spatial and legal production of state sovereignty claims – most vividly expressed in the land claims policy – through the exercise of jurisdiction over their lands. I also examine the role Indigenous law plays in shaping political economy and seek to identify whether a “*distinct form of accumulation*” emerges in the dialectic of settler colonialism and Canada’s staple state economy.⁹

Thematically, my research examines jurisdictional struggle at Barriere Lake by studying a resource co-management agreement signed in 1991 between the Algonquins, Canada, and Quebec. The “Trilateral Agreement” illustrates the best and the worst of what can happen when Indigenous and settler laws meet. This Trilateral Agreement was designed (by the community) to give the Algonquins a decisive say over resource management on their lands, protect their ways of life, and allocate to them a modest share of revenue from resource extraction on the territory. From the Algonquins’ perspective, the Agreement was based on their historic 3-figure wampum belt that ensured the community would always exercise leadership over their territory in partnership with the French and British nations. However, through a multiplicity of legislative, bureaucratic, economic, and repressive security tactics, the federal and provincial governments withdrew their commitments to share jurisdiction over a substantial selected area of Barriere Lake’s territory. I argue here that this withdrawal can be attributed to a lack of political will by

governments to share governing power with Indigenous peoples, particularly in this case for Canada because it would undermine the government's preferred policy for settling unresolved land claims through the Comprehensive Land Claims policy.

The land claim policy itself operates as a technique of settler colonial jurisdiction-making on Indigenous lands, transforming unceded Indigenous territory into fee simple lands, disclosing new possibilities for economic exploitation and land alienation, and by reconfiguring Indigenous lands under provincial rather than federal powers. Barriere Lake chose to negotiate under their own laws of jurisdiction and governance rather than to comply with a federal policy that greatly reduces First Nations' land base and forces the extinguishment of Aboriginal title. Algonquin resistance to the land claims policy and to state claims to jurisdiction over their lands has led to serious Canadian governmental interference in Barriere Lake's customary governance and to the criminalization and repression of community members. With forestry and mining resources at stake, the contested frameworks of authority for who should exercise jurisdiction over Barriere Lake's lands have materialized in struggles over territory that produce the geography of settler colonialism today.

Arriving at Jurisdiction

I first struggled to understand the encounter between the SQ officer and Matchewan through the language and conceptual framework of *property*. But I could not get to what I felt was at the heart of this matter: the inauguration of law – or the authority to have authority over land – which I understand to be in fact a problem of *jurisdiction*. The state's property claim on Barriere Lake's lands assumes the state has jurisdiction to demand proof of ownership from the Algonquins to overwrite the Crown's lease of lands to forestry companies. If we understand jurisdiction as a prefigurative power relation to property, then we open the space to ask: how does this body of property law gain the authority *to have authority* over Indigenous lands? The interpretive framework of jurisdiction allows us to examine the overlapping authority claims between Indigenous, state, regional, and private interests, and to parse out the ways in which these jurisdictional claims produce different kinds of political space. What is the effect on the ground of these competing legal orders?

Jurisdiction also presents us with a powerful way to understand and analyze Canada's assertion of sovereignty over Indigenous lands. Jurisdiction clearly stands in relation to sovereignty and territorial claims. But the sovereign territorial state, as I show below, aims to project an absolute space, whereas jurisdiction carves out a wide range of authorities by which people and places are governed. As Mariana Valverde writes, jurisdiction is the *how* of

governance.¹⁰ While colonies such as Canada were claimed under the authority of national state sovereignty, what is left to examine are the “internal arrangements for organising and exercising authority” and the means to ask how that authority is exercised.¹¹ In this chapter, I will be drawing attention to jurisdiction as a conceptual framework for understanding the specificities of settler colonialism; survey jurisdiction as a historical concept, distinct from territory and sovereignty; and show some of the ways in which jurisdiction is enacted to govern across multiple scales and issues.

One question this dissertation leaves open until the end is whether or not sovereignty is the source of jurisdiction. If so, the implications are significant. It would be fair to ask: why not frame the struggle at Barriere Lake as one over sovereignty? But here we find by bringing to light the question of sovereignty, we also paradoxically bury it in tautology. Because then we must ask: from what source does the sovereign gain the authority to govern? Here I would maintain that at least in part this authority derives from the work of jurisdiction and that in so persisting we may find that a strict hierarchy that places sovereignty above jurisdiction as a “source” of authority may simply not bear out empirically. My gamble here is to trust the research to show us what is at stake for the Algonquins and why.

Much has been written about the ways in which European nations claimed sovereignty over the lands of Indigenous nations on Turtle Island. Less common is scholarship that examines the ongoing jurisdictional struggle between settler and Indigenous nations. What marks jurisdictional conflict as a specific form of struggle over sovereignty is that jurisdictional conflict is specifically over the geography and scope of the law. With the establishment of settler colonies, the space of law was expanded from imperial European centers to geographies far from the localized context and authority from which it arose. By asking *where* and *to what or whom* distinct bodies of law apply, we are inquiring into the definition of territory itself.¹² Take for example, the extradition of nationals for criminal offenses. The coercive deportation of alleged criminals across national borders raises questions around the authority of law over individual bodies and the meaning and scope of citizenship relative to our location. As law moves, so do the boundaries of national sovereignty, and so does the authority to have authority in particular places shift, too.¹³

How law is connected to or rooted in a place is technically arranged in the register of jurisdiction. Legal scholar Kent McNeil submits that while he acknowledges the factual status of Canada as a sovereign nation, he does not recognize its legitimacy and legality. My line of argument follows along a similar premise. I do not contest here that Canada is recognized as a

sovereign state by the rest of the world and by its citizens. But as the Algonquins have clearly expressed to me, this recognition has no bearing on Canada's authority over them and their lands. Canada loses *legitimacy* to exercise this sovereign authority by its lack of respect for Indigenous self-determination. As McNeil puts it, it is one thing to accept the reality of governmental power, "but quite another to hold... that acquisition of that sovereignty virtually obliterated indigenous governance authority as a matter of law."¹⁴ McNeil affirms the tension between settler and Indigenous legal orders where he writes that, "as a normative matter there is no reason why the governmental authority of indigenous peoples over their own communities and lands should not have continued under the overarching sovereignty of the nation states that colonized them."¹⁵ The concept, genealogy, and empirical substance of jurisdiction allows us to get clarity on what is meant here by Indigenous authority – its connection to law, territory, other legal orders, and sovereignty – and the ways in which Indigenous governance persists over lands that constitute this country.

I situate this dissertation within the emerging field of settler colonial studies and in the field of critical legal geography. Settler colonial studies is a dedicated field of inquiry that specifically examines a type of European colonialism premised on land acquisition and population *replacement*, in contrast to colonialism premised on resource exploitation and surplus labour markets.¹⁶ Unlike colonials in South Asia and Africa, settlers did not "return" to the metropole.¹⁷ Rather, they stayed, seeking eventually to replace Indigenous societies with their own. Replacement is embedded in the institutional logic of settler colonialism and "informs a range of historical practices that might otherwise appear distinct – invasion is a structure not an event."¹⁸ One of these historical practices that structures settler colonialism is jurisdiction. To render jurisdiction visible, it must be placed into geographical studies, otherwise risk "the presentation of *law* and *space* as pre-political categories."¹⁹ A critical legal geography perspective secures an interdisciplinary approach to jurisdiction as a spatial category, while examining the differentiation of space through the work of jurisdiction. By differentiation of space, I refer here to the ways in which place is socially and politically produced, for example, by social divisions of labour according to regional industrial specializations, through town and country distinctions, by political status gained through the division of the world into nation states, and by the imperial drawing and re-drawing of regional boundaries.

The work of jurisdiction

As a concept, jurisdiction has much to offer as a way of thinking about colonialism and the ways in which the state's legal authority is ordered. Emile Beneviste's etymology of jurisdiction links

the Latin noun *ius* (law) in its performative and adverbial form, with the verb *dictio* (the saying or speech of law).²⁰ First and foremost, jurisdiction is the power to speak the law. As Dorsett and McVeigh write, “In some formulations jurisdiction inaugurates law itself. Thus to exercise jurisdiction is to bring law into existence,” and in so doing, draw law’s boundaries and its subjects.²¹

While jurisdictional conflicts tend to bring to mind disputes occurring within mutual civil frameworks – for example, between states within the World Trade Organization, or between levels of government in a confederated state like Canada – by contrast, Indigenous-settler conflict brings to light conflict for which there is either no prior agreement (in the case of unceded lands in British Columbia or Quebec, for example), or for which treaty protocols have been the central framework for negotiation. Rather than reject jurisdiction on the grounds that it is an internal framework to civil governance in Canada, I would submit that the meeting of Indigenous and settler legal orders is precisely what constitutes the *shared space* of our societies.

Across this country, Indigenous responsibilities toward their lands persist, despite the imposition of civil frameworks of law. In Barriere Lake, the Mitchikanibikok Anishnabe Onakinakewin is the sacred constitution that governs the legal order in the community. The Onakinakewin inaugurates law on the territory; it is an oral tradition that speaks the right relations between all living things on the land. It constitutes what I call an “ontology of care” – a way of being in the world based on responsibility and respect – that defines the forms of entitlement that inaugurate Indigenous law. I describe jurisdiction as ontology here because this aspect of care is a collectively determined reality on the territory. As described by Sue Roark Calnek, an ethnographer who worked over extended periods of the time with the Algonquins of Barriere Lake, the Onakinakewin “derives authority from assertions of (collective, community) primordiality but also and especially, as a distillation of wisdom which in turn comes from the families’ lived experience on the land.”²² In other words, the Onakinakewin is a legal order that is itself constituted and sustained through deep, long-term relationships between people and the land.

While unacknowledged as such, Indigenous forms of jurisdiction are constantly bumping up, overlapping, and conflicting with Canadian jurisdiction claims. Hence, I write these meetings of law constitute the shared space of our societies. However, despite the important symmetries, jurisdiction is still imperfect as a comparable term between Indigenous and settler legal orders. While conceptually, it captures some of the underlying legal conflict that animates anti-colonial resistance in Canada, jurisdiction is etymologically and genealogically bound to a European history. As a singular designation of “Indigenous” jurisdiction, it also has the potential to mask an

internally complex reality, with great differences among, between, and within Indigenous nations regarding their own traditions of Indigenous law and the distribution of authority within them. However, I hope here to offer some compelling evidence for its use nonetheless, especially in the particular case of Barriere Lake. If nothing else, I hope to bring to light some of the under-researched and poorly understood operations of settler colonial sovereignty enacted through law today.

To help visualize and represent the concept of jurisdiction that I describe, perhaps some will be familiar with the picture of the human body tucked into the backs of old encyclopedias, comprised of a dozen transparent pages, each printed with a singular set of parts. For example, one page for organs, one for the circulatory system, another for bones, and then skin. Only as each transparent page is laid atop the other do the overlap of elements form the whole organism. Jurisdiction can be viewed in much the same way – except that each component represented is one kind of governing authority.

As with any metaphor, a surplus of meaning spills out. To avoid misconstruing layers of jurisdiction as somehow detached from one another, where no layer disturbs the other, we need to be attentive to the nodes of connection where authorities meet, conflict, and may be reconciled, or not. The human body image is meant to represent all competing jurisdictional orders, but it would be fair to ask, can we picture Indigenous and settler legal orders as one human being, or do the differing ontological frameworks of jurisdiction require a more dynamic set of nodal shapes – many bodies colliding – where authorities could more properly be imagined to *meet*?²³ An exceptional, but effective, representation of this “many bodies” modification could be the blockade, as illustrated above.

In the next section, I will go into greater depth on the genealogy of jurisdiction and following that, on the relationship between space and jurisdiction. Here I want to dwell longer on the different layers of jurisdiction that comprise the distribution of authority over people in this country. Let us try to see empirically how jurisdiction materializes in the world. In Canada, we are accustomed to jurisdiction as the main ordering framework for governance. A key illustration of this governance role is the division of jurisdictional powers between federal and provincial orders of government in Canada as laid out in sections 91, 92 and 93 of the Constitution Act, 1867. Powers enacted under federal and provincial jurisdictions have carved out spatial patterns of land use and population control. For case studies of this work that jurisdiction does through this division of powers, we can look to twenty thousand square kilometers of territory located in boreal Quebec.

Provincial jurisdiction, according to section 92, includes governance over natural resources. Under this jurisdiction, Barriere Lake lands have been regulated through the Grand Lac Victoria beaver preserve, Parc La Verendrye, the registered trapline regions, moose reserves and sanctuaries, the Société des établissements de plein air du Québec, outfitter establishments and through fishing regulations.²⁴ A biologist who worked closely with the community for years called this dense jurisdictional overlay a “pizza map” of crowded oversight authorities.²⁵ These marked transparencies, to go back to my metaphor, create the space of territory in complex ways. For example, bears in the Grand Lac Victoria beaver preserve (located in Parc La Verendrye) were considered “fur bears” and could not be hunted. Therefore, the provincial Ministry of Natural Resources would capture bears in the 1990s and move them into the southern part of the park outside of the preserve so that they could be hunted by American tourists. Registered traplines that fell outside of the preserve also led to overlapping jurisdiction – this time between Algonquin trappers and individual Quebecois – and conflicts over traplines would frequently break out.²⁶ These mechanisms of state jurisdiction codify and mark the territory on a map in ever thickening lines of territorial control, until not a square inch gap exists without jurisdictional oversight.

In addition to state jurisdictional authorities, the “exclusive, land-centred project” of settler colonialism coordinates a broad compass of agencies outside of the state or empowered by the state to act.²⁷ For instance, we find on Barriere Lake’s territory the publicly-funded ZACs (*zones d’aménagement et de conservations*) that are run by biologists, conservation experts, and technicians employed by the Ministry of Recreational Hunting and Fishing. In 1978, La Verendrye Parc became one of six ZACs in the Outaouais region. Each ZAC is subdivided into smaller management units called ZECs (*zones d’exploitation contrôlées*) and their aim is “to make the bush more accessible to all Quebecers,” by downloading the management of these areas onto hunting or fishing associations – outfitter establishments or private businesses – that are contractually responsible for controlling how the land is exploited. While these ZECs did open up the woods and waters of Barriere Lake’s territory to a broader Quebec public compared to the exclusively private outfitter establishments under the previous government, sometimes these self-financed groups are granted exclusive fishing, hunting or trapping rights within specific territories in return. Essentially, elected governments have used their jurisdictional claims to put the management of resources at the behest of small, private associations for the purpose of promoting revenue from sport fishing and hunting in the province.²⁸

Arguably, though, the most decisive and totalizing jurisdictional powers fall under section 91(24) of the Constitution Act, where we find “Indians, and lands reserved for the Indians” under federal powers of jurisdiction. Unlike all other Canadian citizens (besides federal

prison populations), Indians have their education and healthcare delivered to them by the federal government, alongside a wide range of programs and services.²⁹ But the most powerful form of jurisdictional power undertaken federally is the crafting and enforcement of the Indian Act, R.S.C., 1985. As Secwepmec grassroots leader, and Chair of the Indigenous Network on Economies and Trade, Arthur Manuel explains:

Indian People are governed from “cradle to grave” under the Indian Act. [The] Indian Act does provide for the creation of Indian Reserves and the election of Chiefs and Councils but the ultimate authority rests with the Minister of Indian Affairs. ...[S]ection 3(1) of the Indian Act states, “*This Act shall be administered by the Minister, who shall be the superintendent general of Indian Affairs.*” My late father George Manuel once asked me, when I was a kid[,] to read this provision and he asked me what does that mean? I told him I did not know. He said that means that the Minister of Indian Affairs is our Dictator. This means all decisions about your life the Minister has the ultimate authority.³⁰

Fanon argued that the violence of colonialism objectified the native into a “thing,” marked by race, and subject to a constant colonial gaze so that the body returns to the self unrecognizable: “spread-eagled, disjointed, redone, draped in mourning...”³¹ This affect is produced in Canada through an accumulation of seemingly procedural functions, “hidden practices,” such as projecting an image, eventually internalized, of an Indigenous population incapable of self-government and determination.

Violence and legal reasoning were often co-terminous conditions of the colonial encounter. Sunari Thobani writes that, “lawmaking pursues as its end, with violence as its means, *what* is to be established as law.”³² She writes that key theorists of sovereignty – Giorgio Agamben, Michel Foucault, and Walter Benjamin – have failed to address settler colonial power. Their Eurocentric focus on sovereign power as law misses how “colonialism... has been central to the development of Western forms of sovereignty as racialized forms of power through the institution of law within modernity.”³³ Jurisdiction orders legal authority. It “inaugurates” law³⁴, bringing it into existence, and in so doing, draws its boundaries and subjects.³⁵ While jurisdiction does not wholly precede law in all cases, for example, in cases where the province creates municipal authorities, or where legislatures create administrative bodies, the foundation for these latter forms of establishing jurisdiction are all premised on the initial inauguration of jurisdiction in what is now called Canada, which ushered in the reception of the common law.

In Canada, the state’s claims to jurisdiction over Indigenous lands assumes the authority to inaugurate law where law already existed, and presumes the new forms that law will take. These presumptions preclude asking pertinent questions about which laws should apply on these

lands. Though a neglected question in legal theory,³⁶ from an Indigenous perspective, scholars and thinkers have long commented on the matter of not *which* law, but *whose* law applies to all living things on their territories. For example, in *Two Families*, Nihiyow scholar Harold Johnson explains to non-Indigenous people by what authority settlers were offered a place here: “[w]hen your ancestors came to this territory, *Kiciwamanak* [cousin], our law applied. When your ancestors asked to share this territory, it was in accordance with our law that my ancestors entered into an agreement with them. It was by the law of the Creator that they had the authority to enter treaty.”³⁷ In this ontology of jurisdiction, it is the treaty relationship between Indigenous peoples and newcomers that governs the use and settlement of territory.

John Borrows comments on the Supreme Court of the United States case of *Winans*, which recognized that “‘treaty rights are a grant of rights *from* the Indians, not *to* the Indians.”³⁸ He draws out the implication that flow from this “reserved right of treaties”: “Where there are no treaties, there has been no permission for subsequent non-Aboriginal settlement. This must be fixed to bring Canada in line with its legal obligations to Aboriginal peoples.”³⁹ The Trilateral Agreement signed by Canada, Quebec, and the Barriere Lake Algonquins was one such attempt to render Canadian law legitimate through Indigenous recognition.

Inaugurating Jurisdiction: Territorial Sovereignty & Settler Colonialism

Jurisdiction is an historical concept that has derived its political and legal content over a long course of time and transversal of space. Approaching jurisdiction from an historical perspective also allows us to make key distinctions between the oft-conflated concepts of sovereignty and jurisdiction. Within a settler colonial context, this conflation is itself a political expression of authority, because it fuses together multiple forms of life under one “empire of uniformity.”⁴⁰ “Perfect settler sovereignty” is the legal obliteration of Indigenous customary laws⁴¹ aimed at through the collapse of distinction between these terms.

Jurisdiction pre-dates sovereignty in the common law.⁴² As Dorsett describes: “Bodies of law self-authorized and regulated their relations with each other long before the emergence of the modern nation state. Even after the development of notions of national sovereignty, non-common law jurisdictions continued to function alongside the common law, both in England and the colonies.”⁴³ Lisa Ford historicizes how “[i]n law, sovereignty is practiced through jurisdiction.”⁴⁴ She describes how sovereignty came to universalize jurisdiction. Whereas jurisdiction was understood for centuries to claim authority over people in particular places or over those engaged in particular activities, through its settler colonial articulation it came to claim authority over state territorial space. She recounts the appeal trial of George Tassel (1830) where the Cherokee man

was convicted of killing another Cherokee man on Cherokee land within the borders of Georgia. The defense argued that this incident took place on the self-governing lands of the Cherokee and was outside of state jurisdiction. The judge responded by asking how anyone who knows what a sovereign state is could call the Cherokee sovereign or independent?⁴⁵ The authority of the Cherokee to hold laws over their lands was deemed impossible within the exclusive jurisdictional space of territorial state sovereignty.

Citing case law from America and Australia, Ford traces the transition from a settler legality that claimed jurisdiction over Indigenous bodies – only in the case of personal violence towards non-Indigenous people – to the period where territorial jurisdiction became a necessary exercise of sovereignty at the turn of the nineteenth century. Until the later period, an uneasy legal pluralism existed between overlapping Indigenous and settler social orders. Ford’s research shows that the emergence of territorial state sovereignty was introduced in colonial courts through a generalization of the common law as the singular national law.⁴⁶

Dorsett also notes how intolerant the courts have also been in Australia towards parallel law-making systems. For the High Court,

it seems that sovereignty, territory and jurisdiction have become interdependent in a way which means that questioning any one part (jurisdiction) is to challenge the whole (the sovereignty of the nation). Because jurisdiction has effectively been collapsed into sovereignty for over one hundred years it appears that the High Court now regards any attempt to argue multiple jurisdiction as an attack on singular sovereignty.⁴⁷

Since this conceptual melding rests at the core of settler colonial state logic, it seems plausible to take this conflation at face value and read jurisdiction as an inseparable aspect of state sovereignty and territory. Yet, I would maintain that though there are strong grounds for reading these concepts together, distinctions between sovereignty, territory and jurisdiction bring a perspicuity to different modes of struggle under settler colonial regimes. Though they are mutually dependent, jurisdiction and sovereignty arise from distinct genealogical histories, perform different kinds of political work, and produce discrete sources of legal and political authority over territory. If anything, I hope that a brief historical survey of jurisdiction will trouble conventional understandings of sovereignty itself.

Sovereignty, after all, has been defined by its claims to “final and absolute political authority”⁴⁸ and has dominated as the “key ordering principle of political organizing since the collapse of ecclesiastical forms of authority.”⁴⁹ But authority is not pre-given to sovereignty. Sovereignty, we must remember, “is not simply a matter of physically controlling territory... sovereignty depends on authority, and authority is something more than physical control over

territory.”⁵⁰ It must be matched with conviction that the exercise of sovereignty is legitimate.⁵¹ Forming national law is one way in which this legitimacy is sought. The contestation of this law and questions surrounding the state’s authority to liberate itself from earlier law can be called into question by struggles in the register of jurisdiction.⁵²

Though the common law suddenly takes the shape of the state, the fit is never total or complete. For the common law has no mystical or transcendental authority that connects it to territory in the “New World.” When the common law of England became the national law in the colonies, its content and jurisdiction were deliberately confused. The common law’s universalist principles of equality are intentionally articulated against the local and particular formations of Indigenous legalities.⁵³ Peter Fitzpatrick comments on Brennan J’s reasoning in *Mabo*, where the Justice rejects the common law doctrine of *terra nullius*, only to rehabilitate the common law to “recognize” native title: “In such a miasma, not to say vacuity, is the settler’s law accorded the impenetrable solidity that would secure its completeness and exclusiveness and utterly subordinate any competing indigenous legality.”⁵⁴ Claims to the common law’s universalism are further compromised by its composition as a series of precedents that embody the force of changing social relations from which it takes its content.⁵⁵ The function of the common law’s “labile” nature in a settler colonial context is primarily to replace competing territorial assertions.⁵⁶ As such, the common law is “the perfect instrument of empire.”⁵⁷

It is also a perfect instrument for claiming and defining state territory. Fitzpatrick writes that the “seeming solidity of the nation state is set in the identification of it with a determinate territory, an identification which law thence intimately shares.”⁵⁸ The supposed equality of the law though is also set paradoxically against its application: it is territorially bounded, yet colonially expansive. As R.B.J. Walker notes on sovereignty: its universalism locates it everywhere, yet its territorial form creates a rigid “inside/outside” frame.⁵⁹

How did territorial sovereignty come to define legal political authority? As Quentin Skinner notes, sovereignty is bound up with the emergence of the modern nation state. His genealogy of sovereignty traces the idea’s meanings through invocations of the state that begin to appear in the late sixteenth and early seventeenth century.⁶⁰ The state began to signify a “specific type of union or civil association, that of a *universitas* or community of people living subject to the sovereign authority of a recognized monarch or ruling group.”⁶¹ Architects of modern sovereignty formulated their ideas partly to oppose what they understood to be Indigenous ownership and jurisdiction in the New World. As James Tully notes, “One of the leading problems of political theory from Hugo Grotius and Thomas Hobbes to Adam Smith and Immanuel Kant was to justify the establishment of European systems of property in North

America in the face of the presence of ‘Indian Nations.’”⁶² For example, Hobbes’ “paradigmatic” reading of sovereignty continues to politically construct Indigenous peoples as outside of “the political” in Canadian jurisprudence and Canadian Aboriginal policy.⁶³ Hobbes’ background picture of the world, formed during the brutal civil war in England, depicts a state of nature where man is dissociated from man, each a natural enemy to the other. Therefore only through a covenant of the multitude can individuals form a unified body, authorizing a sovereign to represent the common-wealth or *state*.⁶⁴ Since no unity can exist between individuals prior to the formation of the social contract, people living in the “New World” have been characterized in Canadian jurisprudence as living in a state of nature. Not only is sovereignty impossible in the state of nature, but the accumulation and transmittance of knowledge down generations is also inconceivable.⁶⁵

The Hobbesian concept of the state was famously articulated by Chief Justice McEachern in the Supreme Court of British Columbia, 1991, in defense of denying recognition to Gitskan and Wet’su’wet’en jurisdiction and ownership over their lands. His judgment stated that, “it would not be accurate to assume that even pre-contact experience in the territory was in the least bit idyllic... there is no doubt, to quote Hobbes, that aboriginal life in the territory was, at best, ‘nasty, brutish and short.’”⁶⁶ Here we see evidence of Hobbesian thought on Canadian understandings of the structure of sovereignty: an ontological condition of social unity premised on an ethnocentric European anthropology of Indigenous peoples. But this premise of sovereignty is prefigured by a particular understanding of jurisdiction. Crucial to today’s context of Indigenous politics, “Hobbes renders the construction of this exclusionary identity, the process through which authority is produced and guaranteed as pre-political, as necessary and natural rather than contingent and violent.”⁶⁷ In fact, it is incumbent on the courts to shield the details of colonial acquisition from themselves to persist in their reasoning against Indigenous assertions of jurisdiction over their lands.⁶⁸ Challenges to state sovereignty are considered *beyond the jurisdiction* of the court, eliding the crucial period of inauguration. McEachern states in *Delgamuukw*:

No court has authority to make grants of constitutional jurisdiction in the face of such clear and comprehensive statutory and constitutional provisions. The very fact that the plaintiffs recognize the underlying title of the Crown precludes them from denying the sovereignty that created such title.⁶⁹

This statement is a rather patronizing slap to Indigenous nations for submitting to the authority of the court – among the only presumable democratic channel to obtain their rights – to challenge the taken-for-granted, non-justiciable presumptions of state sovereignty. So why submit to the

authority of the courts at all? Because, as Haudenosaunee lawyer Aaron Detlor has stated simply, they impact us.⁷⁰ For example, the Cayuga leader Deskáheh's international advocacy at the League of Nations in the 1920s raised awareness for the Haudenosaunee cause in Geneva, but also the ire of Canadian authorities at home, leading to the blacklisting of Deskáheh from ever returning to his homelands.⁷¹

Territorial sovereignty, modern sovereignty, state sovereignty – all synonymous terms – arose in the context of European imperialism, re-spatializing the exercise of jurisdiction into a colonial context over a people and territory.⁷² This new spatial form required the inauguration of new forms of law (or new applications of old forms of law), as jurisdiction was transferred repeatedly between European powers and over the colonies. If we took a cartographic view of jurisdictional transfer, we could begin with the Treaty of Tordesillas in 1494, the culmination of a dispute between Portugal and Spain over how to divide the world between them. One year earlier, by the authority of the Holy Roman Catholic Church, Pope Alexander VI issued the Bull *Inter Caetera* in an attempt to resolve competing claims over Columbus' discovery of the "Asiatic" coast. The Bull was highly favourable to the Castilian King, assigning Castile exclusive rights to acquire territory, to trade, or even to approach the lands lying west of the meridian situated 100 leagues west of Azores and Cape Verde Islands. Portugal would have claim to any lands that lay east of this line. After some exploration, the Portuguese protested, getting some idea, though nowhere near the total picture, of the disproportionate distribution of lands. In 1494, Spain signed a treaty with Portugal in Tordesillas, agreeing that Portugal would receive all lands "three hundred and seventy leagues west of the Cape Verde Islands" decreed to "remain in the possession of, and pertain forever to, the said King of Portugal and his successors" with full rights of claim to all discovery. To the west of this line, all other discovered lands would belong to the King and Queen of Castile and to their successors.

The division of the world was not simply a matter of drawing an imaginary line of possession across the earth. It constituted a claim over all of the people and all the living things on these lands. Jurisdictional claims were underpinned by the principle of discovery and by the practices of settlement; we will examine these affiliations in a following section. Here we may conclude for the moment that despite significant differentiation in European articulations of imperial rule, "Europeans everywhere relied on mechanisms for constituting local rule and for establishing jurisdiction over discrete and limited territories."⁷³ Establishing jurisdiction on the ground was not the same thing as imperial powers asserting sovereignty over Indigenous lands. Imperialism created the definitive boundaries of sovereignty: it raised the questions that persist in its name, such as who could exercise what kinds of power over land? And, what is a political

community? As iterated above, what is left to examine are the “internal arrangements for organising and exercising authority” and the means to ask how that authority is exercised.⁷⁴

One final note on reading sovereignty and jurisdiction as relational, but not identical. As far as I understand, there is no parallel concept of sovereignty in Algonquin diction, whereas jurisdiction, understood to indicate the inauguration and authority to speak for law, is a recognizable and translatable concept. I cannot speak to the whether or not this is the case for Indigenous languages more generally, but at Barriere Lake, the inauguration of law in the form of the Mitchikanibikok Anishnabe Onakinakewin comprises the community’s fundamental authority governing the community’s relationship to the land, as well as their social and political identities. The Algonquins of Barriere Lake could be considered “sovereign” in the sense that they are a self-governing band, once strongly affiliated with the broader Algonquin nation. But they have no territorial ambitions in the sense of a modern nation state, nor articulate political ambition in these terms. They speak of the Onakinakewin, and the fact that they have never given up their lands, therefore continue to hold jurisdiction over the territory. If they can secure control over their lands, they feel that their social control and determination over services and programs for their community will stem from there. Sovereignty is the unapproachable form of the problem, while jurisdiction is the material.

There is also a remarkable degree of consensus among Indigenous peoples on the centrality of jurisdiction to Aboriginal rights in Canada. Michael Asch documented addresses made by First Nation, Métis, and Inuit leaders at the First Ministers Conferences that followed the historic inclusion of Aboriginal rights in the Constitution Act, 1982. He notes how these conferences showcased the compelling accord of terms that Indigenous peoples understood these rights to signify. Taken from statements of leaders of national establishment organizations, Asch concludes that Indigenous nations understand Aboriginal rights to mean *political jurisdiction that includes a land base*.⁷⁵ This sounds much like what the Mitchikanibikok Inik communicated to me, as well.

Jurisdiction & Differentiated Space

In this section, I want to bring to light how jurisdiction produces colonial space. An outcome of overlapping legal orders, unique forms of spatial differentiation belie a projection of the national state as abstract and absolute territorial space. Taking a closer look at differentiated space allows us to define with better precision the concept of “overlapping” jurisdiction, and therefore helps us to think spatially about the work that jurisdiction does.

Though I have been using the term “overlap” with some promiscuity to describe the conflict between Indigenous and settler jurisdictional orders, the term denotes a somewhat inchoate sense of layering. What we need is some perspicuity on the nature of this layering. Laura Benton writes that, “precisely because effective imperial control was defined by narrow corridors and a few enclaves, the presence of multiple interests yielded landscapes of *tangled routes* rather than one of *abutting* or *overlapping spheres*.”⁷⁶ That is, if routes could be accessed at all. In the early history of contact, Barriere Lake lands lay like islands within oceans of mapped and re-named territory, rather than in overlapping fields. Provincial officials complained that entire areas under their supposed jurisdiction were unknown due to Algonquin resistance to map their territory.⁷⁷ Eventually, inroads were made, and colonial possession was claimed through highways, registered traplines, logging concessions, and beaver preserves.

In this way, we see that jurisdiction is not just an abstract or descriptive concept, but a practice that “actively works to produce something.”⁷⁸ Jurisdiction as a “technology” speaks to technique, but it also signifies the Greek *têchné* or craft. It works, as Dorsett and McVeigh explain, by “institut[ing] a relation to life, place, and event through processes of codification or marking.”⁷⁹ Neil Brenner provides us with a useful vocabulary for theorizing these processes. Brenner shows how spatiality is always multiple (“polymorphic”) and can include networks, place, scale and territory.⁸⁰ All of these spatial forms articulate different patterns of uneven spatial development under capitalism and they must be understood relationally.⁸¹ For our purposes, I want to emphasize how territory and scale produce unique kinds of jurisdictional space that are at turns adopted and challenged by Indigenous assertions of jurisdiction over their lands. While we have already surveyed some key tenets of territorial jurisdiction, understanding scale in Canada is important, too, given the nature of the confederated dominion.

In brief, territorial sovereign space is projected as a discrete, non-overlapping, absolute domain of space, despite how interpenetrated by capital and by competing jurisdictional claims its boundaries may be.⁸² It is also internally parcelized into administrative hierarchies, creating further spatial differentiation.⁸³ Territorial space is further differentiated into regional, national, and international hierarchies of discrete social units. These scalar hierarchies have been produced through constitutional law, but also through an active struggle between interests at different spatial scales to determine their spheres of power and interconnections.⁸⁴ For example, on the legislative side, the Natural Resources Transfer Agreements Constitution Act, 1930, transferred jurisdiction over natural resources from the Dominion of Canada to prairie provincial governments – Manitoba, Saskatchewan and Alberta – and was the result of a protracted struggle over the division of powers between these scales of government.

Indigenous jurisdiction interrupts the socio-spatial production of state territory and scale in two important ways: the first, is that it disrupts the notion of non-overlapping, absolute domains of space. The so-called Westphalian state system may have created new jurisdictional and administrative arrangements in which modern forms of authority could be rendered meaningful, but it did not necessarily create a new world order from its imperial antecedents,⁸⁵ nor destroy the Indigenous legal and political orders that were already in place on these lands. Second, nation to nation relationships between Indigenous peoples and the state are embodied in oral agreements, treaties, covenants, and in the exchange of wampum belts. These inter-national agreements, on the one hand, disrupt the representation of territorial space as non-overlapping and challenge the absolute domain of the state. On the other, they can be seen to bolster the state and create its legal possibility, for they legitimize the state's existence and settlers' presence on the land.

In terms of scale, provincial and federal jurisdictions have produced the subsequent parceling of land into departmental, ministerial, and third party oversight bodies. This neat nesting of bureaucratic control over Indigenous lands was ostensibly disrupted in 1982 when the constitution was patriated. Section 35(1) of the Constitution Act recognized and affirmed "the existing aboriginal and treaty rights of the aboriginal peoples of Canada." Some argue that the inclusion of Aboriginal rights in the Constitution Act, 1982, shifted the jurisdictional scales and that Indigenous peoples now occupy a place in the hierarchy of spatial divisions over land in Canada. This interpretation represents the conventional understanding of jurisdiction, as a distribution of power along a scalar hierarchy, typically represented by the triangle, or else in terms of shared power, by the pie. According to the Royal Commission on Aboriginal People, section 35(1) should have reconfigured the status of Indigenous peoples in Canada from the bottom of the scalar ladder to a slice of the pie – equally dividing powers between federal, provincial, and First Nations orders of government.⁸⁶ However, from a spatial perspective, the pie analogy is undermined by other forms of differentiation. Like the sheaf of transparencies that comprise the human body, a more complicated layered analysis is necessary to visualize the operations of power here. The internal parcelization of territorial space, the shared domains of so-called absolute space, and the jurisdictional practices on the ground that codify and mark struggles over natural resources, all work to undermine strict scalar claims on Indigenous space.

Though jurisdiction has been primarily understood through scale, Marianna Valverde argues that this has been a limitation in understanding that jurisdiction exceeds scale.⁸⁷ In fact, scale has hidden political realities, as Boaventura de Sousa Santos points out, appearing as "a political neutral technical choice" on a map.⁸⁸ These hidden aspects of scale are the work of

jurisdiction. As Valverde explains: “A fundamental insight from de Sousa Santos’s article but not explicitly articulated by him is that legal powers and legal knowledges appear to us as already distinguished by scale. Legal governance, in other words, is always already itself governed: and the governance of legal governance is the work of jurisdiction.”⁸⁹ Scale is no more fixed than hierarchy. State claims to jurisdiction seek to naturalize its spatial differentiation – represented as a homogenous space free of conflict, its inauguration safely located outside of the frame.⁹⁰

The space of state territory is projected as an undifferentiated, absolute and bounded space, but it is in fact nothing of the sort. One aspect of territorial space that is critically underscored in the literature is its conception as an abstract and homogenous space. The consequences of this abstraction to jurisdictional power are significant. Abstract space forecloses the need for a more concise categorization of territory, obscuring social relations and the distribution of resources.⁹¹ Without a concise categorization of territory, a categorization of jurisdiction is also obscured, whereupon a general unfamiliarity arises in society as to the precise nature of governance, and under whose authority various operations of governance are managed.⁹² This obscurity further depersonalizes jurisdiction, so that its abstract administration is mistaken for a kind of uniform equality. Richard Ford resolves that jurisdictional space is “conceptually empty” because, “[a]lthough any number of specific things and social relationships – wildlife habitats, informal communities, Native American settlements – may be present in, and even in part defined by, the space in question, jurisdiction tends to reduce space to an empty vessel for governmental power.”⁹³ The goal is gapless maps of contiguous abstract territories as far as the eye can see.

However, this empty state space is not an undifferentiated space. In fact, the contested nature of this space is precisely constituted by its forms of differentiation. Though “abstract space *appears* to be homogenous and thus devoid of ‘differences’” in its feigned appearance of homogeneity, it may efface actual difference and differentiation, for example Indigenous law, in order to impose its own abstracting order.⁹⁴ Abstract space is the space of the state: there is no state without territory. Lefebvre notes that abstract space is inherently political, entails conceptual transformation (by the likes of such theorists as Hobbes and Locke), and is inherently violent and geographically expansive – a framework of interlinking military, economic, and bureaucratic forms of strategic intervention.⁹⁵

Territory is the differentiated, political form of space produced by the state. The modern nation state is an historically and socially produced kind of space, set within the context of a rapidly expanding world market; a space “ordered towards intensification of market relations.”⁹⁶ State power organizes the social relations of space. Through rationalizing space in a pervasively

territorial register, the registers of these social relations “entail the classification, partitioning and management of political-economic life within clearly delineated jurisdictional zones; they tend to treat such zones as cohesive, relatively self-contained targets for specific types of strategic intervention; and they impose diverse forms of monitoring, information-gathering, revenue extraction, regulation, control and discipline upon it.”⁹⁷ Stuart Elden proposes that territory is a political technology, a historical question, it “is a rendering of the emergent concept of ‘space’ as a political category: owned, distributed, mapped, calculated, bordered and controlled.”⁹⁸ This is the kind of space that the Barriere Lake Algonquins have been resisting.

Cartography is singled out repeatedly as the central metaphor, material, and discursive device of colonization, and I want to momentarily signal the limitless nature of this approach to jurisdiction. Brenner cites a profoundly insightful passage from Lefebvre that speaks to the unlimited spatial interpretations one could engage in every place:

How many maps... might be needed to deal exhaustively with a given space, to code and decode all its meanings and contents? It is doubtful whether a finite number can ever be given in answer to this sort of question.⁹⁹

My project, of course, represents only a fraction of the knowledge produced on the territory of Barriere Lake.

Jurisdiction is both a spatial and a legal concept: to reiterate Gottman’s definition, it is a claim to governance that refers to the legal relationship between a politically organized community and their space.¹⁰⁰ As such, it defines “territory” across cultural and ontological divides. I will also be using the term “territory” here to denote national and band-specific Indigenous space for the straightforward reason that most of the Algonquins I worked with call the lands that comprise their ancestral homelands their “territory.” The political technologies associated with state management of space may differ in extreme form from Algonquin territorial control, but my aim in using one common language is that a thicker understanding of the term “territory” will be gained.

The Doctrine of Discovery & Jurisdiction in Canada

We have surveyed relationships between jurisdiction, sovereignty, and territory, but not the grounds upon which jurisdictional claims were laid in Canada. At the core of federal and provincial assertions of jurisdiction over Indigenous lands today is the doctrine of discovery. Discovery is a multilateral concept of claim to property rights in new lands, wielded to resolve inter-European competition over the New World; but it is unilateral in the sense that it renders the

status of Indigenous laws to be void and the lives of Indigenous peoples prior to contact to be historically meaningless. The doctrine emerges from a fifteenth century Christian belief that all authority on earth must be commissioned by God through His earthly representative, the Pope: a jurisdiction of divine law. As Peter Russell describes, “the natives – or ‘savages’ – of the New World, being infidels who had never heard of the Christian God, were incapable of exercising *dominion* – they could neither exercise political jurisdiction over their lands nor possess the territory they inhabited.”¹⁰¹ Even among the critics who challenged this vision of the world, none were prepared to link “Indian” property rights to exclusive jurisdiction to govern territory and peoples.

Theologian to the King, Spanish Dominican Franciscus de Vitoria had a striking influence on the conceptual design of an imperial international law in the sixteenth century. Vitoria defended the *dominion* of Indigenous peoples and recognized their right to property, yet still granted the Spanish held legitimate *imperium* over Indian lands.¹⁰² *Dominion* meant the control or ownership over things, while *imperium* meant the authority to govern the people. Jurisdiction over things, then, remained with Indigenous peoples, while jurisdiction over Indigenous peoples would shift to Rome. However, Vitoria undermined Rome by displacing jurisdictional authority from the Pope to a secular sovereign, thus from divine law to natural law. He asked, if law presupposes jurisdiction, how can the Emperor claim authority over the world it does not govern? In answering his own question, Vitoria ultimately re-entrenched a Christian universalism into secular law through the Law of Nations (*jus gentium*). A common humanist framework based on reason that applied to all nations, *jus gentium* obliged Indigenous peoples to allow Europeans to trade and travel freely in their lands. If they resisted, a just war (*jus in bello*) could be waged against them.¹⁰³ This Spanish claim to jurisdiction derived its legitimacy from a universal humanism, but also rendered Indigenous peoples objects of Roman law if they attempted its disavowal.¹⁰⁴ Herein lies the contradictory spatial and conceptual occupation of Indigenous people – to be both inside and outside of the law “creates an object against which sovereignty may express its fullest powers” by engaging in violence to correct the offense to universal morality.¹⁰⁵

The doctrine of discovery has endured in Canada. It was inaugurated and adapted by British powers to answer for its own grounds of sovereignty and possession. English genealogies of discovery are interlaced with Spanish reasoning, but they also differ as a result of Britain’s own cultural and historical context of colonialism. Discovery of alien peoples had little traction in Britain's first foray into colonial conquest in Ireland, which occurred at roughly the same time as King Charles V of Spain sought to resolve the controversies of exploration plaguing his Christian

conscience. While Juan Ginés de Sepúlveda and Bartolomé de las Casas debated in Valladolid, 1550-1551, regarding whether or not Indigenous peoples could be considered to be part of the human race, the Irish were constituted as colonizable by virtue of their racial and social differences, which England used to justify political and economic domination over their neighbours.¹⁰⁶ By the time the British landed on what the Anishnabe call “Turtle Island,” the doctrine of discovery was already embedded in their common law. It was also articulated in a memorandum for the Privy Council of Great Britain, which set out two grounds for the establishment of British sovereignty in the colonies: for uninhabited lands, the doctrine of discovery; for inhabited lands, the doctrine of conquest.¹⁰⁷ Obviously, Britain never colonized an empty land, but on the ground, the term came to mean something different: “already inhabited nations were simply legally *deemed to be uninhabited* if the people were not Christian, not agricultural, not commercial, not ‘sufficiently evolved’ or simply in the way.”¹⁰⁸ In England, agriculture and enclosure emerged as central rationales for dispossession, most succinctly articulated by John Locke in 1689 and appropriated by a range of actors, including Emeric de Vattel (1714-67) who ridiculed the Papal Bull dividing the world between Spain and Portugal, defending the right of all European nations to settle on land barely occupied by nomadic bands and to lawfully possess them by virtue of their use and need.¹⁰⁹

Tensions over colonial competition between Spain and England forced the English to innovate and find a higher universal basis of reasoning than the Spanish. The English turned to *possession*, arguing that land actually had to be settled to belong to a sovereign. Locke provided a justification for settlement as possession through natural law. He argued that by mixing one’s labour with the soil that man improved the land, thus enriching the common heritage of humankind, and entitling him to enclose the plot as his own.¹¹⁰ Thus, as Fitzpatrick comments, began “the long occidental romance with the land, particularly of the cultivated variety.”¹¹¹ New technologies of jurisdiction were born of this colonial labour theory of value, such as seventeenth and eighteenth century English Atlantic charters, which deeded vast swaths of land in the name of the English King to corporations in the newly demarcated world of America.¹¹² These charters and other such colonial legalities worked to efface Indigenous land rights. But it was not quite so neat as a series of extinguishments by pen. These documents were really trump cards in an inter-European competition to support their flailing colonies. They did not actually extend meaningful jurisdiction over Indigenous people, as Ford explains: “The messy work of settlement itself required a much messier array of legal practices: and herein lies the real history of sovereignty and possession in the New World.”¹¹³ In Canada, as we will see, this messiness was often mediated by the rule of law.

Colonialism was legal in European law and its principle of discovery imprinted on the legal systems of settler colonies today. The doctrine of discovery has been embedded in Canadian law through two central texts I will focus on here: the Royal Proclamation, 1763¹¹⁴, and by Justice Marshall's decision in the United States case of *Johnson v. M'Intosh*.¹¹⁵ In the first case, the imperial notion of discovery embedded in the Royal Proclamation is articulated through a double move of jurisdictional recognition and subordination. When King George III issued the Royal Proclamation in 1763, a key end it was designed to serve was to quell Pontiac's War, an Anishnabek uprising comprised of the Three Fires Confederacy and led by Obwondiaq, an Odawa warrior known by many historians as "Pontiac." The war was triggered by the British presumption of jurisdiction over Indigenous lands upon defeating the French in the Seven Years War. The British conveyed every indication that their rule would disrupt the peaceable trade and social relations arranged with the Anishnabe's former allies.¹¹⁶ The Royal Proclamation contained language to assuage these fears, as Anishnabe legal scholar John Borrows describes, "To alleviate conflict, the Royal Proclamation was declared to delineate boundaries and define jurisdiction between First Nations and the Crown."¹¹⁷ But it also simultaneously consolidated British power over the new world in the face of Indigenous nations and competing European powers by burying the doctrine of discovery in its prepositional form:

it is just and reasonable, and essential to our interest, and the security of our Colonies, that the several Nations or Tribes of Indians with whom We are connected, and who live under our protection, should not be molested or disturbed in the Possession of such Parts of Our Dominions, and Territories, as not having been ceded to or purchased by Us, are reserved to them or any of them, as their Hunting Grounds.

By asserting that Indians live on "*our* Dominions, and Territories," the British manoeuvre an attempt at a jurisdictional transfer of Indigenous lands to European powers. While sovereignty had already been staked through English "ceremonies of possession,"¹¹⁸ this move relocated Indigenous societies into the common law of the colonizing nation. A contradictory effect is thus produced in Canada's Constitution: while section 35(1) protects Aboriginal and treaty rights, section (25) enshrines the Royal Proclamation, and hence the colonial doctrine of discovery.

The Royal Proclamation cements an imperial property right: preemption, which is essentially the right of discovery. The royal prerogative lays out strict preemption rules making it illegal for Indigenous peoples to sell land to third parties unless they are first ceded to the Crown. Pre-emption is an exclusive, future right in discovered lands, what is sometimes referred to as "European title." Literally interpreted to protect Indigenous peoples from being taken advantage of by settlers, Robert Williams Jr. argues instead that it is more likely the case that Whitehall

sought preemption as the most expedient way to protect its mercantilist interests,¹¹⁹ “a monopoly over land and resources.”¹²⁰ In either case, the exercise of preemption powers meant “the exercise of authority over the ‘owned’ Indian.”¹²¹ The prepositional clause highlighted above makes this quite clear.¹²² From an Indigenous perspective, the Royal Proclamation’s more profound implication unfolds in the aftermath of King George III’s proclamation. In accordance with Indigenous laws and protocols, a meeting was held at Niagara between around 2,000 Indigenous Chiefs and leaders with British official William Johnson. The Treaty of Niagara 1764 reflects the deeper, mutual commitments made between the Crown and Indigenous nations, which I discuss in Chapter Three.

In terms of the common law, the U.S. Supreme Court made the biggest impact on Canadian jurisprudence on Aboriginal rights.¹²³ The U.S. Supreme Court in *Johnson* stated that under the rights of the international law of the doctrine of discovery, the Christian discovering nation “automatically gained sovereign and property rights over the non-Christian, non-European peoples even though Indigenous nations were already occupying and using the lands.”¹²⁴ In *Johnson*, a case where no Indigenous people ever appear before the court, Chief Justice Marshall decides that the doctrine of discovery is the originating source of Indian rights in the United States. Discovery gave title “to the government by whose subjects, or by whose authority, it was made, against all other European governments, which title might be consummated by possession.”¹²⁵ Though Marshall ultimately reverses his opinion in a later trial, his decision in *Johnson* attenuating Indian rights to occupancy and usufructuary rights became the most influential precedent on federal Indian law on the continent.¹²⁶

Discovery haunts jurisprudence on Aboriginal rights in Canada. Each time discovery is invoked by the Crown in defense of violating Indigenous jurisdiction over their lands, the racist foundations of Canadian jurisdiction are recapitulated into the structures of state power. In 1888, *St. Catherine’s Milling Lumber Company v. The Queen*¹²⁷ established in Canadian common law that Indigenous land holdings could not be considered proprietary in the sense of a fee simple interest in land. The decision rested on the judge’s interpretation of the Royal Proclamation, which was understood to *give* natives only rights of occupation and use. The judge also referred directly to *Johnson*, concluding that the doctrine of discovery meant that Indigenous rights amounted to “a personal and usufructuary right dependent on the good will” of the Crown.¹²⁸ Until the majority decision in *Calder et al. v. Attorney-General of British Columbia*,¹²⁹ when Nisga’a title was seen to derive from pre-existing occupation and social organization, the doctrine of discovery had been wielded numerable times by the Crown to extinguish any Aboriginal title claim to the land.¹³⁰ In *Calder*, Justice Judson awarded title, explicitly refuting the Royal

Proclamation.¹³¹ For the first time, the courts acknowledged that Indigenous rights were not extinguished when Canada claimed sovereignty over these lands.

In the dissenting decision for *Calder*, however, Justice Hall favourably cited the doctrine of discovery in his judgment.¹³² According to Hall, the tenets of Crown sovereignty and preemptive rights could still be upheld on the basis of the doctrine of discovery, as articulated in the Royal Proclamation and *Johnson*. The doctrine of discovery would in fact continue to be invoked by the Crown, irrespective of ground-breaking legal reasoning refuting its historical basis. In 1984, *Guerin v. R.*¹³³, further defined title as a *sui generis* right based on pre-contact occupation predating the Royal Proclamation. The Proclamation was judged to be a document which merely recognized, but did not create Aboriginal title. But although the Proclamation was rejected as the source of Aboriginal title, Justice Dickson maintained that underlying title to the land still belonged to the Crown, by virtue of discovery. He wrote: “The principle of discovery which justified these claims gave the ultimate title in the land in a particular area to the nation which had discovered and claimed it. In that respect, at least, the Indians’ rights in land were obviously diminished; but their rights of occupancy and possession remained unaffected... Indians have a legal right to occupy and possess certain lands, the ultimate title to which is in the Crown.”¹³⁴ Although recognized as having a “unique” source of rights in the land, Indigenous jurisdiction was still rendered subordinate to state property by virtue of discovery.

The *Delgamuukw* court rejected the doctrine to limited avail, as well. In *Delgamuukw v. British Columbia*,¹³⁵ 1997, the Supreme Court of Canada sidestepped the Crown’s arguments of terra nullius and discovery and found that Aboriginal title was a broad right in land entrenched within section 35 of the Constitution. The Supreme Court decided that the province lacked the constitutional authority to extinguish Aboriginal title in 1871 when British Columbia joined Canada. The province lacked this authority notably due to the machinery of jurisdiction: since Aboriginal title is within exclusive federal jurisdiction, the power to extinguish Aboriginal title is an exclusively federal power. A cynical grounds for recognition, as Louise Mandell points out, *Delgamuukw* also entrenched the subordination of Indigenous societies to Canadian law:

An unquestioned assumption is that with Crown Title comes sovereignty and legislative authority. With legislative authority comes, *inter alia*, the power to allocate resources from Aboriginal territories to others and to make decisions about how the land will be managed, even where the land has not been subject to treaty.¹³⁶

In this sense, *Delgamuukw* represented a loss, since it essentially maintains colonial preemption rights of discovery.

All eyes are now on a recent ruling that weighs in on the constitutional issue that *Delgamuukw* left open on whether provincial land and resource laws were applicable on Indigenous lands. On behalf of the Xenigwet First Nations Government and the six bands that make up the Tsilhqot'in nation, Chief Roger William brought legal proceedings against British Columbia to challenge their authorization of logging on the Tsilhqot'in's traditional territories in the Cariboo-Chicotin region of northern BC. In *Tsilhqot'in Nation v. British Columbia*,¹³⁷ the Province argued, that, "even if Aboriginal title exists, the lands remain provincial Crown lands over which the Province can exercise legislative jurisdiction."¹³⁸ Justice Vickers disagreed. He held that though the *Forest Act* falls under provincial jurisdiction, Aboriginal title land could not be defined as Crown land under the Act, but must be treated as "private lands."¹³⁹ That is to say, provincial jurisdiction under the *Forest Act* undermines the exercise of Aboriginal jurisdiction over their lands. Justice Vickers favourably cites legal scholar Kent McNeil, who laments that, "Ever since the *St. Catherine's Milling* decision in 1888, it has been apparent that exclusive federal jurisdiction over '[l]ands reserved for the Indians' might well include jurisdiction over Aboriginal title lands."¹⁴⁰ McNeil warns that this feigned constitutional authority that the provinces have been exercising over the past century has been transparently thin and unprincipled. Leave to appeal was granted in January 2013.

There is the potential that the courts could always go further in recognizing Indigenous jurisdiction over their lands, and this prospective risk to the Crown is mitigated in part by the federal land claims process. It was the *Calder* decision in 1973, after all, that blind-sided the government into a statement of policy that re-opened the treaty process for the first time in fifty years. When the split decision came down narrowly defeating a ruling (on a technicality) that recognized the Nisga'a Nation's pre-existing title to the creation of British Columbia, Prime Minister Trudeau infamously declared: "Perhaps you had more legal rights than we thought you had..."¹⁴¹ The fear that expanded jurisprudence on Aboriginal rights – as set out in landmark cases such as *Delgamuukw*, *Marshall*, *Haida Gwaii*, and *Tsilhqot'in*¹⁴² – have perversely played a hand in expediting policies and legislation to resolve the problem of overlapping jurisdiction. The extinguishment clause of the Comprehensive Land Claims policy is a central example of this expedition. As Asch and Zlotkin note: "Such a clause would counteract the possibility that the courts could interpret Aboriginal rights and title more broadly or differently than the rights set out in a comprehensive claims settlement."¹⁴³ Currently, in exchange for settlement "rights," Indigenous peoples must convert their lands into fee simple: a method of jurisdictional termination, as we will see, that played a significant part in Barriere Lake's struggle to avoid the policy at all costs.

Dissertation Overview

This project does not purport to be a comprehensive ethnography of jurisdiction at Barriere Lake. As a work of legal geography, it is most concerned with jurisdiction as a living expression of Barriere Lake's relationship to the land and to settler colonial possession more broadly. I have also not set up to provide a historical geography of Barriere Lake's lands and all the processes of propertization that have unfolded, and continue to unfold, since contact and settlement. While the cultural reshaping of the region through Western legal property regime would make for an interesting project, my own work focuses more closely on the relatively recent struggle in the community to develop a land management plan based on Algonquin laws of jurisdiction.

What I do intend to cover here is a map of jurisdictional overlap on Barriere Lake's territory and a picture of how simultaneous operations of governance, based in different ontological and epistemological systems, can take place in a single space. I will survey the ways in which conflicts over governance bring jurisdiction to light and lend discursive and material visibility to the structures of colonialism.

I will do this by showing how jurisdiction works on a number of registers, including through policy and policing measures. One of the key registers is through the resource extraction economy. Operating through a political economy of accumulation that does not necessitate dispossession, assertions of colonial jurisdiction invoke a multiplicity of micro-regimes of regulation and access to Indigenous lands. These regulations may at first appear accommodating, but when they are directly challenged, serious consequences befall Indigenous communities. On Barriere Lake lands, Indigenous and non-Indigenous people co-existed relatively peacefully since contact until clear-cut logging in the 1980s made increasingly unbearable conditions outright impossible for the Anishnabe people. Their resistance in the form of blockades, eventually resolved by the Trilateral Agreement, turned into the beginning of their problems rather than their cessation.

While primitive accumulation has been an authoritative explanatory framework for the spatial production of capitalism – a double-move of peasants separated from their means of production, forced to sell their labour – Nicholas Brown asks: “is it possible to identify a set of unique processes that we might call *settler accumulation*? In other words, does a *distinct form of accumulation* emerge from the dialectic between primitive accumulation and settler colonialism, which cannot be reduced to either of its constitutive elements?”¹⁴⁴ Barriere Lake's forms of life have not been subsumed into the jurisdictional claims of Canada and Quebec. Yet, Barriere Lake's struggle against the tides of accumulation on their territory have repeatedly forced a clash

of legal systems on the land that in turn shape the political economy of the region and the politics of settler accumulation.

To see the landscape is not necessarily to know the land is in dispute. The majority of Barriere Lake's territory falls inside the provincial Parc La Verendrye – a flat surface of highway signs and information chalets marking provincial stewardship. The roads in the summertime are filled with SUVs dragging shiny speedboats and the fall finds moose strung up on their grills. Conflicts around the political economy of possession are made visible through Algonquin resistance. There are over \$100 million in resources at stake on Barriere Lake's unceded territory.¹⁴⁵ Resource extraction schemes produce contests over space; the Algonquins engage in highway blockades, MP office occupations, logging camps, mining company evictions, demonstrations, and even the quotidian practices of daily life, such as checking traps, building cabins, hunting, observing changes in the land, assert their jurisdiction in ways that challenge the state's presumed claims. Life on the territory can at times be a daily struggle over land. Certainly, most of the Algonquins have not been integrated into liberal capitalism through the sale of their labour or even through an integration into park management and stewardship. To resolve the jurisdictional conflict, in order to proceed with resource extraction on unceded lands, the governments need the Algonquins to either go away – a prospect seen no doubt as increasingly dim – or to extinguish their claims altogether. Or else, as is the hope with the land claims process, they need forms of land title recognized that will enable their subsequent alienation through conventional parcelization and sale.

The Trilateral Agreement contradicts the federal government's primary strategy for dealing with Indigenous economic and political assertions on unceded lands: the federal land claims policy. The agreement provides a viable alternative to the federal government's preferred land claims policy, therefore Canada became increasingly reluctant to implement it and set a precedent for settlement beyond their own limited terms. (Quebec initially went along with the concept of shared management and jurisdiction with the Algonquins, but quickly changed their minds, too). The land claims policy that the Algonquins of Barriere Lake rejected is literally a policy of extinguishment, though the language has been euphemized over time. The 1981 claims policy stated as its objective "to exchange undefined aboriginal rights for concrete rights and benefits" calling for the "extinguishment of all aboriginal rights and title as part of a claim statement."¹⁴⁶ Today, the language of "extinguishment" has been replaced by the languages of modification, exhaustion, and certainty. However, the content of the policy has not changed. Extinguishment is not merely a policy option: it forms the very structure of settler colonialism. Patrick Wolf has notably written that settler invasion should be thought of as "a structure," rather

than as “an event.”¹⁴⁷ Unlike colonialism, structured to *reproduce* itself, settler colonialism has an end point, which is to *extinguish* itself.¹⁴⁸ By extinguishing Indigenous land interests, the settler colony erases distinctions between the colonizer and colonized. In Canada, this extinguishment would eliminate the state’s reliance on its mythological origins of proprietary claims to Indigenous lands, such as the doctrines of discovery and its racist legal foundations for state sovereignty.¹⁴⁹ Likewise in Quebec, the French claimed their right to land by discovery and conquest, whereas the historical record reveals a long history of treaty and alliance between the Europeans and Indigenous nations.¹⁵⁰ These fabricated jurisdictional claims structure the state’s need for Indigenous extinguishment into the daily life of First Nations peoples across the country.

Finally, the conflict between Canadian and Indigenous legal systems signals the broader ontological boundary-making and -breaking at stake in jurisdictional overlap and conflict. Understanding differences in sources of jurisdiction accounts for radically distinct ontologies of property. Bradley Bryan writes that it is the kinds of social relation underlying conceptions of property that signify something about our ontological status in the world: “Our ideas of property seem to be present in much of the way we comport ourselves with respect to each other and the world.”¹⁵¹ Of course, this kind of analysis takes vigilance. As Bryan cautions, by engaging in a comparison between English and Aboriginal conceptions of property, we are already asking a different kind of question: “what does it mean to be a human being steeped in liberal understandings trying to understand cross-culturally.”¹⁵² Bryan historicizes the liberal understanding of property as one that has become heavily invested in a relation of transaction, where nature is a “standing reserve” for human rationalization.¹⁵³ To approach an Indigenous understanding of property from this technological context, Bryan argues that we need to unpack the ontological basis of life which property expresses.

These arguments on jurisdiction are embedded in my dissertation. The second chapter in my Introduction, “An Autobiography of Territory,” outlines my methodology and research ethics for undertaking this project. I try to account for how the process of researching jurisdiction was also part of the process of understanding jurisdiction and colonialism more generally. Chapters Three to Six of my dissertation focus on the Trilateral Agreement. Chapter Three covers the early history of colonization of Barriere Lake lands and the failure of these processes to dispossess. Chapter Four covers the period leading up to the signing of the Agreement and the short period subsequent. Chapters Five and Six cover the slow and steady collapse of the Agreement and the extreme lengths taken by Canada and Quebec to derail the Agreement and discredit the Algonquins. Figuring centrally in these derailment and discrediting strategies are major government interference into Barriere Lake’s customary governance system, rooted in the

Mitchikanibikok Anishnabe Onakinakewin. This section on the Trilateral Agreement attempts to capture how jurisdictional conflicts played out on the ground and the mixed resulted of this effort to reshape the colonial relationship.

Chapters Seven and Eight narrate aspects of Algonquin Indigenous law, the Mitchikanibikok Anishnabe Onakinakewin. Here, I am interested in finding ways to represent the co-occupation by Indigenous and non-Indigenous people over a land base in a way that does not, on the one hand, subsume Indigenous belonging into totalizing theories of capitalism or, on the other, minimize the specific alienating effects of settler colonialism. The imposition of beaver preserves and registered traplines at Barriere Lake demonstrates the gulf between liberal and Indigenous forms of belonging and jurisdiction, while also narrating the uneasy co-existence of jurisdictional overlap between provincial, federal, and Indigenous governments. This case study also provides an account of the resilience of an Indigenous land tenure system, though incursions have pushed the flexibility of the system to an edge. I also look at the practices of Algonquin law today, including the customary leadership selection process, the feast, the language of the land, and the role of prophesy. Although this task is enormous, I attempt to illustrate Indigenous jurisdiction here, rather than simply theorize and explain.

Chapter Ten explores the other side of the rule of law: policing and security operations. As Tia Dafnos notes:

With the on-going expansionist impulses of capitalism, the Canadian state has amplified its role in facilitating “development” of land and resource extraction to maintain “competitiveness” in the global economy, imminently threatening indigenous communities’ land and self-determination. In this context, reclamations and blockades of “development” projects have been characterized as threats to (national) security because of their potential disruption of the critical infrastructure of the state, defined in both physical and economic terms.¹⁵⁴

This chapter surveys the criminalization and repression at Barriere Lake in the context of the state resource grab and mounting Indigenous resistance against ecological exploitation. I will bring to light selected incidents of criminalization, intimidation, and deliberate targeting of both Barriere Lake community members and Barriere Lake non-Indigenous supporters. I contextualize this chapter by examining the production of space in a staple state economy, noting the unique history and geography of Indigenous lands on the forefront of capitalist accumulation in Canada, including in the contemporary era. I will examine incidents of pacification at Barriere Lake in light of forestry and mining operations on their lands and the governments’ and industries’ needs to secure jurisdictional control over the territory.

The final chapter, Chapter Eleven, will examine the Comprehensive Land Claims policy, and more specifically, the context of loan bribery and deception involved in the implementation of the policy. I will also be focusing in particular on how property is a technology of jurisdiction, as a central plank of the policy requires bands or nations to transform their collectively-held lands into fee simple property holdings. This chapter will rely on field interviews with individuals opposing the policy on their lands, as well as submissions to the United Nations Commission on the Elimination of Racial Discrimination, submitted by a coalition of Indigenous bands, nations, and territorial organizations. It will also serve as a conclusion to my dissertation, which frames the Trilateral Agreement as a viable and hopeful alternative to this problematic and colonial policy that refuses any notion of shared jurisdiction over Indigenous lands.

Ultimately, this is a story of triumph in the face of violence. Despite the attempted erasure of Barriere Lake people and their lands, the strength of their continued assertion and practices of jurisdiction is an expression of their deep love for the territory and their deep commitment to their elders and to their children to preserve the land and take care of all the living things. Despite the impositions of state and capital jurisdiction onto their lands, Barriere Lake people have a place in their laws for the interstices, co-habitation, and co-management with others. At each site of struggle, new opportunities present themselves to change the toxic colonial relationship in place for only a couple of centuries. As long as Barriere Lake people maintain their struggle, the question of jurisdiction remains unsettled. The simultaneous operations of jurisdiction on Barriere Lake lands will continue to come to light through struggle: one which should force Canadians to decide which laws are the principled ones to carry forward.

PART I: INTRODUCTION

CHAPTER TWO – An Autobiography of Territory

The Story of Shula: In the land of blood & honey, of milk & heavy artillery

The shacks where my grandparents lived when they first settled in the arid Negev desert were small and flimsy. “We really heard everything from room to room,” my Safta laughs. Each room of the two-room shacks were occupied by a couple. The kids lived in the Children’s House nearby, raised collectively by a caregiver who made her rounds once per night.

My Saba slept most nights in a tent on the fields he worked by day so the Palestinians would not destroy the irrigation pipes. One late evening, when my Saba was on security patrol with the neighbour’s husband, two Palestinian men slipped into the settlement and hid behind a stack of palettes. They had probably come to pilfer food. Safta’s neighbour, Shula, picked that moment to stir from her sleep, and went to pee behind the palettes. She startled the Palestinians and they killed her.

Shula was pregnant. When the doctor arrived, he realized that he could save the baby, but he decided not to let it live. “A baby can live without a father, but not without a mother,” my Safta says. She heard everything that night – the startled cry, the stabbing, the hasty retreat. Later, the settlers found where the gate had been cut and repaired the breach. Friends named a grove in memory of Shula at the entrance to the kibbutz and life went on.

Safta is losing her memory, but she remembers this story and repeats it regularly, triggered by my incessant questions about settlement. The first time I heard this story was the first time I asked her why we came to this place. She replied with surprising candor: “They told us God gave us this land. Now I wonder, why would God give us a land where others were already living?” I pressed her on this point and she became annoyed, accusing me of understanding very little about life in Israel: “As a North American, you cannot understand what it means to live in times of war and to fight for your survival.” A swift means to annex me from the territory, she tells me the story of Shula.

I’ve come to wonder about this story of Shula. On the surface, it is a story about the added affect of bodies: death premeditated by Palestinian hunger, by a pregnant woman’s incessant need to urinate, and by the killer instincts of self-preservation. But if it is a story about the fog of war, the topography is unconventional. I tell a friend the story and he rolls his eyes and says, Isn’t colonialism *always* an accident? *Nobody* seems to have *ever* meant for anything bad to happen. His sarcasm is aimed at the Jewish settlers. But if this story is a metonym for the whole

colonial enterprise, then what structure would we see it ‘as’? Is this a story of the unborn child? The stillbirth dream of settler utopianism? Is this a story about hunger for land? How the Halutzim drove Palestinians to starvation, and in the process created their own “violent” opponents?

My grandparents did not technically steal the lands where Kibbutz Be’eri was built. These lands south-west of Be’er Sheva were bought privately by the Jewish Agency and other individuals. But whose land was it to sell and how had the deed been authorized? In the desert of al-Naqab – what the Jews called the Negev – all land fell into five categories of legal interest. As Hussein and McKay explain, “In practice, it was not always clear under which category a plot of land fell and many rights in land, acquired by long possession and use, were not formally registered.”¹⁵⁵ On top of this, Turkish title to much of the land – land that was sold to the Jews – was considered merely nominal, since Palestinians acquired use of land through long occupation and through communal land trusts held by Arab villages for generations.

But for the Jewish people ownership meant little without possession, too. So the Jewish Agency for Palestine, along with the Jewish National Fund, the Hagana Defense Forces, and Mekorot Water Company, planned an operation to extend Jewish settlement into Bedouin lands. Be’eri, the kibbutz my grandparents helped to found, was established during a wave of colonization called “Eleven Points” that took place on a single night in October 1946: it meant the illegal settlement of as many kibbutzim in al-Naqab – a region sparse with Jewish settlement, excluded from British partition plans for the State of Israel. My grandparents’ role was particularly significant, since Be’eri would be strategically crucial as one of “Four Points” including Tekuma, Kfar Darom, and Nirim, that bordered the Gaza Strip.

To catch the British off-guard, the settlers chose the evening of Yom Kippur – the most holy of holy nights for the Jewish people – to settle the southern desert. On the night of October 6, under an immense sweep of darkness hammered by stars, the newcomers – my Saba and a dozen or so men – erected four hasty walls and a makeshift roof. They named the settlement Nahabir and waited in the chilled desert hills for sunrise.

Upon discovery by the British, it was the roof that saved the settlement, despite the illegal nature of their covert occupation. An Ottoman law still on the books stated that any structure with a roof intact could not be torn down. “This is the mind of the Jew,” my Safta laughs. She is right, in that a legalistic approach to dispossession would dominate spatial change in Palestine.¹⁵⁶ But the Jewish peoples’ appeal to Ottoman law in 1946 was not to an ethnically blind judicial system. Though the civil courts of Palestine were meant to conform to the Ottoman law in force at the time of British occupation (in a strenuous effort to maintain the image of benevolent

stewardship), the British Mandate demonstrated enormous flexibility in their interpretation of these laws.¹⁵⁷ Thus, the Ottoman law regarding roofs likely held up by virtue of British sympathy with Jewish presence in al-Naqab, rather than by a strict adherence to an inflexible juridical order.

Over the next sixty years, Nahabir was relocated nearby to what became Kibbutz Be'eri, and the shacks turned into small but comfortable modern homes, with wireless internet, air conditioning, and bedrooms now built for children. Safta says: "And now they call us 'the rich'.... Our conditions are better than our neighbours. We are a big kibbutz, we have a factory that is very profitable. Agriculture became less profitable, and we eventually saw it wasn't worthwhile, and we gave up our dairy. But our printing press is doing well..." She begins to sing, "There were days..." But she forgets the words.

While writing this introduction, my Safta passed away. Too far away and too expensive and too difficult to travel with my infant daughter, I could not attend the funeral. *A Pan of Young Trees* is a short video my sister made a few years ago that begins with a black screen and just the sound of my grandmother's deep voice asking, "Will there be something for you to tell?" The film now feels elegiac. Grainy shots of a junk forest fade onto the screen, planted in rows outside the kibbutz. As the camera glances shakily around, we hear the rest of their Hebrew conversation:

Maya: About what?

Savta: To your grandchildren.

Maya: About what, though?

Savta: You didn't found a kibbutz, you didn't, for example, [do] special things...

Maya: I hope so.

Savta: I'm pleased that although it was hard, I did something important.

Maya: I want to say at the end of my life that everything that I wanted to do, that I thought was important, I did... whether big or small.

Savta: But what you've done is for yourself, right? What you've done – it was for yourself.

Maya: Good question.

Savta: I did it for the people of Israel. There was nothing in the Negev. What's "Negev"? *Linagev*, "to dry," right? They were *years* of drought...

What Safta did, it is true, was for the people of Israel.

The Negev occupied a special place on the interior frontier of the settler colony. David Ben Gurion, Zionist leader and first Prime Minister of Israel, epitomized this logic in a statement that declared: "[t]he people of Israel will be tested by the Negev..."¹⁵⁸ A geography to be conquered, the Bedouin people of al-Naqab became the present absences in this version of *terra nullius*.

Like Indigenous peoples in Canada, the Bedouin are what Oren Yiftachel calls a "trapped minority," a population who fall outside of the nation state despite being located geographically

within.¹⁵⁹ These populations are governed by complex patterns of integration, segregation, violence and partition.¹⁶⁰ The constraints exercised by the trapped minority on the state are prevalent in the production of settler space, for a major issue with the captured minority is their ongoing potential for disruption to the national order by asserting their unvanquished claims to the land. A surplus relationship to the land by Indigenous peoples threatens controlled narratives of conquest and domination.

The terrorization of Bedouins continues today, structured as it is into the Jewish settlement goals of Palestine. Almost half of the Bedouins in al-Naqab live in unrecognized village sites that lack basic services such as running water and electricity. The village of Al Araqib located between the Bedouin town of Rahat and the southern Israeli city of Be'er Sheva has been razed to the ground four times, most recently in July 2010. In the latest incident, bulldozers arrived escorted by more than 1,000 armed officers, destroying around 40 houses and uprooting hundreds of trees.¹⁶¹ The State of Israel's strategy is to cajole the Bedouin into one of seven government-established towns comprised of pre-fabricated homes with no access to their traditional Bedouin land base or ways of life. Critical observers have labeled this project the continued "Judaization" process of the Negev.¹⁶²

Fifty years after Israeli "independence," a shop on Ben Yehuda Street in West Jerusalem sells a t-shirt depicting a Native American counseling Prime Minister Ehud Barak. The Indian, who is holding a peace pipe and dons a headdress, warns the former Israeli leader, "Ehud, let me tell you about trading land for peace." Like the Native American who has failed to exchange his lands for peaceful co-existence with European settlers, the Jewish people are depicted as fighting a losing battle to negotiate their own lands for a peaceful solution with the Palestinians. Cast as Native Americans, the Israelis are to be understood as those with the rightful, *original* claim to the land – in other words, as the Indigenous peoples of Palestine. In the t-shirt image, Ehud and the Indigenous caricature stand against the backdrop of a map of Israel-Palestine, labeled "Israel." Only five points are marked: Haifa, the Golan Heights, the Kineret, the West Bank, and Jerusalem. It is not a geographically accurate map, but that is obviously not its purpose: highlighted here are contested or co-habited areas of Palestine, those many Israelis are determined not to "trade" away. Augmenting the semiotics of the colonial present,¹⁶³ the map depicts the flat space of Israel-Palestine, the regime of modernization that contains Israel as a settled place in a series of points on a map.¹⁶⁴



Figure 12 - T-shirt seen at a shop on Jerusalem's Ben Yehuda Street (photo by author).

Here I come back to my Safta and an image of her I dug up in the Be'eri Archives. She dons a headdress and claps along to children playing (also dressed in costume) against a flat landscape of brown dusty land. It is Purim, 1955. Another photo in the set shows two kibbutz children in redface, also wearing headdresses and feathers. The state of consciousness that aligns Jews with Indigenous peoples is not an accident of frontier space-making: the trope of the Indian has figured prominently into Jewish mythology for centuries, playing a range of critical roles. One role has been as a means by which to resolve identity crises connected to Jews' outsider status to European then American society.¹⁶⁵ In one rendering of this relationship, Jews saw the American Indians as a lost tribe of Zion, visualizing Jewish migration to America as a reconnection with their people, rather than as another violent moment of displacement.¹⁶⁶



Figure 13 - Yehudit Rapoport, Kibbutz Be'eri, Purim, circa 1955 (courtesy of Kibbutz Be'eri archive).

The frontier is after all a socially-constructed place, relative to other people and places, and its shifting relocation can serve to naturalize claims to the land, especially as it articulates with claims of indigeneity. In the United States, the frontier of the American West was depicted as the Orient in an attempt to paint the violent assault against Indigenous peoples in a patriotic light. As Lubin describes: “[n]umerous southwestern landscape paintings after the Mexican-American War dressed Mexicans and Indians in clothing and scenery that turned them into Bedouins.”¹⁶⁷ Bedouins, in this particular fabrication, implied liberation and drew on heroic American narratives of exploration throughout the Ottoman Empire.¹⁶⁸ Conversely, American soldiers in the Second World War sought to familiarize themselves with those they encountered in North Africa through the figure of the “Indian,” comforting themselves through racist tropes of a familiar pre-modern subject race to contain their fears of the unknown.¹⁶⁹ Chickasaw theorist Jodi Byrd sees Indianness as crucial transit in the cacophony of American empire: “Indianness becomes a site through which U.S. empire orients and replicates itself by transforming those to be colonized into ‘Indians’ through continual reiterations of pioneer logics, whether in the Pacific, Caribbean, or the Middle East.”¹⁷⁰ So on, American settler colonialism at home produced cross-hatched imperial space on “frontiers” throughout the globe.¹⁷¹

The reappearance of Bedouins in the American Manifest Destiny story creates a surprising symmetry in my autobiography, but the use of these tropes of indigeneity should not lapse into a method for comparing colonialisms. While Indigenous peoples – of the Americas or Middle East – have been swapped in and out of national narratives for imperial purposes, comparing forms of settler colonialism risks a “special haunting” that Benedict Anderson warns will construct a double-consciousness through which we see only the colonists’ gaze.¹⁷² What these comparisons can show us, however, is how the production of imperial space operates through discordant and competing pioneer logics¹⁷³ that establish networks of “transversal interconnections across geographically dispersed locations or organizational units.”¹⁷⁴ The long-standing alliance between U.S. and Israeli settler colonialisms, through U.S. aid and arms trade, for example, create a vector for Indianness to infect Israeli national narratives of conquest, disguised as self-defense. Israel’s frontiers are lined with American money, but the common transit of meaning is the shared identification of Israel with the Indian.

What a comparative mode can also show us is that though key differences exist between settler colonies, we must exercise a relational method of understanding identity. Ella Shohat demonstrates this in her uncanny work on the *two* 1492s. Examining Sephardi Arab-Jewish identity and its historical intersections with other communities, Shohat writes that, “[t]riumphant over the Muslims, Spain invested in the project of Columbus, whose voyages were financed partly by wealth taken from the defeated Muslims and confiscated from Jews through the Inquisition.”¹⁷⁵ Today, Canadian Jews are relentlessly interpolated to identify with universalist articulations of Jewish identity that press the Shoah against Palestinian aspirations for nationhood, as though these forces must be always kept in careful counter-balance. Most disturbing are recent alliances between prominent Jewish organizations and the Conservative Party of Canada, the latter of whom support Israel as an exercise in eschatological solidarity of Christian evangelicalism, advancing Canadian imperial support in new ideological directions.¹⁷⁶ As I write, Prime Minister Stephen Harper is pledging support for Israel as the Israeli Defense Force shower missiles into Gaza, some of which are in ostensible retaliation for Hamas rockets that landed inside the gates of Kibbutz Be’eri where the funeral of my grandmother is being held. My doubled identity as settler colonial seems to go all the way down.

An only child born in Tel Aviv in 1926, my Safta joined the pioneer movement after high school where she learned to throw a grenade. Today, four of Safta’s grandchildren have refused to engage in combat or serve in the army. It seems to me that Shula represents Israeli memories of violence that simultaneously repress its basis. As such, Shula is a testament to me now of the way that fear excuses a lack of bravery in taking responsibility for the violence and displacement

settlers cause. Israeli nationhood hovers in the background, but it is never able to fully immerse into its surroundings as long as Palestinians resist the occupation of their lands by Israel. In this way, Palestinian resistance is a form of jurisdiction-making: it makes visible the legal technologies of Israeli possession, articulates its own forms of entitlement and belonging to the land, and asserts a territorial belonging to places over which the society's own governance forms emerged.

My Anishnabe friend Dawnis Kennedy convinced me to start my dissertation with my grandmother. "Know why you're doing this – why this is the story you want to tell." She said, "Your spirit chose this family for a reason." I bought a plane ticket and flew to Israel that summer. To cover my expenses, I received a research grant to do comparative research between Israeli and Canadian land privatization initiatives. Interviews eventually turned to the situation for Indigenous peoples in Canada. Anthropology professor Daniel Montereescu said, "You know, there are a lot of Palestinians migrating to Canada now. I thought you were better."¹⁷⁷ That summer, I stayed in Tel Aviv, but visited the kibbutz often, where I tried not to feel in the way at my grandmother's house. I found it hard to talk to her. She has always been a bit cold and aloof and she corrected my Hebrew grammar as I spoke, which made me self-conscious, so I tried to find things she could talk about so that I could just listen.

On my final visit to Safta's tiny flat, filled to the brim with the sculptures, paintings, figurines and ironwork she loved to collect, we sat over tea and she told stories about how all the objects came to her and why she loved each one in particular. She also collected beautiful books and I found a leather-bound copy of Solomon's *Song of Songs*, addressed to her and my late grandfather on the occasion of their wedding. I brought it over to her and she slid it open and ran her crumpled fingers across the finely engraved monographs. Then she began to read:

Rise up, my love, my fair one, and come away. For lo, the winter is past, the rain is over and gone. The flowers appear on the earth, the time of singing birds has come, and the voice of the turtle is heard in our land. 2:10.

Turtle Island & the Algonquins of Barriere Lake: Research Ethics & Methods

I was born and raised on Anishnabe and Haudenosaunee lands. As historian Victoria Freeman describes, these lands have been inhabited by the Huron-Wendat and the related Petun (Tionnontati), as well as the Seneca Nation of the Haudenosaunee, and most recently, the Anishinaabe peoples.¹⁷⁸ A common interpretation of the name Toronto derives from Tkaronto, a Mohawk or Kaniekehaka word that means "the place where trees stand in water," though Torontonians have largely and unsurprisingly ignored their Indigenous history. Many of the early historians of the city failed to mention the Toronto Purchase at all¹⁷⁹ and today one would be

hard-pressed to find a local citizen who knows whose bones lie beneath their feet. The Great Indian Bus Tour, run by the Toronto Native Community History Project, addresses this amnesia on three-hour guided tours of the city that bring to light Indigenous presence and landmarks on the land. Though not commonly thought of this way, cities are Indigenous space, colonized in their own particular ways.¹⁸⁰ They play a key role in maintaining settler colonial mythologies and hierarchies. As Freeman writes, “Cities, no less than nations, articulate founding moments in their efforts to define themselves.”¹⁸¹ Take, for example, the incorporation of Toronto in 1834. Toronto celebrated this milestone by reversing its name from York (dubbed so by Lieutenant General John Grave Simcoe), back to the original Indigenous place name of Toronto. This name change signified the city as a uniquely North American place, despite the city’s actual displacement of local Indigenous inhabitants.

The reversal of “York” back to “Toronto” illustrates an organizing principle of settler colonialism that Patrick Wolfe calls replacement.¹⁸² Indigenous societies are destroyed in order to replace them with settler society, but this replacement, paradoxically, must reference what is destroyed. That is because

the erasure of indigeneity conflicts with the assertion of settler nationalism. On the one hand, settler society requires the practical elimination of the natives in order to establish itself on the territory. On the symbolic level, however, settler society subsequently sought to recuperate indigeneity in order to express its difference – and, accordingly, its independence – from the mother country.¹⁸³

Toronto is a colonial landscape of re-placement. Metropolitan, but named for its Indigenous “past,” its modernity is tempered by nostalgia: a flagship Hudson’s Bay store in the heart of the city displays in its windows the iconic black, yellow, red and green-striped blankets that once symbolized the fur trade, and old-timey Canadiana that is sold at hipster gift shops incorporates generic Indigenous motifs.

In the north end of Toronto sits a Jewish neighbourhood where Saturday mornings the sidewalks throng with families on their way to and from synagogue. I grew up there and eight houses away, so did Tamara, a Jewish-Salteaux actress who quickly became my best friend when we met at age fourteen. When Tamara’s uncle died, we put down tobacco and in the summer we attended pow wows. We also shared Shabbat dinners and a complicated love of Israel. Later, when I got to know Tamara’s maternal family, my perspective opened from the standpoint of one native person’s hardships into a much wider world of contemporary political struggle. My family carried the weight of multi-generational trauma, too, but we carried it silently. In Tamara’s family, healing was an ongoing theme and so were the trials and tribulations of its achievements

and failures. I got to know Tamara's step-father, Russell Diabo, a Mohawk from the reserve of Kahnawake in Quebec, and he and I struck up an unlikely friendship.

Russell lived in Brooklyn, New York for a few years, where his father was a steel worker like so many other men from his community, but he mostly lived in Erie, Pennsylvania where he was born. He is a big man, with long silver hair and a sparse silver moustache. He has a dark sense of humour and a caustic, direct way of speaking to you. He does not mince words. It is difficult to think of another person more knowledgeable on Aboriginal policy or who has been as consistently outspoken, ostracized for, and critical of what he calls "Canada's war against First Nations." Over the years, Russell often talked about a community of Algonquins living in northern Quebec that had suffered unspeakable treatment by the Canadian government. One time in Ottawa while visiting Russell and his wife Joanna Anaquod (from Muscowpetung in Saskatchewan), an emergency Elders Council meeting was held at their place. A boisterous group of men arrived late, having driven three and a half hours straight from the bush that morning. They listened quietly when the advisors spoke and laughed uproariously whenever someone made a joke. I remember that they ordered an implausible amount of meat on their pizza and that I had never met hunters before and felt humbled, and awed at how they carried themselves with such strength and certainty, especially given all that they had been through. But most of all, I remember Jean Maurice Matchewan, who was the customary Chief at the time and who everyone called Pancho. He had a presence that was larger than life. I remember Toby Decoursay, who would become an important contact for me in the community, and his quiet and humble presence, how his laughter came a bit later than the others. Little did I know that a few short years later, my life would become so intertwined with theirs.

Russell told me once that you could learn everything there was to know about colonialism in Canada by working with the Algonquins of Barriere Lake. That is how I found myself in October 2008 catching a ride from Ottawa with some activists up to the Rapid Lake reserve. It was already very cold in the region and I woke up in Harry Wawatie's basement at 5 the next morning, dreading the freezing blast of air that awaited us. We rode out to the highway on the back of a pick-up truck and other trucks were there already, loading sawed trees onto their hitches and dragging them across the 117 where they were dropped into a thickening heap to form a barricade against oncoming traffic. Further up the highway in either direction, community members with flashlights and bright vests were stopping traffic and letting trucks and cars know that there was a blockade up ahead. At the access road – where the reserve road met the highway – more and more vehicles arrived from the community as the sky lightened. A fire was made in the centre of the highway and soon, breakfast was prepared and served. At that point, I only knew

a few individuals in the community – a handful of community members who had come to Toronto, where I organized a dismally-attended speaking event – but people were friendly and I watched from the sideline as assemblies were held in Algonquin periodically to assess the intensifying situation and decide collectively how to go forward.

The blockade was organized by the community to protest the imposition of a band council that many claimed had not been selected according to custom. The community claimed that Canada's recognition of this council represented the same old tricks the government had been up to for years, intervening in their governance system in order to sever their connection to the land and ensure the Trilateral Agreement was never implemented. Barriere Lake's demands were simple that day: send in a negotiator. The government refused. Instead, vans of riot cops arrived from Montreal. They cleared the road with tear gas, police brutality and arrests.

I worked as an activist with the community for a year before approaching them to ask if I could tell their story in my doctoral dissertation. I asked how to go about obtaining permission to do this research and I was told to come up to the community where a Community Assembly would be held and the matter discussed. The meeting was informal, about two dozen people showed up, and I explained my intentions: that I felt that their struggle for the Trilateral Agreement was important, but had never been documented, and that I wanted to write a book about what my government had done to them. The customary Chief, some Councillors, and members of the Elders Council were in attendance. They agreed their story should be told.

We began to organize the steps to undertake the research project. Through Barriere Lake's tribal council, the Algonquin Nation Secretariat (ANS), we set up an informal Advisory Committee with a team of experts who had been working with the community for many years, along with members of the Algonquins of Barriere Lake (ABL). The Advisory Committee was comprised of David Nahwagahbow (Lawyer, ANS), Jim Morrison (Historian), Sue Roark Calnek (Genealogist/Anthropologist), Peter Di Gangi (Director, ANS), Russell Diabo (Policy Advisor, ANS), Jean Maurice Matchewan (ABL Customary Chief), and the ABL Elders' Council. The terms of reference for this contract with the Advisory Committee involved meeting at least once a year, circulating work for approval, presenting ongoing work to the community, and on a case-by-case basis seeking out individual advisory members for feedback, advice, and editorial assistance on specific issues and drafts. I submitted a Proposed Work Schedule and Plan, detailing my long-term research goals and estimated date of completion, as well as ongoing short-term tasks I would undertake that were related to my research (e.g. data transfer of personal interview recordings to ANS and ongoing solidarity work with the community). I also provided a detailed month-by-month overview of what my first year of research would look like. In addition,

I agreed to contribute labour to the ANS in a work exchange for the time the organization spent introducing me to the documents, database, and political Algonquin context. This work exchange was negotiated in mind to be mutually beneficial so I prepared, for example, an annotated bibliography of all ABL-related reports.

I also signed a Memorandum of Agreement with the ABL, and one with the ANS, giving me access to all relevant research materials, as well as defining proprietary rights, terms by which my research may be used, terms of arbitration in the case of conflict, and outlining a confidentiality agreement and code of ethics for the duration of the agreement. I obtained a Band Council Resolution of the Customary Council (No. 2009-07-15) authorizing me to undertake “academic research in relation to ABL history and customs, and in particular, the Trilateral Agreement,” and authorizing the ANS to give me access to all ABL-related materials. I signed two additional contracts specific to confidentiality with the ANS and ABL, ensuring that access to all information I am privy to in the course of my research will not be disclosed, except under the agreed-upon conditions.

I would soon find, however, that the best laid plans could go terribly awry in the context of the broader dynamics of power shaping my relationship with Barriere Lake. As my dissertation describes, a leadership conflict in the community between two councils was causing considerable distress at Barriere Lake at the time of my initial involvement. There was a grassroots struggle to resolve this conflict, but in the meantime, the Elders Council at Barriere Lake had also taken the Minister of Indian Affairs to court, requesting a judicial review of the Minister’s decision to recognize one customary council over the other, in effect replacing Jean Maurice Matchewan’s council with that of Casey Ratt’s council. On February 17, 2010 the Mainville Decision came down.¹⁸⁴ Despite an earlier favourable reading of the Elders Council case by Justice Zinn,¹⁸⁵ Justice Mainville decided that neither of the two factions claiming to be legitimate customary council at Barriere Lake could be recognized as fit to govern under the community’s own customary code.

The political implications of the decision were devastating; they form a central discussion in my dissertation. But from a research perspective, and a “research ethics” perspective in particular, the impacts were baffling. Every last document I was working with had to be returned to legal counsel to be sealed and stored until a time when the leadership issue could be resolved. That meant dozens of boxes filled with land claims research, Trilateral Agreement documentation, years of correspondence between Barriere Lake and the provincial and federal documents, traditional land use and occupancy studies, interviews with elders, anthropological and ethnographic research on Algonquin society, old photos and maps. The Director of the ANS,

Peter Di Gangi, encouraged me to work with another Algonquin band in the tribal council. It seemed I had no recourse but to rethink my entire doctoral research project.

There was one other major problem. The Matchewan Council had signed my university-mandated research ethics protocol, which was approved by the Research Ethics Board on April 12, 2011 – long after the Mainville Decision came down.¹⁸⁶ My contact at the university also initiated a new contract between the Governing Council of the University and the Algonquins of Barriere Lake, as per university policy which authorizes only certain persons within the University to sign on behalf of the council. I delayed obtaining Algonquin authorization, stating that it would take time to organize travel to the community to obtain the new signatures. Based on the contingency that I would finalize these signatures in the coming months, my research application was finally given approval by the Research Ethics Board in April 2011. But the question was who would re-sign the documents? As of February 2010, according to Canada and the Federal Court, a cloud of doubt was cast on who was legally in power at Barriere Lake with the authority to speak on behalf of the community.

I reflected on the situation for months before coming to any decision. My graduate committee advised me to lay low and maintain connections with the community for now; in a sense, to trust the process and stay open to opportunity. I took their advice. In the meantime, I took fast and careful notes before sealing up and sending off the boxes of ABL documents. Gradually, I discerned that in order to resolve this dilemma I must answer the following question: what governs my ethical responsibilities to undertake research with Barriere Lake? At the Community Assembly, when I obtained consent to work with Barriere Lake as a researcher, Toby Decoursay said, if you want to understand our political struggle here, and to know what the Trilateral Agreement is all about, you have to come out here and live on the land. On the land I learned that my accountability was to the community, but that my responsibilities go beyond human beings: they concern the land base of the Mitchikanibikok Inik, all the living things and waterways, and all the impacted watersheds that run downstream. These relationships are the authority which govern my ethical responsibilities to Barriere Lake. Cree scholar Shawn Wilson writes that Indigenous methodologies – which he and others distinguish from just doing research in an Indigenous context¹⁸⁷ – must fulfill one's relationship to the world around them. Methodology must pose different problems than conventional research: "rather than asking about validity or reliability, you are asking how am I fulfilling my role in this relationship?"¹⁸⁸ Methodology and research ethics blur into one concern: accountability to oneself and to one's relationships.

Though I did not read it until long after the decision was made, perhaps the best paper to shed light on this question is one co-edited by researchers who live or work in the north. The paper highlights the relationship between Indigenous governance and Indigenous research, arguing that research respecting Indigenous governance “is a form of highly accountable decision-making derived from the coming together of all the experiences and stories that people can bring to bear on issues of survival and well-being.”¹⁸⁹ Whereas their argument distinguishes between research based on individual representatives of a community from collectively forged perspectives, their central argument is that researchers must respect customary governance processes as a prerequisite for doing credible research that supports the self-determination of Indigenous communities. In the case of Barriere Lake, the majority of the community still considered Jean Maurice Matchewan to be their customary leader. That is not to say that there was unanimous agreement about his role in the conflict or that there was no dissent in the community surrounding his leadership. But by popular support, he represented the will of the community, and even the government and forestry companies continued to approach him for consent on resource extraction in the region, implicitly acknowledging his leadership in the community. If the community still considered Matchewan to be the customary Chief, then I would respect the band’s self-determination and consider him to be so, too. Matchewan signed my application for the University of Toronto Research Ethics Board. He agreed to continue to support my work; I think that at that time, perhaps more than ever, he wanted the story to be told. True to my agreement in earlier signed contracts, I have sought out and ensured that the final draft of my dissertation has been read and approved for publication by my Advisory Committee and by key community members at Barriere Lake. As far as I have been made aware, there is nothing in this dissertation deemed unsuitable for publication.

My relationship with the community since our initial agreement has been based on obligations of reciprocal appropriation,¹⁹⁰ a term coined to describe Indigenous investment in the land and the incorporation then of the land into the living experience of Indigenous peoples. The term has also been recognized to describe ethical research, where reciprocal appropriation would mean adequate benefits for both Indigenous participants and researchers. One benefit to the community of this research has been the opportunity to set the record straight on the kinds of settler colonial repression perpetrated against their community by the Quebec and Canadian governments. Another benefit to the community has been the material support my parallel organizing work has brought to the community, which has drawn at many junctures from my academic research base, and vice versa.

I also benefit enormously from this research in the economy of academic exchange. I will earn a doctoral degree, produce journal publications and conference presentations, and gain the possibility of being hired at a university, which could secure me a stable middle-class income, potentially for the rest of my life. The social capital associated with intellectual labour also earns me a respectable place in a range of social hierarchies. Outside of the academic economy, in activist and non-profit networks, there is also a high premium placed on people who do direct organizing with Indigenous communities, earning me authority in these circles, as well. These are the calculable benefits of this research to me – benefits, I might add, that could also be materially shared and re-distributed.¹⁹¹

But in terms of an ethics of accountability, there are still many questions unanswered. Outside of personal and academic relationships, what greater responsibilities do citizens of this nation have to Barriere Lake in the face of their political situation? How can I be accountable for the ways my government has intervened in Barriere Lake's governance system? What is the nature and source of this accountability according to Barriere Lake, and to Anishnabe and Indigenous legal and political systems more generally?

Here I want to introduce four planks of responsibility upon which I believe that my broader legal and political responsibilities to the community are based: the Mitchikanibikok Anishnabe Onakinakewin, treaty, alliance, and prophesy. We could also describe this as a methodology of living in relation to Anishnabe law. By staying close to these relationships, I hope to model co-existence in ways that reflect Indigenous forms of life and respect for the land.

The Colonizer Who Refuses: Polishing Treaty Promises, Renewing Alliance

The colonial gaze has been critiqued by Western thinkers in the likes of Haraway and Whatmore, whose work has highlighted the epistemological and ontological production of nature-society binaries. It has also been rejected by thinkers like Castree and Braun, who “have described how colonial exploration served to aid in the European ordering of nature.”¹⁹² But there still remains room to be made for distinctions between these scholars and Indigenous thinkers.¹⁹³ These distinctions are many-fold: metaphysical, local, and cosmological, and they are explored in this dissertation, though this is not to say that these distinctions signify a closed box. According to some Indigenous scholars, Indigenous methodologies offer an approach that can be adopted by non-Indigenous people, and they invite a ‘mode of place-based consciousness’ that can contribute to an anti-colonial ontology.¹⁹⁴ The challenge for an outsider is that

[f]or Indigenous communities, their oral histories, narratives, and spiritual practices and rituals are important avenues for knowledge transmission. They contain numerous nuances that only certain community members are privileged to understand. Attempting to decipher

this rich code and to represent it adequately requires that the researcher becomes an advocate of the Indigenous knowledge system and at the very least incorporates the 'Indigenous voice' in their work.¹⁹⁵

In other words, to understand the Indigenous knowledge system, one has to accept it; to accept it, one has to advocate for its importance. Further, accepting this knowledge system means accepting the epistemological shift that must accompany the transmission of this knowledge, which will come in the form of oral history, narratives, spiritual practices and ritual.

I consider myself a treaty person. To share this territory, we must respect the laws that govern our right to be here. Sharon Venne, a Nihiyow woman from Treaty Six, agrees that every non-Indigenous person must know his or her treaty rights, though most discussions fail to even mention the rights and obligations of non-Indigenous parties. Venne writes: "Everyone who has come to live on Great Turtle Island since contact is living here as a result of a treaty. To discount the treaty or deny the treaty rights of non-indigenous people is to make illegitimate foreign people's occupancy of Great Turtle Island."¹⁹⁶ To reject the doctrines of discovery that currently structure Canadian society, non-Indigenous people must strive to honour original agreements by the terms and in the spirit in which they were made. In Chapter Three, I list and describe the treaties, wampums, and agreements entered into by Barriere Lake as forms of alliance made between Indigenous and non-Indigenous peoples on Turtle Island.¹⁹⁷ According to customary law, these are nation-to-nation agreements that must be renewed periodically so that they do not tarnish. Venne writes that the main treaty rights that non-Indigenous people possess are to live on Indigenous lands and to respect the land.¹⁹⁸ I consider myself party to these treaties my government signed or inherited from previous imperial regimes.

Respecting the land means living in relation to Anishnabe law. While the treaties are important, Indigenous laws of jurisdiction precede contact with European and other settlers. In the case of Barriere Lake, their struggle is a fight for rightful jurisdiction over their lands exercised under the authority of their Onakinakewin. At the heart of Indigenous laws of jurisdiction is the endless learning and humility embodied in respect for the bush. The Onakinakewin is a system of natural laws that governs all that which grows on the earth. As told by Barriere Lake knowledge holder Toby Decoursay, it came from a young boy who spent years with the animals, birds, water, and forests, and learned everything there was to know about the world. He gave those teachings to the Algonquin people and they protect that knowledge by respecting it and passing it on to their children. To break this chain of learning and teaching would disrupt centuries of mutual safekeeping between the land and the people. The Onakinakewin is a sacred constitution, represented by a three-string wampum, also gifted by the

young boy. These laws can only be passed along through practice and experience and they were the reason Toby and others insisted I come up and live on the land if I wanted to understand what the community struggle was all about. To respect the laws of the Anishnabe, I had to fish, hunt, gather, and sit by the fire, as part of my research process.

The political struggle at Barriere Lake, and in communities across Turtle Island, are not simply struggles for recognition from the state, but rather assertions of jurisdiction over their lands. Communities defend their right to self-determination not only through blockades, but through daily practices such as going to the bush, hunting and fishing without permits, tending their traplines, harvesting syrup at family sugar bushes, maintaining their language and Algonquin toponymy, through the feasts and assemblies, and by living in their traditional territory. Non-Indigenous people can embody solidarity, in turn, through social movement organizing and through material support for Indigenous practices of everyday life.

For example, long before we learned about treaty, belts and the Onakinakewin, a group of people took action to support Barriere Lake's struggle based on the political principle of respect for Indigenous peoples' inherent right to self-determination. In March 2008, when the federal government was once again taking steps to intervene in the community's customary governance process, activists from Montreal traveled to Algonquin territory and presented themselves at a community assembly to request consent to do community-led solidarity work with Barriere Lake. The customary government, the people, and the elders agreed and Barriere Lake Solidarity was formed in Montreal. Soon support groups in Toronto and Ottawa were also formed and linked. The solidarity groups have supported the community in a range of ways. They have organized multiple demonstrations in Ottawa, speaking tours to major urban areas and conferences, a sit-in at the Barriere Lake local MP's office, and a human rights delegation to the territory. They have participated in two blockades of Highway 117. The groups fundraise, run a website, and do extensive communication and media work. All of this effort is undertaken with a direct and explicit mandate from community spokespeople, who in turn respect the resolve of their own people, as expressed at community assemblies and in conversations with family and elders. For the solidarity groups, Indigenous self-determination is not the end goal of a process, but is constitutive of renewing the alliances themselves, which begin with the formation of these new kinds of relationships.

There is a prophesy at Barriere Lake, that says ka-dish-pogwashni. In the future, "we will jump high." Indigenous people are also bound together with non-Indigenous people in profound spiritual paths of alliance. Barriere Lake's world has been carved out by prophesy. They have knowledge of a time to come on earth when the storms bluster, the tornados violently stir, the

floods pour, and the wind shakes the world to its foundations. When that time comes, people from other nations will come to the Anishnabek and seek their knowledge. Barriere Lake hold this prophesy through their 7-diamond belt. In many peoples' minds, that time has come. The appearance of researchers in the community seeking knowledge from Barriere Lake has been interpreted as prophetic in this light. In all the literature available on methodology, prophesy could be the most marginal. Yet, of all the Indigenous methodologies covered here, it honours most concretely and illustrates most eloquently the inadequacies of conventional assumptions about power relations between researchers and Indigenous peoples. Prophesy can reverse expectations about the role of outsiders in a community. For it was based on this prophesy in part that Toby agreed to share knowledge with me. In other words, I was confirming a role within their own cosmology and honouring it. While I may be self-conscious about the extractive nature of research, it is useful to be reminded that Barriere Lake members have their own work to do when they share their knowledge; it is for me to take only what I need and make it available for others who might need it.

Other prophesies are more ambivalent about outsiders. A story I heard often in the community is the Sturgeon River Prophecy. A long time ago, a Mitchikanibikok Anishnabe was walking along the river and came across one silver snake and one gold snake washed up onto the shore. He takes them home and feeds them. At first, he feeds them small things, fish and mice. Then little by little, he feeds them bigger and bigger things, until one day, at the time when the Cabonga dam is built, the snakes begin to eat people. The man decides that he must feed the snakes back to the Ottawa River (called Nemeozibi, or Sturgeon River, where it crosses Barriere Lake territory) from where they came. That is why the Ottawa River snakes around so much, in so many winding directions. This prophesy ends with one snake's mouth gaping open, unknown what it will swallow next. That version comes from Toby Decoursay. But Harry Wawatie, another elder in the community, also shared this story with his nephew Tony Wawatie, a community leader and knowledgeable spokesperson for the community. One day he mentioned that his uncle used to describe two snakes – one made of silver, one of gold. He remembers Harry telling him that the gold symbolized the greed, the money that had come into their communities to destroy them, and the silver snake represented technology, which had come to do the same. Harry often warned Tony, "The monster is coming."

Finally, the conditions necessary to protect Indigenous law, in support of Indigenous people, and to protect the knowledge upon which we all may someday come to depend hangs on the mantle of how one understands the logics of settler colonialism in Canada today. Russell Diabo calls Canadian colonialism a low-intensity war against First Nations, fought with

legislative policies, public relations spin, and the full disposal of police and military forces.¹⁹⁹ To honour treaty agreements of peace, friendship, respect and principles of non-interference in a contemporary context requires taking significant steps against the federal and provincial governments that perpetuate Indigenous land dispossession and assimilation policies. Fanon writes: “Every citizen of a nation is responsible for the acts perpetrated in the name of that nation.”²⁰⁰ In Canada, a nation of 30 million non-Indigenous peoples and just over 1 million Indigenous peoples, the numbers alone speak to a crucial need for strong alliances. To force the Canadian government to honour their treaties and agreements, non-Indigenous Canada will have to bring their vocal power, privilege and resources to bear. They will have to lead the way for other Canadians by honouring their treaty obligations.

From the perspective of land, there is a political economy to colonialism that is critical to understand. Defending Indigenous law is less about non-Indigenous people recognizing Aboriginal Title, but about defending the terms Indigenous peoples set by which they themselves agree to recognize Crown Title. Here the onus is on non-Indigenous peoples to cast aside the doctrines of discovery by acting under the jurisdiction of Indigenous nations.

The “we” here is a problem, of course. As a naturalized, white Canadian citizen with full citizenship status and a modest amount of social capital, my responsibilities to hold my own government accountable may differ significantly from non-Indigenous people who are racialized, criminalized, hold precarious citizenship status, and do not benefit in the same way from their relationship to the state. Nor have the economic benefits of colonialism been distributed evenly amongst settlers.²⁰¹ But critical scholars have also debunked “natural ally” theories that presume sameness among people of colour, for example, reproducing oppression by erasing differences in the operations of power.²⁰²

Ultimately, as Albert Memmi warns, no individual can end colonialism because it is systemic and must be fought on these grounds.²⁰³ As academics, we can draw important attention to these necessary conditions and form powerful organizations ourselves. We must be mindful of our accountability to the survival of these political spaces, for as we build our own careers, secure incomes, and experience personal transformations through working with Indigenous law, the very survival of the communities we “study” can be at stake. Many scholars have taken up this task in a good way, supporting Indigenous struggles materially, intellectually, and through advocacy work. For me, the test of our strength is the ability to keep everything that grows within our horizon of accountability. The Algonquins call this *m’dinen’jigen* – the Anishnabe way of thinking, our connected sacredness. This is what I understand to be honouring the Onakinakewin.

A Final Note on Accountability

Barriere Lake is not a homogenous community. The community members with whom I worked had a base on the Rapid Lake Reserve, where I often stayed to meet with people. All of the people with whom I worked in Rapid Lake also spent time in the bush, at their summer or winter cabins, where I often visited. But there are other village sites on Barriere Lake territory that are not geographically connected to the reserve and operate remotely from reserve life. These are family settlements where people live year-round in their bush homes or in nearby towns and settlements. One of these sites is called Nanotinic and was led by matriarch Lena Nottaway until she passed. When Lena passed away, people in that settlement slowly displaced to other sites. One of those sites was Maigan Agik, near Le Domaine at the northern entrance into Parc La Verendrye along Highway 117. Members of the Nottaway family are based at Maigan Agik, led by matriarch Elizabeth Nottaway. Another family settlement is at Mattawa, near Roland Lake, and it is led by matriarch Pauline Ratt and comprised of members of the Wawatie family. Members of the Wawatie family also have an encampment at a site dubbed “Airport” due to its proximity to an old landing strip that can be seen from the road. This site is often associated with Jacob Wawatie, the nephew of Harry Wawatie, the late customary Chief. It was also associated with matriarch Louise Wawatie, who recently passed. There are also a number of other year-round settlements scattered throughout Barriere Lake’s substantial territory. Algonquins are a decentralized society and they traditionally lived year-round at their bush camps, gathering for feasts each spring. Some families resisted settling on the reserve from the start, while others moved off for religious or political reasons.

These geographic dispersements are reflected in my research. I did not work with family groups at the village sites described above, though some of the knowledge held in these communities is reflected in my work. Anthropologist Sue Roark Calnek undertook substantial research with Lena Nottaway at Nanotinic, and I draw heavily on Roark Calnek’s work, particularly in Chapters Five and Six. My work also draws on the knowledge of elders from these communities, many of whom have now passed, but who participated in the early Trilateral land use and occupancy studies undertaken for harmonization measures with forestry companies.

But in terms of interviews conducted over the course of my research, field site visits, or even regular contact on the territory, my work proceeded quite separately from these groups. There are a number of reasons for this, but I will go into the central reason here. Over the course of Barriere Lake’s struggle to see the Trilateral Agreement implemented, divisions arose in the community over the plausibility of Canada or Quebec honouring their agreements. The government’s hand in sowing these doubts will be made clear in this dissertation. But

disagreements between community members and family groups made access to these aforementioned village sites difficult and proved historical accounts irreconcilable. This issue proved as much an academic issue as an activist problem. Disagreement in the community also meant a rift between solidarity activists and community members who resented non-Indigenous involvement by outsiders who adopted demands upon the government (for example, honouring the Trilateral Agreement) that they themselves opposed. As a visible member of the solidarity network, this conflict of interest restricted my freedom to move about the community as an “objective” participant or observer. It also drew considerable contention towards me from community members, other solidarity networks, and individuals from other Indigenous nations who work politically with these families. These contentions form vibrant internal activist discussions on the ethics of accountability in doing solidarity work within heterogeneous communities.

Thus, this account presented about the Algonquins of Barriere Lake is not meant to represent the views of all Mitchikanibikok Inik. However, what cannot be contested here are the actions of the Quebec and Canadian governments, which is where my attention is largely focused in this thesis. Too much attention in recent years has been focused on community accountability to colonial governments. Division in communities is seen as a sign of malfunction, but only the most virulent racism in our society can account for holding Indigenous communities to standards of unanimity unexpected in white communities, and regardless impossible in itself, but also given hundreds of years of colonial attack on Indigenous social and governance systems and on their economic bases. This dissertation is a story about Canadian illegitimacy, above all, and the ways in which the state attempts to absolve past and ongoing appropriation through the logic of private property.²⁰⁴

PART II: THE TRILATERAL AGREEMENT

CHAPTER THREE – The Early History of Settler Accumulation

It all began with a footprint, at a point on the shore across from the original Barriere Lake settlement. That footprint belonged to a young boy. He walked around the island and saw the plants and animals and everything that grew there. That is where the Onakinakewin came from, the sacred constitution of the Anishnabe people. The young boy saw everything that was in the world and made it ready for the Anishnabe people. He found gifts for them – fire, water, medicine, everything they would need. The sun would be their father, and the earth would be their mother. Since the young boy began here and found the knowledge of the world here, this would be the centre of the world.²⁰⁵

From a watershed perspective, the Barriere Lake traditional land use area really is located in the centre of the Algonquin world: it reaches from the northern Gatineau River and the headwaters of the Ottawa River (*Kichi sipi*, “great river”), southwest across the present Cabonga Reservoir to the Coulonge River. The Ottawa River flows westward, then southward, then southeastward for around 1200 kilometers before joining the St. Lawrence River near Montreal. Where the Anishnabe lived at their original settlement, the river was 10 feet across from one shore to the other. They put rocks across the river creating a stone weir over which they could easily scoop fish. For this technique, they became known as the people of the stone weir: Mitchikanibikok Inik. The fish weirs are *mitcikan* and *inik* are the people; *Mitcikinabikong* is the “place of the stone fence or weir,” marking their name on the great river with their presence. The French translated their name literally into “Lac Barrière.” Since time immemorial, the Mitchikanibikok Inik have occupied over 44,000 square kilometers of land in what are now the Outouais, Abitibi-Temiscaming, and Laurentide administrative regions of Quebec. Confirming oral history, the archaeological record shows human habitation of the area at least as far back as 10,000-8,000 years ago. The Anishnabe on the territory tell stories of the giant beaver, which would have been part of the ecosystem at this time.²⁰⁶

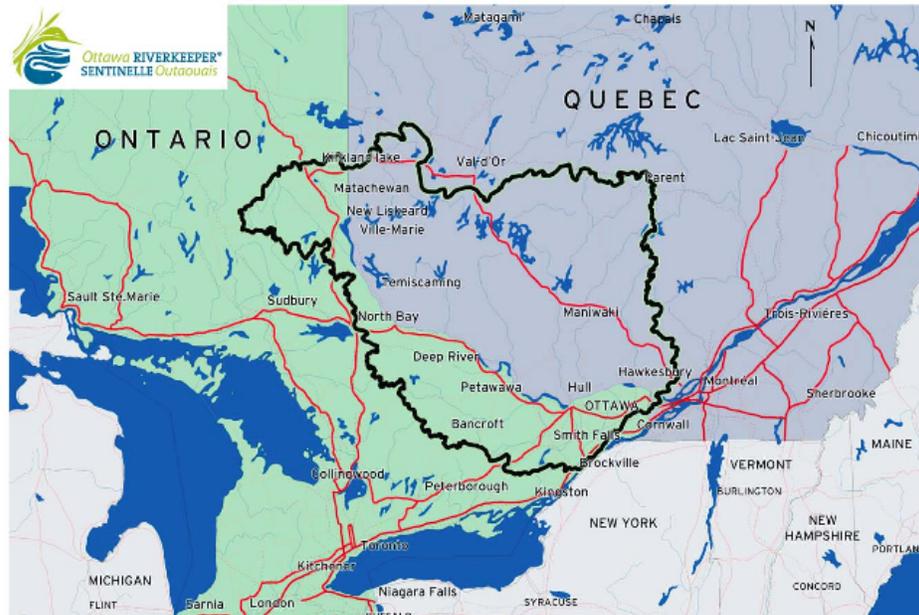


Figure 14 - Ottawa River Watershed (courtesy of Ottawa Riverkeeper, 2006).

Community members at Barriere Lake rarely refer to themselves as “Algonquin.” People call themselves Anishnabe people, which generally means “human being,” and more specifically carries the meaning of “real (i.e. Indian) people.”²⁰⁷ Their language is mitcikanâpikowinîmôwin, which is a distinct local sub-dialect of Algonquin. Barriere Lake people can understand Ojicree, Cree, and other Algonquian-based languages, but theirs is the most divergent dialect of the Ojibway language in the “Middle Tier” of the Algonquian language family.²⁰⁸ The term “Algonquin” is a colonial category that emerged as a French application (“Algommin”), meant to contain bands and sub-bands in the region of central and eastern Canada who spoke similar languages. The origins of the term might derive from the Maliseet term *elakomwik*, meaning “they are our relatives (or allies).”²⁰⁹ Later, the term was applied to a smaller sub-group of Indigenous peoples living in the Ottawa Valley, of whom Barriere Lake were included.²¹⁰ It can be difficult at times to interpret the historical record kept by colonials because of the shifting terms applied to the Mitchikanibikok Inik by a range of early explorers confused by the relationships between various societies. In early French records of contact, Barriere Lake

Algonquins (as well as other Algonquin-speaking Upper Ottawa peoples) were also called by other *kichi sipi* anishnabek and by Europeans the *nopiming daje inini* or *gens de terres*, literally, inland people or men of the woods, reflecting the location of their territory in the boreal forest. They were also referred to phenomenologically as *machakandiby* or *têtes de boule*, which means round heads, but which refers – along with *gens de terres* – a backwoods, culturally tenacious and resistant people.²¹¹

The Barriere Lake Algonquins are one of ten present-day Algonquin communities in this Ottawa River watershed that straddles the Quebec-Ontario border. As their name and surrounding band names suggest, Algonquin territorial organization and land management is based on these watersheds and waterways that serve as boundaries for family, band, and national territories. The Algonquins once traveled extensively along these watery highways, spending their winters in the bush in extended families, hunting large game like moose and deer, and trapping fur-bearing animals, particularly beaver, which were of critical socio-economic and cultural significance. The community lived relatively well by hunting, fishing, trapping, gathering plant foods and harvesting traditional medicines, with occasional subsistence gardening, as encouraged later by missionaries. The Barriere Lake Algonquins were also part of an extensive trade network with the Huron and Odawa to the south and southwest of their own territory, from whom they could obtain trade objects, such as wampum beads, and agricultural and fishing products in exchange for furs and dried fish.²¹²



Figure 15 - First Nations in and around the Ottawa Valley (Algonquin Nation Secretariat, 2007).

Though many river waterways in the region have been flooded by dams, elders can still recall the direction the currents flow beneath the wide, deep lakes and reservoirs. Families maintain their summer and winter cabins, sugar bushes, medicinal harvesting sites, and traplines. Community members still build their homes and hunt without provincial permits on their territory. Norman Matchewan, son of long-time former customary Chief Jean-Maurice Matchewan, remembers his grandmother returning to the reserve, head bloodied from blows taken by game wardens.²¹³ She had been accosted for hunting and resisted their attempts to confiscate her moose. Game warden repression is not nearly so bad today with the recognition of Aboriginal hunting and fishing rights,²¹⁴ though Norman explained to me that several years ago when he was out hunting, a game warden blocked him in with his jeep and upon Matchewan's return from the bush, the warden informed him that he could not hunt without a permit. Norman in turn informed him, "This is my land, I can hunt when I want." The warden checked his gun for bullets and let him go because the gun was not loaded, but he told Norman he would have to keep the gun in the trunk. Norman refused: "What if I see an animal and need to shoot it?" But he was not particularly angry about the stop and search, telling me, "I just explained to him that this was

my land, so that he could understand.”²¹⁵ Nothing the government had ever said or done had persuaded him to the contrary.

In the early history of contact, the fur trade governed relations between the Algonquins, the French, and other settlers. The Algonquins of the Ottawa Valley were trading with the French as early as the second half of the 1500s through Montagnais middle-men along the Saguenay River.²¹⁶ The Algonquin nation formally entered into alliance with the French in the first decade of the 1600s, along with the Montagnais, Odawa, and Huron.²¹⁷ The elders at Barriere Lake contend that when the French approached them to become allies, they made an agreement that the Anishnabe nation would always “be in front” when it came to the land because the Algonquins had their own laws to follow. But the government “has not remembered this agreement,” according to elder Toby Decoursay, and instead has gone about destroying the land.²¹⁸

Barriere Lake’s alliance with the French was eventually over-turned by the fall of Quebec in 1760, marking a new era of diplomacy between the British and formerly French-allied nations. Known as the Seven Nations, or Seven Council Fires, these former French allies included Christianized Hurons, Iroquois, Abenakis, Algonquins, and Nippisings, and their “allies and dependents,” which included non-Christianized bands such as Barriere Lake.²¹⁹ Barriere Lake has created a copy of the seven-diamond wampum belt symbolizing this alliance. The Algonquin nation, as part of the Seven Council Fires, signed a series of treaties with the British Crown. The *Treaty of Swegatchy* (1760) (now Ogdensburg, New York) insured that the Seven Nations would remain neutral, and the parties agreed to the principles of peace, protection of land rights and freedom of religion. The *Kahnawake Treaty* (1760) promised peace, alliance, mutual support, free and open trade, anti-trespass, protection of land rights, freedom of religion, and economic assistance.²²⁰ These treaties fully incorporated the Seven Nations and allies into the longstanding Covenant Chain Treaty Alliance between the British and Iroquois, and would have applied to Anishnabe of the Upper Ottawa valley, including the Algonquins of Barriere Lake, whether or not members were at the 1760 treaty councils.²²¹

The Algonquins were also included when the Covenant Chain was polished in 1764 at the Treaty of Niagara, which ensured that no Indian lands could be sold before first being ceded to the Crown.²²² Implicit in these assurances was that Indians owned their lands and that their British allies would protect them from exploitation. The Royal Proclamation of 1763, issued by King George III, ensured these provisions of cession and surrender a year earlier. The Royal Proclamation of 1763 is enshrined in section 35 of the Constitution of Canada of 1982 and in section 25 of the Charter of Rights and Freedoms. However, two central differences between the Treaty of Niagara and the Royal Proclamation speak to the importance of the Niagara treaty as a

founding constitutional moment of the settler-colony. While the Royal Proclamation unilaterally stated these provisions of land transfer, the Niagara treaty was an actual agreement, made between over 2,000 Chiefs from 24 nations and the British Crown, that followed the legal protocols of Indigenous diplomacy on these lands.²²³ The wampum at Niagara represents the mutually-affirmed relationship of peace, friendship, and non-interference set out in the two-row wampum presented there.²²⁴ While the treaty at Niagara assumed nation-to-nation discussions, the Royal Proclamation makes the land provision, but then declares “dominion” over Indigenous lands.

The Algonquins never ceded their lands under the provisions of the Treaty of Niagara. Their lands continue to be governed under the Mitchikanibikok Anishnabe Onakinakewin – their sacred constitution. Though Barriere Lake signed treaties, none were land treaties. What Barriere Lake does have, however, is a wampum dating back to the 1760s that provides evidence of an agreement between the band and the French and British Crowns ensuring the Anishnabe control over their lands. Advisors to the community believe that the wampum was exchanged concurrently with the Articles of Capitulation – in particular Article 40, which affirmed the autonomy of Indians and Indian lands – because the content of the belt makes sense of the transition from French to British rule.²²⁵ The belt was originally constructed from wampum shells – tiny shell beads manufactured from the lining of conch and quahog clam shells – that provide mnemonic devices to record alliances.²²⁶ It depicts three figures in white against a purple background – the Anishnabe in the middle, with French and British representatives on either side – and a white Christian cross to the left of the figures. No mere relic, Chief Solomon Matchewan read the belt at the 1982 First Ministers Conference to remind the governments of the sacred covenant that had been recorded through customary law. Maurice Wawatie translated the reading:

What our Chief has mentioned is this historic agreement between the French speaking nations, and the English speaking nations and all the Indian nations. According to the reading of this wampum belt we have seen to today, is that there had been a negotiation dealing with this land. That the representative of the French speaking nation on one side and the representative of the English speaking nation on the other side, and on the centre is the Indian nations. And it was agreed at this time that the Indian nations would always be leaders in their homelands. And anything that was supposed to be negotiated upon, that they would have to negotiate with the Indian people, regarding jurisdictions and how to deal with each other, respecting equality of each nation. That the Indian people will always be the leaders of this continent. And upon finishing this agreement a representative from the Vatican, the priest, was there to bless this agreement, this historical agreement that had taken place at this time. And he pointed toward heaven when he blessed it, this agreement.²²⁷

The belt depicts an understanding, under the sign of the cross, but through an Indigenous protocol of contract, that no interference would be made into the local Anishnabe ways of life. Woven into hair pins and stamped onto their letterhead, the 3-figure wampum has endured to this day as a symbol of the pact between nations. The belt would also provide the interpretive framework for the Trilateral Agreement.



Figure 16 - The three-figure wampum embroidered into Elder Toby Decoursay's jacket below the words Mitchikabikok Inik (photo by author).

Accumulation Without Dispossession

In Cole Harris' excellent article, "How Did Colonialism Dispossession?" he outlines with remarkable brevity key technologies of Indigenous dispossession in British Columbia.²²⁸ In so doing, he introduces critical methodologies for appraising the impacts of colonialism on Indigenous peoples' territorial belonging to the land. Harris divides his account into earlier techniques of dispossession – involving direct violence, the imperial state, cultural narratives, and settler self-interest – and later techniques of dispossession – constituted by disciplinary power through the use of maps, demographics, and a particular reserve geography of resettlement. Though Harris delineates these strategies temporally, a mixture of all such techniques have been deployed at Barriere Lake in recent years. These techniques contribute to the dynamic of forces that have shaped the jurisdictional struggle over land.

These techniques, however, sometimes fail to dispossess. The early history of settler incursions on Barriere Lake's land did not result in dispossession since people were not actually

disowned of their lands. What can we call the process by which jurisdictional impositions of state authority grossly undermine – yet do not succeed in extinguishing – Indigenous governance over their lands? A continuum exists between the steady accretion of restrictions and regulations endured by Indigenous peoples on their lands and the settler colonial objective of elimination. Though dispossession is by no means inevitable, diminishing a band's ability to govern their lands can result from a succession of attacks on their jurisdictional authority.

As we will see, jurisdictional claims can easily overlap. These overlaps are full of inconsistencies and contradictions, and from an economic perspective, they produce specifically sited dynamics of accumulation. Nicholas Brown articulates this dynamic as *settler accumulation* or *accumulation by possession*, shifting the economic emphasis onto an often silent process of acquisition – the racial and legal frameworks of settler colonialism.²²⁹ Research on this colonial economic dynamic is also developed in Gillian Hart and Arrighi, Aschoff and Scully's respective works on post-apartheid South Africa, where racial exclusion and alternative trajectories of accumulation complicate the role of proletarianization in the development of capitalism.²³⁰ Accumulation without dispossession is a modified expression of what has come to be called "accumulation by dispossession,"²³¹ or a process first described by Marx as "so-called primitive accumulation."²³² Marx recognized that the same process that separates workers from their means of production is also what enslaves them to wage labour.²³³ He also saw that primitive accumulation does not usher in an immediate transformation from serf to wage labourer, but that the process involves a gradual transfer of forms of entitlement from ownership based on labour to ownership based on capital. Michael Perleman emphasizes this gradual nature, as well, where he stresses that some degree of self-provisioning is always necessary for capitalist development.²³⁴ The determining context for whether or not self-provisioning will be considered threatening by capitalists (and destroyed) is how it effects surplus value – will it increase or decrease the rate of accumulation? Because this separation is considered a process of degrees, rather than an either/or condition, it opens up possibilities for exploring the ways that indeterminate spaces of self-provisioning such as at Barriere Lake impact the accumulation of capital.

In early writings, Marx pronounced that even scattered and individualized forms of production would inevitably give way to more concentrated social forms and to the immanent laws of capitalist reproduction and centralization ("One capitalist always kills many"²³⁵). But his imperial forecasting of a dying commons or the vanishing Indian does not paint an accurate picture of Marx's deeper anthropological insights. According to Kevin Anderson's study of Marx's lesser-known work, his thinking on the matter changed over time. A core theme of Marx's unpublished notes on societies and ethnic communities peripheral to capitalism was their

“communal social relations and property forms.”²³⁶ Marx recognized that these property relations played a critical role in anti-colonial resistance.²³⁷ Certainly, in Canada, these insights prove to be true. The necessity of proletarianization and outright dispossession of original producers was negated by “settler colonialism’s specific, irreducible element”: territory.²³⁸ Indigenous resistance to capitalism emerges – not in the space between subsistence and proletarianization – but from the social and legal orders maintained through Indigenous peoples’ connection to the land and to their cultures.

I read this resistance in the register of jurisdiction. At Barriere Lake, Indigenous labour was crucial in the early stages of colonization, but eventually community members were dismissed and discouraged from participating in market relations on the territory. The French and British at first flocked for the fur trade, then they sought to extract value from the land. The “freedom” for Algonquins to sell their labour dwindled as their bodies became less important with the decline of the fur trade and the end of intra-colonial warfare. Lands were increasingly sought for settlement and industrial development; an *ongoing* and *constitutive* process of primitive accumulation unfolded in the establishment of exclusive state territorial space.²³⁹ This dynamic was generalized across Canada, though the moment this shift occurred varied widely, largely dependent on the period of permanent white settlement. For example, while in southern Ontario settlers consolidated their presence in the early nineteenth century, Indigenous peoples on the prairies were not outnumbered until over a hundred years later.²⁴⁰

One tool the Algonquins had to protect their lands from white settlement were their military alliances and political relationships entrenched through treaty and wampum. The Algonquins had received a medal for their role in the War of 1812 as British allies,²⁴¹ for which they were promised to be compensated with generous financial reward. Though the money was not forthcoming, from their perspective this did not diminish the nation-to-nation agreements they had made and secured through military alliance. Testament to this resolve is evidenced in a statement made by Governor General, Lord Dalhousie to the Under-Secretary in the Colonial Office on 22 November 1827:

But savage as those distant tribes are, they have their treaties, their peace and war agreements, constantly in their minds; they would insist upon their present established by long custom, and if not complied with on representation, they would do themselves justice in their own satisfaction, and we should soon find them most formidable enemies.²⁴²

Though their lands were poor for agricultural settlement, by the mid-nineteenth century logging had made its way up the Ottawa River. These “formidable enemies” were now simply nuisances to development.

Alienation

Analysts close to the community have used the term “alienation” to describe the ways in which land and resources at Barriere Lake became “planned, managed, used and impacted by non-Native peoples and their institutions and industries.”²⁴³ Alienation did not preclude community members from continuing to hunt, fish, trap, and gather medicines. Nor did it preclude them from selling their labour occasionally to supplement their livelihoods, eventually enabling Barriere Lakers to purchase vehicles, skidoos, rifles, traps and other useful tools aimed at improving their skills and access to bush life. Infringements on their jurisdiction took place instead through a proliferation of incursions and other micro-processes fueled by new bodies of authority populating their lands.

The history of land alienation at Barriere Lake is beyond the scope of this research, but a survey of human-made impacts on Barriere Lake’s land over the past century is necessary to contextualize Barriere Lake’s demand for a resource co-management agreement on the territory. The destructive impacts of commercial lumber extraction and hydro generation were facilitated by a dense web of federal and provincial regulatory regimes, which the Trilateral was determined to supercede. Settlement on Barriere Lake lands occurred later than the southern regions of the province, and even simultaneous to some of the “discovery” happening on the far reaches of the west coast of Canada. As the fur trade in Barriere Lake’s region waned and a period of war had come to a close, logging moved to the upper reaches of the Ottawa River in the 1860s, along with permanent European settlement. Logging replaced the fur trade as the main economic activity in the territory, and with logging came incursions by white settlers who hunted and trapped indiscriminately, decimating wildlife populations, and ushering in waves of epidemics of smallpox, diphtheria, measles, whooping cough and influenza.²⁴⁴ By the 1870s, the government of Quebec had leased out much of Barriere Lake’s traditional territory to timber companies – 611 timber limits were licensed in the region north of the Ottawa covering an area of 15,794 square foot of cut timber and for each tree.²⁴⁵ From 1870 to 1913, an incredible 59 percent of Quebec’s revenue came from the two regions that make up the Algonquins of Barriere Lake’s traditional territory.²⁴⁶

In 1979, the historic counties of Upper and Lower Ottawa that were superimposed on Barriere Lake’s territory would become modern day administrative regions. For example, the south-western Outaouais region was located on Ratt family lands, the traditional harvesters and hunters of that area of Barriere Lake territory. The creation of these jurisdictional zones gave the province administrative oversight over resource extraction and land management in the area, on

which the logging operations had an enormous ecological and social impact. Outaouais initially supplied squared timber, mostly pine, to be assembled and sent down the tributaries of the St. Lawrence River. A log flotation dam was constructed at the outlet of Cabonga Lake in 1871, backing water up to Barriere Lake and disrupting the natural currents, therefore the transportation routes and habitats for the people, fish, and animals. Decline for squared timber began in the 1860s, but demand was soon replaced by the sawn lumber industry, and then the infinitely more destructive pulpwood industry, a forest devourer, which ushered in an era of mills and larger dams at the turn of the twentieth century.²⁴⁷ Short-term gains had devastating effects on the long-term occupants of the territory; in Barriere Lake, the people began to starve and die. The Department of Indian Affairs reports from 1875 to 1878 show a rise in relief costs across northern Quebec, due to scarcity of game.²⁴⁸ The adverse effects from logging were exacerbated by health epidemics all brought on by increased contact with the northward migration of settlers. Meanwhile, Quebec pillaged its forests for a song, exporting mostly raw materials to the United States and Britain, and engaging in only minor primary processing domestically.²⁴⁹ The industry was badly mismanaged due to meager attempts at reforestation, extensive foreign ownership, and volatile commodity prices.²⁵⁰ For the Algonquins, this meant the disappearance of a natural pharmacy, loss of home and habitat, and a diminishing of heritage and social peace.

While the federal government did attempt to intervene on Barriere Lake's behalf, Quebec refused to even acknowledge the presence of the Algonquin people in the region. In 1929, no one bothered to inform the community that the Gatineau Paper Company, a subsidiary of the Canadian International Paper Company (CIP), was constructing dams to form a reservoir 100 square miles wide on their territory with a holding capacity of 43 billion cubic feet.²⁵¹ The community was forced to relocate their settlement, leaving behind two cemeteries that were badly damaged and twenty-three destroyed homes.²⁵² Compensation of thirty dollars was offered to the heads of each affected family for this massive relocation and cultural damage.²⁵³ A few years later and further to the south, CIP constructed more dams to provide power to their mills, this time flooding an additional 150 square miles of land in the heart of the Algonquins' traditional territory to create the Baskatong reservoir.²⁵⁴

Early records show that the Algonquins did what they could to stop the flooding of their territory. One significant record describes Hugh Ray's encounter with the Algonquins of Barriere Lake – or the *gens de terre*, as he called them – as he traveled up the Ottawa River in 1932 to take charge of the Kakabonga Hudson Bay Company post. He describes a point in the rapids where whitefish and trout wanted to come up from Lac Barriere Du Nord to spawn, and “the Indians placed stones at the head of the rapids to turn the fish into the bay above the rapids when they

could scoop them out with scoop nets.”²⁵⁵ To Ray’s astonishment, the Indians had cut half the dam away, likely with bare hands or wooden instruments, in order to release the waters from the foot of Lac Barriere Du Sud. The people of the stone weir were resolute in the persistence of their traditional harvesting techniques despite interventions on their lands.

Even bigger changes were to come in 1938 with construction for the Mont-Laurier–Senneterre highway (now highway 117), which opened the region for tourism and sport-hunting. Fiercely independent, the Barriere Lake Algonquins pushed deeper into the forest to escape the incursion. They were also encouraged to disappear: Quebec banned the community from hunting and trapping along the 10-mile corridor created on either side of the highway for tourist recreation.²⁵⁶ The logic of prohibition was to recoup the costs of highway construction through tourism,²⁵⁷ but the unspoken assumption was that, if sighted, the Algonquins might scare away the whites. The racist ploy failed regardless, as the Algonquins refused to avoid the corridor, and enforcement, proving futile, was abandoned.

The highway also ran directly through the Grand Lac Victoria (GLV) Beaver Preserve, a conservation area created following a joint federal-provincial conference on Wildlife and Fisheries, where the concept of Indian-only preserves was raised. Two game preserves were created: the Grand Lac Victoria (GLV) Beaver Preserve (6,300 square miles) and Abitibi Beaver Preserve (4,000 square miles), which were established in 1928 by a Quebec Order-in-Council and covered much of the hunting and trapping territory in the Algonquin communities of Grand Lac, Lac Simon, some lands from Winneway and Wolf Lake, and some lands of Barriere Lake.²⁵⁸ The beaver preserves were conceived as the solution to the extreme exploitation by settlers that had previously led the province to simply “close” beaver season to everyone, including Indigenous peoples, who first suffered the privations of settler incursions and then the state’s punitive measures against their greed. At the insistence of Fur Supervisor Hugh Conn, traditional Algonquin adaptive management strategies regulated the preserves. He identified two major Algonquin conservation methods for beaver – rotation of trapping areas and managed culling of beavers in their houses – and also cautioned about the placement of the reserve on Algonquin lands, since, as he noted, “every square mile in the forested portion of Eastern Canada, was owned and occupied buy [sic] tribes, bands, families of Indians even as we divide into provinces, counties, townships and lots.”²⁵⁹ Conn also pointed out to state authorities that the boundaries of the preserve were disruptive. But even given Conn’s sensitivity to Algonquin laws and tenure system, the community remained skeptical. The imposed management regime angered them, especially the arbitrary boundaries drawn onto the territory that disrupted their decentralized kinship land-holding system.²⁶⁰

While the other Algonquin bands gradually eased their suspicions of Conn's efforts, Barriere Lake remained intransigent.²⁶¹ Then, in the 1920s and 1940s, the province set up trapline systems to regulate access to small fur-bearing animals, which further broke up the traditional land base outside of the preserves and undermined the authority of the customary government. Lands were lost, despite another well-intentioned, though ultimately ineffective, conservation effort. An attempt to integrate traditional tenure and management practices had been made again, but as Usher points out, "No Canadian fish and wildlife management agency acknowledges native hunting and fishing rights as constituting a proprietary interest in land or resources."²⁶² Therefore, even these efforts to integrate traditional Algonquin knowledge into hunting regulations resulted in various forms of land alienation.

In 1950, the 10-mile corridor along the highway was expanded to become the La Vérendrye Wildlife Reserve, creating new jurisdictional conflicts with provincial authorities. As their sense of embattlement grew, so did Algonquin resistance to the loss of their lands. Throughout the late 1940s, the Algonquins refused to abide by restrictive laws mandating permits for hunting and trapping. They further refused to be searched for "illegal" beaver pelts by police authorities after trapping had been banned; as a result, they were paradoxically blackballed and refused trapping licenses.²⁶³ They further resisted drawing maps of their hunting territory or to provide demographic information for government collection.²⁶⁴ Around this period, the Algonquins came to rely on a mixed economy to supplement their traditional livelihood, engaging in waged labour employment that included trapping, seasonal work at fur farms in the US, cutting trees for CIP, and guiding moose hunters.²⁶⁵

Ten years after a substantial swath of their territory (without any consultation) was turned into a park, Quebec finally transferred some land to the federal government to establish a Reserve for the Barriere Lake Algonquins. The community had been petitioning for land since 1876; the reserve was finally created in 1961.²⁶⁶ But the reserve introduced a new slate of problems. They were given a measly 59-acre plot of eroded and sandy land totally insufficient for a few hundred people. In addition, no core infrastructure was built and no community development plan was established.²⁶⁷ A lack of firewood was available nearby; dwellings were not numerous enough; no groceries were sold on site; hunting was restricted nearby because of the overuse of strychnine to kill wolves, the poison also ingested by and fatal to beavers and small game; and mechanized forestry that decimated the landscape.²⁶⁸ The government believed the reserve land at Rapid Lake would silence complaints and satisfy the Algonquin band's land claims. However, the Algonquins of Barriere Lake never considered the reserve as a settlement of their land claims, but simply as lands set aside from settler excursion. The reserve was sited on land called Kitiganik, which

translated roughly to mean “place to be planted” or “plantation.” The land was once literally a plantation, cultivated as a tree farm of *okik* (jack pines) after a natural forest fire spread across the lake and burned through the bush. But it came to have a second meaning according to some, that the Algonquins saw themselves as *planted* there by the government, and did not intend to stay there permanently.

That Barriere Lake did not get a reserve until 1961 meant that the community did not have reliable access to school, medical provisions, housing, or other assistance. It also meant a transition to a crowded life of year-round habitation as opposed to the traditional, decentralized form of socialization to which the community was accustomed. As a result, the reserve was mostly deserted for the first couple of decades. The generation born in the early eighties, like Norman Matchewan, still spent most of their early days in the bush. Though Barriere Lakers supported the idea of having lands set aside exclusively for their use, the shock of a measly fifty-nine acres must have been great. To get the reserve, the federal government (eager to resolve the persistent petitioning, but unable to grant provincial lands), the Hudson Bay Company, and a Catholic order of Oblates petitioned on Barriere Lake’s behalf, at first requesting four hundred acres then by 1946, for six hundred and fifty acres to be set aside. They were rebuffed by Quebec because the Land and Forests Act does not provide for the transfer of land to the federal government, except in the case of long-term leases, meaning that the Indian band would not get title to the land as requested.²⁶⁹ Finally, in May 1961, the Deputy Minister of Lands and Forests approved the lease of 59 acres and a few months later a Quebec Order-in-Council was passed.²⁷⁰ The community was ultimately split over the decision to “plant” at this tiny Rapid Lake site – many people remained at the traditional Barriere Lake settlement and others remained permanently settled in village sites around the traditional territory, excluded from even the minimal resources offered on reserve.

Barriere Lake was considered a priority for reserve by the federal government because their land was so adversely affected by timber development. But conditions in the forest did not improve. Ten years after the siting of the reserve, a meeting was held with government officials at Rapid Lake. Paul Matchewan complained about the continuing impacts of settlers on the Barriere Lake people: “The moose, the birds and the fish, things by which his people lived, were being slaughter [sic] by licensed hunters from outside. The government derives the benefit.”²⁷¹ Continuing efforts were made to gain back control over resources on their territory. Several Algonquin bands passed a joint resolution in 1979, including the Algonquin leadership of Maniwaki, Lac Simon, Grand Lac Victoria, Abitibiwinni, and Barriere Lake, “Resolving that the area known as Grand Lake Victoria Indian Hunting Preserve, situated within the boundaries of

Parc de la Verendrye, be henceforth reserved for hunting, fishing and trapping exclusively by the Algonquin people.”²⁷² Their resolution was ignored.

The toll of residential school also wore on the community. Toby Decoursay explains that people had become afraid of what God might do to them; individuals were also dealing with deep internal scars of sexual and physical abuse, as well, as from being rent from their parents who had trustingly sent them away. The children attended the French Roman-Catholic boarding school – Pensionat Indien De St. Marc-de-Figuery – north of the reserve in Amos, Quebec and the English-speaking Spanish Boys' and Girls' School in Spanish, Ontario. Most of the children were sent to Amos, where the Oblates ran the school. When the children tried to tell their parents what was done to them, their families thought they made up these tales to stay home. Other parents resisted the pressure to send their children to be educated in the white man's world. Children were kept in the bush, hidden away from missionaries. Jean Maurice Matchewan, Maggie Wawatie, Rose Nottaway and others lived with their grandparents in village sites and cabins deep in the forest where they could not be found.

The sway of the church also affected the community's incentive to fight back. The priests persuaded the people of a punitive cosmology that dissuaded the community from protecting the land and their own children. Elder Toby Decoursay explained: “That's why the people got so weak, you know. ‘You don't hurt nobody, you don't fight, love each other, even the white man...’ So when the people first saw the white man cutting the trees there, they didn't do anything. [The priests said]: ‘Let the God do something, they're going to take care of it sooner or later.’ So no Indian was going to fight back, because he was afraid of their God, of making a mistake, he has to be good all the way, just to go to heaven, or somewhere. That's what the people are being told. So every night before they go to bed, they say thanks, even in the morning because you didn't die there in the night.”²⁷³ That is the reason, Toby explained, that people did not fight for their rights for a long time.

A number of events transpired to shift the political winds at Barriere Lake. A quasi-religious movement – fervently anti-Christian, based out of the town of Maniwaki – convinced community members to take down the cross from the church and the cemetery.²⁷⁴ Elders in the community were also beginning to stir on their own accord. Toby's grandfather, Paul Matchewan, stood up for his rights because he saw that the children did not have enough food to eat, and he saw that the white men in the territory had over-hunted the marten, the lynx, and for a long time, the beaver.²⁷⁵ Then, around the 1980s, Toby took up his grandfather's cause and started talking to the people, telling them Catholicism and Christianity were not for them. When Toby's

grandfather passed away, he inherited a drum. And in a sense, Toby began to beat it, and things began to change.

PART II: THE TRILATERAL AGREEMENT

CHAPTER FOUR – “They’re Clear-Cutting Our Way of Life”

Despite the eulogies, Indigenous peoples continued to play a critical role in the nation’s political economy post-fur trade. Ignoring the history of treaty, alliance, wampum, and the integrity of Indigenous jurisdiction altogether, eminent scholars such as Harold Innis and Stanley Ryerson offered a view of Indigenous peoples with diminishing returns: as beaver depleted, Indigenous societies were destroyed and the sun set on native life. While Innis believed that native people were part of highly organized societies of ‘primitive communism’ and capable of defending their interests, in his contemporary period he ignored their presence entirely.²⁷⁶

Frances Abele and Daiva Stasiulis document the “white settler colony” thesis that predominates Canadian historiography and discounts Indigenous political economy post-fur trade. The thesis accounts not only for the chronicles of settlement, but also figures into the new political economy studies of Canadian capitalist development, where scholars continue to ignore Indigenous land interests and economies. One classic example of such exclusion that Abele and Stasiulis have pointed out is Marxist scholar Leo Panitch’s exclusion of the entire treaty process and Riel rebellions in his account of capitalist development in Canada throughout the nineteenth century. As they write, Panitch ignores the fact that, “[d]uring this long period, Native societies presented a commercial opportunity and a military challenge for the merchants and the colonial elite who controlled the state apparatus.”²⁷⁷ While Panitch foregrounds a crucial link between the staple economy and industrialization, he never explicitly mentions Indigenous land.

The irony here is that Panitch describes the importance of transportation infrastructure in linking these economic forms, but fails to notice the political processes that were opening this land for development. He writes that the railway created a class of petit bourgeois farmers on the western end of the line and industrial proletariat on the other, in Southern Ontario: “Built to service the wheat staple of the West simultaneously expanded the class of wage workers not only in the building of the railway, but also in the iron and steel industries that came into being.”²⁷⁸ The conditions that supplied the land for small farmers to become petty capitalists remain outside of his frame. These conditions would be the numbered treaties, one through seven, which dragged a long shovel through the west and across the provinces. Between 1871-1877, these treaties were negotiated to secure a valuable circuit for industrial production, securing access to the fertile southern lands of the prairies and paving the way for the railroad.²⁷⁹

Also ironic, however, is how Abele and Stasiulis implicitly endorse the “white settler colony” thesis by rendering Indigenous political economy as a matter of the past, as well. Focusing on the period between 1860-1914, they write: “The structures of the Canadian state, the staples-oriented drift of the economy, and the very geographical extent of the country were all established during the period.”²⁸⁰ While this historicization provides an important challenge to theories that presume the fur trade had little impact on the structure of the national economy in Canada, the authors fail to acknowledge the ongoing value of Indigenous livelihoods and lands in the Canadian resource economy today. The present and ongoing assertions of treaty rights and agreements continue to affect widespread challenges to the status quo of Canadian political economy.

In Barriere Lake’s territory, and broadly applicable to lands throughout the country, the ecological mismanagement of the forest by the province also meant long-term economic ruin. While in Algonquin terms, care for the territory meant ensuring its regeneration for future generations, Quebec leased out what were deemed provincial Crown lands (on unceded Algonquin lands) with little regard for ecological principles of restoration. In this chapter we see from an Algonquin perspective how ecological integrity is inextricable from economic principles, and how both principles are embodied in Barriere Lake’s assertions of jurisdiction over the land. These principles are summarized as core to all Indigenous economies by George Manuel, the great Secwepmec leader, who stated, “Our economy carried on because it was being held together by a substance much stronger than the simple list of raw materials with which we worked. The roots and berries, fish and meat, bark and moss, are a list of ingredients that cannot by themselves make a whole cloth. There is only organizing when those raw materials are brought together on the loom of social values toward which people choose to work.”²⁸¹ Against Quebec, whose officials viewed nature as standing in reserve for exploitation, the Algonquins would seriously challenge the principle of profit as the key management philosophy for the territory.

The Mighty Lease

By the 1980s more than thirty-eight logging companies had leases in their Algonquin territory. The provincial government had begun to issue twenty-five year, non-revocable logging concessions to companies like Canadian Pacific Forestry Products (now Domtar), to clear-cut large areas of La Verendrye Wildlife Reserve. New logging roads cut fresh pathways through the territory, along which timber was extracted and sport hunting flourished. Despite these incursions, the Algonquins continued to practice their traditional ways of life, but under tremendous threat – not only was the natural habitat being destroyed by logging, but pesticides

and herbicides were sprayed, killing vegetation and poisoning animals. Soon the people got sick from eating the animals.²⁸²

One day, a couple of community members came to see Jean Maurice Matchewan, who was customary Chief at the time. They had in hand letters from the Ministry of Natural Resources that had been left at their bush cabins on Pomponne Road (otherwise known as Moose Lake Road), notifying them of spraying taking place in the area.²⁸³ They were told they would have to move out of their cabins for three weeks. Matchewan realized with a shock that they were planning to spray herbicides right around their homes. He said the band's next move was resolute, knowing then that it was only a matter of time before the whole community was poisoned and the woods around their cabins were all torn down. They could see what was coming by what they observed in the bush, the effects of the herbicide were already clear: "Sometimes you would see a moose that was only 500 pounds, you know they get sick from that."²⁸⁴ The first blockade the Algonquins mounted was a traffic slow-down on the highway at Lake Roland, where Pon Pon Road began, interfering with the logging operation and raising awareness about what was being done to the land.²⁸⁵ Quebec eventually sent a letter stating that they would not be spraying anymore, claiming it was because it was getting too late in the season. The government never acknowledged Algonquin opposition²⁸⁶ and this total lack of recognition made the community angry, but their success nonetheless encouraged them.

The spraying had been the last straw for the beleaguered community, though it was only one of a number of grave concerns at the time. Spawning areas were being ruined because of fluctuations from the dam. Worst of all, the community witnessed the devastating landscape of the clear-cuts.²⁸⁷ The Algonquins have prophecies that warn precisely of the dangers of this scale of ecological destruction. The prophecies envision this destruction manifesting on a global scale, with especially disastrous effects on weather patterns and oceans. On their own lands, they observed changes to animal migration patterns, precipitation, and plant life, but this knowledge was not valued outside of their society. So in the late 1980s, Barriere Lake commissioned a report on the impacts of forestry on their lands that would speak in the voice of modern science. The Quebec Forestry Act of 1986 had set forth a new forestry regime for the public domain that accelerated the forestry industry's path of destruction. Quebec required that all existing timber allocations be abolished, replaced by timber supply managements agreements: in French, CAAFs (Contrats d'Approvisionnement et d'Aménagement Forestier). CAAFs are 25-year agreements with 5-year extensions every 5 years if the holder confirms to obligations. Rebecca Aird, an environmental consultant who worked on Barriere Lake's commissioned report, confirmed that CAAFs were simply oriented to secure an adequate supply of wood for the mills. They made no

reference to wildlife, plants, or any other forest uses, least of all Indigenous habitation and use.²⁸⁸ Aird concluded that industry's interest in forest management was limited to the timber harvest, putting all other forest values at risk, including Indigenous life.

Condemning the total invisibility of Algonquin land rights to Quebec, she wrote that “many aboriginal communities such as Barriere Lake, whose livelihood and culture are integrally dependent on conditions in the forest, were not consulted on the policy, the Act, or the regulation, nor on the land use designation applied in their area. Neither are they to be party to the development of the CAAFs.”²⁸⁹ In fact, CAAFs arose from closed door negotiations held between the provincial government – represented by senior bureaucrats in the Ministry of Energy and Resources and the director of the forest management unit in question – and the forestry companies. No attention was ever paid to those who would have to live with the consequences of the new forestry regime.

Remarkably, no wildlife area within the La Verendrye Wildlife Reerve, a designated wildlife reserve, was set aside for conservation, save for one heronry. Aird reports that “[t]he land-use designations of [La Verendrye] reflect not only the continuation of a historic ‘fiefdom’ for the logging industry within the reserve, but also reflect the fact that MLCP [Department of Recreation, Hunting and Fishing] wildlife managers *do not have the necessary research and information to clearly delineate critical wildlife habitat.*”²⁹⁰ The wildlife reserve was being clear-cut, yet no wildlife studies had ever been done of moose, beaver, waterfowl, and other wildlife habitat and use. Though the Algonquins of Barriere Lake have extensive knowledge on wildlife habitat, plants, and sacred areas due to a millennia of land use and occupation, no attempt was ever made to draw upon this knowledge in the development of land-use management plans for the area. As a result, Aird warned that “[i]f the CAAFs are negotiated on the basis of the current land use designations, there is little hope for adequate protection of the wildlife, aesthetic [sic] and recreational values of the La Verendrye Wildlife Reserve, nor for the future of the land-based economy of the Algonquins of Barriere Lake.”²⁹¹ Aird joined Barriere Lake in advocating for an 8-month moratorium on industrial and recreational harvesting in the park and for a moratorium on the negotiation of CAAFs to allow for a more sustainable regime of habitat management strategies to guide forestry practices.²⁹² This demand fell on deaf ears.

The early traffic slow-downs against spraying had shown the Algonquins that such tactics could work. In the late 1980s, the Algonquins erected road blocks on the access roads through the forest to prevent logging equipment from reaching the trees. But the Algonquins soon found that they were fighting a wide range of development encroaching on their lands. In July 1988, the Algonquins blockaded Highway 117 to protest the hydro-electrification of their reserve, handing

out 2,000 pamphlets to alert the public that power lines would disrupt their traditional hunting grounds, and asking for support.²⁹³ They also learned at this time that Quebec was proposing that 40 percent of Parc La Verendrye be privatized, a move which the Algonquins also opposed.²⁹⁴

An underlying issue for the Barriere Lakers became the question of jurisdiction that was driving development and keeping it out of their reach and control. As their lawyer, David Nahwegahbow explained to the *Ottawa Citizen*, the Algonquins had been severely affected by clear-cut logging in their forests and saw electrification “as promoting further outside development without having their title resolved.”²⁹⁵ Not one to mince words, Chief Matchewan made clear, however, that it was not title itself that was at stake, but rather the survival of his people.²⁹⁶ Ownership would never prove to be the stake Barriere Lake anchored to in negotiations; title would prove to be a kind of sideshow to jurisdiction: a way of asserting control over their lands, so long as the government defined the terms of recognition. Instead, they fought for a decisive say to govern over the lands that defined them as a people and obligated them to act for their protection.

The community had put their lives on hold to stand out on the highway in attempt to get the government’s ear. Finally, after months of federal inaction, the Algonquins took the capital. In September, they occupied Victoria Island for several days, a traditional Algonquin meeting place behind Parliament Hill, but they still could not get the government’s serious attention, even despite good media coverage of their protest. Over one hundred community members eventually left Victoria Island, promising to return until the issues were resolved.²⁹⁷ The next week, the Algonquins made good on this promise, this time taking over Parliament Hill. Their demands were clear and consistent: no hydro lines through their hunting territory; an 8-month moratorium on logging; no privatization of the park; and most importantly, they had a vision for a conservation plan that would cover their traditional territory, governed by the principle of sustainable development. Once again, they were rebuffed. In an incident still widely remembered and discussed in Barriere Lake today, the Royal Canadian Mounted Police (RCMP) were brought in to do the government’s business. In September 1988, Lena Nottaway, a 75-year old grandmother, was one of about 20 people arrested on Parliament Hill for “trespass.” She is quoted in the press chiding cops not to drop her as they carried her to an awaiting vehicle.²⁹⁸ Nottaway, along with the others arrested, were issued a summons to appear next month in court for illegally camping on public land. The case was stayed when the Crown decided that the Algonquins’ claim to Parliament Hill as unceded land would cast a bright and potentially embarrassing light on the true identity of trespassers in this case.²⁹⁹

Though only a fraction of the protestors were arrested, the RCMP confiscated all of the Algonquins' belongings and refused to return to them their sleeping bags and tents.³⁰⁰ It was a mean and spiteful refusal, given the community's poverty and cause. Chief Matchewan insisted to the media that they would not have needed to travel all that distance and risk arrest if the government had simply responded to urgent meeting requests that the community had been making for months. He pointed out the irony that Prime Minister Brian Mulroney was away at the United Nations discussing human rights and the environment while Barriere Lake's land was being clear-cut – mere hours away from Ottawa – and the government could not be bothered to respond.³⁰¹

Quebec finally stepped down from their insistence on the privatization of the park and the hydro line through Barriere Lake's territory. But the logging went ahead unabated. The community persisted with their demands and moved their protest camps to block six new logging roads. In the meantime, Barriere Lake also made a desperate bid to win in the courts with an injunction against Quebec over lands in forestry management units (FMUs) 73 and 74, large parts of which were in the Parc La Verendrye Wildlife Reserve and the Grand Lac Victoria Beaver Preserve. The injunction was an attempt to abort the distribution of CAAFs to companies in their traditional territory.

They lost badly. Barriere Lake's lawyer on the case, Gerard Guay, immediately pointed out the sheer prejudice evidenced by Superior Court Judge Orville Frenette's decision to refuse the injunction. Multiple errors in judgment included a willful misinterpretation of Barriere Lake's demands, which the judge mischaracterized as stipulating a permanent halt to all logging in the territory; the assertion that Barriere Lake failed to establish that they have any rights to the land, despite such evidence as the Grand Lac Victoria Beaver Preserve, where ABL have exclusive hunting and trapping rights; and the fact that Judge Frenette completely ignored a series of legal violations Quebec had committed in the distribution of CAAFs that should have forced the province to re-evaluate their applications.³⁰² Most glaring was the utter discrepancy in the standards of evaluation regarding the evidence: Barriere Lake submitted to the court six lengthy affidavits by community members and environmental and forestry experts, yet, as Gerard Guay wrote, "the Judge gave more weight to a flimsy, contradictory one and a half page affidavit by the Regional Director of Forestry."³⁰³ The courts were clearly not the avenue for justice the Algonquins sought.

Fortunately, in the 1980s, the North American social conscience became trained on forests by a growing cadre of non-government organizations (NGOs). NGOs in the developed world created campaigns to "save the rainforests" in the south, raising money to buy up lands,

lobby governments and industry, and promote consumer habits that did not rely on rainforest destruction. Barriere Lake realized that they would have to wake people up to the fact that devastating clear-cuts were destroying Indigenous lands in Canadians' own backyards. The Algonquins had already begun a campaign of blockades to protect the forest when the United Nations Report of the Brundtland Commission, "Our Common Future" (1987), commonly known as the Brundtland Report, was released. The report reflected serious concern about the impact of human development on the environment. It suggested that Indigenous people should play a significant role in the sustainable management of natural resources, given their unique and particular knowledge of their homelands. Sections of the report were translated into Algonquin and discussed between elders and community members with their political advisors. The Barriere Lake Algonquins were attracted by the concept of sustainable development, which explicitly recognized the needs of future generations within the framework of resource extraction. Barriere Lake, under customary Chief Matchewan, formulated a strategy to demand that the Canadian government act on the report's recommendations by allowing them to implement a conservation strategy on their territory.

The government continued to ignore their concerns, so the Algonquins took matters into their own hands. Barriere Lake had only one card in their pocket and they continued to play it powerfully and relentlessly. This time, blockades occurred during the 1989 provincial election and began to attract politicians' attention: all it took was a visit from a Parti Québécois candidate for the Liberal provincial Minister of Indian Affairs to swoop in for a quick chat. Clifford Lincoln, former Special Representative to Barriere Lake during the Trilateral negotiations, believes that the Trilateral was signed to solve a problem of electoral politics. He told me, "My sense of it in the interim is that the provincial election was the catalyst. There was an election in the fall of 1989, and the government was anxious to put looming problems to bed, those of the Algonquins of Barriere Lake versus forestry companies being a persistent one. This I think was the great motivator in looking for a way out, which became the Trilateral Agreement eventually signed in 1991."³⁰⁴ Other external pressures the following year, though, would seal the deal.

In 1990, Barriere Lake was back to blockading Highway 117. Lumber baron Claude Bérard was seeking permanent injunctions against the community and the Quebec ministry of forests was supporting these injunctions.³⁰⁵ Barriere Lake did not have the money to intervene in court, nor could they otherwise get Quebec's attention – instead, they took over the highway.³⁰⁶ In July 1990, acting to protect a sacred grove of pines, a group of Mohawks in Kahnasatake were inspired by Barriere Lake to erect their own blockades to protect Haudenasaunee traditional lands.³⁰⁷ Now Quebec had two major crises on its hands and fear of an incendiary summer of

Indian insurrection was clearly palpable.³⁰⁸ It is not hard to imagine what happened next. Quebec Native Affairs Minister John Ciaccia had replaced Raymond Savoie in the recent provincial election. He flew in a helicopter from Oka to Barriere Lake to finally discuss an agreement.³⁰⁹ In the shadow of Oka, a tentative deal was finally struck.

The thorn of jurisdiction

From an Indigenous perspective, the Barriere Lake Algonquins were not disrupting the forestry industry through their campaign of blockades. They were rather saving it. Most people in the community had never been outright against logging in the territory – they were against the destructive clear-cuts and the sheer neglect of forest life that was being endangered by provincial land-use management plans. Their determination to blockade through harsh winter conditions, with their families and young children on the frontlines, created economic conditions through the threat of shutdown that would ultimately challenge the forestry regime over a substantial area of land in the province. But these challenges precisely pitted the jurisdiction of the federal and provincial governments over a small Indian band to determine how the territory should be governed.

In early September of 1990, after Barriere Lake succeeded in getting Quebec to the table, the province immediately tried to short-circuit negotiations. They attempted to change the language of the proposed comprehensive conservation strategy from “sustainable development” to “sustainable yield” – language that lacked any clear definition even in the Quebec Forestry Act³¹⁰ – which the Algonquins rejected, interpreting the language as a means to continue tree farming on their territory.³¹¹ The Algonquins also rejected Quebec’s assertion of “exclusive jurisdiction” over resource management in the wildlife reserve.³¹² In response, Chief Matchewan hit back, asking: “So does that mean when we go outside (the reserve) we’re squatters? We don’t have the right to say anything about what happens outside these 59 acres?” Barriere Lake’s position was uncompromising: “This is Algonquin jurisdiction, too. We never gave up this land.”³¹³ Despite the fact that the Quebec cabinet agreed in principle to an Algonquin conservation proposal,³¹⁴ the government refused to take seriously the idea of co-existence and co-management that the Algonquins envisioned.

In the meantime, logging continued unabated. Following another series of blockades, Barriere Lake allowed the Gatineau lumber company to get back to work until October 1, 1990 as gesture of good faith. But they warned that if Quebec made little progress in signing a conservation deal, the Algonquins would be back on the blockades.³¹⁵ A year later, the governments and Barriere Lake were still negotiating. John Ciaccia had convinced Barriere Lake

to dismantle their blockade of Highway 117 on the assurance that he would bring their conservation strategy to the Quebec government for approval. Ciaccia agreed with the conservation strategy in principle, but he had to convince the province to go along with an agreement. The longer the province stalled, the more tense relations grew with the logging companies who endured costly delays and constant uncertainty. Ciaccia also agreed to contact Gatineau lumber company operator Claude Bérard and ask that he withdraw his injunction against Barriere Lake. Bérard insisted to the press though that he would go ahead with the injunction, demanding his right to fulfill the logging contract.³¹⁶ He stated that “if the band won’t respect the law,” the police or army should be brought in to remove the blockade.³¹⁷ The Algonquins responded by stating that they would not fight the injunction in the Quebec Superior Court because they neither recognized the injunction nor the authority of the court’s jurisdiction over their lands.³¹⁸ Two could play the game of withholding recognition, so long as the ongoing logging gave them leverage.

Relations softened after that. Quebec brought Bérard to the negotiating table, where he was included in discussions regarding conservation measures in the park. Bérard also sought some authority in negotiations: “The Algonquins have rights but I have rights too,” he told the media, referring to his 25-year forestry contract with the government.³¹⁹ The question now centred around the relationship between these respective rights, and here the tussle between jurisdictional powers is magnified. The federal Department of Indian Affairs was at first much more supportive of Algonquin demands for a conservation strategy over their territory than the province. This might seem surprising, given the federal Crown’s fiduciary obligations, and jurisdictional divisions of power that place “Indians and lands reserved for the Indians” under federal powers. From a sovereignty perspective, the federal government would have to reconcile some symbolic power in agreeing to share land management powers with Indigenous peoples. However, from an economic perspective, Quebec was financially liable to the forestry companies, since natural resources were under provincial jurisdiction; whereas, the federal government had little material wealth to lose. Since most of Barriere Lake’s territory was also held as provincial Crown land, the federal government had to petition the province for support to try to resolve the ongoing crisis in the community. This jurisdictional tug of war between the federal and provincial governments would characterize all negotiations with Barriere Lake henceforth. In early days, Quebec was the recalcitrant partner in negotiations, but eventually the federal government lost interest in the community when they realized they had as much to lose from recognizing Algonquin jurisdiction because it undermined Canada’s national land claims policy. As Nahwagahbow describes, at a meeting with Deputy Minister of Indian Affairs Scott Serson the

official actually accused Nahwagahbow and the band of “back-dooring” the Comprehensive Claims policy.³²⁰

Though Quebec certainly prefers to create the impression that the province holds exclusive ownership rights over the territory, these ownership claims are in fact subject to confirmation and recognition by Indigenous peoples. Forestry Canada reports that “[a]pproximately 170,000 hectares of Quebec’s productive and accessible forests are currently located on Indian lands.”³²¹ That amounts to about ninety percent of the province.³²² But as the Assembly of First Nations of Quebec and Labrador note, Quebec provincial jurisdiction on so-called “public lands” is not absolute. Rather, it is defined in article 109 of the 1867 Constitutional Act:

The limits to the ownership right of article 109 define the field of application of section 92(5) and, therefore, of all provincial laws which stem from it. Among these provincial laws, we find the Act respecting the lands in the domain of the State, the Forest Act, the Mining Act and the Hydro-Québec Act. The field of application of all these Quebec laws is subordinate to the First Nations title and to other ancestral rights, since it is clearly established by the jurisprudence (particularly in the *Delgamuukw judgment*) that the provincial laws cannot extinguish these rights.³²³

While this jurisprudence was yet to be reasoned by the courts, Barriere Lake were already asserting that their land rights had not been extinguished by Quebec. To wit, Quebec was having difficulties selling access to lands it did not own.

To complicate matters, during this period, the province of Quebec was not only in conflict with the federal government over the Algonquins, of course, but also locked in a constitutional battle over the nature and resolve of their confederation. Quebec’s historical denial of Indigenous rights was compounded by their own internal sovereignty struggle with Canada, marked by the 1989 Meech Lake Accords.³²⁴ Since natural resources are under provincial jurisdiction, Algonquin demands were perceived by Quebec as a direct threat to their short-term profit strategy for the forests, but also as a problem that should be only theirs to solve. The tension between federal and provincial sovereignty claims implied the outstanding question of the status of Indigenous peoples in a future, potentially sovereign, Quebec. Once again, Barriere Lake would serve as a reminder to both governments’ of their lack of jurisdiction over Algonquin lands, as well as the special relationship Indigenous nations have with the federal Crown. In 1992, as Grand Chief of Barriere Lake’s tribal council, Jean Maurice Matchewan vocalized the Algonquin position on Quebec secession from the Canadian state:

Quebec claims a right of self-determination. But self-determination belongs to peoples. It does not belong to territories. If Quebecois and Quebecoises claim the right to determine their own future, then the Algonquins have a prior right to self-determination.

We take the position that Quebec cannot secede with Algonquin land without our consent. And we have put Canada on notice that, until we advise otherwise, we intend to hold Canada to its fiduciary duty with respect to our traditional lands in the Province of Quebec.³²⁵

When the province's bid for secession failed, Quebec's financial liability to the forestry companies ultimately pushed the province to consider Indigenous land rights. The economics of ignoring Algonquin demands had become unfeasible. Prior to his invitation to the negotiating table, lumber baron Claude Bérard had threatened: "I might just close the plant and sue the God-damned government,"³²⁶ no doubt articulating a growing fear in provincial government corridors: a rush of lawsuits that could cost the province millions of dollars, and worse, create a chilly investment climate at a difficult time for the forestry sector.

Barriere Lake's capacity for economic disruption, exercised through the instability they caused in the forestry sector was documented in a report commissioned by the Trilateral Secretariat in 1996. In Chapter Eight, I discuss how the consulting firm found that the rough total estimate of economic value generated in the Trilateral zone was around \$56.5 million dollars.³²⁷ Hydro Quebec's revenues were estimated to be a further \$50 million, calculated by another external consultant and added later to arrive at the conservative sum of \$100 million.³²⁸ In 1994, forestry accounted for fifty-nine percent of economic value in the region – that is over \$33 million in annual revenue.³²⁹

Barriere Lake's territory in the Outaouais region of Quebec is very desirable for logging: it is widely accessible by road and only 320 kilometers north of Ottawa, minimizing transportation costs. At the time of the early 1980s blockades at Barriere Lake, Quebec boasted the most productive forest land in Canada.³³⁰ But from an Algonquin perspective, Quebec was mismanaging the land in ways that would have catastrophic and long-lasting effects. The tragedy of Quebec's forest management regime was that even from a profitability perspective, the forestry sector was making little economic or ecological sense. Quebec's forest management was by some standards the worst in the country: between 1980-1988, Quebec claimed to have only reforested 39 percent of clear-cut forests. In terms of managing harvested areas, from 1985-1990, a mere 7 percent on average was weeded, thinned or fertilized, compared with a national average of 25 percent.³³¹

The industry was also seriously suffering from under-development. The pulp and paper industry in Quebec had been largely resting on its laurels since earlier in the century. It was in

desperate need of modernization; the machinery was hopelessly out of date, constraining growth. Among other issues eroding Quebec's competitiveness, key was the loss of markets for its forestry products. Changing markets linked Quebec into the long cycle of continental and global trade at a time when innovation was desperately needed. The province was essentially locked into a pattern it had established at the turn of the century. From the beginning, Quebec's softwood pulp industry was dependent on foreign consumers, especially the U.S. and Britain, which hampered its domestic development by exporting mostly raw materials with only some primary processing. The impacts of an increasing continentalism marked a "source of impoverishment" for Quebec, contributing to the crisis in Quebec's forestry industry in the 1980s.³³² At the time, lumber prices had risen twice as slowly as the consumer price index of the previous two decades.³³³ Rather than increase the value of lumber through the development of high-value manufacturing capacity, Quebec let others produce the value by exporting high-quality wood fibre abroad, contributing to extreme under-development in the industry that would have consequences later.³³⁴

In the wake of this ecological and economic mismanagement, the province offered no incentive for companies to assume any responsibility for the future of the forests. Barriere Lake, on the other hand, had a real vision for how to preserve the forest for future generations, allowing a mix of economic systems to co-exist.

Their vision was for a tripartite system with the provincial and federal Crowns to form a partnership allowing the Algonquins to have a decisive say over the resource management on their lands. They were proposing a co-management arrangement unlike any other agreement signed in Canada at the time. It was not based on property notions of settler exclusion, but on principles of co-existence, based on Indigenous knowledge. To Barriere Lake community leaders, co-existence was a meaningless term unless it translated into a real transfer of responsibility, rights, and economic wealth. In terms of the forests, Barriere Lake's assertions of jurisdiction were not merely a political or environmental claim, but also an economic assertion based on legal jurisdiction over traditional lands.

The overlapping claims to jurisdiction were being worked out through struggles on the land. Barriere Lake's solution was to share jurisdiction by sharing responsibility for its protection. But protection turned out to be in nobody's interests but the Mitchikanibikok Inik.

PART II: THE TRILATERAL AGREEMENT

CHAPTER FIVE – The Trilateral Agreement is Born

Struggles for jurisdiction over Barriere Lake lands were being worked out on the ground, but in the early 1990s they also moved to the negotiating table. The governments were finding that the Algonquins of Barriere Lake were not easily distracted nor placated with vague assurances. To the contrary, the Algonquins insisted that overlapping jurisdictional claims to their lands be resolved through an explicit power sharing agreement. They further insisted that their own knowledge of the land be respected as a guiding reference in any arrangement over resources on the territory.

The power of the Algonquins to make these demands in part derived from their economic leverage vis-à-vis the forestry industry. But a deeper strength was necessary for Barriere Lake to endure the daily and yearly hardships of leveraging this power. Many Indigenous struggles are derailed by a colonial politics of recognition. As Glen Coulthard describes, “the reproduction of a colonial structure of dominance like Canada’s rests on its ability to entice Indigenous peoples to come to *identify*, either implicitly or explicitly, with the profoundly *assymetrical* and *non-reciprocal* forms of recognition either imposed on or granted to them by the colonial-state and society.”³³⁵ While the politics of recognition tend to drive state efforts at reconciliation and pacification, the Algonquins proved relatively immune to these forms of management that operate through colonial forms of subjectivity. An incredibly adaptive society, the Algonquins did not premise their insistence on resource co-management based on state-dictated forms of recognition or on limited terms of accommodation to development on their lands. Rather, they saw their role as co-managers to remind the state, through their sacred customary constitution and the three-figure wampum, that Canada and Quebec *needed the Algonquins’ consent* to authorize extraction and encroachments on their lands. It was by these forms of jurisdictional authority – their belts, their laws, their ancestors – that the Algonquins found strength to carry on their struggle.

For two years following the tentative agreement with Quebec, the Algonquins endured constant negotiation, ongoing blockades, stalling and debate, until an agreement was finally arrived at on August 22, 1991. The Trilateral Agreement, signed by the Algonquins of Barriere Lake, the Government of Quebec, and the Government of Canada, would give the Algonquins ultimate decision-making power over resource management on their territory. The Trilateral states that, “Quebec and the Algonquins of Barriere Lake wish to ensure, on the territory currently used by the latter... the rational management of renewable resources in view of making

possible, with a concern for conservation, their versatile utilization, and the pursuit of the traditional activities by the Algonquins of Barriere Lake.” Land management would explicitly be managed to ensure the pursuance of traditional activities by the community and to ensure sustainable resource use for future generations.

In the years to come, and as awareness of the Agreement spread, praise tellingly focused on Barriere Lake’s key demands. A United Nations report hailed the Agreement as a “trail blazer,” pointing out six important features of the plan: it put the doctrine of sustainable development into practice; it established a real partnership between government and an Indigenous community; it blended Indigenous knowledge with modern development processes; it provided for a working partnership that fostered mutual respect between Canadians and Indigenous peoples; it established an important scientific and technical experiment that would help amend forestry practices; and it created an important educational and operational model, not only for Canada, but for the rest of the world.³³⁶

The Royal Commission on Aboriginal People (RCAP) report called the Trilateral Agreement a model for co-existence, commending the fact that it upturned the common insufficient conventions of co-management.³³⁷ Rather than simply institutionalize a joint management arrangement over a particular region and species, the Trilateral lay the groundwork for cooperation between parties to develop an integrated resource management plan over 1 million hectares of land covering a major portion of Barriere Lake’s traditional land base.³³⁸ Moreover, mediating extremely different visions for Barriere Lake’s territory, this form of jurisdiction-sharing was designed to control access to the land by industry, tourists, and settlers *through the Anishnabe people*. This time, co-existence would be based on Indigenous leadership, forging a new relationship through the ecological and social damage of colonization.³³⁹

Technical Matters

The Trilateral is technically a study and recommendation process agreement, referred to in the agreement text as a “pilot project.” Though the agreement clearly states that it is without prejudice to Aboriginal rights and pushes the issue of title aside, the Trilateral is a politically and legally binding agreement, which is repeated several times in the agreement itself. In a mediator report in 1993, Quebec Superior Justice Rejean Paul acknowledged that the Agreement would likely be recognized to have “treaty-like” status if challenged in the courts.³⁴⁰ As Justice Paul writes, in light of the *Sioui* case (1990) “it is far from certain that the Supreme Court of Canada and, more particularly, the lower courts, would not characterize this Agreement as a ‘treaty’ with the Algonquins of Barriere Lake.”³⁴¹ This treaty agreement gives the community a decisive voice

in the management of 10,000 square kilometers of their traditional territory, protects Algonquin land uses, and gives them a share in the resource-revenue from natural resource development on their land.

But what made all the difference between the Trilateral Agreement and other resource co-management agreements (and the land claims policy, especially), was the funding the Algonquins secured to undertake traditional land use and occupancy research and mapping. In general, the lack of financial, administrative, and technical capacity in Indigenous communities erodes their ability to negotiate on even ground with governments and industry. Likewise, without detailed maps of traditional land use, having a “say” at the table over resource management would be reduced to doing lengthy consultations with elders for each individual proposal to log or engage in other resource extraction, which would have been quickly dismissed as unworkable. With the financial resources to collect, correlate, and map the community’s traditional knowledge of their land, the Barriere Lake Algonquins would possess a blueprint for how the territory could be collectively managed, based on a transparent, easily referenced, common base of ecological understanding and knowledge of the territory. In article 3, Quebec and the Algonquins agree to share the costs of the study and recommendation phases, with Canada further agreeing to pay all of Barriere Lake’s costs. According to the Trilateral, the collection, inventory, study and analysis of data about renewable resources and their uses would constitute the first phase of the Trilateral Agreement, and the preparation of a draft Integrated Resource Management Plan (IRMP) would constitute the second. This IRMP would be the outcome of thousands of hours of interviews with land users, in particular, elders whose education derived almost exclusively from the bush.

While I deal with the traditional land use and occupancy studies in closer detail in the following chapter, it is important to note here the sophistication of this crucial work. Undertaken chiefly by Terry Tobias, Scott Nickels, and Sue Roark-Calnek, the Indigenous Knowledge agenda of the Trilateral Agreement involved individual and joint interviews with harvesters, elder field trips, and extensive data collation and analysis. For example, elders identified each tree species found on the territory, then described to what ends they were best used, in the construction of which specific implements, in what season to harvest their bark, and how best to undertake this harvest. This work overlapped with Sensitive Area Studies (SAS) mapping for the IRMP phase of the research, which also relied on extensive interviews and field trips, and included Tobias’ two year Harvest Study report, designed with input from Peter Usher and Doug Elias. Scot Nickels, a cultural geographer, produced a two-volume study of Barriere Lake traditional ecological knowledge – comprehensive work which formed the basis for his dissertation research and informed many of the specific reports that followed, such as Doug Elias’s “Socio-Economic

Profile of the Algonquins of Barriere Lake.”³⁴² Sue Roark-Calnek’s three major reports – on family narratives, toponymy, and social custom – formed the major ethnographic synthesis of the data. For example, her social customs report analyzed Tobias’ data on household and cabin cluster composition, trapping partnerships, and moose hunting task groups, and her toponymy report presents a complex geo-morphology of historical ecological knowledge, including information on family traplines, territorial boundaries, animal life, and medicines. The collation of this research data was equivalent in this regard to binding an encyclopedia of oral knowledge of the territory.

The third phase of the Trilateral research – which was only ever partially completed, as we will see – would have involved the formulation of recommendations for carrying out the draft plan of Phase 2, including a plan for resource revenue sharing. Although the agreement set out for completion of the plan by 1995, because of delays in the agreed upon process, caused first by Quebec (1991-1993) and then by Canada (1996-1997), the 1995 goal was not reached. Although Barriere Lake believed that the signing of this Agreement, for which they had fought and sacrificed so much, was the end of their struggle, they soon discovered it was only just the beginning.

“Our authority derives from the Creator”: Governance, Jurisdiction, and the Trilateral

The Trilateral specifies that the Agreement is between parties from “within their respective jurisdictions,” so while Indigenous jurisdiction is not necessarily prioritized, the fact that the Algonquins are implicitly recognized as being under their own jurisdiction is a respectable basis for negotiation.³⁴³ However, the question of jurisdiction was central to Quebec’s stall tactics that delayed the implementation of the Agreement for nearly two years in the early 1990s. Immediately upon signing the Agreement, all parties (as stipulated) appointed Special Representatives – one each for Quebec, Canada, and Barriere Lake – to form a body that had the authority to meet and oversee the implementation of the scheduled work plan. However, Barriere Lake soon found that Quebec never intended to work cooperatively with Barriere Lake. Rather, they seemed to perceive the Algonquins as simply a group to consult with in the course of upholding rigid interpretations of existing laws and regulations. Despite the fact that the Trilateral Agreement was signed by the Quebec Minister for Native Affairs, the Minister for Canadian Intergovernmental Affairs, the Minister of Forests, and the Minister of Recreation, Hunting and Fishing – an impressive array of the highest ranking officials in the National Assembly – Quebec still refused to accept the very purpose of the agreement, which was the shared management of resources in the wildlife reserve.

The new relationship the Algonquins had hoped would restore ecological integrity to their lands depended on to survive was quickly disintegrating. Algonquin input on Quebec's Action Plan for Trilateral work was mostly ignored, cut plans went forward in sensitive and sacred forested areas without Algonquin consultation, and funding from the federal government was not forthcoming for the traditional land use studies, meant to be completed in the first phase of the Trilateral process.³⁴⁴ Quebec refused to acknowledge what they considered "outside interference" to their ministries by the Algonquins of Barriere Lake and their Special Representative repeatedly made promises and assurances he did not keep.³⁴⁵ In February 1992, for instance, Quebec officials showed up to a meeting with a hastily, hand-written one-page document – neither signed nor dated – that they had clearly prepared that morning. The note contained their recommendations to the Trilateral Task Force on harmonizing logging with Algonquin land use. These so-called recommendations were essentially reiterations of provincial policy. Meanwhile, Quebec had rejected the Algonquins' Field Team's initial report on moving forward with the first phase of the Trilateral Agreement.³⁴⁶ A Task Force had been specifically set up as a technical team under the authority of the Special Representatives to develop the Terms of Reference for what became the measures to harmonize Algonquin-settler land use and to identify "sensitive zones." But Quebec struggled against sharing the jurisdiction and control promised in the Trilateral Agreement.

A particular exchange in 1992 between Chief Jean Maurice Matchewan and Quebec Minister of Native Affairs Christos Sirros is telling of what jurisdiction meant to the different parties. Sirros penned a letter to Matchewan regarding the Trilateral process. He wrote that, "there is no question of shared jurisdiction and co-management of resources on the territory covered by the Trilateral which confers no authority or power on the Algonquins of Barriere Lake in this regard."³⁴⁷ An astonished reply followed from Matchewan, reminding the minister that the last time they met in Quebec, in the presence of other Quebec ministers, at Sirros' insistence Matchewan had agreed to put aside the matter of jurisdiction aside and leave discussion of the matter off the table.³⁴⁸ Out of a will to accommodate the process, Matchewan agreed on the condition that they would *all* steer clear of the issue. Now, Sirros' assertion of exclusive jurisdiction betrayed this agreement and laid bare the power struggle that nested beneath the surface of their fretted negotiations. Matchewan wrote to Sirros that he was cognizant of the Minister of Natural Resources responsibilities on public lands under Quebec laws and customs. But he also made clear to what law and customs he was bound by as Chief of the Algonquins of Barriere Lake:

It is not our position that the Trilateral Agreement is the source of our authority or jurisdiction. Our authority derives from the Creator who placed us upon our lands many hundreds of years ago, prior to the arrival of European settlement and the creation of Canada and Quebec. And our authority derives from the traditional knowledge of our elders which has been passed down from generation to generation and accumulated over hundreds of years of occupation of our lands. It derives from our sense of responsibility to the land and forests and wildlife and our desire to maintain the integrity of those things so that we may continue to benefit from them in our traditional pursuits.³⁴⁹

The letter urged a mutual respect of views on the matter of jurisdiction and authority.

The Algonquins knew that their unprecedented agreement would encounter difficulties. Displaying characteristic Algonquin humility and strength in the face of great insult and dismissal, Matchewan adds to the letter the following line: “It is against our ways to be exclusive and inflexible. Thus, our position is tempered by the importance of sharing in our society as well as the realities that prevail on us today.”³⁵⁰ In many ways, this sentence articulates the vision of the Trilateral Agreement in its clearest form: the Algonquins recognized the necessity of sharing the land with the new occupants, and even the need to be flexible in these accommodations, but they would never violate their own laws to do so. The Chief ends the letter concluding that the parties have reached an impassable section of the road. He proposes that Quebec and the Algonquins move forward through a mediation process, overseen by a Quebec Superior Court judge.

Meanwhile, a jurisdictional tussle was playing out between Quebec and Canada, as well. Canada, for its part, refused to approve budgets to move forward with the work plans set out in the agreement. Their Special Representative constantly tried to shift the responsibility for decision-making on financial matters back onto Quebec, despite the federal government’s approval of article 3 of the agreement, which put the burden of Barriere Lake’s financial commitments squarely onto Canada’s shoulders. Instead, Canada tried to insist that Barriere Lake submit receipts on a monthly basis for reimbursement, operating as such in an ad-hoc manner. This introduced impossible conditions for the Barriere Lake Secretariat – the coordinating body for the Trilateral Agreement – constraining their ability to pay salaries or make regular rental payments on their office.³⁵¹ Somehow, the Barriere Lake band was meant to front these costs. At times, Barriere Lake was forced to divert programs and services dollars toward field research.³⁵²

Negotiations remained at a standstill with Quebec. Pleading Algonquin disobedience, Quebec officials accused the community of being unreasonable for continuing to assert their right to determine how forestry decisions were made on their territory. Sirros made a point of emphasizing to Chief Matchewan that the “appropriate instance for the recognition of rights *you may feel you have* is the judicial system or preferably a negotiating table that could be created for

this purpose *in the framework of existing policies.*”³⁵³ Sirros was likely recommending the Comprehensive Land Claims policy as the existing and preferred framework for settling conflicts over land. But Barriere Lake would not budge.³⁵⁴ After a protracted struggle with Quebec, Justice Réjean Paul of the Quebec Superior Court was finally brought in to mediate, forcing the province back to the table. Justice Paul was shocked at the conditions he found under which negotiations were proceeding. He wrote, “[t]he Algonquins of Barriere Lake have, from their own Band budget and to the detriment of their other programs, unilaterally funded certain anthropological studies and have produced maps of an excellent quality indicating, among other things, their sensitive zones and their sacred territories ... *It is David and not Goliath who is attempting to sustain the Agreement.*”³⁵⁵

Perhaps the most compelling vindication of Barriere Lake’s vision and struggle was Justice Paul’s plaintive question: “Why... are we at a point where we can almost see such a beautiful project collapsing?” Remarkably, Barriere Lake had still managed to undertake sensitive area studies throughout these grinding battles with Canada and Quebec. The community was propelled forward by the urgency to protect these areas, since Quebec had started handing out logging permits again despite assurances to the contrary. As Boyce Richardson explains, “The one glaring weakness of the Agreement was that the provincial government’s management deals with logging companies were allowed to stand, guaranteeing the companies continued access to the trees.”³⁵⁶ Barriere Lake believed that armed with the sensitive area studies maps, they could officially stop logging in those areas of the territory. Justice Paul, in Barriere Lake’s defense, found that the logging permits distributed by the province may have been legal, but that they in fact did not respect, as he put it, “neither the spirit, nor the letter of the Agreement.”³⁵⁷ Justice Paul’s recommendations included “the transfer of power to the special representatives, the transfer of control of the technical work from the Quebec ministries, and the protection of sensitive zones within the existing timber agreement.”³⁵⁸ He lamented that an Agreement that finally sought to converge government and First Nations interests so perfectly could be lost.

In spite of the mediator’s report, Quebec unilaterally withdrew support for the agreement again in 1993, and the process nearly collapsed.³⁵⁹ Quebec continued to allocate CAAFs and sensitive and sacred areas continued to be logged with no regard paid to the Algonquins. Against overwhelming odds, Barriere Lake pursued their fight to force the province to implement the agreement. Relations between the Algonquins, industry, and the government resumed their hostility. By February 1993, the Trilateral Agreement seemed to be on the brink of collapse. That month talks collapsed over disputes concerning the dimensions of sensitive area zones – the Ministry of Forests maintained that a band of trees 20 meters around water bodies was sufficient

for the survival and reproduction of plants and animals, but the Algonquins maintained that in certain cases zones should go from 20 to 75 to 100 metres. This conflict over riparian zones held work up further.

Algonquin authority to log was sought at one point, but not through the institutionalized Task Force set up through the Trilateral Agreement. In April 1993, Quebec Minister of Native Affairs Christos Sirros sent a letter to Chief Matchewan informing him that cutting was scheduled to start in the territory in the matter of a week. Sirros suggested the formation of an ad hoc task force with representatives from Barriere Lake, Quebec, and the forestry companies, suggesting a draft IRMP for renewable resources could be produced.³⁶⁰ This was the last straw. Barriere Lake angrily rejected Quebec's proposal for the ad hoc committee. Chief Matchewan said in a statement to the press, "We are still looking for a negotiated settlement, but Christos is dishonest in forming a committee on the eve of cutting operations starting when he himself broke off negotiations last February."³⁶¹ Clifford Lincoln, the community's Special Representative was furious, too. It was Sirros who initially interrupted the sensitive areas mapping work in the cutting sector. Lincoln fumed: "Two months later with no notice, he proposes the creation of a committee which would have to do exactly what we were doing last winter. It takes 45 days to identify the sensitive zones in a cutting plan. Mr. Sirros calls us only one week before forestry operations are to recommence. It's nonsense."³⁶² Matchewan insisted that the Algonquins would come back to the table only if the federal government was involved and if the negotiations proceeded under the Trilateral framework.

The Algonquins did not sit back and wait. They invited to the territory the National Chief of the Assembly of First Nations and human rights and religious organizations to tour the logging camps. Media were also invited to attend.³⁶³ And then, just when it seemed that the Trilateral Agreement was on the brink of total collapse, everything flipped back in the Algonquins' favour:

A combination of factors, including an effective Algonquin public relations campaign, top level political communication, intensified contacts between the Algonquins and industry, and the prospect of rather unpalatable alternatives, prompted the provincial government to consent to the Algonquins' requests. Virtually overnight, a special interim management regime was established for the Agreement territory, belatedly creating a setting in which the Barriere Lake Trilateral Agreement can be successfully implemented.³⁶⁴

The administration of the Agreement was taken out of the hands of the Quebec Ministry of Forests and placed directly under the Premier, easing tensions and creating a warmer climate of negotiations that actually reflected respect for the Algonquin way of life and its place in the modern Canadian economy. Throughout the rest of 1993, the Algonquins of Barriere Lake

accompanied logging crews to ensure that sensitive areas were not disturbed by forestry operations. They completed sensitive area studies led to the production of maps reflecting the extensive knowledge of Algonquin elders and knowledgeable hunters. They included sites that the community and the animals in the territory depended upon, like “moose yards, bear dens, fish spawning sites, beaver streams, sugar (maple) bushes, specialty wood areas, eagle nests, travel routes, and various special sites, such as burial grounds sacred places and old settlements.”³⁶⁵ These sensitive area zones comprised about 12 percent of the total Trilateral Agreement area.

Work began now in earnest on the measures to harmonize forestry operations with Algonquin land use, with the aim of sustainable development on the territory. For one of the first times in Canadian history, Indigenous knowledge was being integrated into land use management plans and future natural resource operations by non-Indigenous authorities. The potential role that Algonquins could play in land management remained wide open. They could be involved as guides, employed in tourism, silviculture, or fisheries development, or establish small business operations. With a modest share of revenue from natural resource extraction a central plank of the Trilateral Agreement, the community would finally be able to develop their own programs and services, rather than rely on cookie-cutter government programs. There was a growing sense that the Algonquins’ time had come again.

PART II: THE TRILATERAL AGREEMENT

CHAPTER SIX – Coup D’Etat in Fourth World Canada

Settler accumulation on Indigenous lands relies in part on severing the connections between land and legal orders. Therefore, Indigenous governments have been key targets for colonial interference in Indigenous societies. This interference dates back to the mid-nineteenth century. One of the earliest attacks on Indigenous governance was dealt in 1857 by the influential Methodist missionary and departmental advisor, the Reverend T. Hurlburt.³⁶⁶ A letter penned by Hurlburt to Superintendent General R.J. Pennefather provides the solution to the problem of native leadership: a coercive law against the ‘petty chieftanships’ should be leveled to abolish and replace them with the colonial administration. The legislative means to accomplish this abolition appeared in Article 12 of the Gradual Enfranchisement Act 1869, which introduced an electoral system designed to undermine traditional and hereditary Chiefs.³⁶⁷ It gave the Superintendent General of Indian Affairs the power to direct elections and depose any Chief they deemed afflicted by “dishonesty, intemperance, or immorality.” There would also be no more Chiefs for life, instead a 3-year electoral cycle where only “the male members of each Indian Settlement” could vote. These changes were meant to disable hereditary government systems, where leaders were endowed with lifelong responsibilities, and to remove women from their crucial role in maintaining social order. As historian J.S. Milloy sums up, new electoral institutions were aimed at shouldering aside customary governments in exchange for “unchallengeable departmental control.”³⁶⁸ By the time the Indian Act was introduced in 1876, damage by earlier acts was already done. Band councils had begun to replace customary systems, though at Barriere Lake the community was largely ignored and the customary system persisted.

Since it began to appear increasingly unlikely that the Algonquins would voluntarily surrender their jurisdictional claim, the government saw an opportunity to undermine the social order upon which this jurisdictional claim was based: their customary government system, based in the Mitchikanibikok Anishnabe Onakinakewin. The signing of the Trilateral proved to be a moment of accommodation within a broader historical movement towards extinguishment.

This may seem like a contradiction: why would the governments sign the Trilateral, only to turn immediately around and undermine it? In what sense does the paradoxical fact of accommodation fit into the extinguishment structure of settler colonialism? The necessity for accommodation tends to follow public incidents of disruption that bring to light aberrations in Canada’s pretense of a law and order society. The most dramatic example of this can be seen in

the aftermath of the Oka crisis in 1990: the Royal Commission on Aboriginal People was the most comprehensive resolution-seeking process ever undertaken in Canada's history and produced over 400 recommendations on meaningful reconciliation of state-Indigenous relations. Most of these recommendations, however, were never implemented. Instead, the appearance of accommodation was deemed a sufficient deflection against allegations of inaction on Indigenous rights by the state. Efforts at accommodation, then, are best viewed with skepticism, and within a longer term perspective of their implementation and affect.

In Barriere Lake, while David bravely battled Goliath, the young king was also fighting Babylon at home. Dissent brewed in the community. Some perceived a failure of leadership was responsible for problems getting the Trilateral Agreement off the ground, others questioned why the community had to allow any measure of logging at all on their traditional lands. Monies were being spent, but no discernible results could be seen – cutting continued unabated. Personal conflicts between community members simmered into political divisions and eventually, government and industry saw an opportunity to derail the Trilateral Agreement from the *inside*.

Chief Jean Maurice Matchewan (“Pancho” to those who know him) was an especially polarizing figure. He had a big personality and did not like to be pushed around by anyone, least of all the government. He was an intimidating presence – a large man, keenly intelligent, in full possession of himself, with a shrewd sense of humour and a penchant for devastating understatement. Once, when a bragging Quebec Minister went on for over forty minutes about his deep connection to his family's property in the province, Matchewan dryly responded: “Us, we've been here for a few years, too.”

As a leader, Matchewan was chosen in 1980 in an usual leadership selection process. As elder Toby Decoursay explained it to me, with the territory being clear-cut and the wildlife disappearing, the elders knew the community needed a fierce leader who could lead a lifetime of struggle against these external forces. So they approached the youth and they asked, “Who amongst your peers is fearless and strong?” Jean Maurice Matchewan was already in the hereditary line to be Chief, but he was also a young unruly spirit who did not seem to fit the part. His peers, however, knew he was tough and held him up to be Chief. After the usual deliberations (“blazing,” as it is called in English) the elders chose Matchewan and the community approved the decision at a community assembly, as was their custom. Reflecting on this years later, Matchewan revealed to me the best advice his father and former Chief, Solomon Matchewan, ever gave him about dealing with white government was, “They are all thieves.”

According to Russell Diabo, policy advisor to Barriere Lake for over 25-years, the Trilateral Agreement might have never gotten off the ground in the first place if it was not for

Matchewan. The politicians could see that Matchewan did not mince words or make empty threats; he would lead the community to fight with everything they had. Matchewan was no lone wolf or rogue despot. He spent hours with the elders taking directives based on Algonquin law and taking his punches when they did not approve of his approach or decisions. Yet, regardless of Matchewan's successes and his great sense of accountability, his confrontational tactics worried some in the community who were not fully apprised of what challenges Barriere Lake faced in the corridors of Canadian and Quebec power. Tactics that effectively worried the government and brought them repeatedly back to the table also made some community members nervous.

Luckily for Indian Affairs, the coup d'état at Barriere Lake was first engineered by other outside parties. Gerard Guay, Barriere Lake's former legal counsel, had a vendetta against the community for firing him. They had let him go because he refused to take direction from the band.³⁶⁹ He sought revenge by exploiting Matchewan's natural enemies. The dissidents at Barriere Lake were led by Joseph Junior Wawatie, who was the grandson of the great matriarch Lena Nottaway, described in my introduction regarding the geographical distribution of families on Barriere Lake's territory. Wawatie was eventually named official spokesperson for the "Kitiganik Anicinabek Provisional Government" – the name the group first chose to replace Matchewan's "Barriere Lake Indian Government." The "Provisional Government" began their campaign to replace Matchewan's Council in April 1994 with a series of newsletters denouncing the council and claiming to be the new government. The attacks also focused on Band Administrator Michel Thusky, advisor Russell Diabo, and legal counsel David Nahwegahbow. The Provisional Government's newsletters contained allegations of fraud, embezzlement of Trilateral funds, and "authoritarian" domination.

Wawatie sent in a petition to the Department of Indian Affairs claiming a newly elected group had formed a counter-council to Chief Matchewan's Council. He submitted a list of five new councillors that he claimed comprised the Provisional Government.³⁷⁰ Within days, Jérôme Lapierre, Associate Director General of INAC, replied that "[i]n light of the submitted documentation we cannot come to the conclusion that the custom of the Barriere Lake Band has been followed nor that the provisional council has the majority support of the community." Lapierre informed Wawatie that the Department would continue to work with Jean Maurice Matchewan's council.³⁷¹ On November 30, 1994, the Minister of Indian Affairs, Ronald Irwin, confirmed this position to Wawatie, writing that "[u]nder the Indian Act... the Department of Indian Affairs has no authority to intervene in the selection of Chiefs and Councils, which are carried out in accordance with the customs."³⁷² These would prove to be famous last words.

Over the next year and a half, INAC repeatedly rebuffed the dissidents' attempts to claim

legitimacy, consistently asserting that the Department does not interfere in the customs of a band. The circumstance of Barriere Lake's customary government made things especially tricky for the Department. Barriere Lake was one of only a handful of bands in Canada that always selected leaders by custom and which never came under the Indian Act legislation. Therefore, the leadership selection of custom bands could not be regulated by the Department, since these inherent rights of governance had never been delegated to Canada.³⁷³ Nor would the Department have any basis of knowledge of the band's customary traditions to intervene and adjudicate an election dispute. Department officials instead encouraged Barriere Lake to resolve their internal dispute by codifying their oral customary code in order to make the leadership process more publicly transparent.³⁷⁴

In the meantime, Trilateral negotiations staggered along. New stall tactics were deployed to jimmy progress in the work plan. While governance issues divided the community, the Sûreté du Québec (SQ), the courts, and provincial government agencies all suddenly found complaint with the community in what amounted to a smear campaign. In 1994, Chief Matchewan was accused of assault by two women from the dissident faction at Barriere Lake. Bail conditions set by the Quebec prosecutor forbade Matchewan from returning to Barriere Lake at a time when Trilateral issues were coming to a head.³⁷⁵ Soon after Matchewan's arrest, the SQ were invited to a community assembly by band administrator Michel Thusky to be questioned on why they only reacted to complaints by the dissident faction and not to calls by other community members.³⁷⁶ Later, while attending Matchewan's trial, to his great surprise, Thusky was arrested in a spectacular and egregious show of force by *twenty-five* police officers. He was accused of detaining two police officers in the band office and refusing to allow them escape – an inconceivable rendering of the assembly the SQ had attended.³⁷⁷ Thusky's bail also forbade him from returning to the community, where he played a critical role as political strategist and negotiator alongside the Matchewan Council. Both sets of charges were eventually thrown out of court, but the damage was done – the community had been side-tracked into legal issues for the better part of 1994.

In 1995, Quebec once again walked away from the Trilateral process, now citing allegations raised by community members concerning rampant sexual abuse on the reserve.³⁷⁸ Angus recalls that “[w]hat the allegations had to do with completing a forestry agreement remained unclear to Band leadership.”³⁷⁹ The band council agreed immediately to an investigation, but found proceedings slow, increasing the risk of a media circus that could undermine the community's political credibility. There is no evidence to suggest for certain that dissident members alleged this abuse, and furthermore, the law protects the identity of those

bringing forth allegations, so their identities may never be known. But anomalies plagued this new set of charges, raising the band's suspicions. Bizarrely, the Outaouais assistant director for Direction de la protection de la jeunesse, Luc Cadieux, made public statements to the *Ottawa Citizen* during the investigation, claiming that 50 percent of the sexual abuse cases were justified.³⁸⁰ In fact, *only one person* was ever charged for sexual abuse, and about a half dozen children were treated for substance abuse.³⁸¹ But the final report released by the Quebec youth protection office never disclosed these extremely low figures, citing privacy concerns under law.³⁸² While the youth protection agency was very open about allegations of abuse to the press, reporters had to struggle to obtain information regarding resolution of the matter. An *Ottawa Citizen* reporter wrote that "Quebec has made getting the truth difficult by withholding critical information on the scope of abuse."³⁸³ The sex abuse allegations appeared to be a manufactured scandal to render Barriere Lake's public image as a community without the moral integrity to govern itself.³⁸⁴

But this was still not to be the end to the mud slinging campaign. The sexual allegations were soon followed up by further allegations of financial misconduct related to the band's deficit, which led to federal threats to freeze Trilateral funding. These allegations were also later disproved.³⁸⁵ As Justice Paul's report had clearly found, the result of the federal government's financial hoarding had forced Barriere Lake to pay for Trilateral research from their meager program funding, wreaking havoc in their financial accounts. Allegations of financial misconduct were then expanded to the band's advisors. Following a visit to the community by Reform Party members, on June 22, 1995, MP John Duncan (Conservative Minister of Indian Affairs, 2010-2013) "raised a question in the House of Commons about allegations of misappropriation of \$255,000 in legal fees paid to David Nahwegahbow," Barriere Lake's former legal counsel. Following inquiries, Indian Affairs concluded that there were no grounds for an RCMP investigation, since Nahwegahbow was acting as Special Representative for Trilateral Agreement and these monies were owed to him in salary.³⁸⁶ (The large sum in fact represents considerable back-pay, since Trilateral employees often had to wait months for remuneration). However, Nahwegahbow was not spared the public stain of humiliation as his name was dragged through the mud.

A final devastating blow: seemingly out of nowhere, fortunes turned for the dissidents at Barriere Lake. What had started out as a letter writing campaign in 1994 escalated into a coup d'état by 1996. The Provisional Government, now calling themselves the "Interim Band Council" (IBC), presented a petition in November 1995, claiming they had won a recent leadership election. They claimed that 259 people participated in this election and that 156 people had

signed a petition in favour of the IBC, compared to only 62 people for Matchewan's Council. An unusual mode of leadership selection, the IBC claimed that Barriere Lake's customary code had "evolved" to "election by petition."³⁸⁷

On January 23, 1996, the IBC was formally recognized by INAC as the legitimate governing body at Barriere Lake. The very next day following the IBC's recognition, an internal briefing to the Minister cautions him to avoid any investigation into the Matchewan council's claims of IBC fraud. Instead, INAC staff issued talking points to which the Department should keep to on the matter of the validity of the IBC. They recommend that INAC insist that the IBC received a strong vote, with over a hundred signatures on their election petition; that the new council had a mandate to write up the electoral customs by June 30, 1996, after which another election would be held; and finally, the that "[o]nce a proper custom selection process is in place, a new Chief and Council will be chosen."³⁸⁸ There is no direct mention of why the current Chief and Council – Matchewan's Council, to be exact – fell short of the criteria for a properly selected council. Ignoring Matchewan's submissions attesting to his ongoing support by community members,³⁸⁹ the Minister is advised to continue to emphasize the need for the community to codify their customary code and to resolve their leadership dispute through "an electoral custom" – neither of which conformed to Barriere Lake's leadership traditions or addressed Matchewan's protestations.

Up until around December of 1995, the Department of Indian Affairs had firmly and publicly rejected any intervention into the community's customary code of governance. But a set of internal briefings show that by at least the end of 1995, senior officials in the Department had undergone a change of disposition towards the Trilateral.³⁹⁰ In January, just weeks before the IBC recognition, recommended actions expand from *collaboration with SQ* to a focus on financial matters, now including recommendations for the nomination of a third party manager to control the band's budget. The briefing assures the Minister that if the recommended action to recognize the IBC election is taken, that, "*in the meantime DIAND will be in control of programs, services, and budgets.*"³⁹¹ To get control of a band's finances, INAC flexes a policy called "third party management" that authorizes the outsourcing of financial management and accounting of First Nation band council funds to external consultants.³⁹² It is therefore unlikely a coincidence that on the very day that the IBC were recognized by INAC, the newly minted council approved the nomination of Anthony Blouin of BDL Management and Consultant Inc. as third-party manager of the band.

Seeking advice from the Department of Justice (DoJ), INAC was warned unequivocally that "in strict legal terms, there is no such thing as 'recognition' of a band council."³⁹³ The

consequences then, of recognizing the IBC, would be that “any subsequent actions that the Minister might take with regard to the newly recognized band council would be subject to review by the courts in one way or another.” DoJ counsels that, “the most wise course would be to make the determination of who is regarded as the true band council in a procedurally fair matter, in order to help ensure that the correct determination is made.”³⁹⁴ As we have already seen, the INAC did quite the opposite. Following the initial circulation of a petition by the dissidents in November, Matchewan invited INAC to hold a referendum in the community to verify the support Matchewan still held, but INAC ignored this request.³⁹⁵ Then Matchewan communicated to the Department that there were egregious problems with the petition signatures, including many names of people who did not live in the community or that claimed to have been misled into signing for the IBC.³⁹⁶ Matchewan even countered with a petition attesting to the community’s support of his council – collecting 152 signatures – to no avail.³⁹⁷ Calls to the Minister of Indian Affairs for the immediate suspension of the IBC went unanswered.³⁹⁸ The Department, in fact, had no means to verify the legitimacy of the “newly elected” council, since they had no knowledge of Barriere Lake’s customary code. So how could they have felt assured that their arbitrary decision reflected a “procedurally fair” adjudication of Barriere Lake’s leadership selection practice? This was precisely the legal predicament DoJ presciently warned INAC to avoid.

It would take years for evidence to surface confirming Barriere Lake’s conviction that this coup d’etat was in part the product of Canada’s change of heart regarding the Trilateral Agreement. In 1999, in relation to a labour dispute at Barriere Lake adjudicated by Madame Justice Tremblay, two findings of particular interest were submitted as matters of fact in her ruling: the first, confirmed that the agitation by dissident Barriere Lake members was instigated by Gerard Guay, the disgruntled lawyer that the customary council had fired for unprofessional conduct, and; second, that *Indian Affairs was advising the group of dissidents on how to seize power.*³⁹⁹

The Interference Archive

I would like to take a moment to point out here that this careful reconstruction of the “coup d’etat” is not aimed to single out the “good” guys at Barriere Lake from the “bad guys,” but rather to emphasize that this incident cannot be simply dismissed as an “internal dispute,” as often is the case. Certainly, there was substantial misinformation circulating in the community about individuals and about the Trilateral Agreement and its funding. There was also a genuine rift in political opinion, much as one would find in any political community, or at any level of

government. But there also have been and continue to be ongoing efforts at reconciliation to mend political differences between families and individuals in the community – efforts, one might add, to be envied from a Canadian perspective. The conflict represented here is not intended to cast stones at particular factions in the community, especially in the context of a band under considerable external duress, but rather to be read closely as a much more damning indictment of Canada, Quebec, and the unethical mores demonstrated by individuals and firms in the law industry. In Chapter Nine, I examine another leadership dispute that focuses more specifically on reconciliation efforts, and I hope that provides a strong antidote to the more black and white perspective represented here.

To reiterate, the broader context of this current “internal dispute” is crucial. Recognition of the IBC was convenient for a federal government increasingly anxious about the precedent that the Trilateral Agreement could set for other bands. In 2002, Barriere Lake received a letter from Prime Minister Jean Chrétien’s office. The letter was a response to concerns raised by Barriere Lake’s Special Representative at the time, Michel Gratton, questioning the federal government’s commitment to the Trilateral process. Chrétien blatantly expresses his preference for the land claims process as a “solution” to the crisis. He wrote: “I am... confident that a positive long-term solution can be found, specifically through negotiations concerning global territorial claims.”⁴⁰⁰ Over a decade after the Department’s recognition of IBC, more definitive evidence of such federal concern surfaced in a “protected” document released accidentally through court disclosure in another matter. In a briefing to the Minister, a high-profile government official acknowledged the threat the Trilateral could pose as an alternative to an unpopular land claims policy. Former diplomat Marc Perron counseled the Minister of Indian Affairs at the time, Chuck Strahl, on the terms Barriere Lake continued to set for negotiation:

The former Chief clearly indicated that the ABL [Algonquins of Barriere Lake] had no interest in comprehensive claims. They hoped to maintain Federal responsibility (and their obligations) and to obtain rights and co-management on the territory (including royalties) ... A question we could ask: why bother negotiating a land claims agreement when we can obtain benefits (at least partially) through a partial accord like a trilateral agreement? Other First Nations would be justified in questioning this matter. *And it’s the current overall comprehensive lands claims and self-government negotiations which could be questioned.*⁴⁰¹

An alarming admission that a real threat the Trilateral posed was its insinuation of an alternative to the Comprehensive Land Claims policy.

Partisan politics also accounts in part for the federal Minister of Indian Affairs’ sudden unwillingness to implement the Trilateral Agreement. According to Clifford Lincoln, it was the

Liberals who started to pull away from the table at the end of 1993, after taking over federal power from the Conservatives. Lincoln had been Barriere Lake's Special Representative up until this point, and when he was elected into the House of Commons, Michel Gratton took over. As Lincoln tells it: "After we got elected, the first Minister of Indian Affairs... he started to get very inimical to the Algonquins. First of all, the cost of it was starting to bother them, and certainly, the Liberal ministers increasingly got 'anti-Trilateral Agreement' – they thought it was a waste of money, a waste of time. And it also coincided with the opposition there, the petition – where they destituted the band – and so all this was one. They didn't want the Trilateral Agreement, they were fed up with... Matchewan – and felt that the people there were too demanding, too aggressive. So they welcomed the petition, which caused a huge upheaval in the community..."⁴⁰² The struggle over the Trilateral had begun to get personal.

As far as Quebec was concerned, the fact that Barriere Lake would keep all of their lands in the Trilateral process had serious economic implications for the forestry companies operating in the Trilateral territory. The logging industry was nervous about loss of wood volumes and control over cutting sectors. If the governments had incentive to terminate the Trilateral Agreement, so did the logging companies. Barriere Lake had successfully won an injunction against their former lawyer, Gerard Guay, who represented the Provisional Government for a short time⁴⁰³ (in 1994, the customary council supporters had him removed, citing an egregious conflict of interest), but the community soon learned that the IBC were now legally represented by the large Winnipeg law firm of Thompson Dorfman and Sweatman, *the same firm that represented Domtar Inc.*, which had the largest logging concessions of any company in the Trilateral area. Matchewan's Council alleged that before being appointed by Irwin, the dissidents had already received counsel from Domtar lawyer Rhada Curpen, girlfriend to Gerard Guay's brother.⁴⁰⁴ In the community's eyes, it was as much a government coup as a corporate takeover.

The law firm of Thompson Dorfman and Sweatman, on behalf of their Indigenous clients, filed a motion in December 1995 with the Federal Government requesting the dismissal of the Barriere Lake customary council.⁴⁰⁵ They also asked that Matchewan's Council turn over all documents pertaining to the Trilateral Agreement, "including, but not limited to,... all records... band records, accounts and books."⁴⁰⁶ In his capacity as Acting Special Representative for the Algonquins of Barriere Lake, Nahwegahbow provided an Affidavit stating that this conflict of interest "would entitle Domtar, through their legal counsel, to gain access to the confidential records of the Algonquins of Barriere Lake"⁴⁰⁷ – a terribly compromising outcome for the Algonquins.

The dissidents had by now set up as a government in exile in the town of Maniwaki, 130 kilometers to the south of the Rapid Lake Reserve. Barriere Lake's lawyers fought to stop the transfer of Trilateral documents. As far as the Barriere Lake customary government was concerned, "the Trilateral Agreement [would] be effectively dead if something [was] not done soon to reverse the decision of DIA."⁴⁰⁸ The community believed that Matchewan was deposed because he was leading the fight against the logging companies and taking a stand against a corrupt land claims policy. With Chief Matchewan out of the way, logging could proceed unabated and the Trilateral Agreement could slowly die of neglect, removing a dangerous model for Indigenous self-determination from the options for bands trying to secure formal jurisdiction to their lands.

The federal government suspended the Trilateral Agreement after IBC took power. In just two short months from the time the IBC was recognized, the community had been scheduled to renegotiate the Trilateral Agreement – an agreement the IBC had vilified repeatedly in their communications, though ostensibly still claimed to support.⁴⁰⁹

With INAC's recognition of the IBC as the legitimate government at Barriere Lake, the dissident council attempted to withdraw their application filed in December 1995 with the federal government requesting the dismissal of the Barriere Lake customary council. The Judge refused, agreeing with the Attorney General of Canada – and in fact, concurring with the advice that DoJ had given INAC – that the basis on which the ministerial decision was made was "purely administrative in nature and was made solely for the purpose of permitting the Minister to discharge his duties to the Band."⁴¹⁰ The trial went ahead and Justice Madame McGillis determined that "the question of the legality of the selection of the Interim Band Council remains to be determined."⁴¹¹ Suddenly, INAC was in precisely the precarious position they had been warned against by the DoJ when they recognized the IBC – subject to a barrage of legal violations they were now forced to defend. The fact of the matter was that there is no such thing as an "Interim Band Council" under the Indian Act, nor under the Barriere Lake customary code. But while the legal question of IBC's status of a band had been resolved, the political question hung in the balance.

A final question of timing is raised by the coincidental date of federal recognition for the IBC. On the day that Matchewan was deposed, he was scheduled to make an extremely critical announcement regarding a study undertaken on the quality of the federal education program at Rapid Lake. The Education Report, prepared by Rosalee Tizya and Louis Bouchard found that the Department of Indian Affairs "totally and absolutely failed to meet" basic provincial standards of education. At a press conference on the day of the IBC's recognition, Tizya

expressed her “outrage” to the media “at the lack of services these students have received for the past 18 years and we have to ask ourselves, where on earth was the Department of Indian Affairs when this process was going on. In the wide-range assessment tests that were done in October and November, from grades 3 to 7, half of those students have kindergarten spelling, math and reading... 90% of the students of Rapid Lake that go to Maniwaki and Hull end up in remedial programs. Nowhere in this country has any school board tolerated a record like this, nowhere.”⁴¹² The community endured eighteen years of this impoverished and failed education system.⁴¹³ The story, however, was buried in the sudden chaos caused by recognition of the dissident faction. People close to the community believe this timing was no coincidence.⁴¹⁴

Aftermath, Recovery and Collapse

The immediate aftermath of the DIA’s recognition of the dissident council was devastating. Once again, the Algonquins put their bodies on the line for the land and their customs. Thirty community members occupied the band council office to prevent the IBC from striking up their organizing base there; another two dozen teachers and parents occupied the federal school on the Rapid Lake Reserve.⁴¹⁵ True to INAC’s internally communicated plans for “collaboration,” the SQ patrolled the reserve daily.⁴¹⁶ The Rapid Lake federal school was soon shut down by the principal, Jonathan Robinson, to ensure public safety as the factions grew increasingly hostile. One hundred and ten kids – aged 1 to 7 – were left without formal education.⁴¹⁷ The IBC were forced to govern from Maniwaki since they were not accepted by the community as legitimate representatives, so the federal government cut off programming dollars and welfare money to the reserve, in what Charlie Angus called a “starve or submit scenario” to force Barriere Lake to surrender and accept the IBC as their governing council.⁴¹⁸

Angus’ words are not rhetorical terms. The community’s sacrifices literally meant a spell of hunger. For over a year, the children were not in school and the community lived without power, electricity, or reserve medical services; they survived on what they could hunt in the bush. Marylynn Poucachiche, a community spokesperson, and one-time youth representative for Barriere Lake at the Algonquin Nation Tribal Council, remembers the hardship of those long, dark months:

So the majority of our community was here for a year and a half without electricity, without running water, without medical services or any programs and services for that matter. We were all on welfare at that time. I remember I had just had my baby at that time, my two babies, I was young myself. It was hard for me. It was hard for a lot of people. There were people getting sick and often times we’d have to do our best that we could to transport ourselves when it came to surgeries and stuff like that. But often times

we would use our bush medicine when it came to our babies coming up with fevers or colds. That is how we would survive using our bush medicines as much as we could, feeding off the land, going hunting, setting nets so we could feed a couple of families at a time. At that time, when they would kill a moose, they would try to get a piece each to each person in the community...⁴¹⁹

Despite the hardship, Barriere Lake showed no sign of surrender. They mounted new barricades to stop the clear-cutting in 1996 and the blockade remained in place through a second harsh winter without supplies, food, or school for the kids. Michel Gratton, former provincial cabinet minister and Special Representative for the Algonquins, reported to the press about living conditions at the time at Rapid Lake: “They have nothing to eat. Almost everyone’s on welfare. With the barricades they haven’t had a chance to hunt for moose. They are suffering many hardships. People have lost weight. They look despondent. The community’s patience is wearing extremely thin.” Things got to the point where the community had to request emergency food from Quebec.

Eventually, word got out about Barriere Lake’s destitution and the federal government started to feel the heat. Feeding the fire, Gratton issued a strongly worded critique against the federal government in the *Montreal Gazette*, stating that “This unilateral decision to replace the Chief and Council... is the imposition and diktat of raw power by the department against a small community without the resources or ability to defend itself.”⁴²⁰ Another *Gazette* article noted the irony of Domtar taking the worst economic hit from the crisis, since “many Algonquins believe [the company] encouraged Ottawa to remove former Chief Matchewan from office.” The most indicting fact reported, however, was that “[a] Domtar lawyer had admitted to advising a dissident faction of pro-forestry Algonquins who campaigned for Matchewan to be removed.”⁴²¹ In the meantime, the blockades resulting from violations to the Trilateral Agreement were costing Domtar enough money to lay off 100 forestry workers in the week after the blockade went up. Domtar then moved on to other areas, but they claimed that ongoing costs of disruption threatened to close down its Grand Remous sawmill that employed 125 workers.⁴²²

By now, Quebec was also pressuring the federal government to resolve the leadership dispute. Pressure from the forestry companies was intensifying, affecting the province’s own bottom line. Guy Chevrette, Quebec Minister of Natural Resources and Native Affairs sent a “stern letter” to federal Minister of Indian Affairs, Ronald Irwin, demanding action and pointing to the way federal intervention in leadership wreaked havoc on provincial land and resource management.⁴²³ At last taking action on the file, despite being outside their jurisdiction, the Director General of the Quebec Region for DIA responded to an Elders’ Council request in the community and appointed Michel Gratton and André Maltais as Facilitators to assist in resolving

the leadership dispute. Through an extensive community consultation, the community reaffirmed Harry Wawatie as the rightful Chief of Barriere Lake, with Charles Ratt, Eddy Nottaway, Antoine Decoursay, and Peter Poucachiche as Councillors. (A month earlier, Chief Matchewan, Council Jean Ratt Paul and Administrator Michel Thusky had finally resigned, citing legal harassment from both the federal government and Interim Band Council.⁴²⁴) On April 17, 1996, the Department of Indian Affairs at long last recognized Chief Harry Wawatie's customary Council as the legitimate leadership of the band.

A lengthy process of restoration of relations between the governments and the band began with the appointment of Quebec Superior Court Justice Rejéan Paul on May 7, 1996. One task at hand was to assist the Algonquins in codifying their existing customs on governance, which were affirmed and proclaimed by Declaration, and formally produced the Mitchikinabikok Anishnabe Onakinekawin (MAO) written code. Also, in addition to the code, through community consultations, Barriere Lake produced Amendments One and Two to the MAO, which augmented existing customs to changing circumstances, such as the inclusion of an election process for a board of directors to handle the administration of programs and services for the community. The codification of the ancient oral customs of the Barriere Lake Algonquins is a complex story unto itself, since the nature of the sacred constitution itself in many way defies such flat literal representation. However, in order to avoid at all costs a repeat of the devastation caused by the Department's recognition of the dissident faction, the community felt pressed to submit to the process. Harry Wawatie in particular foretold that the codification would come back to haunt them in the end.⁴²⁵

Key among Judge Paul's findings were addressed to INAC's recognition of the IBC. He issued a formal report to the Minister of Indian Affairs, which found that Elders have a supervisory role and responsibility for leadership customs, contrary to IBC's claims.⁴²⁶ Historian and researcher Peter Doug Elias' expert historical opinion was solicited by the facilitators; he concluded that the MAO is consistent with Barriere Lake customs, that Barriere Lake does not have a modern tradition of selection by petition, and that according to their customs, only members who have knowledge of and connection with their traditional land are entitled to participate in decisions regarding customs and leadership selections.⁴²⁷

The community contemplated litigation against the Minister for the DIA's 1996 intervention. There were still many grievances and outstanding issues to resolve, not least of which were the deficit and financial complications leftover from the IBC's unauthorized reign of power. Barriere Lake would have a strong case in the courts, given that even the DoJ had informed INAC that their actions were illegal prior to their decisive move. But the facilitators –

Michel Gratton and Andre Maltais – convinced the community to restore relations through negotiation. Hence, the community went forward instead with a Memorandum of Mutual Intent (MOMI) in the hope of restoring relations after the years of turmoil, hunger, and despair. The Department of Indian Affairs, for its part, promised an era of reconciliation and peaceful relations. In October of 1997, with the blessing of Minister Jane Stewart, Deputy Minister Scott Serson signed the MOMI, committing the federal government to building new housing, completing the final phases of the Trilateral work, and electrification of the community. Other community priorities were also identified, such as building a multi-functional community centre, growing local capacity through community, social and educational development monies and administrative development, and finally, promising restoration and consultation costs for the Trilateral Agreement, which the agreement described as “fundamental to the future of the First Nation.” The plan was laid out in an annex entitled, “Global Proposal for Rebuilding the Community,” with estimated costs neatly labeled next to each commitment.

Barriere Lake were also negotiating with Quebec on issues particular to provincial jurisdiction. In 1998, a Bilateral Agreement was signed with the Government of Quebec addressing what they called key “quality of life” issues for the Algonquins, such as expansion of the Rapid Lake Reserve, connection of the community to the hydro grid, and access to economic opportunities on the territory, including resource revenues.⁴²⁸ The joint recommendations introduced in the Bilateral Agreement were negotiated with John Ciaccia, who had been appointed as Special Representative for Quebec at this time. He also discussed with the community an approach to complete Phases 1 and 2 of the Trilateral Agreement, and move forward with the implementation of the integrated resource management plans.

Word had begun to spread about the cutting edge research, modeling, and land management planning the Algonquins were undertaking, and they received considerable outside support from forest conservationists, First Nations, and environmentalists who admired the integration of traditional ecological knowledge with non-Native land use needs.⁴²⁹ Though disagreements persisted, the Trilateral research inched forward.⁴³⁰ By May 2000, Gull Lake, the first IRMP of seven management areas of the Trilateral area was underway. The community was heavily involved in reviewing the plan and technical work that incorporated their traditional knowledge into the land management plans. In June 2001, Barriere Lake announced they were submitting the Gull Lake IRMP to Quebec planners. This area was the most contentious of seven management zones for which Barriere Lake was preparing “measures to harmonize” plans; it brought to bear Sensitive Area Studies work with harvest studies and the Phase 1 field research with elders and regional harvesters. It was to be the model for all the other areas. Among the

protected measures at Gull Lake was the preservation of spawning sites, sugar-bushes, wildlife habitat and medicinal plant collection areas. The average size of clear-cuts had been reduced to between 20 to 30 hectares and the total area harvested had been reduced from 3000 hectares to 600 hectares. The resource management plan was setting the pace as a model in sustainable land use, guided by the deep indigenous ecology of the territory.

In the wake of this tremendous progress, a mere month before the completion of the Gull Lake IRMP, federal officials complained that the Trilateral Agreement was costing too much money, taking too much time, and that there were not enough concrete results to date. Canada had by this point spent \$5 million, and the province \$2.5 million. Canada walked away from the table again. Sophie Lise Ratt of Indian Affairs, in an act nothing short of cruel mockery, told the community if they wanted to complete the project they could use their housing dollars.⁴³¹ (Health Canada issued a report in November 2000 that highlighted the deplorable condition of housing on the Rapid Lake Reserve, including several warnings concerning houses where residents had developed chronic respiratory problems suspected to be linked to mold in the buildings).⁴³² Ratt then proceeded to stand up the community for a meeting she was confirmed to attend on the urgent issue of logging operations in the wake of the crisis the federal government had invoked.⁴³³

The Deputy Minister of Indian Affairs was no more forthcoming in his communications. In response to an 8-page detailed letter from Harry Wawatie that surveyed the Department's failure to fulfill its multiple obligations under the MOMI and Trilateral Agreements, Marc Lefreniere replied in a brief, terse letter that ignored all mentions of agreements the federal government had signed with the community and instead expressed his understanding that it was the IRMP that was *most* important to the community, advising them to take it up with Quebec and the Region to identify a proper approach and resolution.⁴³⁴ He then complained that the process of Trilateral work had been lengthy and inefficient and that the federal government would regretfully no longer be involved. Clearly appalled, the Chief responded by reminding Lefreniere that the MOMI was signed *in the aftermath of his Department's illegal deposition of the community's chief and council*. The MOMI was facilitated jointly by Lefreniere's Department and the Algonquin community in order to *rebuild* the relationship between them. As a result of those two years of INAC meddling – and in addition to the early years when the federal government deprived the Algonquins of funding to carry out the plan – the community lost years on IRMP work, yet the Department had the audacity to raise the lack of progress on the Trilateral Agreement.⁴³⁵ On September 26, 2001, DIA went one step further and put out a statement

claiming that the MOMI was simply a declaration of intent and good will “which did not create legally enforceable rights or obligations.”⁴³⁶

Why did Canada adopt such an absolute strategy of refusal just as the Algonquins were on the brink of submitting the first and most comprehensive of land management plans for the territory? The coup d'état had failed. The criminalization of leaders had failed. The attempts to starve them into subordination had failed. Barriere Lake had still not been prepared to give up the Trilateral Agreement. Whatever good will had been extended to extract themselves from the disaster of the IBC recognition burned up quickly as the community approached completion of the Gull Lake resource management plan. The fact remained that the government had signed an agreement that was not in synch with the federal land claims policy. Russell Diabo claims this was behind Canada's hard-line withdrawal, stating that, “Comprehensive Claims is definitely where the federal government is trying to push all the Algonquins.”⁴³⁷ Michel Gratton concurs with Diabo's assessment that Barriere Lake's refusal to enter into the Comprehensive Land Claims framework for land claim settlement was a key part of the incentive to shut the project down. He said, “They hate the idea of the Algonquins negotiating *not* a land claims agreement. But you know the process with the land claims agreements - the lawyers' fees eventually come out of whatever the community gets. And, with the Trilateral, it was a different procedure and they hated it.”⁴³⁸ Canada had walked away from the Trilateral Agreement despite the fact that within sixteen months the whole process would have been complete.

Negotiations with Quebec were only slightly better. The province was demanding that Barriere Lake complete all their Trilateral work in four months, despite an assessment – jointly conducted with their own Department – that the work would take a minimal of sixteen months to complete.⁴³⁹ Again, the hypocrisy was extreme. For example, while it took eight months for Quebec senior officials to draft the Terms of Reference and an Action Plan for the Wildlife Working Group – a Trilateral subcommittee – the province now expected the community to complete the entire wildlife management assessment in half that time. The Bilateral Agreement fell apart.

When Indigenous and Capitalist Interests Align

Barriere Lake and the forestry companies were plunged into crisis by the sudden withdrawal of Trilateral funds. The community was forced to suspend all logging in the territory, informing companies that when cutting was complete in areas that had been measured to harmonize with Algonquin land use, they would have to leave the territory. Chief Wawatie sent letters to each of the forestry companies operating on their land: Domtar, Lousiana Pacific, Bowater, Bois Omega,

Davidson and Commonwealth Plywood. He addressed them as allies, rather than as enemies: “As you know, since we signed the Trilateral Agreement... our First Nation has endeavoured to maintain a stable environment for forestry companies operating within the area. Despite our greatest efforts, the process has been frequently suspended or delayed... Of course, the main victims have been those who have the most to lose: the companies and our community.”⁴⁴⁰ Several of the forestry companies wrote to the federal and provincial governments to support the Trilateral Agreement emphasizing the real achievements of the land management plan. Even Domtar rose to the occasion; the company had warmed to the Algonquin perspective on land management since the days of advising the dissident council. Senior Vice President Craig McManus wrote to Indian Affairs Minister Robert Nault:

Domtar is concerned that the breakdown of this negotiating process will produce harmful effects. Domtar is striving to achieve genuine harmonization between industrial forest use and traditional aboriginal activities: all on the basis of collaboration and partnership. We felt that the spirit of cooperation encouraged by the Trilateral Agreement process is helping to build a more trusting relationship between the parties and has yielded more concrete results.⁴⁴¹

But even industry’s demands fell on deaf ears.

Tensions often arise between the state’s logic of territorial acquisition and the mobile logic of capital accumulation. As Arrighi’s theory of the long twentieth century contends, there is a “recurrent contradiction between an ‘endless’ accumulation of capital and a comparatively stable organization of political space.”⁴⁴² The common project is to make the world safe for capitalism. But these logics, Arrighi observes, have not historically operated in isolation from each other, “but in relation to one another, within a given spatio-temporal context.”⁴⁴³ The Algonquins’ case presents an example of both ambivalence and strategic cooperation between territorial and capitalist logic: throughout negotiations between Barriere Lake and the federal and provincial governments, forestry companies exerted pressure in two directions – towards Indigenous rights and towards infringement and violation of these rights – depending on the economic risks perceived in each type of intervention at particular moments of accumulation.

By the early 2000s, tensions between settler state logic and the logic of capitalist accumulation were at a historical conjuncture of divergence. Barriere Lake territory was the site of intense jurisdictional conflict the state was determined to resolve through land alienation, and ultimately, extinguishment by the land claims process. In contrast, the logic of capitalist accumulation in the forestry industry had led to the loggers’ adaptation to Algonquin land use. From industry’s perspective, the threshold for tolerance was manageable: Algonquin demands on

surplus value were relatively low and the Algonquin land management system was focused on long-term sustainability for non-renewable resources, not an outright ban. Industry's bottom line would ultimately hurt more if they continued to violate Indigenous jurisdiction, therefore the best way to protect their proprietary interests in the lumber would be to respect Algonquin jurisdiction.

Here we find an interesting resolution of jurisdictional overlap. The forestry industry's preference was primarily for a stable property rights system, protected and enforced by the state, back by security forces if necessary. But Algonquin resistance to destructive clear-cut logging created ecological and financial incentives for the companies to take care of the land. Resistance here acts as an important diagnostic of jurisdictional power and its material affect. Heterogeneous modes of governance conflicted on the territory, where jurisdiction was ultimately recognized, firstly, based on who had the power to enable the regulation of economic activity on the territory, and relatedly, on who was willing to work with the Algonquins to protect the land. The *how* of jurisdiction here involved a negotiation over different kinds of proprietary interest: the Algonquins had obligations to steward the land for future generations; the foresters had short-term profit-motivated goals. Through a co-management regime that prioritized Algonquin land use and forms of life – with promised economic benefits to come in the final phase of Agreement implementation – the Algonquins secured recognition for authority over their lands. As Deborah Rose Bird points out, for Indigenous people, *who* you are is *where* you are, thus “to get in the way of settler colonialism, all the native has to do is stay home.”⁴⁴⁴ On Barriere Lake's territory, proprietary interests were leveraged as productive techniques of jurisdiction in the struggle to defend their lands.

For the state, the stakes of accommodation proved too high to cede any jurisdiction. While the federal government claims the authority to govern Indigenous peoples and their lands, it also simultaneously rejects the accompanying legal and financial responsibility that jurisdiction proffers. The federal government resolves this contradiction in a few ways. First, Canada attempts to offload jurisdiction over Indigenous peoples to the provinces. In this case, INAC tried to offload the Trilateral Agreement entirely onto Quebec, serving two main goals: (1) it confirms settler colonialism's structure of extinguishment, because provinces have a weakly defined fiduciary obligation to Indigenous nations; (2) related, the provinces foreclose the possibility of a nation to nation relationship with Indigenous peoples. That is because functionally, reserves become *de facto* municipal creatures because there are no other institutional frameworks under current settler colonial structures of governance by which they could be governed. The province, in turn, must accept the financial burden for managing Indigenous populations, while its own

economic self-preservation as a governing power relies on its jurisdiction over natural resources: a discrepancy that is not likely to be resolved in Indigenous peoples' favour. The second way the federal government resolves its dilemma of jurisdiction is by cultivating its disciplinary powers to create new frontiers of killing through the police, courts, and bureaucracies. Third, the state's ongoing convergences with the logics of capital will be addressed in the following chapters, especially Chapter Ten.

For now, time loops slowly in circles. In October 2001, the Algonquins arrived on Victoria Island in Ottawa. Victoria Island, nearby Parliament Hill, is a tourist site with teepees and tents for visitors to learn about Indigenous cultures. Now the living tents and teepees teeming with real Algonquin life and struggle took the place of nostalgic representation. A cold rain fell, but families refused to leave until the Deputy Minister agreed to meet with them. The National Chief, Matthew Coon Come, visited the Algonquins on the island to show his support for the Trilateral Agreement, drawing critical national attention. But it was only after marching to an Indian Affairs building in Hull and occupying the lobby that they were they finally granted short audience with the Deputy Minister. Canada would still not budge. In a prescient news report, the stuff of tragedy, a reporter covering the Victoria Island occupation foreshadowed the worst case scenario: "It's been 14 years since the first protest here on Victoria Island. Fourteen years of fighting for a future for these children. The Elders worry they still may be here 14 years from now: different kids, different faces, but the same old fight for basic needs."⁴⁴⁵ This proved to be true.

The Trilateral Agreement never actually died. But it would take on a life of its own for the next generation. As Audra Simpson points out, "The condition of Indigeneity in North America is to have survived this acquisitive and genocidal process and thus to have called up the failure of the project itself."⁴⁴⁶ In this hopeful light of failure, we will now examine the state's unfinished jurisdictional claims from the perspective of Barriere Lake's customary governance system and legal order. I want to show how the force of Barriere Lake's exercise of jurisdiction over their lands has undermined attempts to erase "the native" on the land.⁴⁴⁷

PART III: ONAKINAKEWIN

CHAPTER SEVEN – Jurisdiction from the Ground Up: Law, Land, and Leadership

Elders at Barriere Lake told me, if you want to understand the Trilateral Agreement, you have to spend time on the land or you will not get the idea of what this is all about. Elder and customary knowledge holder Toby Decoursay explained, “We know this land – we have a language for everything that happens here. That’s what the Trilateral is about – that is why Barriere Lake has this and no other nation.”⁴⁴⁸ The Trilateral Agreement is an expression of what it means to be Mitchikanibikok Inik. It reflects the extensive knowledge and deep inter-relationships the Anishnabe have with their territory. The Mitchikanibikok Anishnabe Onakinakewin is Barriere Lake’s sacred constitution that contains the law for everything that grows on earth. It is not a set of ideas that can be written down, but rather embodies all of the living relationships in the world, which are governed by the principle of respect. The Trilateral Agreement was meant to ensure that the land was protected so that these relationships would not be lost. It grows directly out of the belts, wampums, and prophecies of the Barriere Lake Algonquins. To understand the jurisdictional conflict unfolding over their territory, we need to better understand the Indigenous legal order that governs the land.

Toby told me, *this is where everything starts*: the three-string wampum. It represents the teachings of the Onakinakewin. Unlike the other wampums of Barriere Lake, the three-string is about spirituality, about “how the Anishnabe ruled,” he explained.⁴⁴⁹ The original three-string was made with a rock: a hole bored through the middle and three strips of hide laced and knotted through. Toby said it could be buried somewhere on the territory, but no one is truly certain. He considered the newer wampum in his hand and said, “You can look at it this way – this is the earth, the sun, mother nature – everything that grows... Even animals – male bear, female bear, and a cub. And birds are like that, too.”⁴⁵⁰ As he spoke, he separated each hide strip into three parts, to show its components, then gathered them together at the end of each count.

We were on his land at Barriere Lake, near where the traditional settlement village was once located before it was flooded by dams. Toby wore a band around his forehead and a worn leather jacket. We had spent most of the afternoon with replicas of Barriere Lake’s wampum belts, sitting on logs by the water or on the screened-in porch when it rained. Philomene sat by her husband’s side each time we spoke. Toby was chosen at a young age to carry the customs of the Mitchikanibikok Inik. He is a quiet man in his mid-50s, good-humoured and patient, healed after many years of addiction stemming from his painful residential school experience where he

was beaten and starved before finally running away for good. Toby first learned about the Trilateral when he was 17-years old. The elders relayed to him a vision that the forests would disappear around them and the Onakinakewin would rise again.

The three-string wampum starts the teaching, Toby emphasized, of “what role to play, how to lead.” The three-string wampum is the beginning of the teachings and usually appears when the fire is made. The first time Toby spoke to me of the Onakinakewin was by the fire, where community members had assembled on his land to hear the teachings. He told us then, “What we feed the fire is what comes from the land.” He explained that the firekeeper starts the fire and each individual holds something – tobacco or something from the land – and then one by one they burn what they are holding as they speak what is in their heads and in their hearts. This is what creates the fire and this communion is what keeps the fire burning.⁴⁵¹

A few months later, at his tiny wooden cabin on the Rapid Lake reserve, Toby counted out the hide straps again. Philomene made tea, then took her place by Toby’s side. “The long string is the grandfather, next is the grandmother, then the young generation.”⁴⁵² These separate components form a crucial whole. He told me about a cultural camp he once ran for the kids many years ago. It was initiated by the community as a rehabilitation effort after the sexual abuse charges were investigated. The community had insisted they had their own methods to deal with social issues that arose, rejecting federal programs run by outsiders. At the camp, the kids learned about their territory. They learned toponymy (Algonquin place names) and a highly-specific language of navigation, like the word for the flow of the current when it splits around a small, mid-lake island. They learned about the medicines and how to harvest medicinal plants. Toby showed me a thick crust of black fungus the Algonquins once harvested from pine trees. The *sikinagan* contains a crucial survival trick for winter camping: the black mould can hold an ember for an entire day, allowing hunters to spark a fire in the moist snow to keep them warm throughout the night.

The Onakinakewin is an oral tradition embodied in the Mitchikanibikok way of life, located primarily in the bush.⁴⁵³ In Barriere Lake, nearly all stories about the Onakinakewin lead back to hunting. One night, elder Eddy Nottaway explained to me, “To understand the Anishnabe Onakinakewin, you have to know about hunting and you have come out trapping.”⁴⁵⁴ He reiterated what Toby had explained, “It’s best to tell stories around the fire, that’s when they all come back.” Then he talked for a long time about trapping beaver. He said, you have to wait days, weeks sometimes for beaver. You have to see if they are male or female by how they swim. Beavers are clever, Eddy warned. They want to outsmart you, but you have to wait them out. They can stay under for a long time, burrowed down or escape through multiple exists, outwitting

awaiting human hands. Others had warned me, as well, that if you abandon your hunt for the beaver mid-way through, you will be cursed with bad luck for the rest of the season. Stories abound of beavers anchoring misfortuned people for weeks to a den.

Understanding how to trap beaver is not simply learning a technique for killing the animal. Trapping is contingent upon understanding the seasons and connects to the ultimate goal of land management to ensure ecosystem protection. Trapping techniques are based on an in-depth knowledge of how to cull beaver to control the population and maintain healthy waterways and forests. When Eddy described how one must recognize a beaver's sex by how they swim, he was referencing the crucial information necessary to know which animals to take in order to fulfill these conservation goals. If too many of either sex are killed, a den will suffer, especially when there are babies that need caring for by their mothers. If beavers are taken in the wrong season, the young can suffer and affect the population's regeneration. Eddy lamented that the government did not understand that nobody owned the land, but that the Mitchikanibikok Inik had the knowledge to take its care. This knowledge is the repository of hundreds of generations of Algonquins who have lived on the territory; it reflects a certain right mind and right intent in relation to the land. It reflects a certain kind of belonging to the land that is based, in a word, on *care*.

Bradley Bryan writes that the kinds of social relations underlying conceptions of property signify something about our ontological status in the world: "Our ideas of property seem to be present in much of the way we comport ourselves with respect to each other and the world."⁴⁵⁵ The Onakinakewin teaches a comportment of care; one has to possess extensive knowledge of the land to gain responsibilities of jurisdictional authority. Thus the objective of colonial governments fighting for jurisdiction over Indigenous lands must include the erosion of an ontology of care. In Indigenous societies, same as Western, conditions of primitive accumulation alienate communities' capacities of self-reliance to state governments and corporations; people are no longer responsible for taking care of constituent practices of their ways of life. These responsibilities are delegated instead by way of markets, elections, and most profoundly, to Indian Affairs. When internal conflicts arise, communities begin to look to these agencies to correct them, as well. This means that people lose not only their skills for taking care of themselves and the land, but also the knowledge to manage their lives into the future.⁴⁵⁶ As James Tully poignantly remarks, "this is a special and understudied kind of dispossession – namely the dispossession of the whole ethos in which community-based property relations are grounded and sustained."⁴⁵⁷ He calls this ethos "property as taking care." In this sense, the Algonquins of

Barriere Lake have resisted dispossession by sustaining relations of care though their ongoing connection to the land.

In comparison to property as taking care, settler property relations on Barriere Lake's territory have been driven by logics of accumulation and transaction. Certainly transaction is not the only property relation operative in liberal capitalist societies, but in the context of Barriere Lake's lands largely due to its unique history and geography permanent settlement and thus, the associated property relations of belonging attached to ownership and cultivation, have not played a major role in their jurisdictional struggles with settler society. Incursions on Algonquin lands have been largely restricted to short-term, high-exploitative profit-driven property relations that are specific to resource-extraction based economies. With almost no private ownership on their lands, save for scattered outfitters establishments that predated the transition of the region into a provincial park, the primary property relation is the leasehold. The owner of this right has prescribed access to fish, hunt, log, mine, or camp. The leasehold is governed under the jurisdiction of the province that regulates the terms of this bundle of leasehold rights. As we have seen in Chapters Three to Six, the Ministry of Natural Resources has operated, in Jean Maurice Matchewan's terms, in the service of "raping a wildlife reserve."

On Algonquin territory, land management is not governed by an instrumental attitude towards to the territory, but is a reflection of the ways in which the bush is a sacred place. Sue Roark-Calnek has documented the "religious" nature of hunting in Algonquin life. She writes that, "Hunting is a particular sacred occupation, requiring a moral and spiritual as well as a technical relationship with the game that are stalked (and the spiritual beings and forces that provide them or serve as their guardians)."⁴⁵⁸ She lists the rituals that act out this belief: "divination for game; summoning the animals by their respective names and songs; elaborate precautions taken with animal remains, in particular bones and fetuses found in pregnant females inadvertently killed; 'talking to animals' in the bush; feasting; and offerings."⁴⁵⁹ Taking an animal's life is itself part of the sacred regenerative laws of the living world. As Roark-Calnek explains, "If hunters comply with the above, animals will offer themselves to be hunted when 'it's their time', and they will be reborn or regenerated for future hunts."⁴⁶⁰ An example of this ritualized practice, Toby talked about the old ways of moose hunting, how they used to put the animal to sleep by using a certain pine needle. They would sneak up on the animal at night wearing snowshoes, so they could track whether it was male or female. If she was female, they determined whether or not she was carrying a child and should be left alone. If not, they waited for her to sleep, then penetrated the needle slightly under her skin; the moose would jump up once

pierced and run quickly for about 200 feet before settling down to a deep sleep, in which case they would thank the animal and take its life to feed the community.

Temporal and seasonal cycles are considered to be fundamental to understanding ecological relationships on the land – the growth of plants, movement of animals, and the required activities for human beings to manage the land. When Eddy Nottaway's son, Clayton Nottaway, described knowing when to hunt, he talked about temporal windows to explain their customs and reciprocal relationship with the natural world: "Let's say for a moose there, there's female, there's males, there's young calves. And you have to know when to collect their meat, when to shoot them. You have to recognize the body. You have to know what season, you have to know where they live, how they survive. Cause you're not just going to kill the first moose you see and not knowing what it is. There's certain times..." Clayton turned to his wife Marylynn Poucachiche and spoke to her in Algonquin for her to translate. "He's just saying, the bear, too. There's a certain time you kill a bear... In the fall there when you kill, it's like it opens the door. Your door. For you to be a good hunter. If you kill it in the fall it's the same. You don't kill it any time and you don't just kill any bear. And then it opens a tunnel for you to become a good hunter."⁴⁶¹

The seasonal openings that Clayton discusses are reflected and expanded upon in the Indigenous Knowledge report, undertaken by Scott Nickels in anticipation of the Trilateral Agreement.⁴⁶² The report provides an incredible ethnobotanical and ethnohistorical record, as Roark-Calnek notes, that taken together with her report on Social Organization and Terry Tobias' harvest study, "actualizes the principles of the Onakinakewin in empirical social formations,"⁴⁶³ by documenting the kinds of knowledge and social organization that define and protect Algonquin law. In the Indigenous Knowledge report, Nickels brings to bear hundreds of hours of research interviews with Algonquin community members, cross-checked with customary knowledge holders, and painstakingly translated from Algonquin.⁴⁶⁴ He details the four winds described by elders as "beings" who possess power to influence a range of conditions on the land, such as animal movements and hunters' fortunes. Nickels notes that not everyone these days conceptualizes the winds as beings, but the winds are always considered as instrumental to understanding weather patterns and seasons, and the conditions of success for hunting. To spiritual elders, the winds also explain how spirits "give" the animals to hunters. Kîwedinok, the north wind, is the Father who blows from the northwest and can be either beneficial or dangerous, bringing in cold air, snow, and ice, but also bringing warm weather and game. Câwanok, the south wind, is the Mother who commonly blows in the summer months, and provides sustenance and growth for humans and animals. Wâbanok, the east wind, is the guardian of the animals,

bringing the worst weather – freezing rain, humidity – perhaps to the benefit of hunted animals. Lastly, Nigabîyanok, the west wind, is the prevailing wind and is referred to as the boss or the leader. The winds connect temporal and spatial categories because they transform the surface of the earth through the seasons. Clayton killing a bear at the right time in the season signals a balance between âkî (earth), âweysîsik (animals), and ânicinâbe (human beings), as governed by the winds.

An elaborate classification system exists for the seasons, as well, with eight categories allotted to describe the changing earth cycles. As one Barriere Lake elder eloquently described the complexity of the cycles, one must think of the seasons collectively, the way you would observe how the light and land gradually change over the course of a day.⁴⁶⁵ The seasons are Sîgon, Minokimin, Nîbon, Aptanîbin, Tigwâgan, Bidjîbibôn, Pibôn, and Aptabibôn; they name the period from the first sign of spring, when the snow melts slightly and develops a crunchy crust during the day, and the ice on lakes and rivers begins to thaw, to the last phase of winter, when the “extreme cold, ice and snow are at their thickest, daylight hours begin to shift and get longer, sun rises further north on the horizon each day and rises higher in the sky.”⁴⁶⁶ Each season brings its own particular regimes of care and reciprocal obligations and connects the small community to broader ecological and social changes in the world.

The Onakinakewin is attuned to the seasonal aspects of time. Toby says, the teachings begin in May. “The reason they say that,” he explained, “is because that is when everything that grows in nature, even the kids, the birds, the plants – that is when they start. This period of life goes until November. A different set of teachings – the winter teachings – begin in November. That is when the Algonquins return to their winter cabins.” In the bush the children learn respect for the animals. “We used to teach why there’s a beaver, why there’s a moose. Just like in that thing there,” he motioned, referring to the three-string wampum. “The kids when they grow up they’re going to know... what to respect, that’s what Mitchikanibikok Anishnabe Onakinakewin is all about.”⁴⁶⁷

Respect is easily the most important principle in the teachings of the Onakinakewin and this principle is recited each time the customary code is invoked. Marylynn Poucachiche, a mother of five, and an active youth spokesperson for Barriere Lake is relied upon to travel and speak publicly on behalf of her community. This means she often has to fill the gaps between worlds by describing for city dwellers what it means to live on the land. At an event during Indigenous Sovereignty Week in Toronto in 2010, she explained to an audience of over a hundred people her understanding of Indigenous law, articulating this principle to sum up her thoughts:

The people in the community they still use the land, go hunting, fishing, collect traditional medicine plants, and everything that we do for that, there's a teaching, there's knowledge. I guess it's safe to say there are laws in these teachings. Say, for example, one of the things that we've been taught, or that's been passed down, is *respect* – that's the biggest thing. Because we have to live together. We have to live in harmony together with nature and with the animals, with each other, with the settlers...

The over-riding principle of respect in Anishnabe culture is not only reflected in hunting, but also in the gathering of medicines from plants and animals. The medicines are accompanied by their own teachings and language. Marylynn explains, "There's like, for example, if my child has a fever, there's a certain flower that I would go pick, I wouldn't just pick any flower, unless I know what it's used for. And you don't take that much, you only take what you need. How much you're going to use."⁴⁶⁸ Embedded in the teachings of respect for medicines are the composite teachings of tolerance and belief. Marylynn illustrates this where she describes the practice of taking medicine: "And you know people sometimes don't like the smell of things or they think it's nasty. But it's medicine and that's where they teach us: *con-winen-jig-wikin*, which means, 'not to be disgusted.' This is what's going to make you feel better... And you get medicines from the beaver, from the skunk. I know everybody hates the skunk, but it's medicine in there."⁴⁶⁹ During the discussion Benjamin Nottaway, Clayton's brother, communicated something to Marylynn in Algonquin and she continued, "That's the other thing, he just said, when you use the medicine, you don't just go pick it and use it. You have to believe in it. So you have to have *digwit-mween*, belief. *Bagwa-baga-giwin-tun*, you got to use it."⁴⁷⁰

The traditional knowledge study of Algonquin forest uses undertaken in preparation for the Trilateral Agreement covers food, beverage, medicine, utility, craftwork, ritual and ceremony, and commercial uses, and also carefully examines flora and fauna use. Surveying an incredible wealth of knowledge, Nickels concludes: "The multiplicity of plant uses demonstrates the ingenuity of the Algonquin people and their intimate familiarity with the plant world. Few 'Western' Canadians would be able to recognize even a fraction of the plants listed, yet it is the ordinary Algonquin who makes use of such plants within their environment, qualities learned about through generations of observations and experimentation."⁴⁷¹ It is this knowledge, the Algonquins maintain, that is the source of their jurisdiction, as we will see vividly illustrated in the following chapter that outlines the relationship between Algonquin tenure and law.

Respect also extends past what one knows to respect for what one does not know. *Mime-gwa-shike* is a tiny butterfly woman and *pana-bikwe* has been spotted sitting on the rocks by the river in a deep fog with her beautiful body, long black hair and fins. Few have caught glimpses of them: they are reminders, though, of an oft-repeated maxim, that one does not know what is out

there. Coming from a community whose ancestors have occupied the same lands for centuries, the humility borne in that statement is profound. Many spiritual creatures and skills have disappeared from Barriere Lake for the time being. But at Barriere Lake, there are prophecies for when these forces of nature will return.

A customary government

The Onakinakewin informs the customary government system at Barriere Lake. It is likely that Barriere Lake was one of the last bands in Quebec to govern themselves under this custom. As Roark-Calnek has found, at a conference in 1995 between the Deputy Minister and representatives of Quebec bands, “When the [Indigenous] representatives were asked about the years Chiefs should serve between elections (two, three or four), only Barriere Lake abstained, citing ‘Chief for life’ as the reason.”⁴⁷² This unbroken line of customary leadership has kept Barriere Lake connected to the land since the community is constituted only by members who have a connection to the territory. This principle is embodied in the eligibility protocols of the Mitchikanibikok Anishnabe Onakinakewin for participating in the customary selection process. Eligible members must live on the territory, use the land to pursue traditional activities, and speak the dialect of the Mitchikanibikok Inik. Speaking the language of the land is not simply a matter of knowing anishnabemowin, but a fundamental requirement for learning how to care for the land.

The “Chief for life” is said to have okima m(i)skew: “leadership blood” or “Chiefly bloodline.”⁴⁷³ Blood lines are important at Barriere Lake and people in the hereditary line are preferred as leaders.⁴⁷⁴ Though community members and researchers alike caution that this tendency should not be over-stressed. If a son is considered weak or incompetent – as was the case with David Makokos’s son, his father, grandfather, and great-grandfather having governed for three generations, up until 1964 – another capable individual in the community would be selected to lead. Interviews with community members consistently show that leadership qualifications were valued over heredity.⁴⁷⁵ Peter Douglas Elias concludes that the reasoning for this flexibility is straightforward: “Survival for hunting peoples depended first and foremost on successfully harvesting the resources needed for food, heat, clothing, shelter, protection, and so on.”⁴⁷⁶ Therefore, a Chief’s “connection to the land and knowledge of the lands and resources was far more important than [sic] blood amongst most northern peoples.”⁴⁷⁷ The customary government was maintained through the selection of leaders most suitable to protecting Algonquin lands.

While more astute colonizers recognized this relationship (and therefore targeted customary governments for elimination), the Chief of Barriere Lake was dismissed as irrelevant in missionary journals, foregrounding a prescient misunderstanding some settlers maintained regarding the connection between Indigenous land and leadership. As Pete Di Gangi uncovered, their skepticism about the Chief was based on how they interpreted his (lack of) jurisdiction: “It is him who decides when the band will leave their encampment, and who decides where the next encampment will be. That is about the extent of his powers.”⁴⁷⁸ From Barriere Lake’s perspective, this responsibility requires an incredible store of knowledge about a vast space and the resources it contains. Furthermore, it is in service of a profound and critical task of protecting the lands for future generations. Elias elaborates: “The exact year-to-year deployment of the people on the land is a consequence of a great many environmental variables, including the distribution, quantity and quality of food resources; weather; presence and distribution of enemies and competing resource users; and so on. Movement is also dictated by ceremonial and ritual conditions; social obligations; the state of knowledge and information available; and the health of the community population.”⁴⁷⁹ Jurisdiction, again, relies on a politics of care and mutual obligation.

Barriere Lake’s customary leadership selection process begins with *Wasakwigan*, the “blaze marking” of the future Chief and Councillors. The Elders Council lead a process of *Okinamowan*, for “choosing who will be there,” and who will be marked. Once again, the value of adaptability is crucial. The elders look for certain qualities in a leader, in particular, Harry Wawatie emphasized the quality of a “flexibly minded person”⁴⁸⁰ – someone who could look at a problem from multiple sides and arrive at a judicious solution. This quality is important because a Chief generally holds their position for life; in Harry’s beautiful language, the end of a Chief’s reign “tied a knot” in a long line of hereditary Chiefs.⁴⁸¹

It can take years to “blaze” a new leader. Once a suitable candidate or candidates have been identified, the Elders convene a Leadership Assembly of the People. The purpose of this Assembly is for the community to have a say. As Harry Wawatie explained: “All the people have to be the judge and decide if they want him for a leader, does everyone accept him... [it’s] known if they found fault they would have to ask why they don’t want him or what they think and if there’s nothing or no faults, [if] there’s nothing, he’s recognized.”⁴⁸² In this sense, culpability rests with everyone in this consensus-based system of governance. Reflecting this communally-driven process, according to the Onakinakewin, the Chief is at the bottom of the decision-making process, while the highest authority are the Anishnabek, “the People.” The hierarchy descends from the People to Ode (Family, or extended families), Ketizijik (the Elders), Nikanikabwijik (the

Council), and Oshibikewini (the Administrator).⁴⁸³ As laid out in the codified Mitchikanibikok Anishnabe Onakinakewin, each institution has its own responsibilities.

Whereas a Chief must always be chosen, Councillors can run for their positions.⁴⁸⁴ In the days before contact and land alienation through the trapline system, there were traditionally four Councilors, reflecting and representing the four cardinal directions and the corresponding areas of the territory. These Councilors, sometimes called “subChiefs” were to look after the people and lands in their area. Sometimes the role of Councilors overlapped with the Chief’s role. But Roark-Calnek notes that this is not unusual in a “segmentary social and political order” where “smaller local groups resemble larger regional groups in the way they work.”⁴⁸⁵ She also speculates that these four Councilors “probably represent an old pattern of familistic authority in kin-based local bands, joined together in a larger regional band.”⁴⁸⁶ So the kinds of entitlement that root leadership choices at Barriere Lake were based on kinship relations, hereditary lines, spiritual consciousness, and connection to the land. These were not rigid roles, but rather advisory, in the context of a consensus-based community that empowered everyone to participate and influence decision-making.

As a result of Canada’s customary leadership intervention in 1996, the community reluctantly codified their oral law to prevent further “mix-ups” in the future. Harry Wawatie was particularly reluctant to transform these customs into a written code, feeling it was a betrayal of their way of life, and as such, would come back to haunt them.⁴⁸⁷ Nonetheless, the codified Mitchikanibikok Anishnabe Onakinakewin details the proceedings of the Leadership Assembly in the following serialized manner:

- the Assembly starts in the morning;
- seats representing the number of positions which are open are placed in the centre of the Assembly area;
- an equal number of seats are also placed in the centre for the spouses of the Leaders to be selected;
- the People gather in a circle, around the seats;
- the nominated candidate is escorted by one of the Elders to one of the seats in the centre;
- the spouse of the nominated candidate is also escorted to a seat by another Elder;
- the Elder who nominates a candidate addresses the Assembly and the Elder who brings forward the spouse also addresses the Assembly;
- the floor will then be open for general discussion;
- if there is consensus amongst the People on the candidate, this shall be announced to the Assembly; and
- the Assembly continues until all the positions are filled.⁴⁸⁸

Following selection, Chiefs are closely watched for their first few years in a kind of probation period. When the Chief does something wrong he is corrected, but he can also step down or be removed in exceptional cases.⁴⁸⁹

When a woman's husband is selected as Chief, "That's when they seat them even the wife, to be the leader now and everyone in there shakes their hands, the wives stand behind their husband."⁴⁹⁰ This practice of women standing behind their men continues to this day. Women are never Chiefs, but they play the critical role of getting consensus from the women in the community. At one time, the women met regularly at meetings to exchange ideas,⁴⁹¹ and this practice also continues to this day, albeit less formally. Women are also part of the blazing process and sit on the Elders Council where they play an instrumental role in selecting future leaders.

Leadership and the Feast

In Indigenous law, the customary government is not just about governance between people, but involves co-existence with the animal world. This reciprocal relationship is best evidenced by the feast (Nimokichanan). In the past, songs were sung for the animals who gave their lives to the hunters and trappers. These songs were accompanied by a hand-held drum and the animals were appeased to hear this music of gratitude from the Anishnabe.⁴⁹² Roark-Calnek explains that "[t]hese offerings both thank and propitiate the spiritual forces (now variously understood) who are responsibility for the supply of food and for the change of the seasons."⁴⁹³ Feasts have also played a crucial role in distributing information about the quality and quantity of food on the land base and the commitment of families and individuals to participate in community gatherings.⁴⁹⁴ These natural and social indicators embodied in ritual obligation contribute critical information to band members, essential in a decentralized society like the Algonquins'.

The feast also reveals the way leadership roles are understood to be reflections of the animal world. For example, as Toby explains, the Bear (Mako) is like the Chief. Therefore, at community feasts, respect is shown to the Bear:

Mako is the head of that feast, and somebody's going to stand up and talk about mookoo. They usually have the feast on the ground, so they talk about Mako in that feast, how he represents the Indian people...

Like a bear, it's almost like a traditional Chief, you could say... the bear is the leader of the animals, so in the fall, when the bear's going to go sleep, you're going to ask him to open his door, that's how they explain this, the old people, cause the bear is going to go to sleep... it's like, someone who wants everything, like the bear, you ask him for everything, like partridge, moose, in the winter-time, to have something to eat in the

wintertime. That's why they have a feast, and they ask for the bear's spirit, for the winter, to have a good winter, to have food, that's why they ask the bear. Because the bear is the leader of the animals, and the birds is for eagle and the leaders of trees is the white pine. For the fish [it] is sturgeon. That's the one, *neozibi*. Every time you eat fish, you say thanks to sturgeon, but not to god.⁴⁹⁵

Roark-Calnek also records elders recounting the important role of the bear in the feast. As one elder tells her: "Like in a feast like when we use a bear in that feast, this is like it represents our great grandfather, and when you talk about great grandfather he represents all the animals..." As Toby explained to me, the Councilors also represented figures from the animal world. Whereas Roark-Calnek's research assesses these animal figures as helpers to the Chief,⁴⁹⁶ Toby regards them as descriptions of Councilor roles. Roark-Calnek recalls that the runner who gathers everyone to the meeting is the deer (*wâwâckeci*) and the spokesperson who kept the meeting in order was the figure of the wolf (*mahigan*).⁴⁹⁷ Toby reported that the wolf works beside the Chief, conforming to Roark-Calnek's description, but it is unclear if he meant to conflate the wolf Councilor's role (the one who sits beside the Chief) with the deer Councilor's role, which he describes as follows: "And here he's something like a messenger. When you have a meeting, this one is going to go around and.. when you hear a drum... and as soon as you hear the drum, people are going to come. And the drum carrier is going to start at the end [of the community] and start drumming."⁴⁹⁸ In either case, the codified customs iterate the role of Councilors as representing the four directions, rather than their animal forms.

The feast has always played a central role in Barriere Lake's governance system and it still does to a different extent today. The Councilors are no longer as central, but feasts are still held seasonally, as an offering to respected guests, and to gather people preceding important community assemblies. Traditional foods are served – moose, partridge, beaver, walleye – the drum is beat, and prayers are said. At a spring feast I attended in 2010, community leaders Maggie Wawatie and Rose Nottaway coordinated the food that was laid out on a sheet of plastic several meters long on the ground, while Toby walked around it pounding his drum in a heartbeat rhythm while everyone gathered. A joyous occasion had delayed the feast for hours: Eddy Nottaway shot a moose by the lake and it had to be carved up and divided amongst families. I joined the women in their traditional role cutting and distributing the meat. They teased me, but did not intervene with lessons, forcing me to watch and learn, as they do with their children. Before we ate, Toby reminded people of the traditional Algonquin values of respect for the land and for one another. Norman Matchewan came around during the feast with a birch basket to which everyone contributed a bit of food from their plates as an offering of thanks to the Creator. That evening a community meeting was held in an adjoining clearing in the forest to discuss

Canada's worrying attempts to impose a band council election system on Barriere Lake and the urgent matter of lumber companies trying to make their way back onto the land. The meeting was held in Algonquin, around a fire, with tea brewing in the center and distributed by former Councilor Benjamin Nottaway, who otherwise sat next to former customary Chief Jean Maurice Matchewan. The community was discussing the government's attempts to impose a band council election system on them. As they strategized about how to resist this intervention, men and women of all ages stood to speak for long periods and their words were greeted with short exclamations of agreement or concern.

Toby says, "Every time we make a meeting with someone, we're going to offer people a feast. Like if we make a meeting, it's for the thanks, you come and share what's our knowledge. That's the reason why we use the feast. That's the way of saying 'thank you,' thanks that you have come."⁴⁹⁹ In April 2011, a delegation of Indigenous land defenders from the Defenders of the Land network traveled to Barriere Lake along with some of their non-Indigenous allies to show their support for the community's political struggle and build stronger working ties. To honour their guests and to welcome them to their territory in a customary way, the community hosted an elaborate feast on the Rapid Lake reserve. Long tables were set with traditional foods and the guests were seated along them with almost a hundred Barriere Lake community members. After the feast, a fire was lit, and people encircled it and shared what was in their hearts.

Algonquin-Speaking Animals

When we contemplate the Mitchikanibikok's sacred constitution, we expose the background picture of jurisdiction, the "legal expression of power,"⁵⁰⁰ which is comported in the daily practices of hunting, gathering, speaking Algonquin, and living on Barriere Lake territory. As we will see in the next chapter, jurisdiction is vested in the band, kinship nexus, and in external agreements with other First Nations and governments, but retains its integrity through quotidian land use and stewardship. Examples of Algonquin-speaking animals can connect how knowledge of the territory relates to broader understandings of jurisdiction. Marylynn illustrates an ethics of reciprocal care in the following story about waiting out a moose at her bush cabin:

Let's say, when you have a dinner out there in the bush, that's where my cabin is. And we've been trying to get a moose for quite some time, and we had a supper with the whole family in my cabin. And we started talking, my father-in-law started talking, trying to communicate, you know, through the mind. And we had supper, we had some traditional foods there, and I made a basket, a birch-bark basket. And we told all the kids there (in Algonquin): "Put a little piece of your food in that basket, it's like giving back to the Creator, so they will give back." And I told them, "Put some little bit in there so we can kill this moose that we want so we can get some meat." So we did that, and I made

my daughter go in the bush and to put that basket over there and to say something, you know. And she came back, she said she made a prayer, (*a-kiden-sa-sha-di-mos*), that's how I said it, "We're going to kill a moose." Sure enough, two days later, the moose came across our lake. On Clayton's birthday, my husband's birthday. He shot it down. We had tons of moose meat, we were able to feed seven families... And that's one of the teachings that's being passed on from our generation.⁵⁰¹

Community members say that the animals, for their part, well understand their relationship to the Anishnabe whose land they share. According to the Algonquins, the animals on Barriere Lake's territory understand Algonquin; it is the language of the land. Marylynn told me a story once about the time wolves gathered near her cabin in the bush one winter, watchful of her cabin. She and her family stayed indoors, but her father-in-law Eddy Nottaway went out and spoke to them in Algonquin. Go back home now, he ordered them, you are not welcome here now. The wolves eyed him for a moment, then turned around and stalked back into the bush.

Marylynn's kokum, her grandmother, also taught her at a very young age about this special relationship between the Mitchikanibikok Inik and the animals on their territory. Marylynn grew up at Ottawa Lake and Barriere Lake, and also spent some time in Nanotinic (also referred to as Kukomville). Like all the children of her generation, she was kept in the bush until she knew her language and the Algonquin way of life. She remembers one story her grandmother, Lena Nottaway, told her about a moose. Marylynn said, I guess she was trying to teach me something. Her kokum walked by a moose on her way out hunting. They came across each other and they sort of communicated. "Not by talking there, but through the mind. And she was telling the moose (in Algonquin), 'I'm not going to bother you and you don't bother me.' Cause they're just coming across each other. And my grandmother said, the moose just walked by and I walked by. That's how they communicated. And I guess that's how they've been communicating, and still communicate today, because sometimes I see them talking, even if they're not talking with their mouths. Like his dad will do that," she says, pointing at her husband, Clayton, and referring again to Eddy: "*A shim-shim mos, a shim-shi-man.*"⁵⁰² *Here moose, come here.* When you are in the bush, Marylynn explains to me, the bush talks to you in Algonquin. That is where the *pook-gin-ninee* live – the spirits who are always present on their land.

In his research with the community Elias discovered a particular formulation of language acquisition that is profoundly based on one's relationship with the land. He writes:

One community member, who contributed both toponyms and translations to the research, recently said that to use the land one needs to know 'the language of the land, of the place.' He meant by 'language of the land' the toponymy for the area and other ways

of describing and talking about it. When asked to elaborate on this, he gave an example about how he would talk about his area to guide someone to and through it. One learned ‘the language of the land’ in the first instance from traveling through one’s family customary use areas with older family members. But, he says also that one can learn ‘the language of the land’ for other areas, when invited to hunt with the persons who know that ‘language’ and are willing to share it.⁵⁰³

Or, as Norman Matchewan simply put it to me one day: “The land is my identity. Without my language, I lose that connection to the land.”⁵⁰⁴

Identity and the Land

The laws of the Anishnabe embodied in the customary government are as much about protecting these sacred relationships as they are about governing relations between people. This sacred relationship is also embodied in the language. Michel Thusky is married to Maggie Wawatie and uncle to Norman Matchewan. Once, when discussing a language camp being held for the youth on their territory, Michel explained to me his reservations about this kind of formalized activity. Reflecting the women’s refusal to teach me to cut the moose meat, he said, “You cannot teach a language to your children, you have to *share* with your children. You can teach non-Indian people. But not your own children.”⁵⁰⁵

For Marylynn, being Anishnabe is not an abstract identity, but a deeply connected way of life. She says, “There’s endless work when you go to the bush. You never get bored there. You go out, practicing every day just by being out there. You don’t have to go and pretend this and that, you know to be a good Indian, you just have to do your everyday stuff.”⁵⁰⁶ In “doing your everyday stuff” you maintain the language of the land, and the language of the language of the flora and fauna. I woke up one morning at Marylynn and Clayton’s bush cabin to a bright, hot day. The first thing Marylynn said to me was, “It’s a beautiful day for birch bark.” After lunch we went out, stopping at some jack pines to harvest their long, stringy roots for crafts. Everyone helped – Clayton dug a small trench around the tree with the back of his ax, looking for roots and his youngest child, Brennan followed, imitating his father’s movements. Shane, a few years older than Brennan, helped Marylynn pull up the roots from the sandy soil. Along the way to the birch bark spot, Marylynn shot two partridges and Shane, 7-years old, without being told, ran quickly into the woods to retrieve them.

At the time, I was staying at Marylynn’s cabin, learning Algonquin. The morning we went out for the birch bark harvest, I learned a very important phrase. *Ki-gee-ma-mede-nen-dan*, an elder might ask you after a story. This translates to mean, “Did you see the whole story?” Here, one is also being asked if they understand the context of what one observes. In the case of

Barriere Lake, to understand the specific laws of the territory, one must understand the ecological and social ontology of care that governs relations between all living things on the land.



Figure 17 - Feast on the Rapid Lake Reserve, June 2010 (photo by author).



Figure 18 - Harvesting jack pine roots for cradle baskets - Clayton, Brennan, and Shane Nottaway pictured (photo by author).



Figure 19 - Harvesting birch bark, May 2010. Marylynn Poucachiche, Clayton Nottaway, and John Corker pictured (photo by author).



Figure 20 - Gloria Decoursay and Deborah Jerome cutting up moose meat, July 2009 (photo by author).



Figure 21 - Clayton Nottaway spots a beaver while driving 60km/hr along a logging road on the territory, June 2010 (photo by author).



Figure 22 - Tikinagan (baby carrier), made by Marylynn Poucachiche (photo by author).

PART III: ONAKINAKEWIN

CHAPTER EIGHT – The Social Relations of Jurisdiction: Traplines & Tenure

One way to understand the differences between Indigenous and Canadian technologies of jurisdiction is through a frame of reference Bryan offers in his work on the ontology of property. Bryan theorizes that English ontologies of property are based on a conception of the world as “standing reserve.”⁵⁰⁷ As Bryan paraphrases: “Technology... makes a demand of nature, and that demand is one of supply.”⁵⁰⁸ This Heideggerian concept that describes the world of instrumental modern comportment can be contrasted to an Indigenous comportment that I have been calling an ontology of care. To qualify, I mean this “standing reserve” to pertain particularly here to the provincial leasehold system that permits resource extraction on Barriere Lake lands. The leasehold property rights expresses a technique of provincial jurisdiction, where Barriere Lake lands are managed as *supply*.

Jurisdiction at Barriere Lake is exercised by the state and the band towards these different respective ends of comportment: reserve and care. These jurisdictional ends further imply distinct, yet overlapping differentiations of space. As we have noted, territorial space is a socially and historically produced kind of space, set within the context of a rapidly expanding world market; at Barriere Lake, beginning with the fur trade in the eighteenth century and amplifying around 1860 with the lumber trade, territorial space became a colonized space almost exclusively oriented and “ordered towards intensification of market relations.”⁵⁰⁹ Indigenous space is socially and historically changeable, but it is localized and particular; ordered towards what Anishnabe writer Leanne Simpson calls “ecologies of intimacy.”⁵¹⁰ Land management regimes that prioritize extraction and scientifically rationalized principles of conservation cannot compete with the long-range knowledge and experience of Indigenous users. These ecologies can be understood as the basis of Indigenous nationhood, but in a way that has little in common with hierarchical, competitive conceptions of territorial statehood.

One way to attain some empirical clarity on these ontological matters of jurisdiction is to examine Algonquian land tenure in the context of overlapping property claims. This chapter illustrates the order-, knowledge-, and space-making practices of jurisdiction on Barriere Lake territory through the allocation of land through Barriere Lake’s tenure system. The Algonquin tenure system differentiates the landscape into spaces of care to ensure self-preservation and to protect the land base for future generations. The introduction of two government-regulated trapline systems on the territory delegated authority over the land away from the Algonquin

community, effectively undermining Barriere Lake's land tenure system and the order of legal governance their tenure embodied. The ways in which these tenure systems overlapped is a complex and nuanced history of adaptation and resistance. Algonquin resistance greatly shaped the eventual outcomes of the trapline systems and their skills at adaptability minimized the damage to their territorial integrity and social order, however lands were lost and Barriere Lake's jurisdiction – in the sense here of effective control – was undermined in the process, impacting life on the territory.

It bears on us to begin by putting the discussion of Algonquian land tenure into historical context, for the subject has evoked deep strains of controversy in the profession of anthropology for almost a century. Frank Speck was an early observer of what he called the Algonquin “family hunting territory” system (nok'i-'wak'v'), comprised of fixed tracts of land with natural boundaries to accommodate extended social units of kinship.⁵¹¹ These social units, he observed, were composed of patronymic families, with a system of land allocation distributed across kinship lines.⁵¹² Speck reports that family territories were pretty rigid, though he goes on to show many examples that break with the strict enforcement of paternal family territories, such as sharing territory in bad years, visiting the wife's territory during poor seasons, and hunting on common lands during the spring gatherings. It is notable in Speck's work that little connection is explicitly made between governance and land tenure. For example, the Chief's responsibilities are not laid out at all in relation to resource and land allocation. There is also a virtual silence on tenure and self-governance, though implications of this relationship exist, for example, through reference to trespass regulations.

Speck's work was influential, particularly on D.S. Davidson, John Cooper, and Robert Lowie,⁵¹³ but it was by no means universally accepted. As Adrian Tanner notes, many anthropologists were convinced that these territorial allocations resulted from the fur trade, rather than long-standing Algonquian social norms of organization. Tanner explains that Europeans were believed to have infected the Indians with an idea of property that soon took root in their society: “It was the Indians who then supposedly applied the property idea to the animals, and finally to the land which the animals occupied.”⁵¹⁴ By far the most influential of these counter theorists was Eleanor Leacock, who first cast doubt on Speck's conclusions in her monograph *The Montagnais Hunting Territory and the Fur Trade*.⁵¹⁵ Leacock dislodged the influence of Speck in the 1950s with her thesis that the fur trade gave rise to individualized and privatized forms of territoriality on the land. Her work supported anthropologist Diamond Jenness's earlier 1925 criticism of Speck and furthered ideas of Indigenous peoples' tenure system as a sign of assimilation into European modes of production, rather than as an Indigenous social form of

organization.⁵¹⁶ Debates continued to wage into the 1970s and 1980s between Leacock and Speck supporter Edward S. Rogers⁵¹⁷ and the debate continues with Harvey Feit recently suggesting in 2004 that pre-contact hunting territories were a distinctly plausible historical theory.⁵¹⁸ The controversy also has ideological traction in non-anthropological political spheres. Right-wing pundit and Conservative Party advisor Tom Flanagan recently used Leacock's work to deny any collective nature to Indigenous society, therefore any basis for sovereignty or self-determination on cultural grounds.⁵¹⁹

Underscoring his interpretation of Algonquian land tenure, Speck's work in the first quarter of the twentieth century challenged the accuracy of Marxist anthropology and argued for a more nuanced understanding of primitive societies. Where Marx argued that hunter-gatherer societies held their land and resources communally, Speck and Lowie described "family hunting territories" in Algonquian communities as a direct challenge to this thesis due to their quasi-private form. Indigenous societies, Speck pointed out, were comprised of decentralized social units of discrete land holding areas for the purpose of hunting. He writes: "The whole territory claimed by each tribe was subdivided into tracts owned from time immemorial by the same families and handed down from generation to generation. The exact bounds of these territories were known and recognized, and trespass, which indeed was of rare occurrence, was summarily punishable."⁵²⁰ In 1920, Lowie concurs and strongly advises against the "blunt alternative" between communism and individualism, dismissing as "evolutionary dogma" the teleology of property from collective to private.⁵²¹

Scholars have struggled to defend – ideologically, ethnographically, and historically – cases for either a private or communal system of property embodied in Algonquin tenure. But an ambiguity in the definition of property cuts across Speck and Leacock's camps. After all, do "private" hunting territories mean the same thing as "private" property in Canadian society? Is there any relationship between fee simple ownership of residential homes in urban centres and the allocation of hunting territories among kinship units on native territory? A major hook for this work hinges on the faulty brace of ethnocentricity, where property is transformed into ideal types, rather than understood in social context. As Tanner writes: "In the cases I am aware of, Algonquian territories are never 'owned' by anyone other than those who work on them; they cannot be sold, accumulated, or used by the owner to accumulate surplus production. Labeling them private property in 'our' sense of the term thus tells us very little and is actually misleading."⁵²² Though Leacock and her followers move from an assimilation framework towards an acceptance that hunting territories are a response to external material conditions – ecological, economies of fur trade, coercive influence of traders and missionaries – their

methodology is focused more on the “function and operation” of hunting territories post-contact, rather than their relation to Indigenous social structures and cultural values.⁵²³

But “property” is precisely about social relations, however mystified this process has become – the fictitious commodity of land in liberal capitalist society, for example, aims to erase value other than that which can be expressed in market terms.⁵²⁴ As David Harvey notes, “The exchange process is... perpetually abstracting from the specifics of location through price formation. This paves the way for conceptualizing values in place-free terms.”⁵²⁵ Places themselves have no use until triangulated with exchange; land simply stands in reserve awaiting demand. Of course, no one can ever actually be disembedded from land, despite the premises of abstraction in capitalist social relations of property. That is what makes land as a commodity *fictitious*. But our comportment towards the world is mediated through these property relations.⁵²⁶ Indigenous social relations of property, in particular those in Barriere Lake, are situated within an embedded and interconnected world of belonging and responsibility. Jurisdiction is prior to property – it inaugurates property – and through jurisdiction’s actualization as care at Barriere Lake, expressed in a proprietary form through land tenure, we can see how jurisdiction embeds the community in particular social relations of mutual reciprocity and spiritual values of care, beyond exchange.

I want to argue here that if we understand property as a technique of jurisdiction, then we can approach land tenure at Barriere Lake from the perspective of Indigenous law. Then we can see how property relations extend from the wider operations of jurisdiction. Rather than appropriate pre-given frameworks of (vulgar) Marxist, anthropological, or ideological definitions of property, we can achieve some clarity on property as a technique of jurisdiction by examining how tenure embodies and inaugurates Indigenous legal and spatial orders. Sue Roark Calnek has compiled the most comprehensive and definitive ethnographic work on Algonquin social organization based on extensive field research and immersion. Her work shows how Algonquin tenure is ultimately vested in the political community of the band, actualized by the consensual deployment of families and trapping partnerships on the land. This is its internal dimension. Externally, treaties, agreements, assertions, and mobilizations have secured and challenged this tenure across a range of time and places, affecting change and adaptation in the tenure system. On the quotidian level of stewardship, tenure is exercised by families, defined by a complex kinship nexus we will examine here.

The family territorial system co-developed with a highly adaptive land management and conservation system. Roark Calnek found that Algonquin kinship is defined by bilateral (blood) kinship; post-marital residence in flexibly constituted extended families; and affinal (in-law)

alliance that binds the community together through a network of reciprocal relationships.⁵²⁷ These networks represent points at which accumulated knowledge is passed along: knowledge passes directly down from grandparents to children to grandchildren, but also across families to cousins, brothers-in-law, or through a woman's new family ties soldered through marriage.⁵²⁸

Other key characteristics of Algonquin kinship include respect for elders (Algonquin *ketizidjek*), who have authority as tradition-bearers. There is also an expectation of sibling solidarity and generational complementarity, where the youth repay the care of their elders through their own contributions of labour and material support. Roark Calnek also notes gender complementarity as a defining characteristic of Algonquin kinship. She writes that women and men have different roles, as they are raised to provide specific household and political and ritual roles, or to play key roles in community-decision-making. Relations through marriage are also key because this is the main form of expansion to the kinship nexus – through marriage Algonquins learn both family territories, matrilineal and patrilineal, as well as gaining affinal access to resources, ecological knowledge, and skills.⁵²⁹ Roark Calnek notes that these extended family alliances persisted after Algonquins settled at the reserve, but there were changes to the kinship nexus: arranged marriages came to an end, there was a greater expansion of kinship through migration to nearby towns, and dense kinship networks were affirmed through housing shortages, where it was not unusual to have twelve extended family members sharing a two-bedroom house. New challenges were also ushered in by change on the territory, making it more difficult to maintain relations between families, gender, and generations.⁵³⁰

These kinship principles apply to three major components of the Algonquin social regime: household, task group, and territory.⁵³¹ While these social regimes are interlocking, I will focus here on territory, where jurisdiction has the most visible currency. The Algonquin word for hunting territory or ground is *ânokî(w)akî*. In its prepositional forms, *-akî* is generally understood by Algonquins to mean “an area used by one or *more* persons for one or *more* harvesting purposes, an area that he/they know particularly and for which he/they have particular responsibility.”⁵³² Access to areas of the territory are structured through the kinship and friendship nexus: since large game are migratory, hunting parties may ensure individuals access to moose and bears that will not travel through their own family hunting territories that season. But for smaller game, such as marten, rabbit or fox, who do not tend to migrate far distances, individuals hold and share traplines where they know the land well and where their families may have been trapping for generations. These land-holding practices balance the need for responsibility without requiring exclusive forms of ownership. As Roark Calnek puts it, the advantages are “social as well as economic/ecological, over *either* a wholly unpartitioned

‘commons’ or the ‘unsociable extreme’ of rigidly privatized territories.”⁵³³ Located somewhere between these extremes, a unique system developed over time to accommodate the ecological conditions and the values of Barriere Lake society. It is a system that continues to evolve to this day.

These nuanced understandings of property are lacking in the otherwise seminal work of anthropologists like Speck. Speck, who worked with the Temiskaming, Dumoine, Temagami, and River Desert bands, conflated hunting and trapping territories, took scant notice of seasonal partnerships, and neglected to undertake any genealogical research.⁵³⁴ His student, D.S. Davidson, who worked geographically close to Barriere Lake, at Grand Lac Dumoine (Kitcisakik), at least mapped the regions of family hunting territories, but he also failed to ground his research in genealogy. Roark Calnek notes that this meant that details of the kinship nexus were lost, therefore key aspects of the band’s social structure were also missing. However, she does agree with Speck and Davidson’s observations on the kinds of spatial differentiation produced by Algonquian land tenure: “territories had boundaries clearly demarcated by natural features... and controlled by sanctions against trespass.”⁵³⁵ These observations on trespass represent what is often the key marker of territoriality from an outsiders’ perspective, since they conform to Western understandings of property as exclusive right. An account from trader Alexander Henry from 1760 describes the system of land tenure as he heard it from the southern Algonquins who traded at Oka:

I learned that the Algonquins, of the lake Des Deux Montagnes [...] claim all the lands on the Outouais, as far as Lake Nipissingue; and that these lands are subdivided, between their several families, upon whom they have devolved by inheritance. I was also informed that, they are exceedingly strict, as to the rights of property, in this regard, accounting an invasion of them as an offence, sufficiently great to warrant the death of the invader.⁵³⁶

Stories emerged periodically from my informants, in hushed tones, about the conjuring powers exercised against trespassers.

But Barriere Lake’s laws of trespass were again mediated by the adaptive technologies of their tenure system. Following the impact on land shortages stemming from the registered trapline system, one hedge against the emergence of a strict ownership regime for the remaining traplines were “free areas” introduced to mitigate against excessively privatized land holdings.⁵³⁷ In more conventional terms, trespass was also historically met with a variety of sanctions if interference was detected, such as confiscation of prey or amicable negotiation.⁵³⁸

Ultimately, family hunting territories ensure conservation and social cohesion; there are social, economic, and ecological advantages to structuring access to territory in this way. As Roark Calnek notes, this system of territoriality “locates and regulates economic behavior within a moral universe in which adults are supposed to be responsibly interdependent, neither dependent on nor competing with each other. They are thus more willing to share costs as well as benefits.”⁵³⁹ The collective survival of the community is also ensured through this system, as a knowledge pool of regional experience is constantly passed lineally and laterally throughout the community. A web of intricate relations secures an expansive reach of jurisdictional oversight and responsibility.

It is not difficult to see the evidence of these observations in daily life in the community. People carry the hunting stories of their grandparents, extending important knowledge of the land over generations. One evening, Clayton told us stories late into the night about the incredible hunting skills of his grandfather, Joe Ratt. One story that Clayton told took place when Joe and his hunting partners saw a moose stumbling along – its belly big against the snow, falling a bit, from side to side. One hunting partner there thought it was a pregnant moose, but Joe Ratt knew it was a healthy moose and he shot her. He turned out to be right. Another time, Joe Ratt saw six moose walking together and one was walking over on the side. This sixth moose was eating different plants than the rest and Clayton’s grandfather knew it must be sick. The leaves he ate were medicine. Joe Ratt killed the moose and piled up the meat and bones to leave on the trail as a signal to let others know of the sickness. These stories that have been passed on to Clayton convey important information about survival in the bush. They also signal the importance of kinship relations in land use management of the territory.

Traplines

What is the ontological basis of life that property expresses at Barriere Lake? Curious about the language of property and jurisdiction in Algonquin society, I spent a summer learning anishnabemowin in the bush at Barriere Lake. I asked Toby Decoursay one day if there was a word for ownership in their language. *Kadthaben-duck* or *debendan*, he answered. What about a word for belonging or “to belong”? I asked. “Same thing almost,” he said. “*Debendaygayzik* or *debendan*.” Martha Steigman, a filmmaker who was also in the community at the time, asked to clarify: “To own and to belong are almost the same?” Toby answered affirmatively: “Yep, ours is *tibenindiziwin*, or *debdendan* or *benjigaywaynan*. *Nin-diki-bendan*. *Debendeegayzik*.”⁵⁴⁰ The land is *ni(n)daki* – it means my responsibility/autonomy/belonging while referring to everything there:

the moose, the sun, the stars, the trees, the eagle, the beaver, moon, the earth, and even the planet. Literally, *aki* is ground while *nin* would mean “mine.”

I did not know exactly what a trapline was when I first started working with the Algonquins of Barriere Lake several years ago. I thought it was literally a line in the snow, made of rope or something, maybe a long snare. A trapline is a route or circuit along which a series of animal traps is set. There is no word for trapline in anishnabemowin, though nearly every adult in the Barriere Lake community has a designated territory to catch mink, rabbit, marten, muskrat, fox, and beaver. One can say, “I am going to set my traps”: *inglendo onige* or *on-donige*, and one can even specify what kind of trap one is setting – *wapsheshu onige* if one is going to check a marten trap, or *ameku onige* for checking beaver. There is a verb for “trap” (*onige*), but there is no noun to describe the place one traps specifically. It is part of one’s hunting grounds and these hunting grounds are distributed by a system of aboriginal tenure embedded in the Mitchikanibikok Anishnabe Onakinakewin.

The fact that the Algonquins have no word for “trapline” in their language is indicative of their orientation towards land distribution. A trapline is made up of the places where you trap on your hunting grounds, but it was never something that could be calcified in maps, since people were cycled through various areas and areas were cycled through and left to rest through various seasons. I have already noted that the Algonquins of Barriere Lake’s relationship to the land is embodied in the community’s constitution, the Onakinakewin, and further along in this chapter we will see how the traditional roles of Chief and Council for allocating traplines forms part of the oral law. The customary government is in turn bound by the laws and customs of the Onakinakewin, embedding the trapping life in the regulatory and moral codes of the customary system.

In the 1920s, the word “trapline” entered into the Algonquins’ vocabulary. A trapline system was introduced by the provincial government at the insistence of the federal Department of Indian Affairs due to the massive shortage in game and subsequent starvation on the territory. Following a joint federal-provincial conference on Wildlife and Fisheries, two Indian-only game preserves were established on Barriere Lake’s territory.⁵⁴¹ The Grand Lac Victoria (GLV) Beaver Preserve (6,300 square miles) and Abitibi Beaver Preserve (4,000 square miles) were ordered in 1928 by a Quebec Order-in-Council. These preserves covered much of the hunting and trapping territory in the Algonquin communities of Grand Lac, Lac Simon, some lands from Winneway and Wolf Lake, and some lands of Barriere Lake.⁵⁴² A *tallyman* regime that aimed to accommodate Algonquin hunting and trapping techniques was designed specifically for Indians living in the Grand Lac Victoria beaver preserve. Over a decade later the *registered* trapline

system was introduced, designed for white trappers outside of the beaver preserve, but impacting Barriere Lake lands that fell outside of the preserve.

The beaver preserves seemed at first to be a positive step towards returning exclusive rights to the Algonquins over their hunting grounds, but the initiative turned out to fall short of meaningful implementation. Quebec had apparently no interest in enforcing these boundaries from settler encroachment.⁵⁴³ The federal government eventually recommended to Quebec in 1931 the appointment of Royal Canadian Mounted Police officers and Indian wardens to secure the boundaries of the preserves.⁵⁴⁴ Quebec agreed, but conditions did not improve. In fact, they worsened with the construction of the Mont-Laurier Senneterre Highway, beginning in 1938, which cut through the GLV Beaver Preserve. The new transport corridor was not only ecologically disruptive to the wildlife, it also facilitated increased recreational use of the area. In 1939, the province created the Mont Laurier-Senneterre Highway Fish and Game Reserve along a ten-mile corridor of the new highway, running straight through the GLV Beaver Preserve, and banning hunting and trapping within its boundaries.⁵⁴⁵ Soon after, the Cabonga and Baskatong reservoirs were built by the Gatineau Power Company to supply power to Canadian International Paper's Gatineau Mill and for export to Ontario.⁵⁴⁶ Hundreds of square miles of Barriere Lake territory were flooded and families lost cabins, hunting grounds, and fishing spots. Two cemeteries were also destroyed.⁵⁴⁷ The Indian-only preserve had perversely become a magnet for non-Indigenous hunting and trapping. Whereas the beaver preserve was meant to prohibit settlers from hunting all fur-bearing animals, Quebec saw an opportunity for a lucrative grab at permit revenues. Provincial authorities claimed that 'fur-bearers' only meant animals one trapped, not big game animals one hunted, and that non-Indians were free to fish and hunt game inside the preserve – a position that completely contradicted their claims to the Algonquins.⁵⁴⁸

Until 1941, only two game wardens patrolled over 10,000 square kilometers of land and so, predictably, the poaching continued unabated.⁵⁴⁹ That year, a provincial game warden, Rene Levesque, was hired to oversee the management of game. He introduced the tallyman system, requiring every Indigenous trapper to map their trapline territory along with the numbers and locations of beaver lodges. In return, the residents would receive a license (and later tags) validating their right to trap beaver on the territory within the beaver preserve. Trappers would also receive a nominal yearly payment from the Department in exchange. The tallyman system was designed as an elaboration of a form of Indigenous land tenure, based loosely on the decentralized system of family hunting grounds. But it was based on Cree land tenure, where a system of *Ndoho Ouchimau* – male leaders – were responsible for the land in different areas of their territory.⁵⁵⁰ Barriere Lake land tenure was similar, but decision-making was also

community-based and land allocation was governed by Chief and Council under the laws of the Onakinakewin, therefore the tallyman system conflicted with Barriere Lake customary governance.

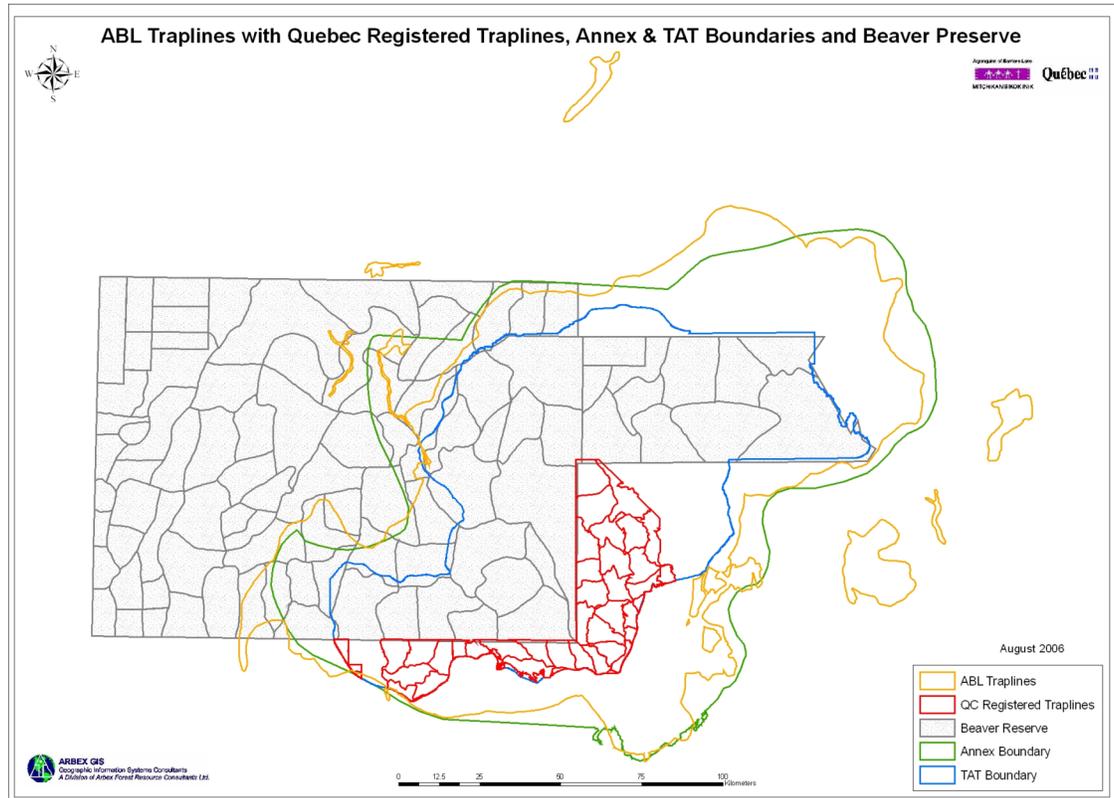


Figure 23 - ABL Traplines with Quebec Registered Traplines, Annex and Trilateral Agreement Territories (TAT) Boundaries and Beaver Preserve (courtesy of the Algonquin Nation Secretariat).

The tallyman system had originally been established in 1927 in Rupert’s House Cree territory, about a fifteen hours drive north of Barriere Lake’s territory. A parallel set of responses to beaver depletion in Cree territory were suggested by the Hudson Bay Company (HBC) trader James Watt and the Rupert’s House Crees (now the Waskaganish First Nation).⁵⁵¹ What the Cree wanted was full control of their lands, but they were not to get it. Instead, James Watt’s wife, Maud Watts, indicated to them that rather than have their rights recognized by the state, a legal arrangement could be worked out for a state-mandated program of beaver conservation. She convinced the Department of Lands to give the Rupert’s House Cree an 18,500 square kilometer beaver preserve. In short, the tallyman system was implemented and the program was a success, beaver populations were restored, and the government boasted internationally about their management control of the north. But by the 1940-50s, the tallyman system had developed into a

state tenure and governance system instituted through a new bureaucracy claiming control over the Cree and James Bay region.⁵⁵²

The gradual government oversight of Cree territory, where previously there had been little, meant that the occasional visits to the territory by doctors and RCMP officers were expanded in the 1940s to include a professional staff of Indian Affairs agents and officers taking charge of the federal and Quebec beaver preserves.⁵⁵³ Harvey Feit concludes that the impacts of what he identifies as these new jurisdictional claims had major outcomes regarding Cree territorial control and tenure. He writes, “The beaver reserves were exercises in governance that reduced Cree control of the land and of their hunting, asserted the competing claims of governments and fur trade companies for authority, jurisdiction and control of the region and enhanced the legitimacy of their claims of northern rule more generally.”⁵⁵⁴ He further notes that the more knowledge the government collected about the Cree and their lands, the better they could claim management authority over these lands. Jurisdiction, he shows, need not be established by dispossession, overt flag-planting, or legal ceremony. The induction of the Waskaganish band into Canadian jurisdiction took only the maplines of a new system of management through which the people could now be surveilled and, ideally, controlled as a population.

Sensing this danger, between the early 1940s and 1950s the Algonquins of Barriere Lake adopted an attitude of non-cooperation and resistance to the Department of Indian Affairs. Instead of complying with the tallyman system, the Barriere Lake men took out hunting licenses yet refused to make the maps for trapping permits, knowing that this information would cede the remaining control they had over their land base.⁵⁵⁵ Resisting the logic of map-making, Barriere Lake community members found outside buyers for furs and other ways to circumvent the system that penalized them for refusing to map their territory for the government. They trusted only their own resource management system, and so they ignored designated “seasons” of harvest and they did not cooperate with game wardens that carried out patrols.⁵⁵⁶ No cooperation meant no beaver tags and so community members were persecuted for hunting and trapping on their own lands; Barriere Lake members were searched and their spoils of subsistence seized. Despite the consequences the community fought back with non-compliance and physical resistance. One game warden report documents the fierce resistance of Algonquin women who hit back with paddles and whatever else they had when attempts were made to search and confiscate their hunting and trapping spoils.⁵⁵⁷ For a time, the game warden even considered black-listing the Algonquins from obtaining any hunting or trapping licenses at all in an ill-conceived attempt to pressure the Indians through regulatory exclusion.⁵⁵⁸ Exasperated, game warden Rene Leveque

wrote to the Fur Supervisor at Indian Affairs at one point lamenting that “we don't seem to be able to control that Barriere tribe” whereas “all the other Indians seem to try to cooperate with us for the protection of their Reserve.”⁵⁵⁹

The trouble continued. Another trapline system was established in 1945 for lands just outside of the GLV Beaver Preserve that still fell inside the border of what is now Parc La Veredrye.⁵⁶⁰ While this attempt to regulate non-Indigenous land use was an overt money grab by Quebec to permit hunting and trapping in the region,⁵⁶¹ attempts at regulation were generally welcomed by the community. Unfortunately, once again, this effort was undermined by the province's autocracy, ignorance and disinterest towards the prior and operational Algonquin land tenure system of the region and its boundaries, despite one official's best efforts. By this time, Quebec had staffed the preserve with a “Fur Supervisor,” hiring Hugh Conn to manage the preserve. Conn had intimate knowledge of Algonquin society since he was formerly the HBC post manager at Barriere Lake. Conn had also previously worked with the James Bay Cree in the north, where he oversaw the management of the beaver preserves.⁵⁶² He warned the province that the boundaries of the GLV preserve were “arbitrary and unnatural” – stating that “portions of some Bands' and/or families trapping territories were left out, and therefore treated differently” within the registered trapline area, for example, Barriere Lake lands east of the preserve.⁵⁶³ Conn recognized the alienating effects of shifting Barriere Lake's jurisdictional boundaries and recommended changing the borders of the preserve so that it more accurately reflected the traditional territorial boundaries of the band's lands, “which themselves normally conformed to watersheds,” however, this advice was not heeded.⁵⁶⁴

The traplines arbitrarily divided Barriere Lake's traditional territory that fell outside of GLV into fixed territories of no more than 50 square miles. Lands within these registered trapline areas required payment for annual renewed leases in return for exclusive trapping rights.⁵⁶⁵ If the trapper did not trap each year, failed to follow regulations, or defaulted on payments, the license could be lost.⁵⁶⁶ In all cases, the GLV preserve was excluded from the registered trapline system, but some Barriere Lake lands outside the preserve were subject to this new registered trapline regime and many of these lands were eventually lost, leased out to white trappers, or to Algonquins who lost leases, thus family lands, due to defaults in payment. In some cases, these lands were lost to surrounding bands. In a traditional land use study dating back to 1993, Harry Wawatie described the process of losing these traplines to a nearby band. Punished for their reticence to participate in the system, others beat them to the all-important and decisive map-making exercise:

You see what happened at the beginning when they first come up with this kind of, when they started making traplines, maps, they started, with the other places first, like Grand Lake, they were coaxed to make these kinds of maps, they were the first ones, took.. I don't know what... advantage, I guess... and a little later on they were coaxed to take some of our parts too...⁵⁶⁷

The trapline systems must have intensified the links between family territories and hunting grounds. But they do not appear to have *caused* the family hunting territories to emerge.

Hugh Conn's efforts to accommodate Algonquin tenure introduces an interesting opportunity to reflect on where laws meet across ontological divides. Conn did advocate strongly on Barriere Lake's behalf and issued premonitions warning of the impacts the registered traplines would effect on their tenure. The tallyman system at Barriere Lake did seem to benefit from Conn's willingness to engage with the Algonquins. More lands were lost in the trapline system that ignored Algonquin territorial boundaries than in the tallyman system, which attempted to account for traditional land allocation.⁵⁶⁸ Conn notes that while Barriere Lake were resentful of white interference, they gradually came around in 1942 and agreed to participate in conservation efforts by estimating the number of beaver colonies in the preserve and promising to count beaver lodges in the spring.⁵⁶⁹ These compromises, or inter-legalities, over trapline jurisdiction meant that authority had to be shared between parties.

The trouble, from Barriere Lake's perspective, was that Conn's sources of authority were premised on counter-factual and racist foundations. First of all, Conn was influenced by Speck's fairly rigid account of family hunting territories, stating that "each family head is appointed as guardian on his own hunting grounds" and largely ignoring the broader kinship nexus we have described.⁵⁷⁰ This outside expertise displaced the Algonquins from being the authors of their own tenure system. Secondly, as a representative of the state, Conn did not act as an honest broker, but manipulated and selectively reconstructed the traditional system in the interests of the Fur Conservation Regime.

The trapline systems reveals how the uneven application of jurisdictional recognition resulted in an uneven production of space. First, not all of Barriere Lake land was included in the GLV – some Barriere Lake community members' lands were given away in the registered trapline system outside of the preserve, creating an uneven distribution of community land between Barriere Lake members and causing tension in the community. Suddenly, there were "propertyless" band members, or severely compromised land holdings compared to others. Second, lands could be "lost" that were never ceded or surrendered. The Algonquins of Barriere Lake resisted registering their lands until quite late, therefore they lost traplines to white trappers outside the preserve, but also to other Algonquin bands. They also lost lands by defaulting on

payments once registered. Third, the tallyman system did not correlate perfectly with family lands; the traplines tended to be much smaller, and this subdivided the land into insufficient parcels of hunting grounds. In conclusion, these foreign systems of land allocation – even the tallyman system that was based on Algonquin tenure – undermined the traditional roles of the Chief and Council through these new differentiations of space, and perhaps more importantly, the expansive kinship nexus that facilitated land use on the territory. It is on this final point on which I would like to focus my argument on jurisdiction.

Property as a Technique of Jurisdiction

Before the “white man made the counties,” or began to subdivide the land into various jurisdictions, it was the customary council that determined the distribution of band lands. In 1991 at Chestnut Lake, community members discussed this practice of allocation: “The Chief looked at how the land was to be used. Before registered traplines, everyone had a territory. People would rotate use of their territories in partnership with other community members: A would trap his area one season, and then partner with B on B’s territory to allow his own to regenerate. Then, the following Season, A and B would go to A’s territory... Set during the meeting [the feast] the people would decide who to go with, decide who to ask, [say to one another] who are you trapping with?”⁵⁷¹ Feasts took place in the fall and spring and it was there that the Chief would deal with issues of over-crowding or shortage of game on the land and move people around accordingly.

Toby Decoursay remembers David Makokos, the life Chief who governed for most of the twentieth century, ensuring that there was not excessive overlap of families on the land. For instance, if two families were already heading towards La Bouchette (an area in the park), Makokos would tell the third family to find another place. There were no property lines, but the territory was clearly delineated by Algonquin place names that contained in their language the geological boundaries and toponymies of a particular area. When pressed, Toby could not remember the need for any laws of trespass, though he did recall that people were generally less strict or more respectful of each other’s territories in the past. “That’s what they say, me I’m going to *kamashgono-gamak* or *gasazibi*, they just say the name of the territory and the Chief is going to take care of that. And they know what direction to go and where is the name of the place. And that’s it...”⁵⁷² The traplines at Barriere Lake were embedded within the governance system, at piece with their tenure system of land management.

The sub-Chiefs or Councillors also played a role in this land management practice. In 1990 at the Romance Lake bush camp, Patrick Maranda described this role of the Chief and sub-

Chiefs in the time before the beaver preserve: “People used to have meetings before they went trapping. There were four sections, four Councilors responsible for the people... The Chief would listen to the Councilors, and the Councilors did the work of visiting around, looking after things.”⁵⁷³ This oral history is confirmed by other community members who remembered how each sub-Chief was chosen to keep one of the four directions, named for winds that reflect a four-pole classification system of the world.⁵⁷⁴

While traplines always existed in practice, their regulation by government dug them up from an embedded system of tenure and governance and lay them neatly on the land like two-dimensional lines on a map. In an interview in June 1994 done with Toby Decoursay and Maggie Wawatie, they discussed the marginalization of the Chief by outside agencies in the establishment of registered traplines: “It was up to the Chief to decide [where people would go]. Everyone would come together in a big feast, make basket[s]. That’s where they were told [where] to trap. That’s why the Indians didn’t fight long time ago among themselves about the trapline. Since the white man made the counties – how big the trapline going to be – that’s when the trouble started.”⁵⁷⁵ The government trapline systems mapped over the existing system of aboriginal land tenure and political governance. Dorsett and McVeigh cite maps as one the easiest technologies of jurisdiction to recognize, since one gets an instant picture of the spatial extent of law.⁵⁷⁶ The disciplinary society relies on maps as systems of territorial surveillance that assimilate space into Cartesian grids; these forms of representation safely ignore Indigenous ways of knowing and recording space.⁵⁷⁷

Trapline systems formed a new technique of colonial power. They constituted a complex set of regulations and jurisdictional claims that impacted the Mitchikanibikok Anishnabe Onakinakewin and inculcated novel ideas of propertization in the territory. As a result, the new tenure system of traplines wrought unprecedented changes in social relations in the territory. Former customary Chief Jean Maurice Matchewan described the impact of the traplines system on the community’s communal ethics:

Well, long time ago when the government started putting laws on our land, like for instance, the registered traplines, that’s a government-imposed trapline. People didn’t get along good, cause as their land got smaller, they started having problems, cause they couldn’t fit everyone on their trapline. So it was the government that introduced this trapline idea to get rid of this problem. Families were pretty much fighting over their territory and with their neighbours and neighbouring communities, as well. So that’s how the trapline came to be. Before that, they didn’t really have a trapline. They just had a territory that they occupied, but it wasn’t really specifically given to them, [just] to manage.⁵⁷⁸

What had begun as a conservation effort in fact worked to undermine the jurisdiction Algonquins had over their lands. While Barriere Lake traplines could be shared across a number of kinship relations, the government trapline system forced individuals to take ownership of particular traplines in order to secure tenure and avoid confiscation and redistribution of lands to settlers by the government. Anthropologist Harvey Feit reports that the trapline system in Cree territory also “led to a more formal and rigid application of leadership, authority and inheritance ideas.”⁵⁷⁹ Ethnographic research conducted years later on post-beaver preserve life revealed that the property relations of the Cree could not have been as easily emulated as even the most generous fur trader managers at first assumed. Feit writes that, “hunting territories are not forms of private property, nor results of commodification or assimilation as had been assumed by some mid-century analysts and commentators. Hunting territories are both expressions and means of reproduction of Algonquian [reference to language group, not national affiliation] social relations, symbolic meanings and relations to the land and wildlife, i.e., they are integral to social reproduction broadly construed.”⁵⁸⁰ By asserting jurisdiction over Cree lands, the governments were also disrupting Cree rights to self-determination and self-government.

At Barriere Lake, much as people did not own individuated plots of property, aboriginal tenure secured some of the advantages of proprietary regimes. As we have described, customary or traditional users of the range would have spent many years on that land, therefore they would have built up an extensive fund of knowledge about the area, making them effective hunters and gatherers and giving families historical attachments to the particular areas. These historical attachments then led to some measure of responsibility (*tibenindiziwin*) for the areas, ideally managing their resources for other users and future generations, requiring recurrent (not necessarily continuous) occupancy and use. This jurisdiction of care could not be replicated through bureaucratic regimes of ownership.

Partly what outsiders could not perceive was the flexibility in Algonquin social relations of belonging. As Jean Maurice Matchewan illustrates, “if there’s one family, if at their trapline there’s no animals there, pretty much, another family will take them into their area when their animals are growing. So those are the kinds of thing they would do to accommodate other families. Cause I remember when I was young my grandfather was a great trapper, he used to go out to somebody else’s territories, with permission, and there was no problem that way.”⁵⁸¹ The Barriere Lake trapline system represents a set of social relationships between community members that respects boundaries between ecological areas, but corresponds to the dynamics of a hunting and trapping economy and the overarching value of ensuring sustenance for all. This flexibility has posed the central question for settlers studying the land interests of Indigenous

peoples: is it property? Bryan contends, however, that the main issue should not be whether Indigenous peoples “have conceptions of property and what those are, but rather how an analysis of other cultures’ ways of life, using our own terms, serves to rationalize that other way of conceiving of the human’s relationship the world-at-large in our own terms.”⁵⁸² The beaver preserves and trapline systems served to re-order Algonquin society along the lines of Western understandings of ownership, even in the best intentioned efforts.

Cross-cut by a range of administrative and political boundaries, while subject to intensive resource extraction, Paul Nadasdy similarly chronicles the failure of Indigenous knowledge to be integrated into the co-management of Ruby Range sheep in the Yukon Territories. The Kluane First Nation involved in the project had to navigate myriad jurisdictional barriers to participate, ultimately failing to make an impact with their contributions. Nadasdy observes that, “arbitrary geographical divisions directly affect people’s experience of the land and so structure their knowledge of it; yet they overlap and otherwise fail to correspond to one another.”⁵⁸³ In the context of conservation Nadasdy argues that while “trust” may be placed between Indigenous and settler parties, whether or not action will actually be taken on the say of Indigenous partners is another question altogether. He warns that co-management agreements can take for granted existing Indigenous-state relationship and perpetuate, rather than transform, unequal power relations.⁵⁸⁴ In some sense, the registered trapline system would prefigure the failures of Canada and Quebec to implement the Trilateral Agreement.

Population Control

Since the trapline systems did impact Indigenous forms of belonging, here is a critical juncture where we can examine the meeting of jurisdictions on the ground. A complex overlay of jurisdictional impositions comprised of provincial orders-in-council, the federal department of Indian Affairs, the national RCMP force, and the encroachment of private citizens structured settler colonial assertions to conservation on Barriere Lake lands. One common denominator of these jurisdictional assertions was the mutual goal to gain control over populations: beaver, settler, and Indigenous. While we have looked broadly at the imperial conditions that gave rise to state forms of sovereignty, here we have another expression of sovereign power, which Foucault has called *biopower*.⁵⁸⁵ Biopower is an exercise of power where a problem of governance is solved through the production of knowledge about bodies, life, and death. The problem of declining fur-bearing animals provided the grounds for intervention at Barriere Lake. Where biopower is the sovereign power to “make” live and “let” die, the beaver preserve and traplines were established in a partial sense to make the beavers live so that the Indians would not die.⁵⁸⁶

My ambivalence around naming this phenomenon as biopower is that negligent policing of settler poaching raised serious questions about the earnestness of these efforts. Perhaps there was a kind of “letting” die at play through the lack of effort; certainly, state-chartered Hudson’s Bay had their own agenda for formalizing jurisdiction over the Indians and beaver. It is hard to interpret exactly whether or not the intention was to save the Indians or to make the best appearance of saving the Indians. Intentions after all were decidedly mixed among participants and this whole line of thinking warrants further attention elsewhere.

What does seem certain is that efforts were pursued through the dogged collection of data on beaver habitat and population, which in turn was utilized to govern life for the Algonquins by assuming jurisdiction over their land tenure. Scott Morgensen writes about the way settler colonialism is in fact “exemplary” of biopower.⁵⁸⁷ Drawing on Patrick Wolfe’s seminal work on the ways in which settler colonialism is a structure of elimination rather than an event, Morgensen writes: “Wolfe emphasises that elimination may follow efforts not to destroy but to produce life, as in methods to amalgamate Indigenous peoples, cultures and lands into the body of the settler nation.”⁵⁸⁸ To ignore this biopolitical context is to naturalize the condition of sovereignty and the pretext of jurisdiction on these lands.

Technologies of biopower affect and alienate the capacities of Indigenous peoples’ to practice local self-reliance. As Toby put it, the land “is from where our customs are built. When the government opens the hunting season, taking bears, moose, and beaver without regard to their families or their role in the order, this is where they start to destroy my beliefs.”⁵⁸⁹ It is the knowledge produced within these biopolitical regimes of power that wrest control away from the community and displace their own sources of knowledge that support Indigenous jurisdictional claims.

Non-Indigenous people for the most part never settled on Barriere Lake’s territory because of restrictions on private ownership due to the status of Park La Verendrye as a wildlife reserve, so cycles of elimination and dispossession were never a matter of private, fee simple encroachment. But the loggers, hydro workers, tourists, and recreational hunters placed enormous pressure on Barriere Lake’s lands and this competitive context forced the Algonquins to hunt less discriminately, lest they lose out completely on sustenance for their families. Terrible impacts on the ecology of the region also followed. Jean Maurice Matchewan describes the impacts on the land and animals from the dams and logging:

When I was growing up and first started realizing what was happening, and hearing my grandfather talk about what was happening... This Cabonga reservoir used to be full of logs, people had a hard time going through with their canoes, even in the little creeks,

logs were cutting across the river, blocking the river, it made it pretty hard for people to travel, cause you know they didn't care if they were near a creek or river, they would just chop down a tree and block a river or a creek. So it really affected they way people used to travel. Even in their portages to go to other areas, it would be just impossible.

The moose are having the same problem now – they've been using the same route for I don't know how many years and years, all of a sudden it's all chopped down and blocked in there, they get lost too, they need to find new routes, just like we had to. That's why we use the road nowadays. But everything that happened, like for all the sport hunting, we got less and less animals, and all that, and the flooding is very hard to travel on it and the beavers freeze in the winter time when they lower down the water, and down below where they release it, too, they drown all the beavers cause the water raises up so fast, so it affects in a way, how we travel, and the food that we eat has also been affected.

And we have to go further and further into the bush to go for beaver, for instance. There's no beaver once they lower down the water. They lowered down the water 10 feet – that means the beaver has to walk 10 feet to get to the water and it's under ice. And they have no food – the food they store in front of their cabans – it's in the ground it's supposed to be in the water, that's why they put it in the water, and a lot of time, they're on the ground, especially on the reservoir here. And the moose sometimes, will just go through the ice. Those are some of the problems we have with everything they're doing.⁵⁹⁰

The effect of these disruptions, not just on the traplines, but on powers of jurisdiction more broadly, have had severely negative impacts on the ecology of the territory, hence the demand for the Trilateral Agreement, which would have introduced an ecological approach to co-existence between Indigenous and non-Indigenous governments. Whereas the provincial government has been content to lease and permit any industrial or recreational activity that generates revenue, Indigenous peoples are able to practice their jurisdiction of care only when they have access to their *intact* territorial land base. Usher, Tough and Galois have observed that “[w]here natural productivity remains high, so does the territorial extent of land use and the volume of fish and wildlife harvests.”⁵⁹¹ In Barriere Lake, the impacts of extraction on their territory has seriously impacted their subsistence economy and also the natural ecosystem. An inability to live off the land increases dependence for Indigenous peoples both on individualized government welfare and on wage labour, enclosing the community in the spaces between primitive accumulation and dispossession.⁵⁹²

Land use clashes are inevitable and widespread throughout the country precisely because these Indigenous land-holding systems are subject to imposition, incursion, and outright dismissal, violating Indigenous laws and trampling on invisibilized turfs of Indigenous responsibility and belonging. As Usher, Galois and Tough put it so well: “The state system of resource tenure and management exists as an *overlay on*, not a *replacement of*, aboriginal systems – hence the frequency of land and resource conflicts.”⁵⁹³ These overlays are not mere palimpsests

on the land. They form the materiality of settler colonialism, generated through the technologies of settler property rights – in this case, leaseholds – that render invisible Indigenous land tenure.

Conflict over land will always play out as a conflict over property relations in Canada because, as Soja writes, “[c]onventional Western perspectives on spatial organization are powerfully shaped by the concept of *property*, in which pieces of territory are viewed as ‘commodities’ capable of being bought, sold, or exchanged at the market place.”⁵⁹⁴ Set within the register of settler colonialism, these capitalist social relations of property organize space into abstract and universalized value, erasing Indigenous forms of tenure, knowledge, and belonging to the land. Despite attempts, property owners in Canada do not have constitutional protection for their private property.⁵⁹⁵ However, the courts and government have proven reluctant to violate private property rights when they are challenged by Aboriginal claims. Instead, *de facto* property rights (in the form of leaseholds) have been protected, despite their lack of constitutional protection and in spite of the special status of Aboriginal lands in Canada.

But control of populations is always subject to the productive forces of power on the ground. Norman Matchewan once showed me his grandfather’s trapline on a map where he and his cousin Benjamin Keyes trap together. His uncle gave the trapline to him and showed him all the best places to catch marten when Norman was broke and could not afford to pay his bills. Norman said it used to be that there were no family territories – people would move around from place to place. I asked when that changed, and he said maybe with the traplines.⁵⁹⁶ Fortunately, while the rigidity of the government trapline system reified these family territories due to sudden “shortages” of land, trapping has been a flexible system to begin with, containing room for adaptation to changing circumstances, to which the families, Chief, and sub-Chiefs would attend. Today, the trapline system calls less upon the customary government for adjudication and allocation, but it is still entrenched in the territory of Barriere Lake’s ecological boundaries and within the purview of the customary government’s jurisdiction.

PART IV: SECURING THE STATE

CHAPTER NINE – The Customary Government Must Fall

We left off in Chapter Six with the Mitchikanibikok Inik's arrival back on Parliament Hill to protest the collapse of Trilateral Agreement negotiations. Following extensive wrangling, the ABL Special Representative, Clifford Lincoln, and the Quebec Special Representative, John Ciaccia, were given a mandate in 2005 to come up with a series of recommendations to resume negotiations. "The Ciacca-Lincoln Recommendations," as they came to be known, comprise seven articles of consensus for moving forward towards co-management of the territory. They include recognition of the Trilateral Agreement territory and the development and implementation of final Integrated Resource Management Plans on forestry, wildlife, fish, and social indicators, that would bring in measures to harmonize Algonquin subsistence with long-term plans for resource development in the territory. Ciacca and Lincoln also provided recommendations for institutionalizing Algonquin participation in the management of renewable resources, as well as revenue sharing, housing and infrastructure improvements, and electrification of the Rapid Lake Reserve. Many articles that first appeared in the 1998 Bilateral Agreement between Quebec and the band now applied more broadly to federal and provincial governments. As the pattern I have delineated has established, however, just as Barriere Lake found themselves on the precipice of success, an enormous and intentionally insurmountable hurdle was once again placed in their path. While the Barriere Lake Algonquins had once successfully leveraged one level of government against the other to keep the process moving along, now it began to appear as though the federal and provincial governments were now cooperating more closely.

Jurisdiction, I have theorized, can be understood as the authority to have authority. One of the things about being a customary band like Barriere Lake is that your authority to govern is not designated by Canadian authority. It is considered under the law to be an *inherent* right. In contrast, band councils formed under the election provisions of the Indian Act are considered to possess *delegated* powers of authority from the federal government. To sever the Barriere Lake people's from the land, Canada engineered a transition from an inherent to delegated form of authority through a obscure clause in the Indian Act in attempt to derail the Trilateral Agreement for once and for all. This chapter details the dramatic imposition of the elective band council system onto Barriere Lake's customary government, highlighting the key role Indian Affairs played as public relations managers in order to secure this new governance regime.

The legislative powers at Indian Affairs' disposal to challenge Barriere Lake's inherent authority over their lands were archaic but effective: a "Section 74" order could unilaterally replace the *Mitchikanibikok Anishnabe Onakinakewin*. This section of the Indian Act gives the Minister of Indian Affairs sweeping powers to abolish customary bands, which are currently accounted for under Section 2 (1)(b) of the Indian Act, under the definition of a "band."⁵⁹⁷ Section 74 states: "Whenever he deems it advisable for the good governance of a band, the Minister may declare by order that after a day to be named therein the council of the band, consisting of a Chief and Councillors, shall be selected by elections to be held in accordance with this Act."⁵⁹⁸ Until now, Section 74 section had not been exercised coercively on a customary band since 1924, when the RCMP raided the Lodge at Six Nations and chain-locked shut its doors, imposing band council elections on the fiercely independent confederacy.⁵⁹⁹ Canada's attempt at using armed force to destroy the Haudenasaunee Great Law ultimately failed, but tensions between the band council and Confederacy exist until this day.

Indian Affairs: To Divide & Conquer

In July 2006, Harry Wawatie resigned as Chief over INAC's decision to appoint a Third Party Manager to control the band's financial and administrative affairs.⁶⁰⁰ Citing ill health and old age, he surrendered the burden of the fight to the next generation. Later that month, Jean Maurice Matchewan was re-selected as customary Chief by the Elders Council, comprised of Harry Wawatie, Toby Decoursay, Jeanine Matchewan, and Louisa Papatie.⁶⁰¹ A small faction ran a parallel leadership selection; they also claimed to have adhered to the Customary Governance Code codified in 1997 as part of the *Mitchikanibikok Anishnabe Onakinakewin* Customary Code. Their Elders Council consisted of George Nottaway, Elisabeth Nottaway, Zoe Jerome, and Jules Papatie and they selected William Nottaway as Chief.⁶⁰² Indian Affairs refused to recognize the Matchewan Council or William Nottaway's Council. Another coup of sorts took place, only this time the government refused to recognize any new Chief.

Instead, for a second time, they put the community under Third Party Management claiming it was justified by Barriere Lake's large deficit and uncertain leadership situation. The Customary Elder's Council led by Harry Wawatie immediately challenged the Minister of Indian Affairs' decision in federal court, arguing that the deficit issues could be cleared up if the money owed to Barriere Lake from the 1996 funding deprivation was repaid as promised. In the yearly funding budget, negotiated by the Third Party Manager and Indian Affairs in 2007, the money owed by the government had simply been struck from the record.⁶⁰³

Matchewan's Council was finally reinstated as an outcome of mediation. In Spring of 2007, Superior Court Judge Réjean Paul was called in again and he confirmed the legitimacy of Matchewan's Council, calling the challengers a "small minority" who "did not respect the Customary Governance Code."⁶⁰⁴ He also named the tactic of replacing the legitimate customary council with these small dissident factions a "'guerilla movement' existing on the Reserve and extending as far as Maniwaki and Val d'Or for many members living off the Reserve."⁶⁰⁵ In terms of the imposition of Third Party Management, by agreement with the Deputy Minister of INAC, a Special Ministerial Representative was appointed for the community to resolve the impasse on financial debts. The legal proceedings on Third Party Management were adjourned in exchange,⁶⁰⁶ but when this intervention failed to achieve results, the Minister of Indian Affairs agreed to re-start the court case.⁶⁰⁷

Then things went seriously sideways. In the fall of 2009, Jean Maurice Matchewan stepped down as Chief as a result of pending charges.⁶⁰⁸ The Elders Council selected Councillor Benjamin Nottaway as Acting Chief to replace Matchewan until the charges could be cleared. But no sooner had they selected Nottaway as Acting Chief did another group in the community hold their own leadership review process to select a leader to replace Matchewan. On January 30, 2008, a totally separate Council of Elders from those who selected Nottaway to replace Matchewan nominated Casey Ratt as Chief. They also selected a new Council consisting of Ricky Decoursay, Donat Thusky, Roger Jerome and Wayne Papatie and alerted the federal government the next day.⁶⁰⁹ On February 4, Elder Harry Wawatie sent a letter to Indian Affairs, strongly rejecting Casey Ratt's claims to be Chief.⁶¹⁰ Nonetheless, on March 10, 2008, INAC recognized the Ratt Council as the legitimate Chief and Council of the Algonquins of Barriere Lake. The Minister did not provide an explanation for his Department's decision to recognize the Ratt Council over Acting Chief Benjamin Nottaway's Council nor respond to Wawatie's February 4th letter. Even the court worker assigned to observe Ratt's selection process put in writing that he could not confirm the legitimacy of this customary government.⁶¹¹

In a secret memo obtained by *The Dominion*, deliberations over the decision to recognize the Ratt Council over the Matchewan Council are outlined. INAC expresses a preference for the Ratt Council, which officials described as less "dogmatized" than the Nottaway Council and who would offer "improved collaboration."⁶¹²

Elder Harry Wawatie hand-delivered a letter to Minister of Indian Affairs Chuck Strahl on March 31, 2008 informing the Department that they were "once again wrongly interfering in our internal governance" and that the Ratt Council would not be accepted as legitimate leadership in the community.⁶¹³ Wawatie further identified the root causes of this ongoing Indian Affairs

interference: “We view DIA’s decision as no more than a divide-and-conquer tactic to get us to fight amongst ourselves and to avoid obligations in agreements it signed with our First Nation.”⁶¹⁴ This time, the Elders Council led by Wawatie (hereafter referred to as the Customary Elders Council), wasted no time appealing to the judiciary to resolve this dispute. They filed a notice of Application for Judicial Review of Minister of Indian Affairs’ decision “to register the results of a purported leadership selection and to conduct his relationship according to those results with a purported council.”⁶¹⁵ The application was at first struck down by Prothonotary Aalto on August 25, 2008, but Aalto’s ruling was reversed on appeal by Mr. Justice Zinn on January 6, 2009. The Minister had tried to claim that he had simply “registered the results” of the Ratt Council, therefore bore no culpability for alleged “decisions” taken by the Department.⁶¹⁶ But Zinn concluded otherwise: in effect, he accepted the applicants’ appeal to *Haida*, which engages the Crown’s duty to consult with the band.⁶¹⁷ Zinn also affirmed that in the case of customary bands – as confirmed previously with the invalidated IBC – the Minister has no authority to determine the legality of customary leadership.⁶¹⁸

This judicial review into the Minister’s decision to recognize the Ratt Council over the Matchewan Council, unfortunately would go no further. Legal entanglements in another courtroom would ultimately undermine both parties’ standing in the courts. Before we continue with this story, however, it behooves us to examine the internal dynamics of the leadership dispute between the Matchewan and Ratt Councils. Could the matter have been resolved within the context of Barriere Lake’s own Indigenous jurisdiction, without appeal to the judiciary or to the public more generally? This matter is in fact of great political importance, since media opinion weighed heavily in the government’s favour when Canada claimed this latest conflict was simply the natural outcome of Barriere Lake community dysfunction. What is necessary is an autopsy of what Wawatie called “divide and conquer tactics.”

The “conquering” objective here appears to tie closely to the Trilateral Agreement. It is not difficult to understand the Ratt’s Council’s frustration at the progress of negotiations. Matchewan saw that if the Trilateral Agreement was implemented and the modest revenue-sharing was distributed at \$1.5 million per annum as agreed, the community could design and manage their own cultural programs and economic development initiatives without being dependent on hand-outs from the government. But this insistence on tying funding to settling the question of jurisdiction and resource management – outside of the preferred land claims process – challenged the Crowns’ willingness to negotiate in good faith. The Trilateral Agreement, the MOMI, and Bilateral Agreement with Quebec all hinged on recognition of Barriere Lake’s right to have a say over their territory and Matchewan, and Wawatie (before and after him), refused to

compromise these rights in exchange for short-term infrastructure investment and programs. This meant that so long as negotiations on land management were stalled, so was progress on all fronts that could improve the daily living conditions of the Algonquin community. In a fall 2009 press release, the Ratt Council clearly explained their apprehension with the way politics was being played by community leadership: “Several members believe that the previous Council, led by former Chief Jean Maurice Matchewan, focused too much of their attention on the trilateral agreement [*sic*] at the expense of other areas such as education, health, policing, and socio-economic development.”⁶¹⁹ Complicating these stalled Trilateral negotiations were rumours of alleged corruption that continued to circulate about Russell Diabo and David Nahwegahbow surrounding Trilateral funding dollars. But ultimately, it was the land issue and agreements that remained poorly understood.

Crystal clear, however, was the crippling poverty on the Rapid Lake Reserve, surrounding family village sites, and among band members. Casey Ratt believed he could solve these pressing material concerns, stating: “For the first time, steps are being taken to address the issues within our community by developing action plans to bring about structure in all areas of our governance that will focus on community involvement and accountability.”⁶²⁰ The Ratt Council did work earnestly to secure what gains they could derive from the programs and services dollars on offer, but ultimately they too failed to make any progress on social and economic development in the community, in part because they did not have the confidence or consent of the majority of the community to govern.⁶²¹

Attempts made by the Nottaway Council and the Customary Elders Council to resolve the leadership conflict with the Ratt Council internally failed to solicit any cooperation from Ratt’s group. The Nottaway Council and Customary Elders Council suggested that the Ratt Council appoint their own independent co-facilitator to help design and implement a new leadership process that ensured fairness, neutrality, and good faith. The Ratt Council refused to participate. Despite this refusal to engage, the Customary Elders Council remained insistent until the end that a new leadership selection process be postponed until the full participation of the Ratt group could be obtained. Finally it became clear, however, as Keith Penner put it in his independent report on the leadership selection process, that “every exchange on this issue was only used as delaying tactic.”⁶²² Further, the Ratt Council’s legal counsel, Michael Swinwood, filed injunctions on May 12 and 13, 2008 to stop the leadership selection process altogether. The injunctions failed and finally, after considerable delay, the Customary Elders Council attempted to end the leadership impasse by holding another leadership selection process strictly according to the Mitchikanibikok Anishnabe Onakinakewin. They invited independent observers and planned

to hold the government accountable to registering and recognizing the results of this renewed process. Jean Maurice Matchewan was re-selected as Chief.

Keith Penner agreed to serve as independent facilitator for the leadership process in late June 2009. A former public official and author of the “Penner Report” in 1983 on Indigenous self-governance, he concluded of the Barriere Lake leadership selection

that the *Customary Code* has been followed and adhered to in each and every respect. The new Chief and Council are the legitimate and properly constituted leaders of the community of Barriere Lake. It only remains now for DIAND to appropriately and correctly recognize and register the results of this Customary Selection in accord with the terms of the Indian Act set out in s.2(1), ‘council.’⁶²³

Six letters were sent to INAC between June 24, 2009 and late October 2009, requesting that the Minister make a decision regarding recognition of the new Matchewan Council. On October 30, 2009 the community finally received a response. Minister Chuck Strahl no longer recognized *either* the Matchewan or Ratt Councils and intended to impose Section 74 on Barriere Lake, putting them under the Indian Act elective system if the leadership issue was not internally resolved by April 1, 2010.

It was a serious blow. An option never far from the Minister’s grasp, the decision to impose Section 74 on Barriere Lake was nonetheless an extreme strategy designed to give the Department control back over the community. It seems that despite their opposition to the Trilateral Agreement, the Ratt Council had failed to ensure the Department control over the community due of their lack of credibility.

Meanwhile, another judicial proceeding was making its way through the courts. Back in September 2009, the Ratt Council, their Council of Elders, and their supporters responded to the selection of the Matchewan Council by launching their own Judicial Review Application challenging its validity under the *Mitchikanibikok Anishnabe Onakinakewin*.⁶²⁴ Matchewan’s legal counsel David Nahwegahbow advised that in light of the Minister’s Section 74 order that an alternative dispute resolution of leadership be appropriate in order to resolve differences by the Minister’s deadline of April 2010.⁶²⁵ A court supervised reconciliation process would have allowed them to hold off the threatening order. But Michael Swinwood, representing the Ratt Council, rejected the proposal, claiming that his clients preferred to litigate.

The miscalculation by Swinwood and his clients was enormous. On February 17, 2010, the Honourable Justice Mainville issued his decision in the lawsuit. He accepted that Matchewan’s selection was valid, but was deeply critical of this group’s use of the *Mitchikanibikok Anishnabe Onakinakewin*, and also of the decision of the Customary Elders

Council to select Benjamin Nottaway as Acting Chief. Rather than remaining *impartial* to the process, as Justice Mainville believed that the Customary Elders Council were required to be (though there is no such concept or law expressed in the *Mitchikanibikok Anishnabe Onakinakewin*), he criticized them for siding with the Matchewan-Nottaway Council, accusing the elders of unfair bias, for example, when they brought the Judicial Review against the Minister on behalf of the Nottaway Council. Justice Mainville also severely criticized the Ratt group for their own misappropriation of the *Mitchikanibikok Anishnabe Onakinakewin* in their leadership selection process and for refusing to participate altogether in the leadership reselection process.⁶²⁶ Ultimately, Justice Mainville decided that he could not recognize the validity of either group's claim to leadership of the Algonquin band.⁶²⁷ According to Mainville, neither of these Algonquin councils were fit to govern their own society.

The fallout from the Mainville decision led to major changes in the community. When they were recognized by INAC, the Ratt Council had immediately withdrawn from the band's tribal council, the Algonquin Nation Secretariat (ANS). But the ANS had continued to support the Nottaway and Matchewan Councils, pending judicial hearing. Now, the tribal council could no longer legally represent the Matchewan Council of Barriere Lake in their organization. The band lost major institutional support and their research funding dollars were completely cut. Worse, a political vacuum opened in the community – something unaccounted for in the laws laid down in the *Mitchikanibikok Anishnabe Onakinakewin*. This political vacuum provided Canada an alibi to suspend resource co-management negotiations under the auspices of this “leadership imbroglio.” Forestry companies moved in and, unsure how to consult with the local Indian band, now sent letters to both Casey Ratt and Jean Maurice Matchewan for approval of cuts.⁶²⁸ The community hired Hutchins Legal Inc. to help them to navigate the forestry incursions on their territory and to use this sudden spate of natural resource development as leverage to get the governments back to the negotiating table.⁶²⁹

Meanwhile, the specter of Section 74 cast a dim pallor over the entire community. Despite considerable conflict between the Ratt and Nottaway factions, neither group supported any abrogation of the customary government system.⁶³⁰ With the unexpected common ground gained through the Ratt and Matchewan Councils' shared contempt for the threat against their customary government, a cautious reconciliation began to unfold at Barriere Lake. Youth took the lead in the reconciliation process, meeting repeatedly throughout 2009, extending open invitations to their discussions to all community members, and affirming unanimous community rejection of the Section 74 order.⁶³¹ The wounds were deeper for the older generation in the community, though Casey Ratt's father, Severe Ratt, was one of the first to cross the fault-line

and re-join his peers that included Jean Maurice Matchewan, Toby Decoursay, and Michel Thusky.

On December 15, 2009, the Elders of the community issued a resolution to reject the Minister's plan to impose the Section 74 elective system and a Barriere Lake Community Resolution quickly followed that day, affirming their support for the Elders and their resolution.⁶³² These resolutions were not simply words and signatures, but provided the catalyst for travel and communication between family settlement sites on the territory to discuss the future leadership of the community. The band communicated the progress of their reconciliation process back to INAC and the Minister of Indian Affairs on a constant basis. For example, in a letter dated May 26, 2010, four youth – including supporters of both the Matchewan and Ratt Councils – sent a letter to Pierre Nepton, Regional General Director for INAC in Quebec, stating that, “We hope that your department will not interfere with our community process as it will also address our reconciliation. We advise the department to respect our process and our wishes for reconciliation.”⁶³³ Once again, hope was stirring in the community that the next generation of leadership would resolve the differences of the past, and more importantly, that the community could join in a common struggle against the governments that they all now agreed were lined up against them.

To repeal the Section 74 order, INAC wanted to see amendments to the customary governance code that would clarify disputes over leadership, the role of elders, and the terms of leadership review for future disputes. The community was ready to take this up through their community-driven reconciliation process. However, the “opportunity” INAC offered Barriere Lake to see the invocation of Section 74 repealed was not to be through an internal Algonquin process. INAC instead mandated strict terms and conditions by which Barriere Lake had to undertake the required amendments through the federal Conversion to Community Election System Policy (CCESP). As Strahl writes in his October 30 letter, first warning them of the imminent Section 74 threat, “Over the next several months, I am offering the community the opportunity to develop and ratify a clear leadership selection process that includes secret ballot voting, and that respects the principles set out in the Department's Conversion to Community Election System Policy.”⁶³⁴ The paradoxical intent of the CCESP is “for the purpose of determining that an order pursuant to Section 74 of the Indian Act be repealed so that a First Nation may conduct its elections under its own community election system (custom).” But the policy cannot do both: in the case of Barriere Lake, these very CCESP provisions undermine the basis of the Algonquin customary system of governance.

That is because the required provisions of the CCESP strip away the connections between land and leadership insured in the Mitchikanibikok Anishnabe Onakinakewin. One constitution is pitted against the other: the CCESP, section 2 (d) states that the policy “is consistent with the *Charter of Rights and Freedoms*, which, among other points, includes: voting rights to off-reserve members; a realistic mechanism by which off-reserve electors can participate in the electoral process (e.g., mail-in ballots); and the opportunity for off-reserve electors to hold positions on the band council.” While the *Charter* may define these criteria as essential Canadian citizen rights, the impact of these stipulations would effectively wipe out Barriere Lake’s customary governance code and all structures built in place to protect it. The function of the CCESP is to essentially allow a small degree of flexibility to Indian Act election provisions. The government then calls these minor modifications a “conversion to custom.” The impacts on a customary band that has never been governed under the Indian Act, however, are severe.

Being governed under the Indian Act would change the very nature of recognition for Barriere Lake’s customary government. As Nahwegahbow explained to the community: “Under custom, the powers are inherent, which is what the Federal Court said in *Bone v Sioux Valley*. On the other hand, the powers exercised under the *Indian Act* are strictly delegated; in other words, they come from the Act and are delegated by the government.”⁶³⁵ Nahwegahbow also warned that the imposition of Indian Act election provisions may have long-term effects in terms of the community’s ability to hold, exercise, and prove Aboriginal title and rights. According to the Supreme Court of Canada, a “substantial connection” to the land is required to prove Aboriginal title.⁶³⁶ Currently, this requirement is embedded in the Mitchikanibikok Anishnabe Onakinakewin. If the Onakinakewin ceases to be recognized as the governance regime at Barriere Lake, the potency of their claim over their traditional territory is also drastically undermined over time. Finally, and perhaps most controversially, the customary governance code requires that participants in the leadership selection process maintain a connection to the land, but does not stipulate where or not community members live on- or off-reserve. The Indian Act forces a distinction between band members on the basis of where people live, causing a new arbitrary basis for divisions in the community. Under the Indian Act, everyone on the band list is able to participate in selections, shifting the *raison d’etre* of the governance structure from jurisdiction over the land to management of band members.

Arguably, Barriere Lake’s customary governance code provisions are Aboriginal Rights protected under section 35(1) of the Canadian Constitution, 1982. However, the courts have said infringement is allowed if a strong case can be made for intervention.⁶³⁷ Under the CCESP, a Section 74 action is considered “the antithesis of self-government” and warns that it should only

be exercised “where the dispute is so volatile that no other option is viable.”⁶³⁸ Minister of Indian Affairs Chuck Strahl made the case for infringement at Barriere Lake by referencing community embroilment in ongoing leadership disputes. But what the dispute really so volatile? Time and time again, the community communicated to the Department that a reconciliation process was underway. INAC officials had the opportunity to see this for themselves on several site visits to the Rapid Lake Reserve. On April 6, 2010, Pierre Nepton, Quebec Regional Director General, reports on a meeting held on March 31, 2010 at Rapid Lake, where both Jean Maurice Matchewan and Casey Ratt were in attendance. He writes that both men “gave us an indication that there were willing to work together with the community to bring some modification to the customary code.”⁶³⁹ The joint efforts of formerly disputing Chiefs would seem to act against suggestions of volatility in the community.

Reconciliation Meets the Stone Wall of the State

Before the ax dramatically fell on Barriere Lake’s customary government in August 2010, there were many forewarnings that the customary band’s days were numbered. As early as 1995, during the first leadership crisis with the Interim Band Council, the Department of Indian Affairs was debating the idea of imposing Section 74 of the Indian Act onto the community as a final solution to their ongoing demands for compliance with the Trilateral Agreement.⁶⁴⁰ In March 2008, an internal report summarizing impact scenarios of Ratt Council recognition over the Nottaway Council also offered the possibility of recognizing neither council and instead imposing Section 74 on the community.⁶⁴¹ Despite repeated references to Section 74 over the years in regard to Barriere Lake, these discussions remained internal to the Department until October 2009. That month, Barriere Lake received notice from Minister of Indian Affairs Chuck Strahl that an order pursuant to Section 74 of the Indian Act to bring Barriere Lake under band council election provisions was being actively considered.⁶⁴² The context of the Section 74 ministerial order in October 2009 was an internal leadership dispute, but INAC had continued to interfere with Barriere Lake’s internal governance procedures prior to this 2008 conflict and following the IBC scandal, undermining the community’s capacity to govern. At least the Department made no secret of the severity of the measure. Camil Simard, director of negotiations, governance and individual affairs for the Quebec Region of INAC, told *Indian Country Today* (after the fact) that, “[t]he Section 74 of the Indian Act... is an extraordinary measure that is taken very rarely and only under extraordinary circumstances.”⁶⁴³

Barriere Lake were well aware of the severity. A series of meetings were held in the community between INAC representatives and Barriere Lake between December 2009 and

August 2010. One meeting in particular illustrates the incredibly independent character and identity of the Barriere Lake people. On December 15, 2009, Nepton visited the community to consult about the Section 74 order. With Nepton seated at the front of the room, ready as a delegate of the Government of Canada to lead the meeting, the community held its own community assembly in their own language of Algonquin. At the end of their 90-minute meeting, when everyone had a chance to speak, the community took a vote and the Indian Act election system was resoundingly rejected. The results of the “consultation” were communicated to Nepton.⁶⁴⁴

Further, the so-called “leadership” or “governance imbroglio” was not what the government was painting it out to be in their communications – a mess of ongoing legal proceedings and endless conflict. While there were in fact four cases before the Federal Court, three of them were against the Minister.⁶⁴⁵ Besides, Barriere Lake asked the Department why they should not have resource to the courts, especially since the Minister himself had said that he has no jurisdiction to adjudicate the dispute. As to accusations of endless conflict, the community had in fact only had one prior leadership dispute in 1996, making that ten years between occurrences. As they point out, “we consider that quite infrequent considering the frequency of leadership disputes within the current minority Parliament in Ottawa.”⁶⁴⁶ The source of these legal proceedings and leadership conflicts, furthermore, were caused by actions of Nepton’s own Department – recognition of the IBC, undue process in the imposition of TPM, failure to honour agreements, and politically-motivated recognition of councils – all contributed to the chaos and unrest in the community.

There were also a series of communications exchanged that clearly expressed the community’s progress in their internal reconciliation process. On May 13 2010, Barriere Lake sent a letter to Nepton informing him of actions taken by the community towards resolving the leadership dispute. The letter outlines a process of internal consultation initiated for reviewing the customary code and a plan to establish a Working Group mandated to conduct community consultation. The purpose of the Working Group, as Barriere Lake explain it, is to facilitate a practical working relationship between the community and the governments and would actively engage all segments of the community, particularly youth, in the consultation process. But the letter also warns that healing times for reconciliation cannot be artificially expedited. This correspondence echoed earlier community resolutions communicated to the Department, such as the Community Resolution, dated May 17, 2010, where 150 signatures from all segments of the community signed a support motion for their Elders for protecting their Onakinakewin and customary laws.

Nonetheless, on June 18 2010, Nepton rejected the community efforts at reconciliation. In a letter to the community, Nepton informed them that he received the Elders' resolutions and outline of plans for a reconciliation process towards a new government in Barriere Lake, but that it fell short of requirements INAC laid out for customary code modification. The nomination meeting for an Indian Act band council would go along as scheduled by Electoral Officer Bob Norton.⁶⁴⁷ At the end of July, the community blocked the first nominations meeting from taking place by driving their trucks across the entrance to the reserve from Highway 117 preventing the Electoral Officer from getting into the community.⁶⁴⁸ There seemed to be no choice by this point to the Algonquins but to try to physically prevent the band council elections from going forward. As Marylynn Poucachiche put it: "The government is breaking the law, but through our actions we are protecting it."⁶⁴⁹

The second time the Electoral Officer entered the territory, however, he had learned his lesson. Rather than publicly announce the nominations meeting, Norton arrived early in the morning, hours before the community living at Rapid Lake was told he would arrive, and held a nomination meeting on a site off Highway 117. He had not obtained permission to be there from the family whose territory he was on and when questioned later, he would not provide any information on how he came to hold the nomination meeting at that time and place. When information finally reached Rapid Lake and around twenty-five community members arrived to find out what had transpired at the nomination meeting, Norton and his colleagues immediately packed up their things and made to leave, claiming everything was void. Independent journalist Courtney Kirkby, reporting for CKUT radio in Montreal, caught the exchange on camera.⁶⁵⁰

Norman Matchewan: Who was nominated?
Bob Norton: Nobody, cause we didn't have a nomination meeting. I'm just checking with a lawyer now and I think the whole thing is dead.
Rose Nottaway: Dead?
Bob Norton: I'm just waiting for a legal opinion. Because the law says we have to have a nomination meeting before an election is activated.
Norman Matchewan: But there were people who showed up to nominate people and we want to know who that was. I think we have a right to know. I don't think you should be nodding your head 'no.'
Bob Norton: I can tell you legally that if those nominations are recognized, they will be posted and you'll know who nominated who.
Norman Matchewan: Can we have a copy now to confirm that?
Bob Norton: No, because they're not valid right now.
Norman Matchewan: So this whole thing is not valid?
Bob Norton: That's my opinion right now. I'm just waiting for a legal opinion. (He holds up his cell phone).

In the video, Norton continues to fixate on his cell phone before finally leaving the site without word from the lawyers. As he leaves, he says: “They’re void. Everything’s void. There’s no Chief and Council.” Matchewan asks for a written confirmation attesting to that statement, but Norton ignores him. As community members encourage Norton to leave and to never return, Kirkby asks Norton whether or not he has received any mail-in nomination ballots. Norton refuses to respond.

On August 16, 2010, community members saw a notice hung up in the health clinic. It informed them that a new band council had been elected to govern the community. Since two nomination meetings were “disrupted,” Norton determined that any attempt to hold a third nomination meeting would fail. Therefore, he declared that the candidates elected through mail-in ballots would be acclaimed as Chief and Council to form a band council for a two-year term. Only five people had submitted ballots.⁶⁵¹ The acclaimed Councillors were Anida Decoursay, Steve Wawatie, Chad Thusky, and Hector Jerome. Casey Ratt was nominated as Chief, but he immediately resigned in protest of the Indian Act elective system, stating that, “We will not surrender our rights nor will we allow the Department of Indian Affairs to do away with our Customary selection process.”⁶⁵² The new band council sent out a notice a month later, claiming that their council was directed by the community to accept the nomination.⁶⁵³ Shock and anger set in through the community. Another coup d’état had taken place. But this time, an entire system of governance had been replaced.

An INAC Band Council at Barriere Lake

When Barriere Lake blocked Norton from coming onto the reserve to hold the first nomination meeting, there was a palpable sense of defiance in the community, but also of desperation. An unbroken system of law that had been handed down since time immemorial was suddenly under threat of the Indian Act elective system – supposedly, a more “democratic” form of governance that was meant to restore order to the chaos the government had themselves caused at Barriere Lake.⁶⁵⁴ Tony Wawatie, a community spokesperson and natural leader with great reverence for the teachings of the Onakinakewin, stated to the press that day:

The Canadian government is trying to forcibly assimilate our customs so they can sever our connection to the land, which is at the heart of our governance system. They don’t want to deal with a strong leadership, selected by community members who live on the land, that demand that the federal and Quebec governments implement the outstanding agreements regarding the exploitation of our lands and resources.⁶⁵⁵

Jurisdiction over their lands was imminently at threat of becoming a delegated power of the state, rather than recognized as an inherent right based on Indigenous law and custom. Toby once

explained to me that a Chief at Barriere Lake has traditionally meant a life-long responsibility because it takes a person a lifetime to learn everything there is to know about governance. The two-year election cycle of the Indian Act rules was just one way in which the Canadian system seemed philosophically flawed and short-sighted to the Algonquin elders. What could a man learn in two years? What could he accomplish?

The Barriere Lake people were not alone in their condemnation of the Section 74 imposition. Due to Tony Wawatie's efforts, that summer the AFN General Assembly passed an emergency resolution condemning the Minister of Indian Affairs for its invocation and demanding that he rescind the imposition of Indian Act band elections.⁶⁵⁶ In the fall of 2010, National Chief Shawn Atleo met with youth leaders from the community and agreed to their proposal for a fact-finding mission to examine the situation in the community that led to the imposition of Section 74 – the AFN would appoint one delegate and INAC would appoint the other.⁶⁵⁷ The government chose not to respond to this request. On Aug 25, 2010, Barriere Lake sent the last of four unanswered letters to Minister of Indian Affairs Chuck Strahl, and Ministers Robert Nicholson, Minister of Justice and Attorney General of Canada, Pierre Corbeil, Quebec Minister of Aboriginal Affairs, and Jacques Dupuis, Minister of Public Security, demanding the cancellation of Section 74 elections.⁶⁵⁸

In the weeks following the Section 74 imposition, Barriere Lake Solidarity (BLS) organized a human rights delegation to the community that brought together members of major unions such as the Canadian Union of Postal Workers and Public Sector Employees Union with political party delegates from the Green Party and NDP, as well as representatives from churches, social justice groups, and environmental NGOs. The delegation saw first-hand the living conditions in the community, heard about the Section 74 order and implications, and met with Toby Decoursay on Barriere Lake's traditional territory where he shared teachings about the three-figure wampum belt. BLS also organized a major demonstration in Ottawa in December 2010 where busloads of supporters drove in from Montreal and Toronto, around one hundred people came from Rapid Lake, and dozens of Ottawa activists and supporters joined them on a freezing cold march from Parliament Hill to Indian Affairs, led by the children of Barriere Lake. Only one year earlier, Prime Minister Stephen Harper had prorogued Parliament, shutting down the House of Commons for two months, avoiding a probing inquiry into the treatment of Afghan detainees, grinding to a halt the progress of numerous government bills, and allowing the Conservatives to take control of the Senate. At the demonstration, there were bright signs everywhere that read, "Harper Has Nothing to Teach Us about Democracy." Referencing the

extremely low turn-out for provincial and federal votes in Aboriginal communities, Norman Matchewan once put it to me like this: “We stay out of your elections, you stay out of ours.”

At the Ottawa demonstration, a number of high-profile supporters spoke out against the imposition of Section 74 on the community, including the national president of CUPW, Denis Lemelin, and NDP Party Leader Jack Layton joined and spoke by invitation of long-time advocate MP Charlie Angus. Spirited community members spoke out, as well, including Marylynn Poucachiche, Norman Matchewan, Tony Wawatie and Tillis Keyes. The event was mc'd by Clayton Thomas-Mueller, a powerful Cree organizer who worked for the Indigenous Environment Network (IEN). The morning of the demonstration, Joseph Boyden, Giller Book Prize Winner, wrote an op-ed in the country's eminent national newspaper, the *Globe and Mail*, supporting the community, and the AFN put out a press release calling for Canada to rescind the Section 74 order.⁶⁵⁹ Following up on this action, BLS launched a call-in and write-in campaign to pressure INAC to rescind Section 74. BLS also drafted information pamphlets, organized a speaking tour for community members, and held fundraisers to support the campaign.

INAC, for their part, stuck closely to the script. The INAC script, as iterated by Camil Simard, constantly emphasized the “help” that INAC was prepared to give Barriere Lake, specifically through the conversion to custom legislation.⁶⁶⁰ She also expressed to *Indian Country Today* INAC's great disappointment that Barriere Lake consistently rejected these offers of support. Simard told the newspaper that, “The Department (INAC) since 2006 offered help and funding so the community could try to resolve this thing internally.”⁶⁶¹ In fact, 2006 was the year in which the Department refused to recognize Jean Maurice Matchewan's Council until forced to do so through a mediation process. In an effort to discredit the community's traditional governance system, Simard then referenced the Mainville decision, where the Justice suggests that different factions in the community were manipulating the customary code to their own benefit. Simard neglects to mention that Justice Mainville concluded that Barriere Lake is also one of those “rare bands” that may “select their leadership in accordance with their customs unimpeded by any conditions or requirements which the Minister may deem appropriate to allow reversion to customary election.”⁶⁶² In line with Justice Mainville's decision and recommendations, the community had initiated their internal reconciliation process, under which the customary code was to be amended through their internal process.

Though Barriere Lake's leaders felt secure in their constitutional standing against a Section 74 order, they did not have the resources to take a lengthy and costly legal challenge to court. They were suddenly presented with an opportunity to address the legal status of band council leadership in the community when the “INAC Council” (as they came to be called by

Barriere Lakers) demanded access to the Trilateral Agreement documents. These documents were in possession of lawyer David Nahwegahbow. As acting legal counsel for Barriere Lake over the course of over two decades, Nahwegahbow had the Trilateral records stored at his law office, where the community believed they would be safest kept.⁶⁶³ Nahwegahbow recognized immediately that there were significant uncertainties as to whether the INAC Council had the legal authority to govern at Barriere Lake (given the earlier legal precedents and the unique constitutional standing of customary bands). He determined that the wisest course of action would be to let the courts identify the rightful owners of the Trilateral documents. Without such a legal determination, Nahwegahbow reasoned, he could not ascertain whose permission was needed to release the records, so he entered an Interpleader Application to the Superior Court of Ontario to resolve the matter.⁶⁶⁴ Under the supervision of Justice O’Neil, a series of conference calls were convened between the Justice, David Nahwegahbow, Jean Maurice Matchewan, Casey Ratt, and the INAC Council. The lawyer who would be representing the INAC Council in the case was none other than Michael Swinwood, the lawyer who had represented the Ratt Council and now sat across the table from him, representing his opponents.⁶⁶⁵

As opposed to the AFN-INAC fact-finding mission that the customary government supporters at Barriere Lake had recommended, the INAC Council proposed that the Trilateral documents be turned over to the fact-finding mission, which would be comprised of two INAC Council representatives, one representative from the Matchewan group, and one representative from the Ratt group.⁶⁶⁶ Matchewan and Ratt rejected this option after consultation with the community, but came up with a counter-proposal, again requesting that a representative from outside the community undertake the fact-finding mission. They also advocated for a more balanced representation of parties on the fact-finding committee – one INAC Council member, one delegate from the Matchewan group, one delegate from the Ratt group – and a broader mandate. Matchewan and Ratt proposed that rather than simply undertake a report “disclosing how and where the Trilateral Agreement funding was distributed,” as the INAC Council was recommending, instead, that the fact-finder investigate, in addition, “all *financial documents, financial receipts, reports and audits, proposals, Band Council Resolutions, correspondence, maps, study reports, and all equipments to develop a draft report.*”⁶⁶⁷ This way, all the spending could be correlated with the work undertaken to complete Phases One and Two of the Trilateral Agreement. Arguments were heard at the Superior Court of Ontario in Sudbury on October 25-26, 2011. At the time of writing this chapter, this mediation has been indefinitely suspended.

Judging by the historical record, the fact-finding mission on Trilateral documents was a red herring to steer the supporters of Barriere Lake’s customary government away from the

Section 74 imposition. All the commotion about an audit on the Trilateral documents had no material bearing on the present circumstances. Furthermore, there already had been an INAC-directed audit on financial management and the Trilateral Agreement covering the period of April 1, 1993 to June 30, 1996 under the pretense of allegations mainly from one anonymous source.⁶⁶⁸ At the time of this first audit, the customary council at Barriere Lake pointed out the peculiar timing of it, given that the time frame of the audit corresponded with increasing pressure from the forestry sector and federal and provincial governments to destabilize their leadership and derail the Trilateral Agreement.⁶⁶⁹ Nevertheless, the customary council agreed to fully cooperate with the private auditing firm hired by INAC. Four years passed without further notice of the investigation until the community became embroiled again in 2001 with the Government of Canada in a renewed political contest to see the Trilateral implemented. Suddenly, Nahwegahbow was contacted by the RCMP who hinted that they may be reviving this financial investigation again.⁶⁷⁰ This time, the customary council put star lawyer Clayton Ruby on retainer, believing that “in light of the foregoing, that the RCMP investigation constitutes continued harassment and likely emanates from political interference from within the federal government.”⁶⁷¹ So it was with relative certainty that the customary government supporters viewed the INAC Council’s Trilateral witch-hunt as another delay tactic to avoid dealing with the Section 74 issue until the audit was complete.

If the INAC Council had been truly concerned about Barriere Lake’s finances, they might have devoted some of their energy to ridding the community of the third party managers who were leeching hundreds of thousands of dollars out of the community each year at INAC’s behest. The year 2011 would mark the fifth anniversary of the community’s tutelage under Third Party Management. According to Casey Ratt and Jean Maurice Matchewan, third party managers Lemieux Nolet’s annual take for its financial administration services was \$600,000 – paid out of band funds, which total a mere \$5 million annually.⁶⁷² No government oversight strategy appears to have been devised to monitor Lemieux Nolet’s operations or to transition the band back to administering their own affairs, despite assurances made by INAC. One could ask what the interest would have been to this Quebec City firm in writing itself out of a lucrative job? Lemieux Nolet’s final audit report was due out in June or July 2011. The community has yet to see it.

To make matters worse, when Lemieux Nolet lost a bid with INAC to renew their contract around the time the INAC Council took over, the government hired *two more* Third Party Management firms to take their place. BDO Canada LLP Aboriginal Financial Services Group was hired to deal with all administrative affairs and Atmacita Hartel Financial Management were hired to manage all files related to the Health Sector. Considerable problems have already arisen

with Atmacita Hartel. Community members have complained of a shameful lack of access to health services and medical transport.⁶⁷³ Since the community has been unsuccessful, despite numerous unanswered letters to Indian Affairs, to obtain any accounting audits of their financial situation, they have no way of knowing whether or not the community is still facing a deficit, and if so, what the current shortfall might be.⁶⁷⁴ The foreign accounting firms handling band finances at the moment exercise extraordinary control and discretion over all spending, acting like internally placed austerity comptrollers. Michel Thusky recently stated to me that though the community has a strong case for challenging the imposition and ongoing extraction of third party managers of their band funds, but he knows the conditions for doing so would involve major political concessions to which the community is unwilling to submit.⁶⁷⁵

As opposed to the INAC Council's cynical bid to re-open the closed matter of Trilateral financial management, the fact-finding strategy of the customary government represented an alternative reconciliation process that would have involved building support in the community for a leadership selection process through meetings and coordination between the different heads of family in the community. It involved a restoration of the customary government, and a modification of the customary code by the laws of the customary code itself. In contrast, the INAC Council had agreed to modify the community's customs under the "reversion to custom" legislation.⁶⁷⁶ If the INAC Council had accepted the counter-proposal, the community could have largely stayed out of a costly legal battle. Swinwood rejected this proposal on behalf of his clients and insisted that the community go to court to resolve the conflict.

On the ground, the youth leadership were meeting with the INAC Council, as well, and requesting that the council step down as a sign of solidarity with the community. Stepping down would also confirm that the band council were against the Section 74 order, as they insisted.⁶⁷⁷ Though the INAC Council assured the youth that they too valued the Onakinakewin, they maintained their refusal to resign as councillors and they attempted to maintain appearances of accountability to the community. Though the community was in the dark for the better part of a year, eight months after "taking office" the band council distributed an "Information Package" community-wide that contained a detailed overview of their activities, including a list of each meeting they attended and minutes of negotiations, such as those with Hydro-Quebec.⁶⁷⁸ Reading over the meeting list, it was also then the community realized that their former lawyer, Peter Hutchins, was also now representing the INAC Council. As well, although the INAC Council updated the community on occasion, no public meetings were ever held at Rapid Lake. The INAC Council well understood that the community did not consider the band council their legitimate representatives and would never accept their purported leadership.

Though the leadership takeover in the community had placed Barriere Lake in a weaker negotiating position with resource extraction industries, the unintended consequences of internal fragmentation might also have inadvertently worked to the community's advantage. The band council, after all, neither numerically represented the community, nor procedurally reflected the governance customs of the community. Their authority did not secure guarantees for logging or mining companies. As one INAC official admitted: "Where there's uncertainty of leadership it's difficult to make advances in social and economic development."⁶⁷⁹

The Great Resource Grab

The community first learned about mining on their territory in early 2011, though they had been warned by a researcher at Mining Watch that a stake was being claimed nearby under the project name "Riviere Doré." Unbeknownst to the community, Quebec had been dropping "torpedoes" into their lake system from helicopters to root up sediment they could test for mineral concentrations. The province then promoted their findings to industry; as a result, Cartier Resources received a permit from Quebec to do some minor exploration work north of the Rapid Lake Reserve. According to their website, the mining company claimed that their "100% owned" land-base of 439 square kilometers boasted rich copper-nickel deposits. They were working with Copper One Inc., who earned an interest in the project by funding all the exploration work.⁶⁸⁰

The INAC Council met with Philippe Cloutier, President and CEO of Cartier Resources Inc. in mid-March. According to the minutes of this meeting, Cloutier confirmed that the company had done no consultation with Barriere Lake band members, believing that their permit from the province was sufficient to begin exploration work. According to the minutes, "The Band Council and the ABL members [from Maigan Agik, Airport, and the reserve] demanded that Cartier Resources to [*sic*] suspend their activities until further notice was provided by the Algonquins of Barriere Lake."⁶⁸¹ The INAC Council requested that Cloutier respect their authority in these matters. However, elsewhere on the territory, the authority and jurisdiction of the Mitchikanibikok Anishnabe Onakinakewin was being exercised by customary government supporters to protect the land from the Cartier mining incursion. In order to ensure that the project did not proceed without proper consultation and an environmental assessment, they determined to halt the company's line-cutting activities that would prepare the ground for exploration by opening paths into the bush to transport drilling machinery and to identify claim sites. Workers on site, predominantly Crees from the Mistassini and Oujebougamou First Nations, agreed to leave when the Algonquins arrived and explained their opposition to the development.⁶⁸²

On April 13, 2011, still in the dark regarding the dealings of the band council, the Mitchikanibikok Inik Elders Council followed up this direct action with a letter to the Quebec Ministers informing them that unless two demands were met, there would be no natural resource extraction on their territory: they demanded a completion of their leadership selection process – affirming the Mitchikanibikok Anishnabe Onakinakewin and rejecting the Section 74 Band Council – and they demanded that the Government of Quebec negotiate with the duly selected customary Chief and Council the implementation of the joint Ciaccia-Lincoln recommendations.⁶⁸³ The elders reminded the Quebec ministers that section 7 of the 1991 Trilateral Agreement provides: “*Both Quebec and the Algonquins of Barriere Lake agree to examine seriously the recommendations . . . that will be submitted to them by the special representatives and to negotiate an agreement on the carrying out of the recommendations retained.*”⁶⁸⁴ A few months earlier, prior to the Section 74 imposition, Quebec had expressed a willingness to implement the Bilateral Agreement as a way to move forward with logging in the territory, but they dropped the two most important recommendations retained by the Special Representatives: resource revenue sharing and co-management.⁶⁸⁵ Following a community meeting, Matchewan rejected Quebec’s proposal, stressing the central features of revenue-sharing and co-management in the Trilateral Agreement, killing negotiations from proceeding along these lines.⁶⁸⁶

The community knew it would take more than giving the line-cutters a few days of work to stop the mining exploration on their territory. With the support of Montreal organizer Martin Lukacs, Norman Matchewan attended Cartier Resources’ Annual General Meeting in Montreal, held on May 20, 2011. Following Cloutier’s presentation and a polite round of questions, Matchewan raised his hand and stood to speak. He told the board members where he was from and emphasized that there would be no discussions about mining in the territory until the Trilateral Agreement was honoured. He highlighted the community's resistance to past resource development as well as examples in Ontario where First Nations communities stopped mining companies, such as the Ojicree community of Kitchenuhmaykoosib Inninuwug (KI) in northern Ontario who expelled Platinex from their traditional territory. Lukacs also rose to say a few words. Stressing the political obstacles and financial risks of the Rivière Dore project, Lukacs explained that the provincial government had clearly misled the company about the security of such a project and of the costs and liabilities if the community chose to challenge Cartier Resources legally. Matchewan and Lukacs distributed copies of the Elder’s Council letter that reiterated the two demands for moving forward with natural resource extraction on their territory. The message was clear: this was a matter between governments. Two months later, Cartier

Resources sent out a press release declaring a two-year moratorium on mining in Barriere Lake's territory, suspending its work on the Rivière Doré project.⁶⁸⁷ A source on the board revealed to Lukacs that Matchewan's presentation was persuasive; the company decided to cut its losses before things went too far, declaring a two-year moratorium on mineral exploration on Barriere Lake's lands.⁶⁸⁸

In the meantime, logging was also on the upswing in Barriere Lake's traditional territory, and once again, the elected band council struggled to assert their authority under increasingly difficult conditions. They sent out a letter to the community in mid-June 2011, expressing the challenges in their ability to govern over Land and Resource Management, given the widely different perspectives of various political factions in the community. The letter urged unity around land management issues.⁶⁸⁹ In the case of the Mitchiankinikok Inik Council of Elders, their demands on logging companies were that no extraction take place on the territory that did not conform to the 1991 Trilateral Agreement, the 1998 Bilateral Agreement, and the 2006 Lincoln-Ciaccia Joint Recommendations.⁶⁹⁰ On the other hand, the Traditional Council of Elders of the One Nation – representing the off-reserve community of Maigan Agik, mostly the Wawatie family – suggested that they were the sole legitimate body for negotiation.⁶⁹¹ In a letter to the community, the INAC Council attributed this disagreement and conflict over land management to the “confusing management legacy of the Trilateral Agreement.”⁶⁹² Nonetheless, for the purpose of the 2011-2012 year, the band council announced that they would allow for Measures to Harmonize with the traditional territory and the Trilateral Agreement territory, conditional on securing consensus on a number of issues, including guaranteed employment for Barriere Lake members in the logging activities, no mining exploration activities within the traditional Trilateral Agreement territory, and that Quebec and Canada agreed to cover all costs for a *Fact-Finder* for the Trilateral Agreement Fact-Finding Process.⁶⁹³

No consensus was ever reached between groups, nor did the families of Barriere Lake feel any pressing need to build unity with the INAC Council, who continued to refuse to step down from their positions. The effort was clearly disingenuous; community members were aware that meetings had been taking place for almost a year between the band council, the Quebec Ministry of Natural Resources and Ministry of Aboriginal Affairs, and multinational logging companies Abitibi-Bowater and Louisiana Pacific in Maniwaki, Quebec – around 150 kilometers outside the reserve.⁶⁹⁴

Many skirmishes erupted over resources during the course of the year: logging proceeded in Jacko Thomas, Hector Jerome, and Jacob Wawatie's territories. While Thomas and Jerome consented to logging on their family lands, the Wawatie family participated in blockades

throughout the year to stop the clear-cuts by Abitibi-Bowater from taking place. In December 2011, Louisiana Pacific began logging on Benjamin Keyes' territory without permission from the family. A group of community members from Rapid Lake, led by Norman Matchewan, drove out to the site to find out what they could about the situation. The loggers informed Matchewan that the Quebec Ministry of Natural Resources authorized the logging and were claiming that they had secured agreement from the family. Following their visit – where the damage had already been done, a moose stand was clear-cut – Matchewan delivered a letter to the Louisiana Pacific office from the Mitchikanibikok Inik Council of Elders who requested that all logging activities be suspended “until the mandated consultation with TMA 2 members of the Algonquins of Barriere Lake” was carried out.⁶⁹⁵

Finally, the lack of control the customary government exercised over resource extraction faced them with the hardest choice many of them had ever made. They could either watch from the sidelines as their lands were destroyed by mining and forestry, or they could form a band council themselves and be elected under Indian Act provisions. When he was running, Norman Matchewan sent friends the following communication: “Well its [*sic*] official I am an Indian Act Candidate. We nominated Casey Ratt for Chief and 6 Councillors. It still hasn't sunk in, it was a very hard decision but if we didn't do anything our land our people will continue to suffer leaving us with no say.”⁶⁹⁶ On August 13, 2012, Casey Ratt became the Chief of a Council that included Norman Matchewan as band Councilor. The victory was bittersweet. The INAC Council was defeated, but their case for challenging the legality of Section 74 was probably irreparably comprised by their participation in the system.

That summer, the new leadership would be tested by Resolute Forest Products' (formerly Abitibi-Bowater) rampant logging on Gabriel Wawatie's family hunting territory. Community members, led by Norman Matchewan, formed a campsite to block the mining, and were soon joined by Maigan Agik members. The logging protest camp drew media attention and support throughout the summer: over 600 people sent letters to stop the logging to MNR through the Barriere Lake Solidarity website, and at the height of Quebec's “Maple Spring,” Barriere Lakers posed in the woods with red squares of cloth to show their solidarity with the students against the Quebec government. The students repaid the solidarity, with CLASSE representative Gabriel Nadeau-Dubois speaking at a demonstration outside of Resolute headquarters in Montreal.⁶⁹⁷ The anti-logging campaign soon came to a close, however, when in September Resolute was granted an injunction against protestors threatening any remaining community members and supporters with arrest if they refused to leave the site. The injunction was challenged separately by Maigan Agik and the rest of the community, with separate legal counsel

and demands. Maigan Agik claimed that the Trilateral was a thing of the past and tried to bring forward a title case, while Michel Thusky, representing the community, asked for Measures to Harmonize be implemented on the logging concessions. The case continues to wind its way through the courts at the time of the writing of this chapter, while Quebec MNR has been intervening in the injunction on the side of Resolute.

PART IV: SECURING THE STATE

CHAPTER TEN – Pacification & the Geography of Indigenous Lands

The kids are searching for “blockade” on YouTube and talking about getting tear-gassed. Later that day, on the way back to the reserve from swimming in a nearby lake, Maria and Shane bring up the blockade again. They ask me if I was there and I say, Yes. Maria reports that Shane was crying when they got tear-gassed, but Shane retorts defensively: “Everyone was crying.” Maria finally agrees. She tells me that Shakira was playing in a car while all the other kids, around 25, were driven back to the reserve (Shakira is four-years old and loves to lock herself in cars). The rest of the kids had bolted in fear two kilometers down the road and had to be gathered in a pick-up truck and driven home. Then Maria tells me that a “handicap” got pepper-sprayed. I misunderstand and ask, “Tear-gassed?” No, Maria says impatiently, sprayed *in the face*, demonstrating with her hands the difference between gases.

In the fall of 2008, a group of over one hundred community members of the Algonquins of Barriere Lake twice blockaded Highway 117 in attempt to pressure the government to send in a negotiator. The community demanded that the government restore Trilateral Agreement talks, and even more urgently, for the government to halt interference into their internal customary affairs. The blockades were precipitated by the decision taken in January by the Department of Indian Affairs to recognize Casey Ratt and his government as the legitimate customary Chief and Council of Barriere Lake. As Norman Matchewan explained to the media during the blockade: “This is not the first time that they have pushed aside our Chief and Council and put in place a small minority for their benefit, so they can get out of this [Trilateral] Agreement. They have played divide and rule in our community for too long. The community is standing up and we are not going to give up.”⁶⁹⁸

The decision to blockade had not been taken lightly. The people of Barriere Lake had spent years trying to set the Trilateral Agreement on a positive track. Then once again they were suddenly faced with a new council to which the majority of the community did not consent. Norman Matchewan defended their tactics to the media on the day of the October 2008 blockade, saying: “We did not want to get to this point, but they’ve ignored us for two years – we’ve been chasing them around, protesting in Ottawa for days, we did a sit-in in [MP Lawrence Cannon’s] Buckingham office, we’ve been to Maniwaki, we’ve organized campaigns, they *still* did not get back to us.”⁶⁹⁹ In an op-ed published in the Montreal Gazette, Norman wrote, “We have always preferred co-operation to confrontation. We do not wish to disrupt the lives of Canadians.

Unfortunately, it seems their governments otherwise ignore or dismiss us - or worse, treat us with contempt.”⁷⁰⁰ The specific incident of contempt Norman refers to here is the sit-in at Transport Minister Lawrence Cannon’s office. The Minister’s assistant told Norman to come back when he was sober. But things went from bad to worse, as Norman explains that, “After the media scandal forced Cannon to hold a meeting we had been requesting for two years, he vilified our community’s majority as ‘dissidents’ in an op-ed in regional papers.”⁷⁰¹ One racial slur had snowballed into another.

Highway 117 is the main arterial road between Val D’Or and Maniwaki, Quebec, and detour routes can add as many as six hours to a commute. Hoping to alert the media and local citizens to their issues and use this leverage to demand face-time with government officials, Barriere Lake community members determined that they had no choice but to blockade. This strategy of last resort amplified the state’s position. At the first blockade of Highway 117 on October 6, 2008, riot police were deployed to the region from Montreal. A quiet morning of food and discussion on the highway was followed by a tense confrontation when the riot cops moved in and tear-gassed the community, including elders and children, and violently shoved them off the highway onto the 5 kilometer access road that led back to the Algonquin reserve. Nine people, including an elder, a pregnant woman, and two minors, were roughly arrested and one customary council member was hospitalized after being hit in the chest with a tear-gas canister.⁷⁰²



Figure 24 - SQ Riot Police lined up on the access road from Rapid Lake Reserve to Highway 117, pushing community members back onto their reserve, October 2009 (photo by author).

It was an affecting sight. “This is how much the government is willing to pay to keep us in that 59-acres!” Marylynn Poucachiche shouted as the riot line moved in mechanical formation towards the crowd. “Look at how much money they spend on you guys... You want to keep us on this reserve? Tiny little reserve? Well, we’re not going to stay here. You guys, you can stand here for maybe twelve hours. Us, we can be here another five hundred years.”⁷⁰³ It is difficult to imagine a scenario where white, rural families could be treated so brutally by police with barely a peep in the mainstream media to follow. Marylynn had also drawn attention to the contradictions of colonial accounting: the violent policing efforts they would experience on their territory that year would cost the province nearly as much as if Quebec had allocated the modest revenue-sharing agreement in the Trilateral Agreements that the Algonquins had been demanding for years.⁷⁰⁴

As a result of outreach by Barriere Lake Solidarity and a viral blockade video made by film-maker Martha Steigman, hundreds of people spoke out against the violence and were mobilized to learn more and get involved in solidarity efforts. Angus Toulouse, the Ontario regional Chief of the Chiefs of Ontario, sent a letter to Prime Minister Stephen Harper and Quebec Premier Jean Charest condemning police actions and calling on Ottawa and Quebec City to follow the Ipperwash Inquiry recommendations.⁷⁰⁵ The Ontario Provincial Police (OPP) killed Dudley George, an unarmed protester who was defending his lands at Ipperwash Provincial Park from expropriation, leading to the Ipperwash Inquiry and a series of recommendations to avoid violent confrontations between Indigenous peoples and armed forces in the future.

At a second blockade at Barriere Lake, on November 19, 2008, Poucachiche was one of several community leaders targeted for arrest. Her arrest followed assurances by the SQ that so long as protesters remained peaceful, they would not be charged. Poucachiche was eventually released on condition she not attend public demonstrations or protests until her case was cleared. Rose Nottaway, another fierce community leader, was arrested as well, and so was Sonny Papatie, a youth committed to the community’s political cause and to the Trilateral Agreement. Acting Chief Benjamin Nottaway was also arrested at the blockade when several riot police broke out of formation and tackled him to the ground. He was charged with three counts of mischief and breach of conditions stemming from March blockades on Barriere Lake’s access road, when a spontaneous protest blocked the Ratt Council from entering the reserve.⁷⁰⁶ Nottaway, a father of five, received the heaviest sentence, imprisoned for sixty days at the Gatineau Detention Centre. The Crown wanted to send him away for an entire year, but the Judge had to remind the Crown that this would be illegal, since the maximum sentence for the crime was just six months. Judge

Barriere agreed, however, that a stern message needed to be sent to the community and punished Nottaway accordingly.⁷⁰⁷

The use of force to police Barriere Lake into compliance with the new customary council is part of a larger pattern of coercion, repression, and criminalization that has been used against Barriere Lake and in communities across the country to manage Indigenous resistance in Canada. These police actions are deeply imbricated within the legal and policy strategies we have examined throughout this dissertation: coup d'états, sexual abuse inquiries, third party managers, and the Comprehensive Land Claims (CLC) policy. Taken together, Tia Dafnos calls these strategies "pacification," whereby highly visible militarized police operations thread with "practices not commonly identified as policing that are carried out by a wide range of participants as strategies of settler-colonial pacification operating through organizing logics of security and liberal legalism."⁷⁰⁸ Pacification is not a novel set of technologies tied to the post-9/11 security regime, but has "an historical-materialist basis in imperialism and colonialism whereby imperial powers attempt to transform colonial societies in ways that facilitate the territorial expansion necessary to global capitalism to enable continued accumulation."⁷⁰⁹ This expansive genealogy allows us to situate the earlier repression of game wardens on the same violent spectrum as the present day blockade beatings of Algonquins defending the forest.

I would argue here that pacification, as it concerns territorial expansion and capitalist accumulation, is also a mechanism for state assertions of jurisdiction. In the case of Barriere Lake, this technology of jurisdiction is exercised towards two specific ends: first, it works to coerce the community towards the CLC policy, and second, it works to allow the state access to resource extraction on the community's lands. Pacification is always shaped by resistance, and Barriere Lake's resistance to the federal land claims policy triggered specific mechanisms of authority into action. Whereas consent-based strategies were no doubt preferred to physical violence, obtaining Algonquin compliance with federal policies resolutely failed, due to the very asymmetrical context in which consent was sought.⁷¹⁰ As Dafnos points out:

The paradox for Indigenous struggles should be evident. In a liberal democratic society, people are expected to express dissent or grievance through the political, legal, juridical, and police institutions. For Indigenous peoples, there are the colonial institutions of the very state whose legitimacy is being challenged and whose existence is predicated on their elimination.⁷¹¹

At Barriere Lake, the use of force acts to sever the connection between the people and the land through extra-legal and security logics of control.

To present a neat summary on the political economy of Indigenous resistance, its relationship to neo-liberalism, ecological scarcity and natural resource extraction would be ideal. But as I have tried to show at points throughout this dissertation, state and capital interests diverge and converge at different times and places, and coupled with the great diversity in contact histories and local topographies, such an over-arching narrative would over-simplify a complex political terrain. Broadly, though, I think we can discern a key tendency: there is a continuity to settler colonialism in Canada that rests in the production of space under capitalism. Pacification of Indigenous rights in Canada is meant to repress those nations, bands, and grassroots groups who get in the way of the staple state model of economic development. That much seems to be clear.

The Geography of Indigenous Lands & Resources

The reason that the CLC is so central to the land reform agenda is because it forms the frontline of risk mitigation against Indigenous jurisdiction in Canada. As we will see in the final chapter of this dissertation, the governments' first line of defense against Indigenous jurisdiction is simply to deny such Indigenous land rights exist. If that fails, the government supports either litigation through the courts or negotiation under the CLC policy. Radical deviations from the CLC are rarely tolerated, and the negotiating process in itself is a coercive mechanism that forces bands to extinguish their Aboriginal rights and title. The federal and provincial governments are equally invested in this process: the CLC secures the extinguishment of Aboriginal title, therefore access to Indigenous lands and resources. But in the case that a First Nation or Inuit community will not submit to the CLC, access to resources must be secured through other means.

Anna Zalik writes that the tendency towards criminalization of Indigenous peoples defending their lands “emerges from a heavily securitized response to social claims on capital extraction that has repressed and constrained popular protest.”⁷¹² Comparing the policing of the Alberta tar sands in Canada to Nigerian oil fields, Zalik notes that while state pacification in Nigeria involves armed struggle, Canadian means by which to repress demands for Indigenous jurisdiction over resources trade on the boundaries of legality and illegality, demarcations produced by the internalization of particular norms.⁷¹³ The exercise of the ‘duty to consult’ precedent set by *Haida* and *Taku River*⁷¹⁴ is meant to shape the discursive boundaries of extraction and manage resistance by setting the terms of compliance – as well as the punitive measures of non-compliance – for resource development. Non-compliance with this legal strategy of pacification exposes the state’s monopoly on violence.

Another way we could put this is to return to Dorsett and McVeigh's definition of jurisdiction as a form of legal ordering and crafting; a technology that creates legal relations.⁷¹⁵ The inverse logic to this crafting of jurisdiction is to ask: what escapes the frame and becomes understood as non-law, lawless, or the negative force of positive law? Nicholas Blomley argues that liberalism always locates violence outside of the law, creating a powerful divide between those who may legitimately dominate and those who may not.⁷¹⁶ Bringing to bear private property as a reflection of colonial social norms, Blomley writes that those claiming recognition to a property right outside of settler-colonial legalities of ownership are deemed to be "property outlaws," such as the "savage" and "uncivilized" Natives or the "wilds" of street-involved and low-income people in urban downtown cores who own no property.⁷¹⁷ If violence is framed as located *outside* of the law, the criminalization and repression of Indigenous peoples is justified by the need to pull them back "into" the law. A veneer of race-free equality is maintained by this logic.

The need to secure physical resource extraction infrastructure – in the case of Barriere Lake: forestry, mining, and transportation corridors – also confirms one of Blomley's other major premises, which is that there is an intrinsic geography to the violence of state law regarding private property.⁷¹⁸ From 1989 when Jean Maurice Matchewan was violently arrested at a blockade (subdued by a half dozen officers)⁷¹⁹, to the recent targeting of his son Norman on charges of mischief for allegedly interfering with forestry harvesting operations in 2009, the SQ have played a vital role alongside the government to contain the community's political assertions of jurisdiction. The intrinsic geography of this pacification is produced through jurisdiction; jurisdiction in turn produces its own kinds of differentiated space that plays important ideological and political roles.

Before we continue on to the specifics of pacification as a technique of jurisdiction on Barriere Lake lands, it is important to situate Barriere Lake's struggle within the broader geography of Indigenous lands across Canada. Far from being the exception to the rule, the production of space under capitalism is intimately tied to the primitive accumulation of primary resources, or its specific Canadian form, "the staple economy."

Stapled Land

Due to the primacy of its natural resource economy, Canada is what is sometimes referred to as a "staple state." Harold Innis, author of the "staple theory" of Canadian development, was seeking a model that could account for the unique economic development of a peripheral state within the global system when he determined that what is unique to Canadian territory is that Canada

produces staples for export.⁷²⁰ Innis showed how economic diversification developed nationally through investment in complementary industrial business and infrastructure requirements.⁷²¹ He understood this diversification to influence historical development through a triad of dependent processes: geographical, institutional, and technological.⁷²² Though a history of interpretive scholarship and multiple schools of thought on Innisian political economy flourished in the wake of Innis' seminal work *The Fur Trade in Canada* (1930),⁷²³ most scholars missed a crucial relation of power when they failed to take into account the value of Indigenous lands (and non-market-oriented labour) to the expansion of the Canadian economy post-fur trade (see Chapter 3). Staples, after all, have to be harvested from someplace, and though the treaties were meant to settle ownership disputes over national Indigenous lands, the Canadian terms of surrender were never accepted by Indigenous peoples as secessions of their traditional territories.⁷²⁴

When Indigenous lands tend to be barriers for development it is because the people of these lands have fought fiercely to defend them from the destructive forces of mining, forestry, and ecologically disruptive infrastructure development. The relationship between the political economy of Canada and Indigenous resistance to harmful development can be understood as a struggle taking place on the frontiers of capitalist accumulation.

European settlement to the "New World" was motivated by the desire to set up an export economy back to core countries. While this strategy of dependent growth is no longer imperial, but rather internally driven, it continues to benefit a certain elite of foreign and Canadian socio-economic interests.⁷²⁵ At the forefront of Canadian resource production today are forest, mine, mineral, and energy products.⁷²⁶ The exploitation and export of these products is accomplished by multi-nationals, with many head offices outside of Canada, particularly in the United States. One way to conceptualize this ownership and production regime is as "continental resource capitalism," which describes the narrow class interests driving state policy towards primary resource extraction and export.⁷²⁷ The policy drivers of this regime tend to treat the Canadian political economy as a specialized resource producer, adjunct to the U.S. political economy. The Harper regime, with his base in oil-rich Alberta, has accelerated this agenda with recent changes to the regulatory regime, for example, "streamlining" the environmental assessment process to promote industry investment with less timely and costly delays.⁷²⁸ The main shift today from the 'contentinentalist' strategy is the state's concurrent attempt to move away from U.S. dependence, as Canada now more aggressively seeks viable export markets outside of the U.S. for oil, gas and mining products.⁷²⁹

Despite the trade-centred economic focus of this regime, land is still the central means of production in the staple state. David McNally's Marxist critique of Innisian political economy

(and of Marxists who adopt staple theory), maintains that Innis in fact fetishized the economy by hiding the social relations of production in staple exchange and circulation.⁷³⁰ But staples theory fetishizes Canadian political economy only if the staple state is strictly understood as a theory of *circulation*. If understood, as well, as a theory of modes of production that brings to light a struggle over property relations, than it has something to recommend as an anti-colonial critique of capitalism. Marchak writes, “[w]here political economy has challenged Marxism is in growing recognition of the existence of other property rights in capitalist systems.”⁷³¹ While both begin with modes of production, Marchak suggests that political economy takes in a wider berth of social relations, such as gender and nationalism, to understand the intersections between class, politics, and culture. To resolve this contest, here we may recall Marx’s 1857-58 notebooks, referenced in Chapter 3, which acknowledge the existence and importance of indigenous forms of tenure in the struggle against the totalizing effects of capitalism. But to move beyond descriptions of “pre-capitalist social formations” towards a more coherent theory of Indigenous political economy within a settler colonial (staple) state, we need a more nuanced interpretation of the concept of modes of production.

Modes of production describe how a “way of life comes from or is related to an underlying structure.”⁷³² As Peter Kulchyski suggests, this “allow[s] us to think about different categories of social being.”⁷³³ The importance of this framework is that

production, the moment of creation, stands in for the whole social process; a mode of production is not simply a way of making things, but equally implies a way of organizing human relations, ways of ensuring social stability, ways of determining social reproduction, ways of understanding and seeing. A mode of production refers to an intricately interconnected social totality where the moment of economic production, narrowly understood, is itself in part conditioned by the relations it conditions, and where even the notions of what constitutes the ‘economic,’ like production itself, are themselves defined and acquire different status within the whole.⁷³⁴

Kulchyski describes a kin ordered mode of production for gatherer-hunting societies, where the primary producer has access to the means of production as well as ‘ownership’ of their product and labour, though he discards the limitations of the category, which deny any form of surplus may be extracted.⁷³⁵ Approaching the staple state from the perspective of property relations, we see a mixed economy comprised of different modes of production. The staple state represents the capitalist mode of production, but it is contingent upon the disruption of another. Embedded in “ecologies of intimacy” or “ontologies of care,” the kin ordered mode of production, in contrast, centres around land-based practices that carry the laws and customs of Indigenous political communities.

Today, we must set this national struggle over property relations within the global struggle over resources in an increasingly crisis-ridden system of neoliberal politics, but also within the specific settler-colonial structure of the Canadian state. On this latter point, Indigenous people, by and large, never proletarianized, nor fully integrated into the market economy, and continue to assert jurisdiction over their lands. In fact, one of the ironies of the reserve system is that rather than transform Indians into commercial farmers or industrial labourers, as colonial officials had hoped, the reserve system created by treaties provided a material basis for Indigenous peoples to retain access to land as a means of re-production.⁷³⁶

In today's political economy, Canada plays a crucial role within a new global and continental context vis-à-vis natural resources, subject to the crisis-ridden nature of this global system. The uneven spatial production of space under capitalism gives us a more precise way of thinking beyond Innisian preoccupations with core-periphery developments of Canadian political economy.⁷³⁷ The material evidence of uneven development within Canada can be starkly noted in a series of simple numbers marking vast differentiation in the Canadian socio-spatial landscape. According to the United Nations Human Development Index, by 1998 Canada had scored at the highest levels in the world for three consecutive years. Applying the same matrix to Indigenous peoples living on reserves, though, their standard of living was at level 78.5,⁷³⁸ about half-way to the bottom of the 186 countries surveyed. In a submission by Indigenous groups from Canada to the United Nation Human Rights Committee, this research is cited and the results denounced: "This kind of relationship is a very humiliating experience and is the root of fundamental contradictions that need to be resolved so that as indigenous peoples too can enjoy the natural wealth of our lands like the settlers have enjoyed since Canada became a state."⁷³⁹ These fundamental contradictions of inequality are further deeply rooted in the crises of capitalism that cause global insecurity for the Fourth World.

To draw a quick and crude sketch of recent uneven spatial development under capitalism in Canada in relation to natural resources and Indigenous resistance, we can broadly survey changes in the landscape due to global economic restructuring. The 1960s era of Fordism was a resource boom to Canada, leading to stability and prosperity in resource towns nation-wide. Eventually, though, the structural flaws inherent in Fordism began to show. In the 1970s, an era of recession, energy crisis, and stagflation emerged. But it was in the early 1980s that the resource sector was hit hard. Large scale lay-offs, and in the extreme, total abandonment of infrastructure struck hard at resource towns and circled out in rings to related and dependent industries. A new post-Fordist, flexible accumulation regime emerged that was more globally, economically connected than the North American trade system, causing more instability in

natural resource markets.⁷⁴⁰ The risk of Indigenous rights is that they can help protect geographically crucial sites for future development and resource extraction. As Manuel and Schabus point out: “As a result of international trade agreements like NAFTA, Indigenous Peoples are in direct competition with multinational corporations for control over their lands.”⁷⁴¹ What industry wants is *certainty* around ownership and rights; Canada and the provinces are committed to achieving this objective through the extinguishment of Indigenous rights. Achieving certainty on Aboriginal rights is meant to produce a stable landscape by removing the *condition* that interferes with risk-free investment, i.e. Indigenous proprietary interests. Meanwhile, the endemic risk of uncertainty in market patterns is obscured. Carole Blackburn notes that given the increasing fluidity of global markets in resource extraction, the speed/volume of these flows has intensified over the last three decades of twentieth century, which makes provinces depending on taxes on mines and forestry particularly nervous when Indigenous land rights are asserted.⁷⁴²

Aboriginal policies should not be viewed in isolation to these other, broader policy landscapes. In 1991, Angus wrote about how the policy-making environment in Canada was dominated by an over-riding concern for ‘fiscal constraint.’ This policy that became prevalent in the 1970s shot to prominence when the Conservatives took office in 1984. Angus predicted that, “[t]he quest for ‘fiscal restraint’ has become – and will continue to be – the predominant factor shaping the government’s policies towards Native peoples.”⁷⁴³ In the twenty years since Angus wrote his book, the language of ‘fiscal restraint’ has given way to a stronger, affirmative language of ‘economic modernization’ and ‘localization,’ but the trajectory of neoliberal policy has remained the same. Trade deals are part of these conservative policy packages that include monetary austerity, deregulation, and privatization.⁷⁴⁴ These monetary policies interact with Aboriginal policy in mutually reinforcing ways. In facilitating capital accumulation both domestically and internationally, the federal government manages staple production and exploitation by a private sector that receives tax incentives, depletion allowances, and other public subsidies of cost and risk.⁷⁴⁵ But most importantly, “legitimation functions of the state mean the maintenance of or changing of the terms of rights and access by private capital to these ‘public’ resources.”⁷⁴⁶ The conflict over ownership of these ‘public’ resources poses real economic challenges to a state determined to sell these user rights. The neoliberal solution to resolve this “Indian problem” has been the promotion of free market policies to bring Indigenous lands into the circulation of capital markets.

A prime example of this kind of governmentality can be found in comments made by a senior analyst for the right-wing think tank the Fraser Institute. Owen Lippert suggests that as Indigenous peoples depend increasingly on private wealth creation over public fund distribution,

they will become increasingly invested in economic growth at the expense of public expenditures more generally.⁷⁴⁷ This follows from an interpretation of the term *neo-liberal* that defines the concept as a mode of governmentality, an exercise of power that produces a certain type of political subject – in this case, entrepreneurial, individualized, and self-governing.⁷⁴⁸ Andrew Woolford supports this understanding where he argues that to govern Indigenous peoples effectively in Canada, non-Indigenous governments must orient citizen subjectivity towards a particular vision of self-government and autonomy.⁷⁴⁹ As Woolford notes in his book on the British Columbia land claims process, in contrast to control-based power such as the exercise of legislative powers under the Indian Act, the new regime governs ‘at a distance’ using soft technologies. Woolford writes: “‘The way forward’ is expressed in terms of the now irrefutable logic of the market.”⁷⁵⁰

What is a frontier?

An intrinsic and violent geography of jurisdiction is the frontier.⁷⁵¹ The frontier need not be understood as a physical place, but as a political space, where the edges cannot be easily marked – they are as deep as they are sharp.⁷⁵² A reserve is one such place. Up until recently, reserves were protected in the Mining Act from mineral exploration and extraction, although this is changing now, too.⁷⁵³ Nonetheless, even where reserves are not direct sites of production, they are sites of geographically strategic capital extraction and circulation – for instance, near transport corridors, pipeline routes, mining and forestry installations, hydro dams, reserves, and falls – as well, as the organizing base for protecting larger treaty and unceded lands. While one might anticipate these geographical proximities to simply be the outcome of a rural-urban divide, the spatial dispersion pattern of Indian reserves is actually unique compared to non-Indigenous settlement throughout Canada, tending to be much more rural than the Canadian population. As Peters explains:

In 1999, most Registered Indians lived on 2,567 reserves scattered throughout the country. Only 36.4 percent of the reserve population lived on or within 50km of urban areas, the remainder were located in rural areas, with 17.4 percent of the reserve population living in areas with no year-round road access to a service centre.⁷⁵⁴

By contrast, as of 2006, 68 percent of the non-Indigenous Canadian population lived in one of the country's 33 census metropolitan areas (CMA).⁷⁵⁵

The colonial strategy behind the geographical dispersion of reserve lands was to weaken internal Indigenous economics and land defense. It was also a strategy in some cases designed to push Indigenous peoples into the industrial workforce or to isolate Indians to prevent united

political action.⁷⁵⁶ This land fragmentation, or *detritorialization*, tore apart nations into bands, sometimes hundreds of kilometers apart, isolating communities from one another, from traditional territories, and from wider society. Moreover, reserve settlement patterns had a significant impact on identity and rights: self-determination is not essentially a right vested in scattered populations or individuals. Therefore, it interfered with nations' and bands' ability to assert jurisdiction over their traditional territories. Reserve selection was ultimately a process cultivated to limit interference with any future commercial interests of settlers, as this 1905 Treaty Commissioner statement attests:

The treatment of the reserve question which in this treaty was most important, will, it is hoped, meet with approval. For the most part the reserves were selected by the commissioners after conference with the Indians. They have been selected in situations which are especially advantageous to their owners, and where *they will not in any way interfere with railway development or the future commercial interests of the country*. While it is doubtful whether the Indians will ever engage in agriculture, these reserves, being of a reasonable size, will give a secure and permanent interest in the land which the indeterminate possession of a large tract could never carry. No valuable water-powers are included with the allotments.⁷⁵⁷

The same intent to clear off the Indians from valuable land can be said about the treaty process more generally:

Between 1871-1877 the first seven of the 'numbered treaties' were signed. These agreements secured for the federal government the Indian title to all of the fertile lands in the southern part of what are today the prairie provinces. In addition, Treaty No. 3 achieved the surrender of that part of the Canadian shield lying between the Manitoba border and Lake Superior, an area later incorporated into Ontario. Its surrender, along with that of the fertile belt, paved the way for the construction of the transcontinental railway.⁷⁵⁸

But despite this deliberate geographic fix, the dispersal of Indigenous peoples across the vast terrain of Canada has made them a formidable population with which to reckon, since – contrary to all efforts and expectations of Indian compliance – their reserves lie on valuable mineral deposits, forests, transportation routes and hydro corridors.

Today, there are 2,675 reserves in Canada. Some bands have no reserve, others have multiple reserves.⁷⁵⁹ The process of reserve settlement rarely reflected the land use of nations and smaller kinship groups within nations, often missing entire communities altogether. But despite the deliberate fragmentation of nations, the dispersal of Indigenous peoples across the vast terrain of Canada has made them a formidable population with which to reckon, since – contrary to all efforts and expectations of Indian compliance – their reserves lie on valuable mineral deposits,

forests, transportation routes and hydro corridors. Take transport routes, for example. Major highway routes have become key hotspots for blockades across the Canada. As we have seen, the Algonquins of Barriere Lake have been blockading Highway 117 since the late 1980s. Tyendinaga Mohawk Territory lies immediately south of Highway 401, which the Mohawks shut down, along with the rail-lines crossing their reserve, during the National Day of Action 2007. The Tyendinaga blockade cost around \$100 million in “economic damages.”⁷⁶⁰ In 2006, Grassy Narrows blockaded the Trans-Canada Highway in Manitoba to protest logging in the Whisky Jack Forest. In January 2010, First Nations youth blocked the Trans Canada Highway bridge over the Spanish River, disrupting the Olympic Torch Relay en route from Sudbury to Sault Saint Marie, protesting the global sports event happening on “stolen Native land.” Perhaps the most famous transport closure was in 1990, when the Kahanwake Mohawks blockaded the Mercier Bridge in solidarity with their Mohawk cousins under siege at Kahnasatake at the famous Oka stand-off.

Most recently, the Idle No More movement, triggered by social media into a national firestorm of direct action and public demonstration in support of Indigenous rights (then strengthened by the energy galvanized around Attawapiskat Chief Theresa Spence’s fast), threatened and delivered widespread economic disruption by Indigenous peoples from coast to coast. On January 5 alone, INM protests included five border crossing blockades, bridge blockades, and rail line disruptions spanning the country.⁷⁶¹

In the government and intelligence departments’ terms, reserves are located in geographic proximity to “critical infrastructure.” According to the RCMP, “critical infrastructure refers to infrastructure, both tangible and intangible, that is essential to the health, safety, security or economic well-being of Canadians and the effective functioning of government.”⁷⁶² RCMP National Security Criminal Investigations have prioritized four critical infrastructure sectors: finance, transportation, energy, and cyber-security. Indigenous resistance threatens transportation and energy sectors most directly. In terms of transportation, the circulation of goods, resources and energy through territory is the very essence of capitalism today. This vulnerability is deadly to the logistics industry. Logistics is a business science concerned with the management of goods and information through global supply chains. As the World Bank has declared: “A competitive network of global logistics is the backbone of international trade.”⁷⁶³ For an industry dependent on maintaining open channels for capital circulation, a blockade means massive losses: the trucking industry alone is worth \$65 billion dollars and employs over 260,000 drivers.⁷⁶⁴

Beyond reserve lands lies the great natural wealth of Indigenous peoples’ traditional territories. Taking a wider view from reserve lands to treaty lands and unceded traditional

territories, we can see how Indigenous lands are located at the frontiers of vital national and regional boundaries. In terms of natural resource extraction, for example, the geography of Indigenous lands vis-à-vis forests, oil, gas, and minerals poses a constant challenge to provincial governments and industry. Global Forest Watch Canada produced a series of maps showing the overlap between Canada's boreal forest and Aboriginal treaty lands. Their research shows how 56 percent of large intact forest landscapes (LIFL) are found on lands in historical Aboriginal treaty areas – over half.⁷⁶⁵ More specifically, “Treaties 8 and 9 contain about a quarter of all of Canada's intact forest landscapes and close to half of all the intact forest landscapes that occur within treaty areas. Modern land claim settlements contain about a quarter of Canada's intact forest landscapes.”⁷⁶⁶

In the energy sector, Canada has oil reserves second in the world after Saudi Arabia, though less accessible -- 98 per cent of this oil is in Alberta and 95 percent of it is in the tar sands, where effective Indigenous resistance by Treaty 8 and other First Nations has led to global boycott campaigns and fierce resistance.⁷⁶⁷ In northern B.C., the Unist'ot'en Clan, with support from grassroots Wet'suwet'en, have built a community of resistance directly on the GPS coordinates of the proposed pipeline route from the Alberta tar sands to the Kitimat port.⁷⁶⁸ From this camp they have evicted surveyors working for Pacific Trails Pipeline. Meanwhile, in Ontario, Enbridge's Line 9 has been opposed by the Oneida, the Haudenosaunee Development Institute, and Aamijiwaang First Nation, who have all vowed to fight the pipeline to protect their lands and waters.⁷⁶⁹

In terms of mining, MiningWatch Program Coordinator Ramsay Hart suggests that the relationship between geography, mining and Indigenous resistance does superficially correlate mining with places where Indigenous peoples make up a relatively greater percentage of the population. But he hypothesized two reasons behind this correlation that complicate a straightforward mapping of space. He notes, first, that areas where Indigenous peoples are a majority or larger part of the population have not been settled by non-Indigenous peoples due to poor conditions for agricultural development and remoteness, such as the Canadian Shield, where bedrock outcrops are near the surface and prospecting is easier, therefore desirable for mining companies. The second reason could be that many mining companies (though not all) are wary of investing in heavily settled areas of southern Canada due to challenges in reconciling the impacts with the interests of the established populations who enjoy greater density, wealth, and political clout than the Indigenous populations in the north. In other words, the space of extraction itself is produced by factors such as class relations and relative access to the political system.

In terms of natural resource extraction, over 10 per cent of Canada's economy is comprised of the natural resources sectors and earth science industries, which directly employs close to 763,000 people.⁷⁷⁰ The greatest concentration and correlation between Indigenous lands and mineral claims are being currently developed in the northern modern treaties and territories, such as Nunavut, Yukon, the James Bay region of Quebec, and the Quebec-Labrador Border, on unceded northwestern B.C. lands (e.g. on Nakazdli, Tzalten, and Tlingit traditional territory), and in northern Ontario's "Ring of Fire" on historic treaty lands, particularly Treaties 3 and 9.⁷⁷¹ The current global scramble for energy, minerals, oil and gas also have governments concerned. Key natural resource projects cannot proceed without Indigenous consent and cooperation. In the last few years alone, Kitchenuhmaykoosib Inninuwug shut down Platinex mining in northern Ontario Ojicree territory, 64 B.C. First Nations threaten the development of the west coast Enbridge pipeline to the Pacific Coast from the Alberta tar sands, and local Tsilhqot'in Nation sank the Prosperity copper and gold mine at Fish Lake in B.C. Barriere Lake are but one band, albeit one of the fiercest and most notorious, to turn frontiers into border crossings of law.

One Case of Kangaroo Court at Barriere Lake

In 1996, Barriere Lake's Special Representative in the Trilateral Secretariat commissioned an economic study of land and resources on the Trilateral Agreement area – about 10,000 square kilometers concentrated in the Outaouias region of Quebec. The report set out to evaluate regional economic structures to assess potential development in the region over the long term and to better harmonize the goals of competing users. Specifically, the report would quantify the economic value of forestry, tourism and recreation, other related activities, and non-economic activities (such as camping and picnicking), in the Trilateral zone. Excluded from its evaluations would be government activities, from which sources of revenue came from outside the zone, such as Hydro Quebec. The consulting firm found that the rough total estimate of economic value generated in the Trilateral zone was around \$56.5 million dollars.⁷⁷² Hydro Quebec's revenues were estimated to be a further \$50 million, calculated by another external consultant and added later to arrive at the conservative sum of \$100 million.⁷⁷³ Of that total revenue, the Algonquins of Barriere Lake received nothing. Quebec refused to set a precedent of revenue-sharing with the Algonquins lest other bands should follow suit with similar demands. Barriere Lake, for their part, have refused to let the province off the hook; they continue to resist resource extraction on their lands, rejecting anything outside of the sustainable development plan laid out in the Trilateral Agreement. This resistance has turned out to be a model the province also wants to nip in the bud.

One month following Matchewan's eviction of mining workers on his territory (discussed in Chapter 7), he received a summons-to-appear at a court in Val D'Or for mischief charges stemming from a peaceful blockade that had transpired two years earlier on a small logging road in Barriere Lake's territory.⁷⁷⁴ It appeared as though the summons had been tucked into someone's back pocket, anticipating a moment to put it to some effective use. Knocking Matchewan out of capacity as a key community organizer against mining could have been classified as such.

The logging itself was in violation of the Trilateral Agreement and had been unlawfully authorized by Quebec's Ministry of Natural Resources. But there were also oddities with the charge. Every criminal offense can either be tried as an indictable offence or a summary conviction. Indictable offenses are more serious. Since the statute of limitation had run out after six months on issuing the charges as summary conviction, Norman's charges had to be tried as an indictable offense. But the indictable offense of mischief did not seem to specify any crime. As Norman's legal counsel, Jared Will, explained:

The indictment... was a bit vague because it alleged that between September 1 and September 8 2008 that he had committed this act of mischief, and the evidence that was disclosed to us talked about a couple of different incidents. One where Norman and a few others had met some loggers who were actually working, which occurred on the night of August 31, technically September 1, where they told them to leave and they left. And another incident where a supervisor or foreman came back on the morning of [September] 2 and was told to leave and left. And then another incident where somebody came and wanted to inspect the machinery and he was told he could inspect the machinery and do nothing else. And then there were sort of descriptions of this road-side camp they set up. And I asked the Crown to specify what exactly they were alleging to be the mischief, or the crime, and it was kind of veiled, but the answer was basically 'all of it.' They refused to specify.⁷⁷⁵

Will further explained that the Crown had no direct evidence for any of the events other than the first incident. They were also not calling witnesses regarding any of these other interactions. "I was puzzled," he said. "They didn't seem to have any idea what their strategy would be."⁷⁷⁶

Among several defenses Will prepared, the most difficult and complicated was a "colour of right" defense, mounted when one believes there is a legal justification for an action also deemed to be a crime. Norman believed that the logging was unlawful and Will thought he had a strong case due to the leadership dispute that called Casey Ratt's authority to consent to logging into question, and due also to anomalies in consultation.⁷⁷⁷ The remarkable aspect of the trial is revealed in the discrepancy between the court's interpretation of the Trilateral Agreement versus the government's spin on Barriere Lake's "utopic" fantasy that the Trilateral still exists.⁷⁷⁸ *All the*

interim measures of consultation were evaluated based on the terms of the Trilateral Agreement.

This involved the forestry company obtaining a permit from Quebec, submitting a cutting plan, getting approval from MNR about where they can actually cut, all of which would be based on “measures to harmonize” with Algonquin land use. As Will explains, Quebec’s failure to comply this time made all the difference in the dispute:

... it seems as if they were just going through the motions. The process *de facto* was that they would send cutting plans to the community and wait for Hector Jerome [who worked with the Ratt Council] to sign off on them without any internal consultations that were supposed to happen. So up to 2008, the process was that MNR would send the forestry company’s cutting plan to the community, and the community would have people go out into the area, do some kind of research, they had a forester who worked with them, and then come back with a counter-proposal about where they could or couldn’t cut. And for the most part, their recommendations were followed. And then MNR would turn around and actually issue the permit to the forestry company. But that didn’t happen this time. There was a protracted negotiation between the Ratt Council and the MNR that seemed to be just stagnant. And then the MNR sent them a letter on July 15 2009, saying, look, we need your answer by July 27, if you don’t get back to us, we’re just going to issue a permit. And then they didn’t hear back, so they issued a permit the day after that [July 28]. And then 2 weeks later they did get a letter from Hector Jerome, apparently, that said, that’s fine, you can cut there, as long as you follow the general parameters of the usual precautions.

Despite the confusion the leadership disputes were causing on the ground and in negotiation, the Trilateral still seemed to have significant legal standing. Will observed that, “that’s at least implicit acknowledgement by them that it’s a valid agreement and that they need to move forward on it. But of course the leadership vacuum in the community means that there’s been no progress on it on that side.”⁷⁷⁹ He concludes that, “It seems to me that nobody has figured out how to kill it. So they’re just hoping it will die.”⁷⁸⁰ As recently as May of 2010, Quebec had affirmed 6 out of 7 of the Trilateral recommendations, which technically was to be the final step of the third phase of the Agreement. But the federal and provincial governments continued to publicly attack the community for their commitment to the Agreement.

The trial date actually happened quite quickly following Norman’s summons: it was set for June 4-6 2012, but it ended first thing on the second morning. On June 5, 2012, Norman was acquitted on what community members alleged all along were politically motivated charges. The forestry company representative for Abitibi-Bowater was caught repeatedly lying on the stand and the Quebec Natural Resources official bluntly acknowledged the province’s failure to consult and negotiate with the Algonquins.⁷⁸¹ In the end, Will never had a chance to present the colour of right defense.

Pacification at Barriere Lake

During the period between being issued the summons and going to trial, Matchewan reported that he was pulled over by the SQ on a regular basis and held for questioning whenever he left the reserve.⁷⁸² According to Norman, there were never clear grounds for the stop-overs given, but the purposes they seemed meant to serve were harassment and attempted intimidation. In fact, targeted police harassment both on and off the reserve has become common practice. I witnessed this on several occasions while visiting the community. One night, I watched the SQ pull over a young man and search his truck. It was after midnight, and he was being detained while dropping off garbage at the dump, about 300 meters from the reserve along the access road.⁷⁸³ The stop-overs were so extreme in 2010 that Norman Matchewan had to obtain special permission from police for no one to be randomly stopped during Katherine Keyes' funeral so that everyone could attend. The funeral was held on an island cemetery (relocated from flooding) at the traditional gathering lands of Barriere Lake, requiring a thirty minute drive from the reserve.⁷⁸⁴ SQ patrol cars frequently perch where the access road to Rapid Lake meets Highway 117, which allows for constant observation of the comings and goings of all community members, frequent stops and harassment, and the mounting sensation experienced by the Algonquins that they are being imprisoned at Rapid Lake.

Many, like Matchewan, report that they cannot leave the community without being pulled over by the SQ. During a visit to the community in August 2010, I was myself detained immediately after pulling onto the access road from Highway 117 and questioned about my business on the reserve. The next day I learned that Jeannette Wawatie and a friend had been followed by an SQ vehicle from the highway into the reserve, where officers sat outside Wawatie's house for hours, refusing to leave. Before Wawatie had entered the house, an SQ officer had rolled down his window and asked the middle-aged women where they were going. When they replied noncommittally that they were tired, the officer asked: "Can I come to bed with you?" Wawatie was afraid to leave her house until finally the vehicle dispersed.⁷⁸⁵

There are effectively 5 small roads that cross through the clusters of housing on the 59-acre reserve and to get from one end of the reserve to the other takes about a two-to-three minute drive. Given this compact geography, it is not difficult to imagine how invasive a patrolling SQ vehicle would be in these circumstances, especially when parked immediately outside of a community assembly or a feast. In these circumstances of political meetings and ceremony, it is particularly unnerving to community members to be constantly observed by SQ officers stationed nearby.

Since March 2008, police harassment escalated in the community, but one would be hard pressed to discover this information through formal records. According to community members, the SQ consistently refuses to register filed complaints from politically outspoken individuals. Norman Matchewan compiled an unofficial list of such incidents, many of which provide extreme examples of police brutality and racialized repression. To begin, Matchewan counted twenty-five Barriere Lake community members arrested since March 2008, all in relation to blockades defending their land or to protests against government interference in their customary leadership selection process. Further, many of the unregistered complaints stem directly from the March 2008 protests over the contested recognition of the Ratt Council by supporters of Acting Chief Benjamin Nottaway. While the formal record presents a one-sided picture of instigated violence and property destruction by Nottaway supporters, the image changes decidedly when the list of unregistered complaints by Nottaway supporters is taken into account. For example, on March 7, 2008, Matchewan reports that two SQ officers assaulted a minor, Angelo Decoursay (Nottaway supporter), during the arrest of Michel Thusky. Witnesses saw an SQ officer hit Decoursay in the face with his fist, but the assault was never registered. Another incident on that day involved the SQ pepper spraying two minors – Kyle and Jim Nottaway – also Nottaway supporters. The incident was caught on video, but never reported. Sergeant De Prato from the SQ was also recorded on camera shoving Mindy Nottaway who was four months pregnant and there to protest the Ratt Council recognition. This complaint of assault was reported, but not registered. Juliette Keyes' vehicle was vandalized by dissidents, but the SQ also refused to register her complaint.⁷⁸⁶

Perhaps the most dramatic act of police repression, though, occurred much earlier, in 1993, when a youth at Barriere Lake was the target of a highly militarized raid on Barriere Lake lands conducted by a Special Unit of the SQ specializing in violent crimes. At least a half a dozen officers arrived on the scene with what witnesses described as 'military' weapons. An SQ helicopter hovered overhead, two marked cars, three unmarked cars, and one police van arrived on the scene. The SQ did not inform the Chief and Council they intended to conduct a military raid on Barriere Lake lands against one of their community members and the SQ on the scene refused to answer questions or speak to any Algonquins at the scene of the raid. The situation was ripe with opportunity for things to go fatally wrong: even in the presence of so much live ammunition, the area was never secured, and young children and elders with their families stood around watching the operation unfold. Ironically, the young man in question had fled the scene of a crime of his alleged offense because of his fear of police and because he did not understand the rights and obligations he had under those circumstances. He turned himself in to the Maniwaki police station one week later.⁷⁸⁷

Jean Maurice Matchewan, who was Chief at the time, wrote an outraged letter to the force alleging that not only had the SQ endangered the lives of his community, but describing to them that this militarized response was a wildly inappropriate action for what was in effect, jurisdictional conflict: “Our young people sometimes act out of frustration when they realized that on our traditional lands, there is a growing presence of ZEC’s, outfitters and logging companies.”⁷⁸⁸ These experiences with security forces only worked to entrench the deep connections between land dispossession and the role of police in the minds of the Algonquins.

Norman Matchewan understands the legacy of struggle that his generation has inherited. “To keep your rights, you have to fight for them,” he says.⁷⁸⁹ Unlike the earlier days when his grandmother was beaten by game wardens, however, charges and even arrests represent only the initial activation of a lengthy justice process for community members. Matchewan explains: “A lot of people... they’ve been criminalized. Charges for peaceful protest, for highway blockades. A lot of them got house arrest, probation, [conditions] not to be at a protest for like a year. If they breach that, they end up in jail. Like Marylynn, she’s under house arrest for a month now.”⁷⁹⁰

At the time of that interview with Matchewan, Marylynn Poucachiche was serving a month of house arrest as sentence for her participation in the November 2008 Highway 117 blockade. Poucachiche echoes Matchewan’s philosophy on the political struggle: “It’s not even criminal what I did. It’s only the right thing to do.”⁷⁹¹ At the trial, the Crown aimed for the harshest possible sentence for Poucachiche, but the judge was more sympathetic, pointing out to the Crown that she was the mother of five children with no prior offences, and obviously a person of some personal integrity. Poucachiche said, “Well, they were asking me why I did that, blocking the road and putting the logs on the road. Well, I basically told them we wouldn’t have been there if the government would have lived up to their commitments... and honour agreements they have signed.”⁷⁹² Her sentence was disappointing, but it meant that soon she would finally be free of the conditions meant to hamstring her organizing efforts over the past couple of years. She said, “I guess I was kind of scared of what my sentence was going to be, cause I had heard the first time I went to court that I was going to get three months. So I guess that was hanging over my head. I wouldn’t have minded, if I fought it out and stayed in jail for three months there, but it’s just that I didn’t want to take it, with my baby there, and my kids. It would have been hard on my kids. After my conditions is over, I’ll be involved again with the community. This time I’ll be there without worries or hesitation. So I’m on board for another big political battle.”⁷⁹³ Jean Maurice Matchewan had been listening on the CB radio to the police channel during the blockade and heard the SQ send out the order to arrest Poucachiche.⁷⁹⁴ She had likely been targeted for arrest for some time by then.

In another example of targeted pacification, Jean Maurice Matchewan himself was arrested for appearing on the access road to Rapid Lake during the November 2008 blockade. Matchewan was forced back into the courts for another lengthy defense against mischief charges served post-action. In an astonishing decision, Matchewan was denied legal aid on grounds that his lawyer, Jared Will, described as “rather shocking.” Matchewan’s counsel was also using a ‘colour of right’ defense, arguing that Matchewan believed he was protecting his lands and that his action is therefore ‘in the interests of justice’ that legal aid be granted. The grounds for denial were that the case was not presented as being in the personal interest of the applicant, but rather for the general public interest. The courts said that having the land rights of a community recognized may be in the general interest, but it is of no particular personal interest to Matchewan. The criminal court, however, has no jurisdiction to recognize land rights in any general sense – they can only make a finding that Matchewan is not guilty because he had a genuine belief in his entitlement to block access to the land. How could this ruling stand? Matchewan’s legal counsel reports to have been told informally that the Crown was contesting the legal aid so vociferously precisely because it was someone from Barriere Lake who wanted to invoke colour of right. They were concerned about having to fund other such cases.⁷⁹⁵

In the village site of Maigan Agik, reports also abound with stories of police harassment and abuse. In 2000 and 2001, the media reported that Jacob Wawatie, Mary Whiteduck, and others were arrested in blockades against Domtar Inc. for protecting their lands against logging.⁷⁹⁶ Over a decade later, on June 24, 2011, Solomon Wawatie of the Anishinabe Traditional Council of Elders – the elders group from Maigan Agik – sent out a message on behalf of elder Mary Whiteduck, reporting that she was assaulted by the SQ and subsequently hospitalized as the result of forbidding an unspecified logging company from cutting on her traditional family territory. Wawatie reported: “The SQ told us its [*sic*] no longer our traditional territory, and now its [*sic*] Public Territory.” An urgent message regarding Whiteduck’s arrest was circulated on several message board and social networking sites. It is unclear if charges were ever pressed against the SQ or the status of Whiteduck’s charges.⁷⁹⁷

The geography of resource extraction on Indigenous lands not only demarcates the territory along the lines of logging roads and mining line cuts, but also determines the mobility of community members to move through the territory at their own free will and to govern according to their laws of jurisdiction.

As early as the 1980s, Norman Matchewan remembers living in the bush with his father, who was “red-zoned” from the community as a result of his blockade charges. The spectacular targeted arrests of Matchewan and Thusky that were described in Chapter 2 (correlated with the crucial

time-sensitive Trilateral work that Canada and Quebec seemed intent to disrupt) led to bail conditions that prohibited these leaders from living in the community, as well. Whiteduck was removed from the territory as a result of her stand against Domtar. At a public speaking event in Toronto, Clayton Nottaway became tearful as he described his own red-zoning from the reserve in March 2008 as a result of charges for protesting the recognition of the Ratt Council. He could not hunt, therefore he could not provide for his wife and five children; he had felt ashamed, helpless, and depressed.⁷⁹⁸ Jurisdictional assertions produce spatial differentiation; pacification tailors these differentiated spaces more aggressively and precisely. From red-zoning community members from the reserve, trials in towns at least 1.5 hours away that are costly and difficult to attend, house arrests, no protest conditions, and imprisonment far from home, this geography of pacification protects crucial access of government and industry to resources on Indigenous traditional lands.

Hot Spots

Examining the recommendations of Ipperwash, Dafos notes that Commissioner Sydney Linden maintained that “despite the vast majority of protests by Indigenous peoples having been characterized by little to no violence, there is a persistent perception and representation of such events as risky and threatening based on a perceived *potential* for violence.”⁷⁹⁹ This perceived risk is mitigated by surveillance, and provides its justification. The surveillance thus becomes a self-fulfilling prophesy in perpetuating mistrust and anger in Indigenous communities across the country.

Recent Access to Information (ATI) requests reveal widespread and systemic surveillance of Indigenous communities across Canada who are asserting their land rights. Internal documents from Indian Affairs and the Royal Canadian Mounted Police (RCMP) show that shortly after forming a government, Prime Minister Stephen Harper had the federal government tighten up on gathering and sharing intelligence on First Nations to anticipate and manage potential First Nation unrest across Canada.⁸⁰⁰ Furthermore, INAC was given the lead role to spy on these property outlaws. The goal of the project is to identify the First Nation leaders, participants and outside supporters of First Nation occupations and protests, and to closely monitor their actions.⁸⁰¹ To accomplish this task, INAC established a “Hot Spot Reporting System.” These weekly reports highlight all those communities across the country that engage in direct action to protect their lands and communities. This information is also collected by the RCMP and then shared across a broad range of government, industry, and security stakeholders.⁸⁰²

Let us take for example Norman Matchewan's mysterious summons-to-appear on mischief charges two years after the fact. In an EIMD notification dated September 1, 2009, INAC reported that a group of "Matchewan supporters and others" approached Domtar workers on Barriere Lake's territory to request that they stop harvesting wood.⁸⁰³ INAC reported that, "the situation is currently remaining calm on both sides of the dispute."⁸⁰⁴ In a follow-up notification, the protest was identified as a "road block," though, adding that, "Members of the Matchewan group are setting up a camp at the site in attempt to prevent machinery from being brought out of the worksite. They have been quoted as saying that the camp would stay in place until an agreement is reached."⁸⁰⁵ The so-called "Matchewan clan" informed Domtar that the tree harvesting was affecting the trapping territories of some Barriere Lake community members; they simply wanted assurances that no more logging would take place without their consent and that affected families would be consulted prior to the cutting and harvest of trees.⁸⁰⁶ What was clearly a political act, devoid of criminal intent and expressly carried out to protect hunting and trapping grounds on his community's unceded territory, eventually became fodder for Matchewan's charges. The economic and political interests at hand here are difficult to ignore. Given INAC's monitoring of the action, to what extent, if any, could INAC have been involved in orchestrating Matchewan's eventual charges? To what extent can we surmise that it may not be coincidence that Matchewan's summons followed so swiftly his opposition to mining on Barriere Lake's territory? It is unlikely that a paper trail exists that would allow us to positively determine the answer to these questions. However, these inquiries should be left open to asking.

When the surveillance project was exposed in the press in late 2011,⁸⁰⁷ INAC protested that this monitoring was a simple matter of public safety, claiming that "[t]he government coordinates efforts across departments to ensure public safety in Canada."⁸⁰⁸ However, they were contradicted by their own analysis of the situation revealed in the documents. In a 2007 presentation to the RCMP, INAC states that "the vast majority of Hot Spots" of so-called Native unrest are "related to lands and resources," with most conflicts "incited by development activities on traditional territories."⁸⁰⁹ It seems, in other words, that "Native unrest" is largely a euphemism for bands that are protecting their lands from development – most likely due to ecological exploitation, or lack of consultation and consent – or in the case of land claim disputes, from dispossession. More broadly, "Native unrest" has become a rhetoric of dismissal for a nation-wide struggle to exercise inherent Indigenous rights.

Of particular concern are bands that reject federal land settlement policies. The INAC presentation to the RCMP also betrays concern about protests "outside of negotiation processes" with elected councils. Though this statement refers to so-called "splinter groups," the

presumption here is that while band councils (“the elected leadership”) are compliant with federal negotiation processes, therefore manageable, grassroots Indigenous groups critical of such federal policies are a problem to be controlled. Barriere Lake poses a particular problem, since their customary leadership neither represents a splinter group nor a compliant band council. But in either case, Canada seems clearly spooked by the spectre of First Nations demanding Crown recognition of Indigenous terms of jurisdiction, as well as demanding land rights beyond the narrow confines of Crown land claims and self-government policies. This in turn explains why Barriere Lake has endured considerable RCMP and INAC attention since the hot spot surveillance reporting was first established. In Emergency and Issues Management Directorate (EIMD) documents obtained through ATI requests, Barriere Lake feature prominently from 2007-2010.⁸¹⁰

Much information in the EIMD reports is gleaned from the Barriere Lake Solidarity (BLS) website, which is the public platform for Barriere Lake organizing, and obviously a valuable source of intelligence for INAC and security officers. For example, INAC reported on an upcoming demonstration in Ottawa 2010 for several months before the event took place, taking notice of planning activities through BLS efforts to promote and mobilize supporters for the action. Barriere Lake Solidarity events also gave security officers an opportunity to infiltrate organizing efforts. In an email exchange between an RCMP Corporal and an unknown recipient at INAC, the Corporal reports that “a group calling themselves the Barriere Lake Solidarity are having an Emergency meeting on a campus in Montreal and the speaker in one Norman Matchewan (son of the old Chief Maurice Matchewan who leads the other group against Casey Ratt and the new Chief).”⁸¹¹ A handwritten scrawl on the printed email says “police inside,” likely indicating undercover police presence at the Montreal event. When this monitoring of community organizing is taken into account, Norman Matchewan’s unexpected highway stops also appear somewhat less random.

In the extensive stack of EIMD reports, what emerges is a clear picture of INAC’s organizational awareness of its role in fomenting the “Native unrest.” Around the time of INAC’s recognition of the Ratt Council, a bureaucrat at INAC warns the Deputy Minister: “Other protests can be expected until the leadership challenges at Barriere Lake are resolved.”⁸¹² INAC’s interference then justifies its own *raison d’être* of managing conflict in First Nations communities. A key aspect of the surveillance project seems to be that it allows INAC to develop elaborate communications strategies to respond to situations on the ground and to craft spin to counter communities’ grievances and demands.

The precursor to the Hot Spot reporting system is the Special Words and Tactics (SWAT) Team that developed around 2000-2001. Walter Rudnicki, a respected bureaucrat who spent years fighting both within and outside the Canadian establishment for Aboriginal rights, told *Wind Speaker* in 2002 that his contacts in government informed him that the Minister of Indian Affairs set up a “special words and tactics or SWAT-team” advising him in the public relations war with the First Nations leadership.⁸¹³ A press release from the Interior Alliance of BC a year earlier also accuses INAC of setting up such a program, but dates its inauguration much earlier: “Since the mid-1980’s the federal Department of Indian Affairs and Northern Development (DIAND) has employed a SWAT (Special Words and Tactics) strategy to ‘control the dialogue’ on aboriginal issues with the media and the general public, now they are adding Aboriginal ‘grassroots people’ as a target group.”⁸¹⁴ These discursive strategies deployed to manage Indigenous peoples are extremely damaging in how they shape the perceptions of the general public. The most recent example of such spin is the great emphasis on “accountability” of First Nations leadership.⁸¹⁵ Despite the fact that INAC manages a budget of over \$5 billion and yet over a hundred Indigenous communities are under drinking water advisories⁸¹⁶, the emphasis on misspending on reserves paints a portrait of a population that cannot be trusted to handle the jurisdiction they are asserting.

In general, we know from the EIMD classified reports that there is extremely close coordination and cooperation between INAC and security forces, such as the RCMP and SQ. For example, one INAC report outlines four demonstrations in which Benjamin Nottaway supporters were involved following the controversial INAC recognition of the Ratt Council in 2008. Under the heading “Road Blocks, Violence and Protests,” INAC states that, “The current response to protests is to involve the police with appropriate jurisdiction.”⁸¹⁷ Numerous other instances abound in the EIMD reports, where intelligence sharing is evident and transparent in emails, meeting minutes, and reports. Interestingly, the law itself is considered to be something outside the frame of reference for surveillance gathering, demarcating surveillance within an indeterminate space of jurisdiction. As the Aboriginal Joint Intelligence Group (JIG) states: “The scope of the report does not cover lawful protest or legitimate dissent.”⁸¹⁸ The JIG monitored Indigenous groups in the run-up to the G8 and G20 meetings, as well as the 2010 Vancouver Olympics.⁸¹⁹ By stating that they did not monitor lawful protest or legitimate dissent the agency in fact *defines* both these terms. Their concern, as stated above, is with *critical infrastructure*, in which case any Indigenous interference in this infrastructure places Indigenous peoples outside of the bounds of lawful movement into the murky space of surveillance and security logic.⁸²⁰

This state approach to resolution of political and economic issues – inviting the SQ, for example, to intervene in leadership disputes – raises crucial questions about the structures of settler colonialism: when local and national police forces do INAC’s bidding, can security forces be distinguished from the historic role played by Indian agents?⁸²¹ Is the role of today’s security forces any different from the role played by Indian agents, who removed Indigenous obstacles from the path of an expanding capitalist state by enforcing the Indian Act? On what side of the law are INAC and the SQ on when Indigenous people are persecuted for blockades on their own lands, on their own *property*, as Aboriginal Title was interpreted by the *Delgamuukw* court? The continuity here is that Indigenous struggles have always been assertions of jurisdiction over competing claims for their lands. Pacification must be understood in this settler colonial context of conflict that prevails on the frontiers of accumulation.

Surveillance does not stop with Indigenous peoples. Non-Indigenous organizers acting in solidarity with Indigenous peoples themselves have also become the target of security monitoring. Martin Lukacs, who founded BLS in Montreal, was visited by the Canadian Security Intelligence Service (CSIS), who sent two agents to visit him on April 13, 2010. They wanted to talk to him about Barriere Lake, specifically about what the officers referred to as the “possibilities of violence.” Luckacs told them the only group that had committed violence at Barriere Lake was the government, then refused to talk to them any further. He believes the incident was a sign of effective organizing, since the government seemed eager to assess the full repercussions of their attacks on Barriere Lake and the potential community responses. He responded angrily to the visit: “If the government, and especially CSIS, wasn’t so ideologically blinkered, they would realize that the community has consistently relied on the same tactics – public campaigning, civil protests, non-violent direct action – on moral grounds and because those are the only tactics that are effective.”⁸²²

Almost exactly a year later, Pei Ju Wang, an organizer with the Indigenous Peoples Solidarity Movement Ottawa (IPSMO) who works intensively on Barriere Lake support, reported that Ontario Provincial Police (OPP) officers appeared at her front door, dressed in civilian clothes, wanting to come in and talk. She refused to let them into her home. The Constable Detective mentioned Barriere Lake and tried to draw her out by saying, “I know you don't agree with some of the tactics some other people are using... you know who I am talking about...” referring to a member of IPSMO who was accused of an arson attack on an RBC bank, whose charges were later dropped. Later Wang learned that the Detective Constable was from the Hate Crimes / Extremism Unit / Provincial Operations Intelligence Bureau of the OPP. It was through the RBC arson case in 2010 that IPSMO had also learned of an undercover police operative

named Francois Leclerc who had infiltrated their organization for two years before being exposed⁸²³; Leclerc had frequently volunteered to do frontline support work for the Algonquins of Barriere Lake, including helping with transport, food delivery, and the logistics in Ottawa for demonstrations. Leclerc was on the internal organizing listserve, as well, where campaign strategy, sensitive community updates, and actions around Barriere Lake were developed and worked out.

The perceived threat of Indigenous peoples becoming “violent” is only matched in paranoia with Indigenous peoples forming coalitions with environmental groups and “Multi-Issue-Extremists.” RCMP Intelligence reports mention these concerns, for example, where concerns about a Defenders of the Land call out for groups to hold Indigenous Sovereignty Week events in 2009 was flagged for concern due to “[t]he inclusive nature of the call out for events,” which “increases the likelihood that participants will include a broad spectrum of the Canadian population including members of activist groups.”⁸²⁴ Jeff Monaghan and Kevin Walby gained access to a CSIS document from 2008 dealing with national security around the energy sector. The documents states that: “Multi-issue extremists [including environmental groups] and Aboriginal extremists may pursue common causes, and both groups have demonstrated the intent and the capability to carry out attacks against critical infrastructure in Canada.”⁸²⁵ As the authors observe, casting a wide net around terrorist entities and ideologically motivated activists deploys the concept of critical infrastructure to begin to make common cause in the construction of terror identities.⁸²⁶

CONCLUSION

CHAPTER NINE: A Land Claim is Canada's Claim: Against Extinguishment

The primary purpose of treaty making is to provide certainty for land ownership and jurisdiction in British Columbia. – British Columbia Treaty Commission⁸²⁷

Only a small icon symbolizing the Rapid Lake Reserve marks the presence of the Algonquins of Barriere Lake on the tourist maps of Parc La Verendrye. Hundreds of these maps are distributed each year to mostly Quebecois and American visitors. On the shelves of the permit offices in the park one can also find a stack of quarter-sheets titled, “The Algonquins in La Vérendrye Wildlife Reserve,” published by the Quebec Ministry of Recreation, Hunting, and Fishing. Wishing to bring to the attention of visitors the “particular context” of the reserve, the pamphlet explains that approximately 400 Algonquins make their home there at Rapid Lake and at nearby Grand-Lac Victoria Reserve. The pamphlet explains that the Algonquins hunt, fish, and trap in the Grand Lac Beaver Preserve, a space of about 19,000 square kilometers, that was once the exclusive domain of the Indians.⁸²⁸

Of course, these pamphlets omit word of any conflict between the Algonquins and settlers, but they do subtly take a stand on the issue. The pamphlet describes how under Quebec provincial regulation the Algonquins are permitted to practice their traditional activities. A space is delineated for these activities as well as the authority by which Algonquins can use this space: “On their traplines, in the beaver reserve which covers three quarters of La Vérendrye Wildlife Reserve, the Algonquins may... hunt and fish for food under the ‘Regulation respecting hunting.’” Quebec’s authority to “permit” the Algonquins their hunting and trapping privileges belies, for example, *sui generis* Indigenous rights to hunt and fish on their unceded traditional territory.⁸²⁹ In spite of these rights, the source of Algonquin land occupation is repeatedly alluded to as discretionary to the province: the title of the pamphlet locates the Algonquins “in” the park, though the park was historically situated *in* Barriere Lake’s traditional territory. The province’s presumed exclusive authority over unceded Barriere Lake lands tidies up the messy space of jurisdictional overlap. To put the Algonquin people’s authority back in the frame takes identifying and demystifying these overlapping claims to power on Algonquin traditional territory.

This map marks provincial claims to jurisdiction over Barriere Lake lands, but as a discursive artifact it performs a different kind of jurisdictional work than the more complex

policy mechanism of the land claims policy. We have surveyed through this dissertation a proliferation of regulatory, representational, socio-spatial, and security impositions on Algonquin land, people, and resources that have all attempted to nudge out Indigenous jurisdiction and that mark the polyphonic struggle between Indigenous and settler legal orders. But a blunter instrument exists that seeks the elimination of Indigenous jurisdiction through explicit and legal consent by Indian bands. I want to close this dissertation by completing a circle I have been drawing that began with Barriere Lake's rejection of the Comprehensive Land Claims (CLC) policy and led them to develop the Trilateral Agreement in response. I want to examine the role of the land claims policy as a means to remove the uncertainty posed to state territorial jurisdiction and to the natural resource economy by overlapping jurisdiction between settler and Indigenous legal orders. The CLC policy aims to achieve this removal through the extinguishment of Aboriginal title.

There is much to digest, analyze, and critique about the CLC policy, but for the interests of my study I want to analyze three ways in which CLC act as a technology of settler colonial jurisdiction-making on Indigenous lands.⁸³⁰ First, I will examine the way in which land under the policy must be transformed from unceded Indigenous territory into fee simple lands; second, I want to review some of the ways in which coercion is structured into this policy to trouble to notion of "consent" around the surrender of Indigenous jurisdiction; and finally, I want to look at how land claims are one of a slate of "Termination" policies that turn Indigenous communities against one another, since one band or nation's cession of jurisdiction impacts all other nations' rights and title, increasingly so with the introduction of new policy frameworks by the Harper Government.⁸³¹ My main objective here is to show how these three contentions against the CLC policy were anticipated and resolved by the Trilateral Agreement process, which can continue to provide a reconstructive model for what decolonization could look like in Canada if its principles were widely adopted and implemented.

The Policy

The modern treaty process was ushered in with some excitement four decades ago. It emerged entirely in response to the considerable efforts of Indigenous peoples to assert jurisdiction over their traditional territories. The policy was an outcome of the ruling handed down in a case brought by the Nisga'a tribal council, at their own expense, against the government of British Columbia. In 1971, the case made its way from the British Columbia Supreme Court to the Supreme Court of Canada (*Calder*).⁸³² The lower courts in BC had not been able to grasp Indigenous land ownership. In a starkly racist example of this failure to connect, Chief Justice

Davey stated that native peoples were far too primitive to have any notion of private property – the sign of civilization – and therefore any right to claim underlying title.⁸³³ But three judges on the Supreme Court bench found otherwise. Emmett Hall was the most outspoken judge who recognized that Nisga’a title had pre-existed Confederation, arguing that it had never been extinguished and that it could still be asserted today.⁸³⁴ He urged the court to adopt a progressive view of Indigenous peoples and not be bound by the outdated notions of Indians from the past.

When the *Calder* decision came down in 1973 it was a split decision of 3:3:1 (three in favour of the plaintiffs, three against, one dismissal based on a technicality), but it opened up the possibility of Aboriginal title in BC and on unceded lands more generally. The decision shocked then Prime Minister Trudeau, who had to confess, “perhaps you had more legal rights than we thought you had” and reversed his denial of special rights for Indians articulated in his Department of Indian Affairs’ 1969 White Paper.⁸³⁵ But as Johnny Mack writes, while the *Calder* decision marked a space away from the harsh denial of Indigenous rights represented by the White Paper – a colonial mode of imperialism – it was also a movement towards a “soft imperialism,” “characterized by a rejection of a colonial apartheid/assimilation mode of operation in favour of one marked instead by integration and selective toleration of indigenous difference.”⁸³⁶ This soft imperialism was signaled by the introduction of a settlement process for outstanding land grievances. Within six months of the *Calder* decision, a new policy was rolled out to deal with all the Indians who had not signed treaties. On Aug 8, 1973, the federal government issued a ‘statement of policy’ demonstrating a willingness to negotiate for land with Indigenous peoples, and acknowledging its obligations under the Royal Proclamation.⁸³⁷

Calder was first heard at the Supreme Court the same year that Premier Bourassa announced the James Bay hydroelectric project. In 1972, the Crees took the government to court, ordering a halt on the massive construction project that would damage their lands and ways of life. Quebec denied the Crees had any such rights of claim to the land. The statement on land claims put out by the Trudeau government was a political policy and not a legal obligation, but when the *Calder* decision came down, Quebec decided to settle as quickly as possible with the Crees so that the hydro-electric project could go through.⁸³⁸ That deal led to the historic signing of the James Bay and Northern Quebec Agreement (JBNQA) in 1975 – it was the first land claim settlement signed since 1930. The JBNQA was not signed under the CLC policy, but it set a framework in place that has yet to be dislodged despite repeated attempts at reform. Article 2.1 of the JBNQA reads:

In consideration of the rights and benefits herein set forth in favour of the James Bay Crees and the Inuit of Quebec, the James Bay Crees and Inuit of Quebec hereby *cede*,

release, surrender, and convey all their Native claims, rights, title, and interest, whatever they may be, in and to land in the territory.⁸³⁹

All Indigenous parties negotiating modern treaties from that day forth would be forced to extinguish jurisdiction over their lands.

This requirement became even more clear when the 1981 policy was released. The policy revision, which hardly differed from the 1973 version, stated that the policy's objective was "to exchange undefined aboriginal rights for concrete rights and benefits," calling for the "*extinguishment of all aboriginal rights and title as part of a claim statement.*"⁸⁴⁰ The requirement of Indigenous nations to extinguish their land rights upon settlement was met with controversy from the start, but a pattern would persist of policy revision without reform for decades to come. To take just one example, in 1985, a federal Indian Affairs' appointed task force, dubbed the "Coolican Task Force" after its Chairman and author, concluded that "the extinguishment policy was unjust and unnecessary."⁸⁴¹ The Coolican Report was actively pursued as the necessary spark for change by the six negotiating groups who were currently at tables.⁸⁴² But the coalition failed to get traction. Though they worked closely with government to develop a series of policy recommendations, they were challenged in this task by the radical nature of Coolican's assessment of policy failure. The Coolican Report identified the need for long-term solutions to overcome the political lack of will by the government to share power and authority with Indigenous peoples. Squeezing down structural change into policy recommendations proved hard and ineffective. As Fenge and Barnaby explain, reaction to the revised policy proposal was largely met with ambivalence by federal agencies:

Much of this reaction seems to have been the result of ignorance about the legal and moral bases of land claims. To aboriginal peoples the question of land claims is compelling and consuming, but to senior civil servants in Ottawa it is a peripheral issue of no great importance or urgency. Most decision makers listened politely to the representations of the coalition but carried on as before, unperturbed.⁸⁴³

The policy recommendations were laid to rest, and following a cabinet shuffle, Bill McKnight became Minister of Indian Affairs. After considerable lobbying by the negotiating groups, he introduced a new policy on land claims released under then Prime Minister Mulroney's 1987 "Blue Book."⁸⁴⁴ The revised policy introduced the concept of "alternatives to extinguishment" to deal with the most pressing concern, but included extremely limited aspects of self-government that bore no constitutional protection. Ultimately, the essence of the policy remained unchanged.⁸⁴⁵

The Coolican Report should by no means be viewed as the ultimate and ideal expression of a land claim policy, since the report continued to frame the policy objective as a means to build strong and distinctive societies *within confederation*,⁸⁴⁶ whereas the fundamental issue for Indigenous peoples has been the recognition of distinct legal, political, and social orders. However, it does show us something important: despite its prescription for fundamental reform, the policy problem is metonymic of “soft imperialism” more generally: Indigenous peoples cannot secure meaningful recognition from a state that is structured to eliminate them. The central problem of jurisdiction must first be addressed.

The federal government has tinkered with the language in the policy, but has never changed the underlying extinguishment requirement. This feat is actually quite ambitious, given the significant juridical, political, and international developments that have unfolded since the CLC policy was first introduced. While we do not have the space to unpack all of these substantial changes to the negotiating landscape, we can briefly summarize some major achievements in Indigenous rights of the past few decades. Since the introduction of the CLC, Indigenous peoples achieved a constitutional victory in 1982: under section 35(1), Aboriginal and Treaty Rights were “recognized and affirmed,”⁸⁴⁷ where no such protections previously existed. On the judicial front, the Supreme Court of Canada has recognized Aboriginal title as an Aboriginal right protected under section 35(1)⁸⁴⁸ and the court in *Delgamuukw* ruled that “Aboriginal title is a right to the land itself.”⁸⁴⁹ In addition, the courts have said that even in the pre-proof stage of Aboriginal title assertions, governments and third parties are legally subject to engage in consultation and accommodation with First Nations, which would ostensibly protect Indigenous nations at the negotiating table.⁸⁵⁰ In the international context, the UN and other human rights bodies have passed protocols that protect ancestral Indigenous lands from state expropriation.⁸⁵¹ UN human rights bodies have further advised Canada that they need to stop requiring Indigenous peoples to surrender or extinguish their land rights.⁸⁵² It is not an exaggeration to state that these substantial improvements in the scope of recognition by state institutions have not affected the CLC policy at all.

What did change in the policy was the language used to require extinguishment. A language of “modification” and “exhaustion” was adopted in the Nisga’a Final Agreement – the first treaty signed in British Columbia under the CLC policy (more specially, under the regional form of the CLC policy, the British Columbia Treaty Process (BCTC)) – in May 2000.⁸⁵³ The concept of this new language was that Aboriginal rights were being modified, but not extinguished. What is sometimes called “certainty language” by negotiators substitutes the

languages of “modification” and “non-assertion” for “cede, surrender, and release,” but like extinguishment, requires full cession of Aboriginal rights and title in exchange for treaty rights.⁸⁵⁴

When the Nisga’a treaty was being negotiated, great efforts were made by government negotiators to distance themselves from the language of extinguishment. But the Nisga’a rightly wanted to know the point of spending decades achieving recognition of their unextinguished underlying title only to trade away these rights upon treaty settlement. Negotiators responded that the reason for doing so was that those Aboriginal rights, protected under Section 35(1), were ill-defined and vague and that they wanted to replace them with “certainty,” i.e. spelled-out rights. Nisga’a negotiators replied, why don’t we just spell out those Aboriginal rights, then? But the government said “no.”⁸⁵⁵ Instead, Canada’s negotiators pressured the Nisga’a to cede and surrender their constitutional rights for a new set of rights where neither Section 35 rights nor Aboriginal title could be listed as treaty rights. So while there was no formal surrender, the modified rights model amounted to significant forfeiture of Section 35 protection, amounting to a violation of what Section 35 is ostensibly meant to protect.⁸⁵⁶

To date, there have been 21 land claims signed under the CLC policy and there are currently 93 First Nations at negotiating tables across the country.⁸⁵⁷ Over half of the current pending negotiations concern BC First Nations, where almost no treaties were historically signed, meaning that the vast majority of the province is unceded Indigenous territory. Some land claims negotiations are grouped in “regional tables,” such as the British Columbia Treaty Process (BCTP) or the Atlantic tables that tend to be grouped by province. While framed by Canada as unique processes designed to suit the particular local needs and context of First Nations, these regional processes all fall under the CLC policy.⁸⁵⁸ There simply are no other negotiating protocols that exist on the federal level to resolve land claims in Canada.

Perhaps the most troubling aspect of current negotiations is that the government refuses to release an updated version of the policy. The last policy revision was released by the federal government in 1993, and has not been updated since despite widespread changes to the political landscape and to the policy itself, such as the inclusion in 1995 of self-government policies. Indignant that Indigenous peoples are expected to enter blindly into high-level discussions regarding their ancestral lands, the AFN have nonetheless had an impossible time getting disclosure on these terms. They describe how “[a] variety of excuses have been provided for this absence of a transparent and explicit policy statement, including the suggestion by officials that it’s *like the Common Law* and can be found in all of the existing agreements and Cabinet mandates (the latter of which are not available to First Nations or the public).”⁸⁵⁹ The formula then must be discerned through combing through signed agreements to calculate average land and

cash settlements, final terms of settlement, non-negotiable items, and other key perimeters for negotiation.

By factoring in all the modern treaties, agreements in principle, and final agreements prepared to date, we can state conclusively that Indigenous peoples must give up their constitutional protections, however undefined, in exchange for ceding approximately 95 percent of their lands.⁸⁶⁰ According to my own calculations of the BCTP, upon final settlement the total land per person would amount to about 11.66 hectares.⁸⁶¹ The requirement under the BCTC is also for cession of all reserve lands and settlements. In a briefing to the AFN Comprehensive Claims committee prepared by Peter Di Gangi, perhaps one of the best informed analysts of the policy country-wide, he summarizes the land formula policy as follows:

All reserve status is to be given up. Settlement lands are to be held in ‘fee simple’ by a First Nation corporation, and subject to federal, provincial and municipal laws. The ‘corporation’ will replace the First Nation as the land holding entity, and this will formally break the link between the First Nation and its Aboriginal title. These lands will become part of the provincial land system. These lands will be subject to taxation.⁸⁶²

The cash component of agreements is tied relative to land: the more land, the less money, and vice-a-versa. This money is referred to as “compensation” though it is not tied to past losses or to a substantive figure representing the current economic value of resources on the land. Rather, it is a fixed amount of approximately \$45,000 per person.⁸⁶³ For a band the size of Barriere Lake, the one-time payout would be around \$1 million in exchange for Aboriginal rights and title forever. Compare that sum to the \$100 million of resources extracted from the territory on an annual base, or to the \$1.5 million in annual resource revenue-sharing laid out in the Trilateral Agreement. In this light, the CLC policy represents a real discount for governments on Indigenous land value.

Take it in Fee Simple or leave it

A land claim is not an accurate description of Indigenous peoples’ assertions of jurisdiction over territory in Canada, insists constitutional expert Peter Russell. A land claim implies that Indigenous people are making a claim against Canada, when in fact, according to Indigenous law, the onus is on Canada to enter into treaty with Indigenous nations.⁸⁶⁴ The CLC policy is firmly rooted in a framework of claim within the institution of confederation. A treaty, on the other hand, depicted movingly in Harold Johnson’s *Two Families*, is an adoption ceremony, where the Nēhilawē (Cree) incorporated their *Kicimanawak* (cousins) into the family.⁸⁶⁵

What Canadians need to understand is that their property rights are contingent upon recognition by Indigenous peoples. As Arthur Manuel explains:

Aboriginal title is not a burden on so called Crown title, our ownership is the underlying Title that all subsequent land interests rest on. I know the Canadian courts have been giving their interpretation about our Title as Indigenous Peoples but they do not have the capacity to make us subservient to so-called Crown interests because they as judicial institutions are created by the sovereignty of Canada and are in a conflict of interest with our sovereignty as Indigenous nations.⁸⁶⁶

Rejecting the federal hierarchy of jurisdiction that places Indigenous peoples at the bottom of the authority structure, Manuel puts in plain terms what Canadian courts have been finding, but refusing to interpret as within their jurisdiction to name. If the sovereignty of the Canadian state depends on a bounded territorial space, which in turn depends on an exclusive claim to that space through the mechanisms of jurisdiction, then unceded Indigenous territories challenge the legitimacy of the state and the legal and political orders contingent upon state claims to govern. Only Indigenous peoples have the legal authority to recognize state property and its derivative fee simple forms; even by Canada's own laws, the proprietary interests of Indigenous peoples call into question those of the state.

The justification for transitioning unceded Indigenous lands into fee simple property through the CLC policy is framed as achieving "economic certainty," but the question is, for *whom*? From a business perspective, treaties are favoured because they remove undefined rights of Aboriginal title and replace them with a stable and transparent Torrens property registry system.⁸⁶⁷ However, the fact that Aboriginal title is considered unstable means that all "Crown lands" and fee simple property – despite being registered in the Torrens system – are also uncertain by virtue of their imposition onto unceded Indigenous lands.⁸⁶⁸ Extinguishing title in exchange for fee simple property is a key step in the termination of collective Indigenous lands as well as in completing the unfinished settler colonial project of sovereignty assertion. It subordinates Indigenous land under provincial jurisdiction, terminating its distinct legal order. This major transformation of Indigenous territorial space is a non-negotiable aspect of the policy.⁸⁶⁹

To understand the implications of the fee simple requirement in the modern treaty process, I visited with Bertha Williams of the Tsawwassen First Nation (TFN) in BC, where she met with Arthur Manuel and I at her home on the former reserve. In December 2007, the Tsawwassen First Nation became the second modern treaty signed in BC after Nisga'a.⁸⁷⁰ The treaty still needed to be ratified by the federal government, however, and in the meantime, Williams traveled to Geneva in February 2009 to launch an unsuccessful emergency appeal at the United Nations Committee on the Elimination of Racial Discrimination (CERD) Working Group

on Early Warning and Urgent Action in attempt to stop the treaty from coming into force. She told the CERD that she feared the outcome of the extinguishment of her band's Aboriginal title: "This is my birthright handed to me by my parents and grandparents and ancestors. This is a legacy that I want to pass to my children and grandchildren. But, it will be severed come April 3, 2009 when the Tsawwassen Agreement comes into force."⁸⁷¹ In April 2009, the Tsawwassen Final Agreement did come into force, in the midst of almost deafening provincial celebration cheering on a badly needed victory for politicians following eighteen years and millions of dollars of failed treaty-making in BC.

Williams continues to be a lone voice of opposition in her community against the treaty and a strong supporter of other bands and individuals opposing their treaty negotiations.⁸⁷² She is one of the few people raising alarm about the realities of the post-treaty world. Now that their lands are held in fee simple ownership, I asked her if people wanted to sell their homes or mortgage their property on TFN's former reserve. She said technically they could now lease their lands for 99-years to someone on the reserve. She said there was a woman who had a "For Sale" sign on her lawn who had hired a real estate agent to try to sell her house, but she was having a hard time. Arthur Manuel interjected to ask what was the difference between the Indian Act and treaty: "I can't really see what the difference is when it was under the Indian Act. Cause under the Indian Act, you only could lease it under 99-years, too... A 99-year lease isn't really the capacity to sell. There's no such thing as selling property outright?" He said, "How come they say it's private land then?" Williams described the situation as "fee simple-ish."⁸⁷³

"Fee simple-ish," as Williams put it, describes the overlapping property regimes resulting from two systems of jurisdiction that are theoretically sharing power on the former Tsawwassen reserve. Colin Ward, Manager of Policy and Intergovernmental Affairs at Tsawwassen First Nation, explained to me that the 99-year leases are not a stipulation of the Treaty itself, but were rather the result of a decision taken by TFN that is expressed in the Tsawwassen Land Act.⁸⁷⁴ He explained that the nature of all title held by TFN was fee simple, which is in effect the allodial title to the land with no reservations or conditions held in favour of the Crown. However, there is also another interest called the Tsawwassen Fee Simple Interest (TFSI), as he described, "which is set out in the Treaty, but is further defined by our law, and which is roughly equivalent to fee simple or freehold title held by a private person elsewhere in the province. This TFSI is subject to reservations, conditions, etc. in favour of TFN, as set out in the Final Agreement and our law."⁸⁷⁵ TFSI is in effect a creation of the municipal zoning code laid out in the TFN Land Use and Planning Development Act, which has been incorporated in to Metro Vancouver's Regional Growth Strategy. TFN must be compliant with certain provisions of regional context statements

for changes to land use plans. However, TFN's submissions process is unique compared to other municipalities, as laid out in Chapter 17 of the TFN Final Agreement.⁸⁷⁶

Ninety-year leases may protect the former reserve from wholesale abdication by TFN members, but according to Williams, many people on the former reserve are feeling increasing pressure to lease their lands before the land taxes kick in under the new property regime. Some of the land owners are intent to have their lands developed, but first must put their TFSI lands into the TFN Public lands and proceed through the Strata Property Act, re-collectivizing their private property now in a way which Williams calls "insulting."⁸⁷⁷ While under the Indian Act, TFN lands were collectivized under federal jurisdiction, now they have transferred to provincial forms of collectivization like any other municipality. The difference here is that when TFN lands are leased to non-TFN members, these urban citizens will have no citizenship rights on reserve and cannot participate in TFN governance. Ironically, TFN laws currently have no capacity to accommodate other legal orders except in subordinate (non-TFN) or dominant (federal and provincial) forms.

According to Williams, confusion has ensued as an outcome of overlapping property systems. The TFN is charged with the authority to enforce provincial regulations, which they do at their political discretion, and new codified band regulations must comply with provincial regulation, but also to the band's customary law. "It sounds like there's a lot of overlapping jurisdiction," I commented, to which Williams replied, "The band has no oversight and they even have their own judicial council."⁸⁷⁸ Provincial law seems to have become de facto Indigenous law. In this sense, is not difficult to see why Russell Diabo calls these settlement lands "ethnic municipalities."

These "private property" matters are in fact jurisdictional matters. Under the BCTP, First Nations exchange one form of jurisdiction over their lands for another when they adopt the fee simple property rights system. The transition begins immediately upon entering into negotiation. Indigenous lands, under the authority of Indigenous nations, are immediately undermined since bands within nations may submit land claims, fragmenting these national land bases. Upon settlement, bands or nations are legally reclassified as corporate entities with a limited measure of authority over a slim proportion of their traditional territory. These Treaty lands are chosen through a Land Selection process, and usually include the reserve and some surrounding areas.⁸⁷⁹ Bands are granted the authority to develop land use regulations over their fee simple estates – those lands chosen through the Land Selection process – but these lands are also now governed under provincial jurisdiction over property and civil matters, as per section 92(13) of the Constitution Act, 1867. When "Indians and lands reserved for Indians" are under federal

jurisdiction according to section 91(24) of the Constitution Act, 1867, they accrue some measure of protection by virtue of the fiduciary duties of the federal Crown.⁸⁸⁰ Under provincial jurisdiction, former reserves take on a novel municipal form, yet to be totally defined. As we have seen with TFN, the question remains: where does Indigenous law meet settler law now?

At TFN, benefiting from treaty the most are businesses moving in to take advantage of a newly cash-strapped population that owns a scarce commodity in the Lower BC Mainland: undeveloped land. In the coming years, TFN members will need to rely on own-source revenue to pay taxes and other expenses associated with peri-urban life. Among a number of smaller developments, one project stands out as a prime example for how capital has gained access to previously protected lands. The Tsawwassen Gateway Logistics Centre, which broke ground in 2010, is located adjacent to Port Metro Vancouver's Deltaport container terminal. It also stands in proximity to three freeways, the Vancouver International Airport, and the (yet-to-be-built) South Fraser Perimeter Road. The TFN Economic Development Corporation boasts that, "[t]he Tsawwassen Gateway Logistics Centre is expected to become a key part of Canada's international trade through Deltaport for the Asia Pacific, and West Coast goods handling services."⁸⁸¹ Reserves, occupying strategic geographic transportation corridors and natural resources, are suddenly connecting key nodes of global capital. Here the tensions between territory and capital disintegrate, because the circulation of goods, resources and energy *through territory* is the very essence of capitalism today.⁸⁸²

Efforts to privatize reserve lands have not been limited to the CLC policy. For non-negotiating bands, a parallel legislative process to transform Indigenous lands into fee simple holdings is also taking place. The basic concept of the First Nations Property Ownership Act (FNPOA) is an opt-out mechanism from the reserve land system under the Indian Act, 1876. The new act creates a mechanism for an opt-in system for fee simple lands to replace the old land system, the Reserve Land Register and the Surrendered and Designated Lands Register. According to its chief proponent Tom Flanagan, "The intended result is to enable First Nations to use their land and natural resources effectively in the modern economy. As they benefit from capitalizing on their assets, so will other Canadians; for a market economy is a wealth-creating, positive-sum game in which call [*sic*] can benefit from the progress of others."⁸⁸³ Eagerly supported by the Conservative government, this legislation is currently awaiting a third reading in the House of Commons.

Though fee simple is touted by proponents of the CLC policy as the solution to Indigenous poverty, as critics of the FNPOA have asserted, the lack of private property alone is not the main barrier to economic development on Indigenous lands. But one does not have to take

critics' word for it. The firm of a central advocate for the FNPOA produced a commissioned report in 1999 for the Indian Tax Advisory Board (now the FNTC) and INAC to review barriers to doing business on reserves.⁸⁸⁴ The consultants found that project approvals took considerably longer on reserves than off-reserve, due to a number of factors. Interestingly, issues related directly to property rights did not comprise the majority of reasons for delay. Key problems were rather structural, such as administrative incapacities, lack of necessary physical infrastructure, poor connections between First Nations and business communities, and insufficient information on the part of First Nations on ways to access capital.

The integration of Indigenous peoples into the mainstream economy through new property rights has been touted in ways that are not only counter-factual, but that also speak to the racist society into which community members are assimilating. For example, much ado was made of Tsawwassen First Nation's newly minted bus stop in the Lower Mainland's public Translink bus system.⁸⁸⁵ But as Arthur Manuel points us, amidst all this celebration no one stopped to ask, what kind of racist society has until now excluded this Indian reserve from access to public transportation services? He writes: "The basic key to getting 'bus service' and other services Canadians take for granted means Indigenous peoples must extinguish their Aboriginal Title through 'Modified' and 'Non-Assertion' Models like Chief Kim Baird did. The Tsawwassen Peoples are paying an exceptionally high bus fare."⁸⁸⁶ The benefits of "economic integration" for former band members also ignores the priority that has been put all along on third party interests, whose lands are protected from expropriation through Treaty settlements, despite the fact that these private estates have less constitutional protection than Aboriginal lands ostensibly enjoy.⁸⁸⁷ Once again, the CLC policy is also out of step with the courts, which are handing down decisions saying Aboriginal title exists on private land.⁸⁸⁸ While TFN land values have doubled since the signing of Treaty⁸⁸⁹, time will tell who will be the beneficiaries.

Coercion at the Tables

The principal contention the Barriere Lake Algonquins have with the land claims policy is the extinguishment of their Aboriginal title. They rejected the policy because they saw it as just another land grab. As Jean Maurice Matchewan explained to me, "We have an agreement with Canada under the wampum belts and we don't need any other kind of agreement, especially the kind that's going to take away our rights from our land. We want to keep living the way we're living today."⁸⁹⁰ The Algonquins continue to assert jurisdiction over their traditional territory by maintaining their hunting, trapping, gathering, and feast traditions that show respect and care for the land. Matchewan could not understand why bands would voluntarily cede jurisdiction of their

lands for slim financial returns. He told me: “Well, when you look at the James Bay Agreement when it says down at the bottom that they’re giving up everything that they may have, I certainly don’t want to go that way. So that’s why we never cared for the comprehensive claims approach, cause the government gives you all kinds of money to prove you have title, and in the end you have to give it all up with all that money that they give.”⁸⁹¹

First Nations debt to the CLC process has been estimated to hover at over \$800 million across Canada, Specific Claims included.⁸⁹² If we also include government expenditures in non-loan form, under the BCTC, “the total costs to First Nations, Canada, and BC activity in the period 1993-2008 was over \$1.1 billion.”⁸⁹³ What is the impact of debt on negotiations? One impact is that when a band tries to pull out of negotiations, they can be pressured back to the table with the threat of exorbitant loan repayment costs.

That is exactly what happened to the Lheidli T’enneh who live on the northwest coast of BC near Prince George. The Lheidli T’enneh were one of the first BC bands to join the BCTP, hoping to resolve the conflict over their lands for once and for all. Instead, they found the process restricted and disempowering. As described in their submission to the UN Committee on the Elimination of Racial Discrimination (CERD), “they were negotiating from a position of dependence, relying on loan funding to be able to participate in the process and seeking ways to address the immediate needs and poverty of their people.”⁸⁹⁴ Over the course of negotiations, Lheidli T’enneh borrowed \$7 million in repayable loans. But in 2007, they voted “no” against their Final Agreement, dissatisfied with the terms of settlement. Following the “no” vote, the BC Treaty Commission advised the Lheidli T’enneh Band Council that another vote would secure a stay in repayment of borrowed monies, which would otherwise have to be paid off over a 5-year period. The CERD report highlights the coercive nature of such demands: “The Lheidli T’enneh Indian Band like most Indian Bands in Canada is poor and does not have \$7,000,000 (7 million) in the bank to cover the loan and cannot afford monthly payments on the loan within the 5 year period amounting to \$116,666 (without interest) a month.”⁸⁹⁵ The band ultimately capitulated, since they did not have the money to repay the loans.⁸⁹⁶ A second vote has not yet been scheduled. As Peter Dexter Quaw, Traditional Chief of the Lheidli T’enneh, described to the Committee: “The Lheidli T’enneh people feel like they are in the clutches of the BC Treaty Commission which is supposed to be neutral but instead aggressively pushes for a revote.”⁸⁹⁷

Another example of this “loan bribery” can be found in the case of the Xaxli’p First Nation (formerly the Fountain Indian Band), who live in the Central Interior-Fraser region of BC. This band was also an early joiner into the land claims process and they signed a framework agreement in November 1997. They spent the following two years engaged in land use and

occupancy research and an ecosystem-based plan for their traditional territory, resuming negotiations in 2000. But they had had a change of heart and no longer wanted to settle for the terms on the table. According to their CERD submission: “On February 27, 2007 Indian Affairs and Northern Development Canada sent a letter to the Chief and Council of the Xaxli’p First Nation stating the federal government wanted to collect “[p]ayments to satisfy a \$2,430,444 debt over 5 years at 4.297% interest would be \$27,249 month.”⁸⁹⁸ Such a vast monthly payment would bankrupt the band and automatically put them in Third Party Management, which would mean that INAC could take over management of the band. Canada was forced to respond to CERD and they exchanged letters, the second of which reported that Xaxli’p’s loan had been put in abeyance.⁸⁹⁹ Xaxli’p had never been informed directly, however, and when Chief Arthur Adolph learned that this was the case, he says he was not necessarily relieved because Xaxli’p had never recognized, acknowledged, or confirmed that monies were owed, despite being threatened by INAC that this challenge would effect revenues distributed to the band.⁹⁰⁰

In TFN, things went the opposite direction. Rather than bribe bands to vote “yes” with the threat of debt repayment if they refused, a carrot was used when treaty negotiators offered band members sums of money for their “yes” vote. Community members were promised that if the majority of the band voted “yes,” all members over the age of 60 would receive \$15,000; all other members would receive \$1,000 if the “yes” vote passed by majority. On July 25th, 2007, the TFN vote on their Final Agreement was held and it passed with a majority vote. Cheques were distributed immediately – not out of the eventual cash settlement – but through a “treaty inducement package” designed specifically for such purposes.⁹⁰¹ Those who voted against the Treaty faced the guilt of depriving elders of badly needed funds. Documented for CERD as well, the submission records then provincial Minister of Aboriginal Affairs Mike de Jong’s reaction when accused of manipulating the outcome of the TFN vote through cash incentives. He answered “guilty as charged” and noted that the provincial government was unapologetic about wanting the vote to succeed.⁹⁰² It is difficult to imagine a Canadian politician being so blasé if caught bribing Canadian citizens in a federal election.

There are other coercive mechanisms to get bands to vote “yes” that do not involve loan bribery. The average length of negotiation is approximately 15 years. In the meantime, the treaty process does not provide mechanisms to protect land during negotiations.⁹⁰³ As mentioned earlier, the courts have said that even in the pre-proof stage of Aboriginal title assertions governments and third parties are legally subject to engage in consultation and accommodation with First Nations.⁹⁰⁴ However, the CLC policy has failed until now to provide such protect in this regard. Recently, though, Canada responded to First Nations’ demands with a solution to the lack of

interim measures by introducing what they call “incremental treaties” (also at times called “slim AIPs” (Agreements in Principle) or “pre-treaty” agreements). These incremental treaties secure some benefits to bands, providing “certainty” around access to certain resources. The Tla-o-qui-aht has signed an incremental treaty, for example, securing funding and 63 hectares of land, in advance of treaty settlement.⁹⁰⁵ But this land is to be “transferred in stages, as specific milestones in treaty negotiations are achieved (e.g., AIP signed, FA initialed, FA signed, etc.). The land becomes part of the Final Agreement, and is transferred through a First Nation company, which holds the land in fee simple until the effective date of the treaty.”⁹⁰⁶ It is a gradual incentive that keeps negotiating bands at the table. Lawyer Murray Browne asserts that from his experience the process of partial agreements is coercive “in that the governments mostly refuse to negotiate interim measures or incremental Treaties” forcing First Nations to “agree to accept government mandates and to complete a Final Treaty with everything in it.”⁹⁰⁷ But perhaps this government recalcitrance is a positive step in the final calculation. Russell Diabo warns that,

Depending on the terms of such agreements involving natural resources and lands, these interim incremental agreements may weaken the strength of the Aboriginal title and rights of Indigenous Nations... to the point where the Crown governments can assert the Indigenous Nation has consented to the alienation of their rights to Aboriginal title territory and consented to infringement of their Aboriginal Rights through the terms of such agreements in the face of any section 35 legal analysis done by the Crown.⁹⁰⁸

In fact, a steady stream of outside treaty measures, such as Forest Consultation and Revenue Sharing Agreements, Strategic Engagement Agreements, and Economic and Community Development Agreements (such as mining revenue sharing), are all contingent upon signing Reconciliation Agreements with the Province of BC. These Reconciliation Agreements allow the government to secure “certainty” for natural resource investment in the province “without prejudice” to Aboriginal title. Therefore, while Indigenous proprietary and jurisdictional interests in the land are implicitly recognized by virtue of provincial engagement and consultation, they are never recognized in terms of explicit recognition of Indigenous economic rights to their land or by explicit acknowledgment of Indigenous jurisdiction.

With the lack of interim protections, Barriere Lake saw extinguishment as embedded in the very process of the land claims policy, rather than simply in the final settlement terms. With no built-in measures to protect land over the 15-year period it could take to negotiate a claim, Barriere Lake’s forests could have been long gone by the time they settled. Instead, Barriere Lake negotiated terms in the Trilateral Agreement to provide for interim measures to harmonize forestry with Algonquin land use while the band undertook their research and land use

management plans. Prior even to the *Haida* and *Taku River* precedents on the government's "duty to consult and accommodate," Barriere Lake arranged to have their lands protected from incursion during negotiations. These measures relied on Barriere Lake's ecological knowledge to create a database from which to enable the community to respond quickly and effectively to industry and government consultation on their lands.⁹⁰⁹ In fact, Barriere Lake used the CLC policy to undertake some of this mapping before the Trilateral Agreement was signed. In 1987, Barriere Lake accepted CLC contribution dollars to undertake Research and Development on Aboriginal Title to their lands. They used this money to prepare two main studies: land use and occupancy maps and a preliminary research report.⁹¹⁰ The land use and occupancy maps were based on traplines and current use of the territory, and in conjunction with historical research, this map was used as the basis for Trilateral negotiations.⁹¹¹ Although Barriere Lake were undertaking research with CLC funding, the band had no intention to negotiate under the policy. The band would in fact only be subject to the policy if they submitted a claim, which also would have triggered loan funding to replace contribution dollars. The Trilateral Agreement ensured that research expenses would continue to be covered by the federal government. In this way, Barriere Lake would not indebt future generations nor be charged to negotiate for their own lands.

Coercion is perhaps most subtle in the culture of negotiations. The small band of K'omox recently geared up for a vote on an Agreement in Principle (AIP), the stage prior to negotiating and voting on a Final Agreement. Mary Everson, who like Bertha Williams, has taken the most vocal and outspoken stance in her community against the treaty process, described a meeting leading up to the vote on the AIP as a one-sided show: "It was just push push push push. We've never had anybody come in and say anything negative. Never."⁹¹² Hence, it is not surprising that the community had become largely favourable to negotiations. I asked Everson if she thought that the reason people were saying "yes" was because they did not have enough information, or whether she felt the treaty was something they actually did support. She replied:

I think that it's just that they don't have the information, and I don't think they can comprehend the information and be able to foresee the effects of a decision now could make in the future. I think a lot of people are limited in understanding that. Decisions that you make today how that effects 50 years down the road and 100 years down the road. What's going to happen? I'm not going to be here, so it's very important for me to make a decision for those who are going to be alive and well there.⁹¹³

As Bertha Williams also describes in the context of her community, many simply do not understand what they are voting on. "There's a couple old timers around, not many left, but one who says, why did you guys vote for the treaty, you know you'd be paying taxes, land taxes – all

the GST, PST – and all they said was, ‘We are?’ These are the people voting on the treaty.”⁹¹⁴ The half-million dollars spent on promoting the treaty was apparently money well spent. Treaty negotiators even bussed people to Nisga’a territory so that they could learn from the only other band to sign under the BCTC. But as Williams describes, “when they got up there, there was entertainment and everything was peachy, but the people who were against the Nisga’a weren’t allowed to go into these community centres, so our band members couldn’t talk to them.”⁹¹⁵ Glossy pamphlets promoting the treaty abounded, with almost no time or space dedicated to debate or counter-perspectives.

Also part of the culture of negotiation is the stipulation that negotiating bands sign a confidentiality agreement, agreeing not to discuss publicly the terms of their agreement while at the table.⁹¹⁶ This lack of transparency prevents Indigenous peoples from sharing information about their respective agreements and pooling knowledge and organizing efforts to mount collective responses to the policy. Meanwhile, the federal government has explicit infrastructure to facilitate such information sharing between federal agencies, giving them an advantage in negotiation and also a structure of collective maneuvering that Indigenous peoples do not share.⁹¹⁷

Termination

Russell Diabo has named the CLC a “Termination” policy and he calls the 93 tables currently negotiating “Termination Tables.”⁹¹⁸ Diabo writes that, “Termination in this context means the ending of First Nations pre-existing sovereign status through federal coercion of First Nations into Land Claims and Self-Government Final Agreements that convert First Nations into municipalities, their reserves into fee simple lands and extinguishment of their Inherent, Aboriginal and Treaty Rights.”⁹¹⁹ The primary form of coercion that marks these policies is the simple fact that few other options are provided by the state for bands to protect their territories from unwanted exploitation and development. Bands generally cannot afford to litigate against governments, despite clear violations of domestic and international law. In this way, as Diabo puts it, “The government is taking advantage of the poverty in our community.”⁹²⁰ Aboriginal title can cost millions of dollars to prove. Since the *Sparrow* decision, which was the first legal case to follow the patriation of the Constitution Act, 1982, and to interpret Aboriginal rights through section 35(1), a number of legal tests have been laid out by the courts that Indigenous peoples must meet in order to prove prior occupation. *Van Der Peet* lays out the most difficult standards, introducing criteria stipulating how Indigenous peoples must show continuity in customs maintained since pre-contact with Europeans until the present day.⁹²¹ Diabo points out

that these kinds of tests take millions of dollars to pass, involving the extensive collection of historical and cultural research. Meanwhile, the courts have simultaneously started to “limit, contain, and restrict the interpretation of Section 35 [rights].”⁹²² Since most bands cannot afford to sustain constitutional challenges in courts, the state takes advantage and offers communities the opportunity to resolve their outstanding land grievances through policy.

Litigation is expensive, its outcomes uncertain, its jurisdiction firmly grounded in state sovereignty, and the Crown’s legal defense based on the doctrines of discovery. It is no panacea. But it has weakened the state’s pretensions to innocence and bolstered the “Aboriginal fact,” as plainly stated by Diabo: “Canada extended its territory and political assertions on top of pre-existing Aboriginal rights and title here.”⁹²³ Forcing Indigenous peoples to surrender jurisdiction to their lands through treaty is framed as a positive exchange of rights, but the doctrines of discovery simply play a less public role than in the courts, never needing to be articulated before a judge or chancing repudiation by the Supreme Court, but all the while drawing the material boundaries around the terms of negotiation. As a technique of jurisdiction, the land claims policy deals with Indigenous legal orders by constraining their exercise to an exhaustively detailed list of so-called “treaty rights,” on a severely diminished land base, subject to extensive provincial oversight and regulation.

The CLC policy is being challenged by dozens of bands who have chosen not to participate in the modern treaty process. One organization, the Defenders of the Land network, a grassroots, Indigenous-led coalition of people (on which I sit on the Steering Committee as an ally), has come out strongly against the land claims policy. They state that: “Canada, with Indigenous communities, jointly change the federal policies on self-government, land claims, and historic treaties to recognize Indigenous rights and Aboriginal title, including the right to self-determination and the right to exercise free, prior, and informed consent.”⁹²⁴ The bands, groups, and sometimes individuals, representing their nations in the Defenders of the Land network have all defended their lands through so-called “civil disobedience” and blockades as the need arose. Bands, such as Barriere Lake, who have not signed historic or modern treaties, must engage in constant struggles on the ground to protect their lands from ecological destruction.

But the main difficulty with direct action resistance is that so long as other Indigenous peoples are at the negotiating table, the government has no incentive to change the policy.⁹²⁵ One response to this problem has been to form a working group within the Chiefs organization, AFN – which represents negotiating and non-negotiating bands – and deal with the federal government on a national level. This work is currently organized through the AFN Comprehensive Claims Policy Reform Working Group (CCPRWG), which was mandated in 2011 through Chiefs-in-

Assembly Resolutions to provoke change in the CLC policy.⁹²⁶ The CCPRWG's strategy was driven at first by those unceded bands who are not currently negotiating treaties, but the committee soon turned in favour of those at negotiating tables.⁹²⁷ Even given this turn, however, the AFN have been unable to translate high-level meetings with the Prime Minister's Office and the Privy Council Office into positive change in the policy.

In January 2012, an opportunity for movement on policy reform was presented in the form of the Crown-First Nations Gathering. The Crown-First Nations Gathering was called in response to a sudden frenzy of media attention on the northern Ontario reserve of Attawapiskat, where Chief Theresa Spence had (months earlier) called a national emergency to illicit response to the deplorable living conditions on the reserve including an acute housing shortage and lack of potable water. When attention finally turned to Attawapiskat, the government was caught in a web of neglect and Prime Minister Harper caved to pressure for a nation-to-nation meeting. Among a number of critical issues raised at the Gathering, an "outcome statement" on land claims resolution was tabled that read: "The parties commit to ensuring federal negotiation policies reflect the principles of recognition and affirmation mandated by Section 35 of the Constitution Act, 1982 and advance certainty, expeditious resolution, and self-sufficiency."⁹²⁸ It was a weak articulation of the AFN's 2012 First Nations' Plan, which proposed a concrete 5-year plan for reforming the land claims policy and asserted that, "[c]osmetic changes to process cannot mask the fundamental failure of the policy to meet its objectives."⁹²⁹ In the interim months following the Gathering, Indigenous leaders awaited signals of Harper's commitment to the outcome statements produced at the meeting. Would the civil servants at Indian Affairs continue to manage the grievances of First Nations regarding the land claims policy, or would the Prime Minister assign senior representatives with mandates from the Prime Minister's Office, the Privy Council Office, Justice and Treasury Board – "the central agencies involved in serious federal policy and budgetary proposals for Cabinet consideration."⁹³⁰ But there was little follow-up in either direction.

The main government response taken was to put Attawapiskat under Third Party Management and smear the community with allegations of financial misconduct. Legal action swiftly followed, where the imposition of third party managers was challenged, won, and subsequently repealed.⁹³¹ But conditions on the reserve remain unchanged and Chief Spence decided to fast on Parliament Hill in a final and desperate attempt to receive needed assistance for her community. Coinciding with her fast was the eruption of a nation-wide, grassroots Indigenous resistance movement under the banner of "Idle No More" that spread like wildfire across the country, then the world, and began to rally to her cause. Though the movement connected the

deep streams of resistance that had always been running underneath the media's radar, Idle No More was originally sparked in response to the Conservative Government's Omni-Bus budget bill that included a number of acts seriously undermining environmental protection over navigable waterways and the environmental assessment process more generally. It also unilaterally changed the Indian Act and introduced "accountability" measures for First Nations finances on reserve.⁹³²

As the condition to end her fast, Chief Spence demanded a meeting with the Prime Minister and the Governor General. National Chief Shawn Atleo secured a meeting with the Prime Minister, but failed to secure the Governor General's commitment. As a result, Chief Spence declined to attend the meeting, and a firestorm erupted among Chiefs about whether the AFN should attend the meeting without the Attawapiskat Chief. Atleo chose to attend. During the January 11, 2012 meeting between the Prime Minister and National Chief, the AFN presented a list of eight priorities for First Nations, to which Harper declined action on most files. However, Harper agreed to a "higher level" process for treaty implementation and comprehensive claims, agreeing to provide oversight from the Prime Minister and Privy Council Office on these matters. This commitment led to the establishment of two Senior Oversight Committees (SOCs) set up to deal with these files.⁹³³ Many First Nations critics do not have much hope in the SOC's. One of the men charged with a SOC is Jean-François Tremblay, Senior Assistant Deputy Minister, Treaties and Aboriginal Government, who was promoted to the position of Deputy Secretary (Operations) at the Privy Council Office. Though at the Privy Council Office now, he is known to First Nations as the middle-management bureaucrat who stalled any progress on the Crown-First Nations Gathering outcomes throughout most of 2012.⁹³⁴

The most recent changes to the CLC policy, however, have nothing at all to do with these "high-level" meetings, but rather are the outcome of unilateral policy decisions that conform strictly to the Conservative agenda. In September 2012, a "results-based" model for comprehensive claims negotiation was introduced, designed to accelerate the pace of negotiations, rather than reform substantially any of the points of opposition First Nations have been asserting for decades. This new model will depend on the results of a federal assessment underway evaluating 183 bands to determine which tables are "ready" for Final Agreements. The "results-based" strategy is essentially a "take it or leave it" one: if a final settlement is offered by the government and rejected, the First Nation is rejected from the process. Diabo concludes: "It's basically blackmail."⁹³⁵ The 93 "Termination Tables" (comprised of those 183 bands) will be reduced to the most immediately promising bands to sign final agreements.

This objective to expedite the most compliant tables conforms to the economic interests of the province, as carefully monitored by Canada and BC. There have been six studies

examining the economic impacts of settling treaties in BC commissioned since 1990.⁹³⁶ To take the earliest example of these studies for example, Price Waterhouse concluded in their 1990 study that uncertainty was costing the province \$1 billion and 1,500 jobs. Lost capital in mining was estimated at \$50 million per year, in addition to \$75 million per year of expenditures that were delayed for 3 years on average. Approximately 100 jobs per year were lost due to unsettled claims and “[a]n investment premium of less than 1% was needed to compensate for the uncertainty of unsettled land claims.”⁹³⁷ The most recent study, a PricewaterhouseCoopers report, finds high net benefits for British Columbians and First Nations alike upon treaty settlement⁹³⁸, but warns that, “pushing financial benefits further into the future reduces the net present value of benefits.”⁹³⁹ At around the same time that the CCPRWG was set up in January 2011, the Minister of Aboriginal Affairs also appointed James Lornie as Special Representative to the BCTP, where he was to make recommendations to accelerate the negotiating process, as well.

But perhaps the most challenging aspect of the land claims policy is the fact that Canada uses negotiating bands as a shield against non-negotiating bands. The frontline of opposition has gradually shifted focus from Indian Affairs onto Indigenous peoples themselves – between negotiating and non-negotiating bands – making the problem with the land claims policy appear to be an internal issue between First Nations. In July 2012, for example, members of the Sliammon First Nation blocked band members from ratifying their Agreement in Principle, which had already been voted down in 2001.⁹⁴⁰ They claimed that many band members enrolled in the treaty process under “duress” and complained of irregularities in band membership codes that would tilt the vote towards a “yes.” Coming to the defense of the treaty process were the Chiefs of Tsawwassen and Maanulth bands.⁹⁴¹ What is the Canadian public to make of this Indigenous defense of a policy other First Nations are opposing? As a result of First Nations participation in the treaty process, the federal government has shown little regard for those unceded bands protesting the CLC policy who are not currently sitting at negotiating tables, such as the alliance represented by the Union of British Columbia Indian Chiefs, or even for those groups opposing their own bands’ involvement in the treaty process.

The land claims policy is a complicated end game that marks all Indigenous jurisdiction as collateral damage in spite of its pretensions to target only consenting bands. It is also a policy that has been largely declared a failure. The Chief commissioner of the BCTC, Sophie Pierre, recently stated that if a dozen treaties are not signed in the next few years, “it’s about time we faced the obvious – it isn’t going to happen, so shut ’er down.”⁹⁴² Provinces are now turning to new kinds of agreements to secure consent for natural resource extraction on Indigenous lands – the key objective of the land claims process in either case. The best expression of this goal can be

seen in BC Premier Christy Clarke's announcement in January 2011, directing her government away from treaties and towards new kinds of contracts with First Nations in order to pursue economic development.⁹⁴³ Land transfers, revenue-sharing, brokering between industry and First Nations – all of these “non-prejudicial” (to Aboriginal title) forms of agreements are now being aggressively pursued in order to secure economic certainty for business interests in the province. But this strategy will face tough opposition from Indigenous bands themselves. Signed by a coalition of Indigenous bands, a declaration issued by the Second Indigenous Assembly Against Mining and Pipelines states: “Clark’s government has no jurisdiction to pursue her economic agenda without free, prior, and informed consent because we – grassroots Indigenous peoples – legally, politically, economically, spiritually, culturally, and inherently maintain Aboriginal title and jurisdiction over our territories.”⁹⁴⁴ Quick deals to gain access to Indigenous lands cannot resolve the outstanding and overlapping jurisdictional conflicts plaguing resource developers across the country. All across the country, different kinds of access and benefit sharing agreements are being negotiated, “giving” Indigenous peoples access to jobs and slim fractions of revenues extracted from their lands. These are risk mitigation strategies against the unsettling uncertainty of Indigenous jurisdiction and underlying Aboriginal title.

The modern treaty process has not actually failed until the 93 tables are either resolved through treaty or pull out of the process. Those outside of the treaty process, like the Algonquins of Barriere Lake, provide a stark reality check as to the devastating ordeal defending Indigenous lands can be outside of federal policies. Barriere Lake, like hundreds of other bands, have not ceded their land or jurisdiction and so they still live to fight another day, on the terms of their own legal and political orders.

What was lost & found

After a long and weighted conversation, reflecting on his years working with Barriere Lake, Clifford Lincoln, former Special Representative to the community, expressed the great loss that the possible death of the Trilateral Agreement represented to the community. He said, “For me, the greatest sadness I’ve got of all the things I have ever done, is to see all this magnificent amount of work go to waste. For example, the genealogy work, the toponymy work – what we had in mind, is that eventually you take the genealogy maps, and the toponymy maps, and you create an ecotourism site. They [the Algonquins] would train as guides. Europeans just thrive on this stuff – they would come to the territory and Algonquins would take them along the waterways and describe to them the ancestry, and what was, and what they’ve got there – there would be so much we could do. And to think that all this is just wasted because governments are

so tough, and not realizing, that they will never have a perfect type of Western administration in front of them, because that's not what these people are about, they've got different concepts – and instead of seeing what's good about the people and the wonderful things that could be built there, they are seeing all the weaknesses and pouncing on them.”⁹⁴⁵ He shook his head and stared sadly away.

The Trilateral provided the Algonquins with control over their territory without having to cede their title to the land – but more importantly, it respected their ways of life and the practices that made them the Mitchikanibikok Inik. The Algonquins have their own constitution, their own responsibilities, under their own laws that they are obligated to protect, and their own relationships to the animals and plants they live among. The modern treaty process expunged any hope of respecting these obligations.

Michel Gratton, who also played the role of Special Representative to the community for a time, was also reflective on how the destruction of the Trilateral process was undertaken simply to protect a failed policy: “The old argument of not creating precedents is another way of saying to refuse progress. Because how else do you improve things if you don't change what's not working?” In his mind, there is nothing else like the Trilateral Agreement in existence: “It was hailed as a model and I didn't understand why the governments were not prone to seek merit for anything. Why didn't they promote it internationally, rather than destroy it and renege on their signatures?”⁹⁴⁶ That is how Barriere Lake came to be on the most dangerous bands in the country. Not by the threat of blockades, but as a result of their vision for peaceful co-existence on their lands. A vision that the governments of Canada and Quebec feared other bands would want to follow.

Those who are intimate with the history of Barriere Lake, and the ongoing story, are the most adamant it must be told. Russell Diabo, who worked with the community since long before the Trilateral Agreement was signed, said to me about this dissertation: “I'm glad you're doing this because it's a really good illustration of how the government can withhold recognition and exercise their will in a colonial way, for those who don't know that this stuff is still happening.”⁹⁴⁷ Though there are clear frustrations with the band, no one who has ever worked with the community doubts the love the community have for their lands. It is a love that gives them strength and courage to fight; it is a love passed down from one generation to the next, unbroken.

The imposition of Section 74 seems to have had little affect on authority structures in the community: elders still advise youth and decisions are taking through community assembly. But the struggle continues, as they say. Housing is in a state of extreme deterioration as well as

extremely scarce – some 2-bedroom houses are inhabited by 12-15 people. The provincial government have been using this scarcity to cajole the community into paying for hydro. The federal government has promised to build more housing, but in order to do so, the province must connect the Rapid Lake reserve to the hydro grid. The reserve's current source of power is a diesel generator that can barely support the energy demands of the community as is, with frequent black-outs throughout the winter. The problem is, Quebec will not agree to waive hydro costs to the community once they are hooked up to the grid. With an unemployment rate of over 80 percent on the reserve, the community is pushing back to say they do not have the money to pay for hydro electricity. Welfare cheques barely cover the costs of living as things stand, with the nearest grocery stores an hour and a half drive away, costing valuable gas, on top of necessary gas and supply money necessary for sustaining their life in the bush. On top of this, the federal government will only supply a fraction of what it costs to build the new homes, so the community is expected to account for the shortfall. Recently, Michel Thusky explained to me that community members would have to mortgage their homes. Thus, when they default on their loans, they could lose their meager shelter.

On Facebook, a different story: the hunters and trappers post pictures of moose, partridge, and bears being skinned and slaughtered; proud images of their children gutting fish; stock pans full of beaver and frying pans sizzling with walleye. Grandmothers photograph the tiny outfits sewn for grandchildren for naming ceremonies, and feasts and dances show crowds of happy people dancing. Jokes in anishnabemowin that I do not understand cause uproarious electronic laughter as youth and elders communicate in the bush dialect of their language over the web. I learn of elders taking ill and babies born. I stay connected, though I am far away in the city, a place where no one has expressed the least interest in moving; a place people generally find tiring and distracting from checking traplines and tending to community responsibilities. This year I will take my daughter up for the annual summer gathering, where canoe racing, bannock baking, and rifle shooting will all be up for competition. The last time I was on Barriere Lake territory, I was pregnant, and Marylynn Poucachiche said to me: "I know you are far away from your family, but your children will always have a place here on our lands." I think about this now and I cry. This leg of the journey is over, but it is a path that continues to wind into the future, to a place for my child secured in the woods, thanks to the incredible strength and determination of the Mitchikanibikok Inik.

Conclusion

With this final chapter, we come full circle in this dissertation. The struggle for the Trilateral Agreement is one rooted in the Algonquins' need to conceive of an alternative to the land claims policy. They sought to gain effective governing control over their lands without giving up their rights to the land. The land claims policy, I have tried to show, is the ultimate and final abrogation of Indigenous jurisdiction. Thus it also represents Canada's attempt to complete its unfinished sovereignty claims by eliminating the uncertainty of inherent Indigenous legal interests in the land. The land claims policy is Canada's claim; it has no support in law (Indigenous or Canadian) and no authority in Indigenous protocols of diplomacy and negotiation. To return to an open question posed in the introduction of this thesis, what it can tell us now about where jurisdiction and sovereignty meet?

Sovereignty and jurisdiction are mutually constitutive claims of the modern state. While on the surface it may seem that jurisdiction derives its authority from state sovereignty claims, the authority to exercise these claims derives in turn from the internal arrangements and organization of responsibilities carried off by jurisdictional powers. By continuing to assert their jurisdictional powers, Barriere Lake undermine the sovereignty of the Canadian state. Further, their laws are based on irrefutable logics of care and evidence of love and belonging. Our knowledge of place structures our understanding of it and Barriere Lake's concept and exercise of jurisdiction foregrounds the world we could inherit if we changed how laws in this country meet.

Appendices

A. The Trilateral Agreement (1991)

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WHEREAS the Algonquins of Barriere Lake and Hydro-Québec are examining the possibility of studying the impacts of the operation of the Baskatong, Cabonga and Dozois reservoirs;

THEREFORE THE PARTIES AGREE TO THE FOLLOWING:

1. The parties within their respective jurisdictions, agree to initiate a trilateral process in view of enabling Québec and the Algonquins of Barriere Lake to prepare a draft integrated management plan for renewable resources (forests and wildlife) with regard to the territory included in Annex 2 and to propose means to carry out the plan. The plan will be prepared with the objective of sustainable development.

2. Within the framework of the trilateral process, the following is to be carried out:

Phase one: the analysis of existing data and, when required for the completing of information, the inventory of renewable natural resources (forests and wildlife) within the perimeter of the territory included in Annex 2 of the present agreement, a study of their utilization, potential and the impacts and the interaction of activities related to their exploitation and development;

The works contemplated by phase one will be done in two stages:

- a) with respect to that part of the study area covered by vertical lines in Annex 2 of the present Agreement (study area A), the works will commence immediately; and
- b) with respect to that part of the study area covered by diagonal lines in Annex 2 of the present Agreement (study area B), the works will commence within one year from the date this agreement comes into force.

However, the parties agree that the Algonquins of Barriere Lake may propose the exchange of any part or parts of the territory within study area A for any part or parts of the territory of equal size within study area B.

Phase two: the preparation, with regard to the territory included in Annex 2, of a draft integrated management plan for renewable resources as defined in section 1, for the purpose of making their sustainable development possible.

The special representatives may, proceeding from the draft integrated management plan, put forward management principles that could apply on the territory viewed by Annex 1.

Phase three: the formulation of recommendations for the carrying out of the draft plan prepared by Québec and the Algonquins of Barriere Lake during phase two; these recommendations may aim at modifying, in the territory included in Annex 2, management and exploitation methods, administrative and contractual adjustments and amendments to regulations or laws.

The special representatives may, proceeding from the draft integrated management plan, put forward management principles that could apply on the territory viewed by Annex 1.

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3. In the framework of the trilateral process, each party assumes its own representation costs.

Common costs of organization (offices, secretary, etc.) are shared in equal parts by the parties.

The costs of expertise and professional services are shared in equal parts by Québec and the Algonquins of Barriere Lake.

At the request of the Algonquins of Barriere Lake, Canada agrees to pay for all costs incurred by the Algonquins of Barriere Lake.

Québec and Canada agree to reimburse the Algonquins of Barriere Lake, up to an amount of 338,000 \$, costs related to the subject of the present Agreement incurred by them prior to the signing of this agreement. The Algonquins of Barriere Lake recognize having already received to that effect an amount of 55,000 \$ by Québec and an amount of 182,000 \$ by Canada. The reimbursement of the remaining amount, that is 101,000 \$, shall be made in equal shares by Québec and Canada within 30 days of the signing of this Agreement by all parties, on submission of invoices.

4. Each of the parties will appoint a special representative mandated to represent them within the framework of the trilateral process. The parties guarantee that their respective representatives will have sufficient authority to make decisions and to apply the provisions of the present Agreement in accordance with the sharing of responsibilities provided for in section 6. The parties agree to appoint their representatives within the three days following the signing of this agreement.

5. The special representatives of Québec and of the Algonquins of Barriere Lake will supervise the work of the task force appointed to identify, within the perimeter of the territory specified in article 2, measures to harmonize the conduct of forestry activities with the traditional activities of the Algonquins of Barriere Lake, as well as the sensitive zones which should be protected more especially in a provisional manner. The special representatives when deemed possible, obvious and necessary may extend outside of the latter one or some sensitive zones identified within the study area specified in article 2. This is the task force that was mentioned in the letter of August 27, 1990, addressed to Mr. Jean-Maurice Matchewan by Messrs. Albert Côté and John Ciaccia and it will include the members to be identified by the Algonquins of Barriere Lake.

The special representatives shall forthwith upon being appointed develop detailed terms of reference for the task force.

The task force will make a report by ~~August 15~~ ^{November 30}, 1991 to the special representatives containing recommendations for the provisional protection (up to the end of the process) of the sensitive zones and the territory so as to minimize the impact of forestry activities on the traditional activities of the Algonquins of Barriere Lake.

6. a) The special representatives appointed, pursuant to section 4, by the three parties must:

1) supervise the trilateral process and ensure that it functions efficiently;

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- 2) guarantee constant liaison and cooperation between them and the technical personnel, the political representatives and the senior officials;
- 3) develop a practical process and a work plan to make the trilateral process work;
- 4) identify the financial requirements for the smooth functioning of the trilateral process.

b) The special representatives of Québec and of the Algonquins of Barriere Lake must:

- 1) identify the studies and inventories that are required to be made;
- 2) identify requirements in expertise and professional services;
- 3) develop detailed terms of reference for, and supervise the work of, the task force contemplated in section 5;
- 4) formulate a draft integrated management plan and recommendations for the carrying out of the plan as required in section 2; and
- 5) formulate recommendations to Québec and to the Algonquins of Barriere Lake concerning the follow-up required on the report submitted by the task force contemplated in section 5.

7. The decisions related to the works contemplated in section 6 a) of this Agreement are reached by consensus of the special representatives of the three parties.

The decisions related to the works contemplated in section 6 b) of this Agreement are reached by consensus of the special representatives of Québec and the Algonquins of Barriere Lake.

Both Québec and the Algonquins of Barriere Lake agree to examine seriously the recommendations contemplated in paragraphs 4 and 5 of section 6 b) that will be submitted to them by the special representatives and to negotiate an agreement on the carrying out of the recommendations retained.

8. The work calendar for the special representatives is as follows:

- at the latest on ^{November 30} ~~August 15~~, 1991:
submission of the report of the task force mentioned in section 5 regarding the provisional measures in the sensitive zones and the territory;
- at the latest on ^{December 15} ~~September 1st~~, 1991:
recommendations by the special representatives of Québec and the Algonquins of Barriere Lake regarding follow-up on the task force report;
- Spring of 1994:
tabling of a draft integrated management plan for renewable resources;

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- Autumn of 1994:

recommendations by the special representatives of Québec and the Algonquins of Barriere Lake regarding the carrying out of the draft integrated management plan for renewable resources.

beginning of negotiations between Québec and Algonquins of Barriere Lake in view of an agreement on the carrying out of the recommendations retained.

9. Nothing in this Agreement or annexes prejudices the rights of each of the parties.

Nothing in this Agreement or annexes is to be interpreted as creating, recognising or denying rights under section 35 of the Constitution Act of 1982.

10. This Agreement is binding on the parties and shall be in force when signed by all the parties.

It will terminate on May 26, 1995.

ALGONQUINS OF BARRIERE LAKE

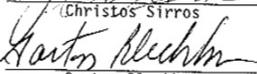
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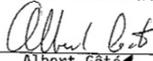

Chief Jean-Maurice Matchewan

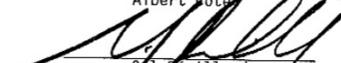
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Albert Gôté


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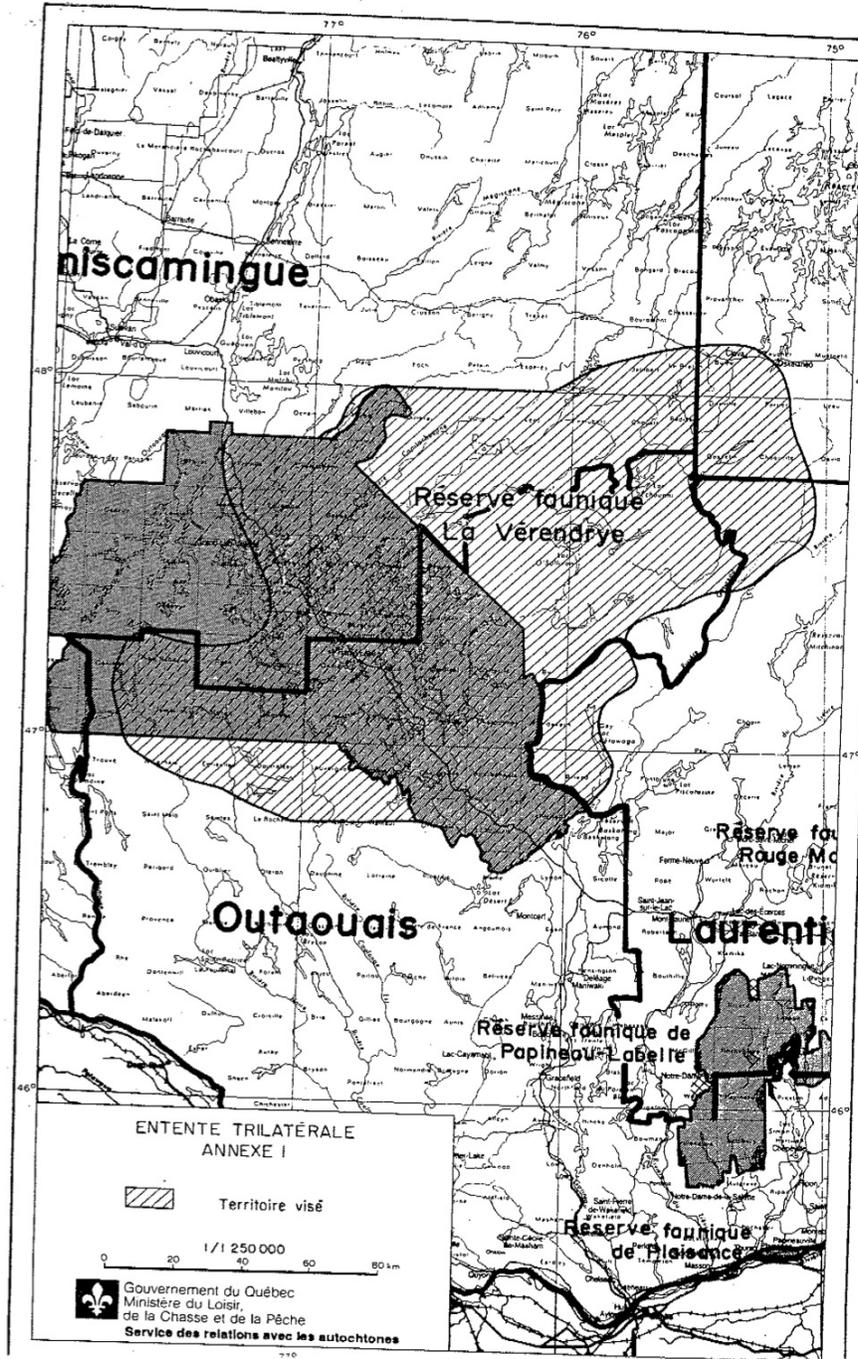
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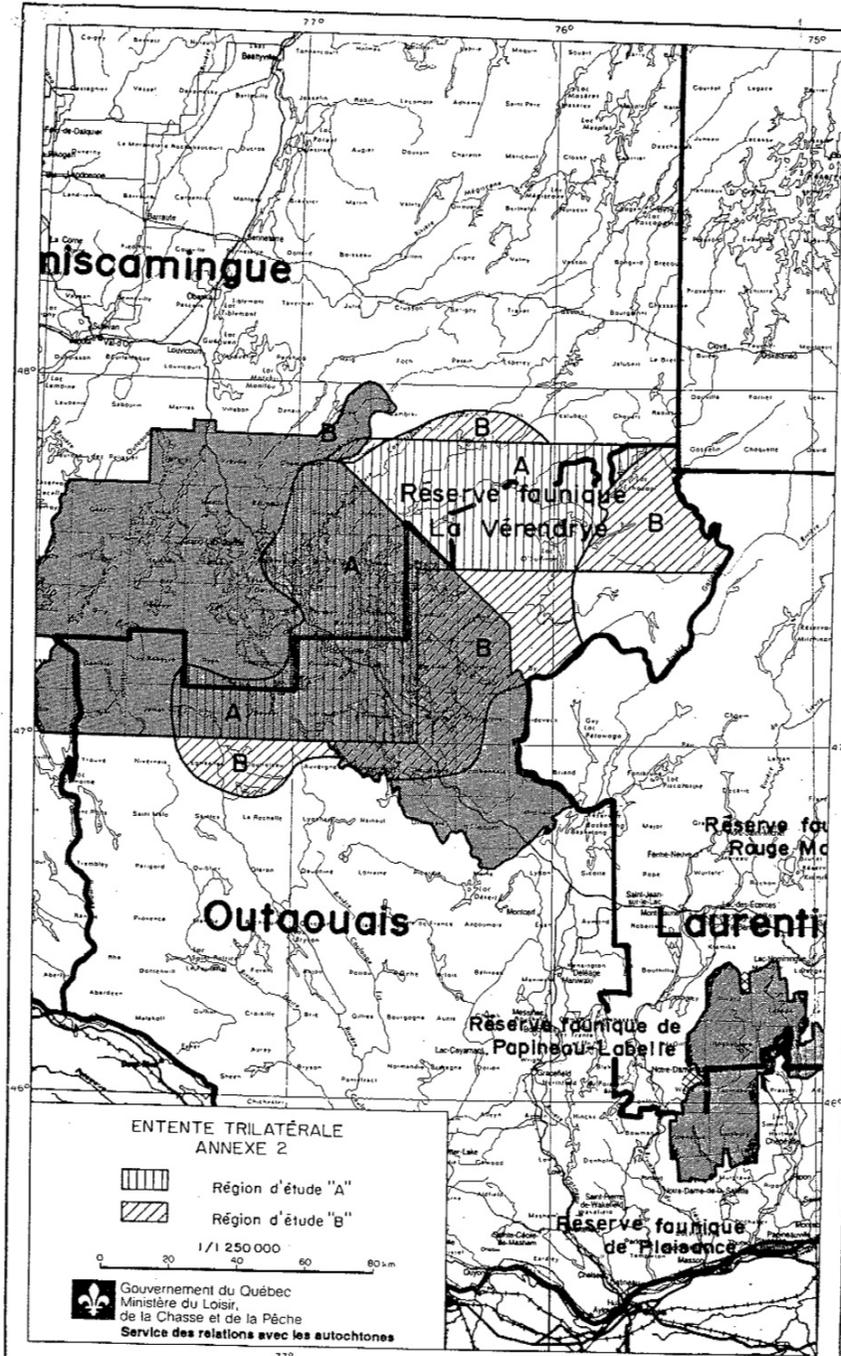
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CANADA

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Witness _____





C. Bilateral Agreement (1998)

BETWEEN:
THE ALGONQUINS OF BARRIERE LAKE, also known as, Mitchikanibikok Inik, represented by their Customary Chief, Mr. Harry Wawatie (hereinafter referred to as "Mitchikanibikok");

AND:
THE GOUVERNEMENT DU QUÉBEC represented by Mr. Guy Chevrette, Minister of Natural Resources and Native Affairs (hereinafter referred to as "Québec");

WHEREAS the parties signed the Trilateral Agreement on August 22, 1991, as a pilot project to promote sustainable development and the reconciliation of resource-uses by Mitchikanibikok and non-Mitchikanibikok people within the territory identified by the Trilateral Agreement;

WHEREAS the Trilateral Agreement contemplates carrying out the following works/activities:

- Phase one: studies and inventories of the renewable natural resources within the territory;
- Phase two: preparation of a draft integrated resource management plan (IRMP);
- Phase three: formulation of recommendations for carrying out the draft IRMP; and
- Negotiations: Mitchikanibikok and Québec negotiate an agreement on carrying out the recommendations retained;

WHEREAS the parties have not completed the Trilateral Agreement but have made significant progress in the sense that:

- Phase one has been completed and an important and useful body of scientific and traditional knowledge has been accumulated with respect to the renewable natural resources within the territory;
- Phase two is incomplete, however substantial work has been undertaken toward the preparation of the draft IRMP;
- Phase three and Negotiations have not yet been started;

WHEREAS the parties are committed to completing the works/activities contemplated by the Trilateral Agreement, specifically phases two and three;

WHEREAS the parties have a mutual interest and desire to proceed to negotiations in advance of finishing phases two and three, based upon the following considerations:

- the parties wish to implement and make practical use of the knowledge accumulated during phase one while the knowledge is still current;
- the parties have acquired sufficient knowledge and information about resources and resource-uses to enter into certain negotiations;
- the preparation of the draft IRMP is contingent on the adoption of a set of mutually acceptable objectives (as quantifiable and/or specific as possible);
- the socio-economic situation of the Mitchikanibikok people is unacceptably poor and there is an urgent need to begin rebuilding the community;
- the negotiation between Mitchikanibikok and Québec would enhance certainty and benefit economic interests within the region.

WHEREAS the federal government, signed the Trilateral Agreement pursuant to its "special fiduciary responsibility toward the Algonquins of Barriere Lake";

<http://www.mrnf.gouv.qc.ca/english/department/affairs/department-affairs-...> 03/09/2009

THEREFORE the parties agree as follows:

Reaffirmation of Trilateral Agreement

1. This agreement is being entered into pursuant to section 6 (b) of the Trilateral Agreement for the different phases contemplated therein.
2. The parties reaffirm their commitment to finalize the work begun under the Trilateral Agreement to the satisfaction of both parties.

Dual Approach

3. The parties agree to pursue a dual approach. They will simultaneously:
 - complete the works contemplated by the Trilateral Agreement;
 - enter into negotiations provided herein.

Phases Two and Three

4. The parties agree to constitute a technical committee to finalize a work plan to complete phases Two and Three. This technical committee will be co-chaired by the Special Representatives of the parties and its membership shall include officials within affected Québec ministries as well as Mitchikanibikok representatives.
5. The technical committee will put the emphasis on two aspects of the work plan:
 - the elaboration of objectives for the IRMP; and
 - the identification and definition of the scenarios respecting projected resource-uses within the Trilateral Agreement territory.
 The starting point for the discussion on objectives shall be the six principles/objectives formerly agreed upon by Dr. André Lafond and David Nahwegahbow.
6. The parties agree that the technical committee must come to a quick agreement on the workplan. If agreement is not reached within 30 days of signing this Agreement, then an outside party shall be brought in to assist and facilitate these discussions. This outside party must be mutually agreed upon by the Special Representatives of the parties.

Negotiations

7. (1) The parties agree to immediately enter into negotiations respecting the following subjects:
 - a) identification of an area of land for the exclusive use of the community of Mitchikanibikok to meet the basic needs for community dwellings and community infrastructures, it being understood that this does not engage the gouvernement du Québec in the financing of infrastructures and activities which are the responsibilities of the federal government;
 - b) participation in economic spin-offs according to models to be defined (for instance partnerships, economic benefits, resources revenue sharing, access to resources, etc.);
 - c) participation in management and sustainable development of resources;
 - d) electrification of the community; and
 - e) economic development of Mitchikanibikok including potentially hydro-electric projects.

(2) The exact scope and schedule of the negotiations, as well as the agenda for negotiations shall be developed by the Special representatives immediately following the signing of this Agreement.

8. Any matter which has not been negotiated and agreed upon as part of negotiations under section 7 shall be negotiated following the completion of phases two and three as provided in the Trilateral Agreement.

Provisional Measures

9. The parties agree that the provisional measures process will continue to be in effect until all phases contemplated by the Trilateral Agreement are completed. Upon the signing of this Agreement, the Special representatives of the parties shall develop a procedure and budget to ensure the smooth and stable functioning of the provisional measures process.

Schedule and Budget

10. The parties agree as follows with respect to the time-frame: the schedule to complete the works contemplated by the Trilateral Agreement along with the negotiations provided herein (section 7) shall be determined by the Special representatives of the parties without exceeding a maximum of two years after agreement on a workplan and budget.
11. The budget for office and technical costs related to phases Two and Three shall be developed by the Special representatives of the three parties to the Trilateral Agreement.
12. The representation costs incurred in the negotiations are assumed by each of the parties, as provided in the Trilateral Agreement.
13. This Agreement shall be in force when signed by both parties.

May 22, 1998)

Date

(Hector Jérôme)
Witness

(May 22, 1998)
Date

MITCHIKANIBIK

(Harry Wawatie)
Chief Harry Wawatie

QUÉBEC

(Robert Sauvé)
Witness

(Guy Chevette)
Minister Guy Chevette



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Portions of Chapter 10 were published in my article, “The Economics of Insurgency: Thoughts on Idle No More and Critical Infrastructure” *Rabble.ca* (14 January 2013), online: <http://rabble.ca/news/2013/01/economics-insurgency-thoughts-idle-no-more-and-critical-infrastructure>.

Figure 2 of Yehudit Rapoport, taken at Kibbutz Be'eri, Purim, circa 1955 was used with permission of the Kibbutz Be'eri archive©. Photographer is unknown.

Figure 3 of the Ottawa River Watershed was used with permission of the Ottawa Riverkeeper and was first published in the Ottawa Riverkeeper's River Report; Issue No 1, Ecology and Impacts, May 2006 ©.

Figure 4 map of First Nations in and around the Ottawa Valley was used with permission from the Algonquin Nation Secretariat (ANS) ©. It was originally published by the ANS in October 2007.

Figure 12 of the ABL Traplines with Quebec Registered Traplines, Annex and Trilateral Agreement Territories (TAT) Boundaries and Beaver Preserve was used with permission from the Algonquin Nation Secretariat ©. It was originally published in August 2006.

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ENDNOTES

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- ¹ United Nations, Secretariat of the Permanent Forum on Indigenous Issues, Workshop on Data Collection and Disaggregation for Indigenous Peoples, (New York, 19-21 January 2004), 2.
- ² Shiri Pasternak, Lorenzo Magzul, Nancy J. Turner, "Born from Bears and Corn: Why Indigenous Knowledge Belief Matters in the Debate on GM Foods," *Acceptable Genes? Religious Traditions and Genetically Modified Foods*, Conrad Brunk and Harold Coward, eds. (New York: SUNY Press, 2009), 213.
- ³ Evelyn Peters, "Geographies of Aboriginal People in Canada," *The Canadian Geography*, 45.1 (2001): 138.
- ⁴ Statistics Canada released a report on Census Consultation in 2011. Chapter 6 dealt with Aboriginal Peoples and the terminology used in the census for data collection: <http://www12.statcan.ca/census-recensement/2011/consultation/ContentReport-RapportContenu/Chapters-Chapitres/ch6-eng.cfm>
- ⁵ Shiri Pasternak, Sue Collis, Tia Dafnos, "Criminalization at Tyendinaga: Securing Canada's Colonial Property Regime through Specific Land Claims," *Canadian Journal of Law and Society*, 28.1 (April 2013): 66.
- ⁶ Boyce Richardson, *Blockade: Algonquins Defend the Forest*, Film, 1990.
- ⁷ Jean Gottman, *The Significance of Territory* (Charlottesville: The University Press of Virginia, 1973), 123.
- ⁸ Boaventura de Sousa Santos, "Law: A Map of Misreading. Toward a Post-Modern Conception of Law," *Journal of Law and Society* 14.3 (1987): 279-302, cited in Mariana Valverde, "Jurisdiction as Scale: Legal 'Technicalities' as Resources for Theory," *Social Legal Studies* 18 (2009): 140.
- ⁹ Nicholas A. Brown, "The logic of settler accumulation in a landscape of perpetual vanishing," *Settler Colonial Studies*, (2013): 7. This question of a *propos* of Brown's brilliant reconceptualization of primitive accumulation within settler colonial states, where he asks: "does a *distinct form of accumulation* emerge from the dialectic between primitive accumulation and settler colonialism, which cannot be reduced to either of its constitutive elements?" (7).
- ¹⁰ Valverde, "Jurisdiction as Scale: Legal," 144.
- ¹¹ Shaunnagh Dorsett and Shaun McVeigh, *Jurisdiction* (New York: Routledge, 2012), 39.
- ¹² This idea was first clearly expressed to me in Lindsay Farmer's article, see: "Territorial Jurisdiction and Criminalization," *UTLJ* 63 (2013): 225-246.
- ¹³ This idea to think of jurisdiction as the "authority to have authority" comes from Deborah Cowen.
- ¹⁴ Kent McNeil, "Indigenous Land Rights and Self-Government: Inseparable entitlements," *Between Indigenous and Settler Governance*, Lisa Ford and Tim Rowse, eds. (New York: Routledge, 2013), 145-146.
- ¹⁵ McNeil, "Indigenous Land Rights and Self-Government," 146.
- ¹⁶ Lorenzo Veracini, *Settler Colonialism: A Theoretical Overview* (New York: Palgrave Macmillan, 2010), 1-15.
- ¹⁷ What is now known as settler colonial studies arose to address these and other unique differences between forms of colonization. Through, as Jodi Byrd and Michael Rothberg point out, settler colonialism has gained much insight from post-colonial studies, with notable exceptions, post-colonialism has largely failed to take account of ongoing colonialism in the Americas ("Between Subalternity and Indigeneity: Critical Categories for Postcolonial Studies," *interventions* 13.1 (2011): 1-12). Eric Cheyfitz takes this further, calling this ellipse a "complete scandal" that "post-colonial studies have virtually ignored the predicament of American Indian Communities in that territory known in European terms since the late eighteenth century as the United States," giving examples of major collections of post-colonial essays that never mention colonialism in the Americas ("The (Post) Colonial Predicament of Native American Studies," *interventions* 4.3 (2011): 405-427). For an excellent article on reconciling the disciplines, see Robert Warrior, "The Subaltern Can Dance, and So Sometimes Can the Intellectual," *interventions* 13.1 (2011): 85-94.
- ¹⁸ Patrick Wolfe, *Settler Colonialism and the Transformation of Anthropology*, (London, New York, Cassell, 1999), 163.
- ¹⁹ Nicholas Blomley and Joel Bakan, "Spacing Out: Towards a Critical Geography of Law," *Osgoode Hall L.J.* 661 (1992): 662.

²⁰ Dorsett and McVeigh, "Questions of Jurisdiction," 4.

²¹ Shaunnagh Dorsett and Shaun McVeigh, "Questions of Jurisdiction," *Jurisprudence of Jurisdiction*, Shaun McVeigh, ed. (Oxford: Routledge-Cavendish, 2007), 4. However, as Jennifer Nedelsky has pointed out to me, while jurisdiction does not wholly proceed law in all cases, for example, in cases where the province creates municipal authority and jurisdiction, the foundation for these latter forms of establishing jurisdiction are premised on the initial inauguration of jurisdiction in what is now called Canada, which ushered in the reception of the common law in Canada.

²² Sue Roark Calnek, Personal Communication with the Author, Email, July 7, 2013.

²³ I would like to acknowledge here Amar Bhatia's comments on the need to push past the flat space of transparencies to more accurately represent the *meeting* of jurisdictions on these lands.

²⁴ Stu Herbert, "Summary of Quebec Orders-in-Council (1928-1980)," Prepared for the Algonquin Nation Secretariat, 1988, 2.

²⁵ Russell Diabo, in discussion with author, April 19, 2013.

²⁶ Diabo, discussion, April 19, 2013

²⁷ Wolfe, "Settler Colonialism," 393

²⁸ For a good discussion on the principles that have driven this decentralized, privatized conservation regulation scheme, see: Peter H. Pearse and James R. Wilson, "Local co-management of fish and wildlife: The Quebec experience," *Wildlife Society Bulletin* 27.3 (Autumn 1999): 676-691). Though the ZECs have generally respected Barriere Lake's rights to hunt, fish and harvest in their traditional territory, this example is to say that jurisdiction represents the law in a multiplicity of ways we must be attentive to, for they give order to the space of Indigenous lives.

²⁹ However, like so many messy piles of overlapping transparencies, the federal government will only cover health care costs to Indians living on reserve, so the provincial government must assume the costs for off-reserve residents, juggling responsibilities for Indigenous peoples like immaterial objects across space. For more on this latter point, see: Report of the Royal Commission on Aboriginal Peoples, Volume 3, especially pages 107-177.

³⁰ Arthur Manuel, "Who is Dependent on Whom?," November 10, 2011. Accessed online May 22, 2013: <<http://www.defendersoftheland.org/story/297>>

³¹ Frantz Fanon, *Black Skin, White Masks*, (New York: Grove Press, 1952), 93.

³² Sunera Thobani, *Exalted Subjects: Studies in the Making of Race and Nation in Canada*, (Toronto; Buffalo; London: University of Toronto Press, 2007), 248.

³³ Thobani, *Exalted Subjects*, 37.

³⁴ Dorsett and McVeigh, *Jurisdiction*, 4. This inauguration can be traced etymologically to the question of articulation, as proposed in *supra* note 24.

³⁵ Dorsett and McVeigh, "Questions of Jurisdiction," 4. The authors cite Emile Beneviste's etymology of jurisdiction, who links the Latin noun *ius* (law) in its performative and adverbial form, with the verb *dictio* (the saying or speech of law) (*Indo-European Language and Society*, London: Faber and Faber, 1973, 391-392).

³⁶ In the context of exploring scholarly precedence for comparisons between Indigenous and Australian law, Shaunnagh Dorsett points to some notable exceptions in the field. She includes in this category: Kent McNeil, *Common Law Aboriginal Title*, Oxford: Clarendon Press; New York: Oxford University Press, 1989; Peter Rush, "An Altered Jurisdiction: Corporeal Traces of Law" 6 *Griffith L. Rev.* (1997): 144-168; and a chapter in McVeigh's *Jurisprudence of Jurisdiction*, Douzinas' "The Metaphysics of Jurisdiction" on the contradictions of modern jurisdiction, which seeks to represent itself and the other ("Thinking Jurisdictionally: A Genealogy of Native Title," Dissertation. Sydney: University of New South Wales, 2005), 3.

³⁷ Harold Johnson, *Two Families: Treaties and Government* (Saskatoon, SK: Purich Publishing, 2007), 27.

³⁸ *United States v. Winans*, 198 US 371 (USSC), quoted in: John Borrows, "Crown and Aboriginal Occupations of Land: A History & Comparison," Prepared for the Ipperwash Inquiry, October 15, 2005, 61.

³⁹ Borrows, "Crown and Aboriginal Occupations of Land," 61.

⁴⁰ For a discussion on what he calls the "victorious modern language of constitutional uniformity," see James Tully, *Strange Multiplicity: Constitutionalism in an Age of Diversity*, Cambridge: Cambridge University Press, 58-98.

- ⁴¹ Lisa Ford, *Settler Sovereignty: Jurisdiction and Indigenous People in America and Australia 1788-1835*, Cambridge, Mass.; London: Harvard University Press, 2010, 3.
- ⁴² Dorsett, "Thinking Jurisdictionally," 254.
- ⁴³ Dorsett, "Thinking Jurisdictionally," 254.
- ⁴⁴ Ford, *Settler Sovereignty*, 2.
- ⁴⁵ Ford, *Settler Sovereignty*, 2.
- ⁴⁶ I would argue that the same principle applies to civil law and other European legal traditions more broadly.
- ⁴⁷ Dorsett, "Thinking Jurisdictionally," 242-243.
- ⁴⁸ F.H. Hinsley, *Sovereignty* (New York: Basic Books, 1966), 26, cited in Nicholas Onuf, "Sovereignty: An Outline of a Critique," *Alternatives* 16.4 (Fall 1999): 430.
- ⁴⁹ Karena Shaw, *Indigeneity and Political Theory: Sovereignty and the Limits of the Political* (New York: Routledge, 2008), 3.
- ⁵⁰ Onuf, "Sovereignty," 430.
- ⁵¹ Onuf, "Sovereignty," 430.
- ⁵² For more on the key principles of modern sovereignty, see: Martin Loughlin, "Ten Tenets of Sovereignty," *Sovereignty in Transition*, Neil Walker, ed. (Oxford; Portland Oregon: Hart Publishing, 2003).
- ⁵³ Peter Fitzpatrick, "'No Higher Duty': *Mabo* and the Failure of Legal Foundation" *Law and Critique* 13 (2002): 239.
- ⁵⁴ Fitzpatrick, "'No Higher Duty,'" 247.
- ⁵⁵ Fitzpatrick, "'No Higher Duty,'" 239.
- ⁵⁶ Fitzpatrick, "'No Higher Duty,'" 239. Fitzpatrick does not explicitly here reference jurisdiction or sovereignty in his critique of common law foundations, preferring the registers of nation and property. However, the common law is inaugurated through the technologies of jurisdiction through processes of codification, marking, and discursively arranging the practice of legal reasoning, such as property relations. The technologies of jurisdiction give form to imperial assertions of territorial sovereignty: nationhood.
- ⁵⁷ Robert A. Williams, *The American Indian in Western Legal Thought: The Discourses of Conquest*, New York: Oxford University Press, 1990, 59, quoted in Fitzpatrick, "'No Higher Duty,'" 240.
- ⁵⁸ Fitzpatrick, "'No Higher Duty,'" 239.
- ⁵⁹ R.B.J. Walker, "Sovereignty, Identity, Community," *Contending Sovereignties: Redefining Political Community*, R.B.J. Walker and Saul H. Medlovitz, eds. (Boulder; London: Lynn Reinner Publishers, 1990), 159-185.
- ⁶⁰ For an Anglophone genealogy of the idea, see Quentin Skinner, "The Sovereign State: A Genealogy," in *Sovereignty in Fragments: The Past, Present and Future of a Contested Concept*, Hent Kalmo and Quentin Skinner, eds. (Cambridge: Cambridge University Press, 2010).
- ⁶¹ Skinner, "The Sovereign State," 27.
- ⁶² James Tully, "Aboriginal Property and Western Theory: Recovering a Middle Ground," *Social Philosophy and Policy* 11.2 (June 1994): 156.
- ⁶³ Shaw, *Indigeneity and Political Theory*, 19, and see especially Chapters 2 and 3.
- ⁶⁴ Skinner, "The Sovereign State," 34-36.
- ⁶⁵ Michael Asch, "Canadian Sovereignty and Universal History," *Storied Communities: Narratives of Contact and Arrival in Constituting Political Community*, Hester Lessard, Rebecca Johnson, and Jeremy Webber, eds. (Vancouver; Toronto: UBC Press, 2011), 33.
- ⁶⁶ Supreme Court of British Columbia, 1991, *Delgamuukw et al v. The Queen*. Reasons for Judgment of the Honourable Chief Justice Allan McEachern. Number 0843, Smithers Registry. 38 B.C.L.R., 3.
- ⁶⁷ Shaw, *Indigeneity and Political Theory*, 9. While Shaw cautions Indigenous people about the disabling tenets of sovereignty discourse to their own struggles of self-determination, she curiously ignores jurisdiction as a potentially productive political vocabulary, despite documenting the Gitskan and Wet'su'wet'en nations' challenge to the Crown's "ownership and jurisdiction" over their lands. She writes: "sovereignty on the modern (state) model will not work for Indigenous peoples" since, by deploying this political vocabulary, "they are struggling to create legitimate authorities – sovereignties – within and across spatial, temporal and discursive conditions that may be at odds with those that have enabled modern state sovereignty" (*Indigeneity and Political Theory*, 5).
- ⁶⁸ Fitzpatrick, "'No Higher Duty,'" 246.

⁶⁹ Reasons for Judgment, 1991, 224-225. The full statement is important to note: “After much consideration, I am driven to find that jurisdiction and sovereignty are such absolute concepts that there is no half-way house. No court has authority to make grants of constitutional jurisdiction in the face of such clear and comprehensive statutory and constitutional provisions. The very fact that the plaintiffs recognize the underlying title of the Crown precludes them from denying the sovereignty that created such title. I fully understand the plaintiffs’ wishful belief that their distinctive history entitles them to demand some form of constitutional independence from British Columbia. But neither this nor any court has the jurisdiction to undo the establishment of the Colony, Confederation, or the constitutional arrangements which are now in place. Separate sovereignty or legislative authority, as a matter of law, is beyond the authority of any court to award (Delgamuukw, 1991: 224–25).

⁷⁰ Aaron Detlor, “Haudenosaunee Nationhood,” *Nation to Nation Now Symposium: The Conversations*, March 23, 2013.

⁷¹ Amar Bhatia, “The South of the North: Building on Critical Approaches to International Law with Lessons from the Fourth World,” *Oregon Review of International Law* 14 (2012): 131-176.

⁷² There are, of course, competing genealogies of sovereignty. A number of scholars trace its antecedent to the concept of *imperium*. I differ here with Shaunnaugh Dorsett, for example, whose work on jurisdiction has been extremely formative and instructive to my work, but who I nonetheless feel misrecognizes *imperium* for sovereignty, despite her acknowledgement that the Roman emperor’s power was “a personal political denomination with no explicit territorial link” (“Thinking Jurisdictionally,” 24). See also Nicholas Onuf, who presents both *imperium* and *res publica* as antecedents to sovereignty, though he acknowledges as well that they are not direct antecedents, but rather precursors to the historical emergence of territorial sovereignty (“Sovereignty,” 425-446).

⁷³ Lauren Benton, “Spatial Histories of Empire” *Itinerario* 30.3 (2006), 20.

⁷⁴ Dorsett and McVeigh, *Jurisdiction*, 39.

⁷⁵ Michael Asch, *Home and Native Land: Aboriginal Rights and the Canadian Constitution* (Toronto; New York; London; Sydney, Aukland: Methuen, 1984), 30.

⁷⁶ Laura Benton, “Spatial Histories of Empire,” *Itinerario* 30.3 (2006): 26, *emphasis added*.

⁷⁷ See Chapter 3, *supra* note 58. Di Gangi reports that “As late as 1949 they were told by Indian Agent Baker of Maniwaki that if they did not ‘make their maps’ they would be ‘considered as poachers and if they did not act like the others they would soon be punished for trapping illegally.’” Later that year, departmental officials reported that in 1949 the Barriere Indians “rejoined the others and seems satisfied with their results” (“Man-Made Impacts,” 26 and 29).

⁷⁸ Dorsett and McVeigh, *Jurisdiction*, 4.

⁷⁹ Dorsett and McVeigh, “Questions of Jurisdiction,” 5.

⁸⁰ Neil Brenner, “A Thousand Leaves: Notes on the Geographies of Uneven Spatial Development,” *The new political economy of scale*, Roger Keil and Rianne Mahon, eds. (Vancouver, B.C.: University of British Columbia Press, 2009), 27-49.

⁸¹ Brenner, “A Thousand Leaves,” 38.

⁸² Brenner, “A Thousand Leaves,” 38.

⁸³ Brenner, “A Thousand Leaves,” 37.

⁸⁴ Brenner, “A Thousand Leaves,” 45.

⁸⁵ James Tully describes how “the so-called ‘Westphalian’ system is actually an imperial system of hegemonic and subaltern states constructed in the course of ‘interactions’ between imperial actors and imperialised collaborators and resisters. It is the foundation of contemporary imperialism, laid in the colonial period and strengthened during decolonisation. Informal imperialism would scarcely work at all if these colonial foundations did not provide a historically sedimented background structure of institutions and relations of domination within which the more flexible relations of informal imperialism are exercised in the foreground” (*Public Philosophy in a New Key, Volume 2: Imperialism and Civic Freedom*, Cambridge: Cambridge University Press, 2008, 140-141).

⁸⁶ The authoritative text on this matter is the Royal Commission on Aboriginal Peoples (RCAP), which recommended Aboriginal nations be seen and treated as a third order of government. As RCAP states: “We believe Aboriginal people must be recognized as partners in the complex arrangements that make up Canada. Indeed, we hold that Aboriginal governments are *one of three orders of government in Canada* - federal, provincial/territorial, and Aboriginal. The three orders are autonomous within their own spheres of jurisdiction, thus sharing the sovereignty of Canada as a whole. Aboriginal governments are not like

municipal governments, which exercise powers delegated from provincial and territorial governments” (Canada, Royal Commission on Aboriginal Peoples, *People to people, nation to nation: Highlights from the report of the Royal Commission on Aboriginal Peoples*, 1996. Accessed online, April 8, 2013: <<http://www.aadnc-aandc.gc.ca/eng/1100100014597/1100100014637#chp7>>).

⁸⁷ Valverde, “Jurisdiction as Scale,” 141.

⁸⁸ Valverde, “Jurisdiction as Scale,” 141. Here, Valverde is offering her interpretation of de Sousa Santos.

⁸⁹ Valverde, “Jurisdiction as Scale,” 141.

⁹⁰ Nicholas Blomley makes a similar point in “Law, Property, and the Spaces of Violence,” where he writes that liberalism tends to locate violence outside of the law (“Law, Property, and the Spaces of Violence: The Frontier, the Survey, and the Grid,” *Annals of the Association of American Geographers*, 93:1 (March 2003): 121-141).

⁹¹ Ford, “Law’s Territory,” 853.

⁹² Ford, “Law’s Territory,” 854.

⁹³ Ford, “Law’s Territory,” 854. But Ford’s use of the term is restricted to its meanings within political liberalism. For example, his statement that, “No particular set of rights and responsibilities naturally comes with residence in a given territory, and the boundaries of the territory itself are not natural” excludes the criteria of Indigenous territorial jurisdiction from consideration (900).

⁹⁴ Neil Brenner and Stuart Elden, “Henri Lefebvre on State, Space, Territory,” *International Political Sociology* 3 (2009): 358.

⁹⁵ Brenner and Elden, “State, Space, Territory,” 358.

⁹⁶ Brenner and Elden, “State, Space, Territory,” 363.

⁹⁷ Brenner and Elden, “State, Space, Territory,” 370.

⁹⁸ Stuart Elden, “Land, Terrain, Territory,” *Progress in Human Geography* 34.6 (2010): 810.

⁹⁹ Henri Lefebvre, *The Production of Space* [1974], trans. Donald Nicholson-Smith. Oxford Blackwell, 1991, 85. Cited in Brenner, “A Thousand Leaves,” 33.

¹⁰⁰ Gottman, *The Significance of Territory*, 123.

¹⁰¹ Peter H. Russell, *Recognizing Aboriginal Title: The Mabo Case and Indigenous Resistance to English-Settler Colonialism* (Toronto; Buffalo; London: University of Toronto Press, 2005), 41.

¹⁰² Francisco de Vitoria, *De Indis De Jure Belli*. [1532], James Brown Scott, ed. ca. 1917 (New York; London: Oceana Publications Inc., Wildy & Sons LTD.).

¹⁰³ Antony Anghie, “Francisco De Vitoria and the Colonial Origins of International Law,” *Social Legal Studies* 5: 321 (1996): 326.

¹⁰⁴ de Vitoria, *De Indis De Jure Belli*, §60.

¹⁰⁵ Here we really see the sovereignty doctrine defined and its legacy in our contemporary world. Vitoria carefully lays out all the rules of the just war. The war waged against the Indians is “perpetual” because Indians are incapable of sovereignty, since they are unbelievers. Only Christian subjectivity is recognized as capable of ensuring a just war. According to Antony Anghie, the enduring legacy of Vitoria is “the enactment of a formidable series of maneuvers by which European practices are posited as universally applicable norms with which the colonial peoples must conform if they are to avoid sanctions and achieve full membership. Vitoria’s jurisprudence demonstrates, furthermore, how the construction of the barbarian as both within the reach of law and yet outside its protection creates an object against which sovereignty may express its fullest powers by engaging in an unmediated and unqualified violence, which is justified as leading to conversion, salvation, civilization” (Anghie, “Francisco De Vitoria and the Colonial Origins of International Law,” 333).

¹⁰⁶ Dara Culhane. *The Pleasure of the Crown: Anthropology, Law and First Nations* (Burnaby, B.C.: Talonbooks, 1997).

¹⁰⁷ Culhane, *Pleasure of the Crown*, 47.

¹⁰⁸ Culhane, *Pleasure of the Crown*, 48.

¹⁰⁹ John Locke, *Two Treatises of Government* [1689], Ed. Peter Laslett, Cambridge: Cambridge University Press, 1960. See also James Tully, *An Approach to Political Philosophy: Locke in Contexts*, Cambridge, UK: Cambridge University Press, 1983; and, Emeric de Vattel, *The Law of Nations or Principle of the Law of Nature, Book I of Nations Considered in Themselves* [1758], Baola Kapossy and Richard Whatmore, eds. (Indianapolis, IN: Liberty Fund, 2008).

¹¹⁰ For an authoritative account on John Locke’s improvement thesis, see James Tully, *An Approach to Political Philosophy: Locke in Contexts* (Cambridge University Press, 1993), in particular, Chapter 3, “The

framework on natural rights in Locke's analysis of property," and Chapter 5, "Rediscovering America: The two treatises and aboriginal rights."

¹¹¹ Fitzpatrick, "No Higher Duty," 240.

¹¹² Ford, *Settler Sovereignty*, 17.

¹¹³ Ford, *Settler Sovereignty*, 17.

¹¹⁴ Royal Proclamation 1763 (U.K.), reprinted R.S.C. 1985, App. II, No.1 [hereinafter the Royal Proclamation].

¹¹⁵ Walter Echo-Hawk, "Johnson v. M'Intosh & the Doctrine of Discovery in the United States: Impacts upon Federal Indian Law; and the Future of the Doctrine under the United Nations Declaration of the Rights of Indigenous Peoples." Presentation. International Seminar on the Doctrine of Discovery, September 20 - 21, 2012, Secwepemcúl'ecw. Also, for a detailed discussion on the genealogy of the doctrine of discovery, please see Robert J. Miller, Jacinta Ruru, Larissa Behrendt, Tracey Lindberg, *Discovering Indigenous Lands: The Doctrine of Discovery in the English Colonies*, (Oxford: Oxford University Press, 2010) 1-25.

¹¹⁶ Olive P. Dickason, *Canada's First Nations: A History of Founding Peoples from Earliest Times* (Toronto: McLelland & Stewart Inc., 1994), 180-181.

¹¹⁷ John Borrows, "Constitutional Law from a First Nation Perspective: Self-Government and the Royal Proclamation," *University of British Columbia Law Rev.* 28 (1994), 27.

¹¹⁸ Patricia Seed, *Ceremonies of Possession in Europe's Conquest of the New World, 1492-1640*, (Cambridge: Cambridge University Press, 1995). As Seed describes, Queen Elizabeth refused to recognize Spanish possession of the New World, since they had only sailed its shores and touched its coasts as opposed to landing, building a house and planting a garden – universally recognizable practices of private property ownership in England at the time.

¹¹⁹ Williams, *The American Indian in Western Legal Thought*, 237. Quoted in Culhane, *Pleasure of the Crown*, 56.

¹²⁰ Culhane, *Pleasure of the Crown*, 55.

¹²¹ Williams et al, *Discovering Indigenous Lands*, 107.

¹²² Culhane argues that this exercise of preemption power is actually rooted in the doctrine of conquest and not the doctrine of discovery (*Pleasure of the Crown*, 48). This seems logical, given that the King could hardly make assurances to "Indian Nations" if the land was uninhabited. But in 1763, given the strong military alliances with Indigenous nations so desperately sought by the colonizers, the doctrine of conquest hardly seems likely. Whereas, the doctrine of discovery could accommodate the paradox of an inhabited land and the concept of terra nullius – vacant lands – so long as the British discovered a land of non-Christian strangers, whose forms of land-holding did not conform to the cultivated enclosures of the British motherland.

¹²³ *Johnson v. M'Intosh*, 21 U.S. (8 Wheat.) 543 (1823) [hereafter "Johnson"]. *Johnson* is one of three cases decided by Chief Justice Marshall pertaining to federal Indian law in what is referred to as the "Marshall Trilogy." The trilogy also includes *Cherokee Nation v. Georgia*, 30 U.S. (5 Peters) 1 (1831) and *Worcester v. Georgia*, 31 U.S. (6 Pet.) 515 (1832).

¹²⁴ Williams et al, *Discovering Indian Lands*, 3.

¹²⁵ *Johnson*. See also, Robert A. Williams Jr., *Like a Loaded Weapon: The Rehnquist Court, Indian Rights, and the Legal History of Racism in America*, Minnesota, MN: University of Minnesota Press, 2005, 51.

¹²⁶ In *Worcester v. Georgia*, 31 U.S. (6 Pet.) 515 (1832), Justice Marshall decides that the relationship between Indian tribes and the federal government is a nation-to-nation political relationship and as such the Cherokee Nation deserved self-governing rights.

¹²⁷ *St. Catherine's Milling and Lumber Co. v. The Queen* (1888) 14 App. Cas. 46 (J.C.P.C.).

¹²⁸ Jennifer Reid, "The Doctrine of Discovery and Canadian Law," *Canadian Journal of Native Studies* 30:2, 345.

¹²⁹ *Calder et al. v. Attorney-General of British Columbia* [1973] S.C.R. 313 ¶ 26 [hereafter "Calder"].

¹³⁰ See, for example, *White and Bob* (1964), 50 D.L.R. (2d) 613 (B.C.C.A.), *aff'd* (1965), 52 D.L.R. (2d) 481 (S.C.C.).

¹³¹ *Calder* at 26.

¹³² Justice Hall, citing *REGINA v. WHITE AND BOB*. [1964] B.C.J. No. 212. 50 D.L.R. (2d) 613., called the Royal Proclamation a 'charter of Indian rights' (*Id.* at ¶ 138, Hall J, dissenting). As for *Johnson v.*

McIntosh, Justice Hall called the case ‘the locus classicus of the principles governing aboriginal title’ (*Id.* at ¶ 121)” (cited in Reid, “The Doctrine of Discovery,” at 347).

¹³³ *Guerin v. R.*, [1984] 2 S.C.R. 335 [hereafter “*Guerin*”].

¹³⁴ *Guerin* at 93.

¹³⁵ *Delgamuukw v. British Columbia* [1997] 3 S.C.R. 1010. (Hereafter, *Delgamuukw*).

¹³⁶ Louise Mandell, “Offerings to an Emerging Future,” *Box of Treasures of Empty Box? Twenty Years of Section 35*, Eds. Ardith Walkem and Halie Bruce (BC: Theytus Books Ltd., 2003), 167.

¹³⁷ *Tsilhqot’in Nation v. British Columbia*, 2007 BCSC 1700, (hereafter “*Tsilhqot’in*”).

¹³⁸ *Tsilhqot’in* analysis by Mandell Pinder, December 2007.

¹³⁹ *Tsilhqot’in* at 1012.

¹⁴⁰ Kent McNeil, “Aboriginal Title and Section 88 of the *Indian Act*,” *UBC Law Review*, 34.1 (2000): 194. This passage is cited by Justice Vickers, *Tsilhqot’in Nation v. British Columbia*, at para 1047.

¹⁴¹ Quoted in J.R. Miller, “Great White Father Knows Best: Oka and the Land Claims Process,” *Native studies Review* 7: 1 (1991), 38. The full quote ends with the phrase: “when we did the white paper.” The “white paper” of 1969, introduced by Trudeau’s government, attempted to erode Indigenous peoples’ distinct status in Canada, for example by scrapping the Indian Act and reserve system, under the auspices of liberal equality.

¹⁴² *Haida Nation v. British Columbia (Minister of Forests)*, [2004] 3 S.C.R. 511 set an important precedent around the “duty to consult and accommodate” First Nations on lands where Aboriginal Title has been asserted, though not necessarily recognized by the courts, and *R. v. Marshall*; *R. v. Bernard* 2005 SCC 43 at first recognized, then reversed recognition for, Miq’mak treaty rights to pursue commercial fishing rights.

¹⁴³ Michael Asch and Norman Zlotkin, “Affirming Aboriginal Title: A New Basis for Comprehensive Claims Negotiations,” *Aboriginal and Treaty Rights in Canada*, Michael Asch, ed. (Vancouver: University of British Columbia Press, 1997), 213.

¹⁴⁴ Brown, “The logic of settler accumulation in a landscape of perpetual vanishing,” 7.

¹⁴⁵ Secrétariat De L’Entente Trilatérale Des Algonquins de Lac-Barrière, “Quantification de la valeur économique des industries de la forêt, du tourisme, des loisirs et des autres industries et activités dans la région de l’Outaouias et le secteur couvert par l’entente trilatérale, Rapport Final,” March 1996.

¹⁴⁶ Department of Indian Affairs and Northern Development, “Statement Made by the Honourable Jean Chrétien, Minister of Indian Affairs and Northern Development on Claims of Indian and Inuit People,” Communiqué, 8 August 1973. The policy was reaffirmed in 1981, by an updated statement of policy: Department of Indian Affairs and Northern Development, “In All Fairness: A Native Claims Policy – Comprehensive Claims,” Ottawa, 1981, 4.

¹⁴⁷ Patrick Wolf, *Settler Colonialism and the Transformation of Anthropology: The Politics and Poetics of an Ethnographic Event* (London: Cassell, 1999), 163.

¹⁴⁸ Lorenzo Veracini, “Introducing settler colonial studies,” *settler colonial studies*, 1 (2011) 3.

¹⁴⁹ See, for example, Culhane, *The Pleasure of the Crown*, 48 and Miller et al, *Discovering Indigenous Lands*.

¹⁵⁰ James Morrison, “Algonquin History in the Ottawa River Watershed,” CULTURAL HERITAGE 17 2.3, Sicani Research and Advisory Services, 2005, [Omàmiwinini Pimàdjowin *Cultural Heritage* Edition, accessed July 12, 2010, www.thealgonquinway.ca/pdf/algonquin-history.pdf], 28.

¹⁵¹ Bradley Bryan, “Property as Ontology: On Aboriginal and English Understandings of Ownership,” *Canadian Journal of Law and Jurisprudence*, 13:1 (2000), 4.

¹⁵² Bryan, “Property as Ontology,” 5.

¹⁵³ Bryan examines the European history of property rights and how it is exemplified by a rationalistic tendency that is captured by a technological worldview. This rationalization comes to be the way we understand ourselves in the world, which can be explained as the harnessing of things in terms of their ability to be turned into something consumable. Rationalization is revealed to us through language and a particular *enframing* or ‘*gestell*’ that Heidegger calls technological. Technology is what constitutes us, and it demands that nature supply us, that it form a reserve to supply human use. It must be transformed into ‘standing reserve’ thus ordered or structured – and in this way, reveals the world at large. “With technology, the ‘real’ is revealed as ‘standing reserve’... Technology... makes demands of nature, and that demand is one of supply” (“Property as Ontology,” 16). This standing reserve is assumed to be a universal reality.

¹⁵⁴ Tia Dafnos, "Pacification and Indigenous Struggles in Canada," unpublished ms, 6.

¹⁵⁵ Hussein Abu Hussein and Fiona McKay, *Access Denied: Palestinian Land rights in Israel*, (London; New York: Zed Books, 2003), 105.

¹⁵⁶ Jeremy Forman and Sandy Kedar, "From Arab Lands to 'Israel Lands': The Legal Dispossession of the Palestinians displaced by Israel in the wake of 1948," *Environment and Planning D: Society and Space* 22, 812.

¹⁵⁷ Norman Bentwich, *Legislature of Palestine, 1918-25: I: Orders in Council and Ordinances* (Alexandria, 1926) 12-13. Quoted in Martin Bunton, "Inventing the Status Quo: Ottoman Land Law during the Palestine Mandate, 1917-1936," *The International History Review* 21:1 (Mar. 1999), 28-56), 31.

¹⁵⁸ Quoted in Y. Gradus, "The Emergence of Regionalism in a Centralised System: The Case of Israel," *Environment and Planning D: Society and Space* 2 (1984) 87-100. Quoted in Oren Yiftachel, "Bedouin Arabs and the Israeli Settler State: Land Policies and Indigenous Resistance," *The Future of Indigenous Peoples: Strategies for Survival and Development*, Eds. Abu-Saad, I. and D. Champagne, (Los Angeles: American Indian Studies Center Publication, UCLA, 2003), 28-29.

¹⁵⁹ Oren Yiftachel, *Ethnocracy: Land and Politics of Identity in Israel/Palestine*, (Philadelphia: Pennsylvania Press, 2006).

¹⁶⁰ Yiftachel, *Ethnocracy*.

¹⁶¹ Isabel Kershner, "Al Araqib Journal: A Test of Wills Over a Patch of Desert," *New York Times*, August 25, 2010.

¹⁶² Erez Tzfadia, "In the Name of Zionism," *Haaretz*, September 19th, 2008; R. Khamaissi, "Mechanism of land control and territorial Judaization in Israel," *In the Name of Security: Studies in Peace and War in Israel in Changing Times*. Eds. M. Al-Haj, U. Ben-Eliezer (Haifa: University of Haifa Press, 2003), 421-448 (in Hebrew).

¹⁶³ Derek Gregory theorizes how geographic place names become "cover terms" for complex networks of people, money, ideologies, and war in *The Colonial Present: Afghanistan, Palestine, Iraq*, (Blackwell Publishing, 2004).

¹⁶⁴ For more on the production of settler space, see the hyper-politicized frontier architecture developed in Israel, the icon of which is Homa Umigdal (Wall and Tower). This structure was erected faithfully at Nahabir by the kibbutzniks to mark their territory, but also in some fifty-seven-odd outposts between 1936 and 1957 alone (Sharon Rotbard, "Wall and Tower (Homa Umigdal): The Mold of Israeli Architecture," *A Civilian Occupation: The Politics of Israeli Architecture*, Eds. Rafi Segal and Eyal Weizman, (Tel Aviv: Babel, London; New York: Verso, 2003), 42). Homa Umigdal is a system of settlement based on fortified walls and a look-out tower; it also provides for a tiny ghetto of housing within its structure. According to Israeli architect Sharon Rotbard, this garrison-type settlement is "the fundamental paradigm of all Jewish architecture in Israel" ("Wall and Tower," 46). That is because "it is more an instrument than a place" (Rotbard, "Wall and Tower," 48). An infrastructure of war, Homa Umigdal embodies a strategy of expansion as a series of fortified dots on a map, more crucial than the settlements themselves, forming together a colony of occupation. One way in which these points were important was in changing the nature of spatial and temporal organization in a region. Citing Lefebvre, Rotbard theorizes that this sprinkling of Jewish settlements throughout the land transformed agrarian or nomadic time into industrial time, instilling a planning regime of modernization and European homogeneity into the Arab desert.

¹⁶⁵ A ripe area of recent scholarship, David Koffman attributes this interest in the role of the Indian in the Jewish imaginary in part to "the competitive appeals by both Jews and Arabs to the idea of indigeneity in Israel/Palestine and a public relations battle around the Americanization of the Holocaust and Americans' failure to rally around memorializing and nationalizing the legacy of the seismic trauma perpetrated against Native Americans," ("Members of the Tribe: Native America in the Jewish Imagination," *American Jewish History* 95.3 (2009): 316.

¹⁶⁶ See, for example: Stephen Katz, *Red, Black and Jew: New Frontiers in Hebrew Literature*, University of Texas Press, 2009; and, Jonathan Boyarin, *The Uncovered Self: Jews, Indians, and the Identity of Christian Europe*, University of Chicago Press, 2009.

¹⁶⁷ Alex Lubin, "'We are all Israelis': The Politics of Colonial Comparisons," *Settler Colonialism*, Eds. Alyosha Goldstein and Alex Lubin, *Special Edition, The South Atlantic Quarterly* 107:4 (Fall 2008), 677.

¹⁶⁸ Lubin, "We are all Israelis," 675.

¹⁶⁹ Lubin, "We are all Israelis," 676.

¹⁷⁰ Jodi A. Byrd, *The Transit of Empire: Indigenous Critiques of Colonialism*, (Minneapolis; London: Minnesota University Press, 2011), xiii.

¹⁷¹ For an excellent discussion of this theme, see James Tully, “On law, democracy and imperialism,” *Public Philosophy in a New Key, Volume II: Imperialism and Civic Freedom*, (Cambridge, UK: Cambridge University Press, 2008), 127-165.

¹⁷² Benedict Anderson, *The Spectre of Comparisons: Nationalism, Southeast Asia, and the World* (London: Verso, 1998). Quoted in Lubin, “We are all Israelis,” 672.

¹⁷³ Byrd, *Transit of Empire*, xiii.

¹⁷⁴ Brenner, “A Thousand Leaves,” 31.

¹⁷⁵ Ella Shohat, *Taboo Memories, Diasporic Voices*, (Durham; London: Duke University Press, 2006), 209.

¹⁷⁶ Canada recently distinguished itself in the world by vowing “retaliation” against the Palestinian Authority for gaining – through democratic vote – “non-member observer status” at the United Nations General Assembly. See: Campbell Clark, “Baird accuses UN of abandoning principles by recognizing Palestine,” *Globe and Mail*, November 29, 2012; and Campbell Clark, “Canada temporarily recalls Palesintian UN envoys, but says it isn’t breaking off relations,” *Globe and Mail*, November 30, 2012. For recent commercial/industrial partnerships, see: Canada-Israel Industrial Research and Development Foundation, “Canada-Israel Call for Collaborative R&D Projects,” November 12, 2012; Natural Resources Canada, “Ministers Oliver and Landau Announce the Canada-Israel Energy Science and Technology Fund,” October 29, 2012. For analysis of shard ideological and economic interests, see: Kole Kilibarda, “Canadian and Israeli Defense – Industrial and Homeland Security Ties: An Analysis,” *The New Transparency Project*, Working Paper II, IRSP IV, November 2008, and Yves Engler, *Canada and Israel: Building Apartheid*, (Nova Scotia: Fernwood Publishing, 2010).

¹⁷⁷ Daniel Montescu, in discussion with the author, Israel-Palestine, June 23 2009.

¹⁷⁸ Victoria Freeman, “Indigenous Hauntings in Settler-Colonial Spaces: The Activism of Indigenous Ancestors in the City of Toronto,” *Phantom past, indigenous presence: native ghosts in North American culture and history*. Colleen E. Boyd and Coll Thrush, Eds. (Imprint. Lincoln: University of Nebraska Press, 2011). Freeman, however, cautions that the “creation and migration stories in oral tradition, archaeological evidence, and linguistic analysis do not cohere to provide easy answers accepted by all concerning the question of their origins, movements, or the length of their occupation,” 217. In terms of recent history, though, the latest settlement on these lands is Mississauga, though the nation was traditionally located further south between Toronto and Lake Erie. Due to rivalries with the Haudenasaunee, the group split several times, creating a number of Mississauga settlements in the region. It was the French, with whom they were allied, who called one settlement the Mississaugas of the Credit because they extended credit to them through their fur trade outposts (Mississaugas of New Credit First Nation, “History: Culture, The Mississaugas of the New Credit,” Website, Accessed December 10, 2012: <http://www.newcreditfirstnation.com>). By the nineteenth century, the British were dominant in the region. Life became increasingly difficult for the Mississauga of the Credit band to thrive amidst the growing colonial town of York. In 1805, the so-called “Toronto Purchase” between the British and the Mississaugas of the Credit paid out only ten shillings for 250,880 acres of land, or about \$60 in today’s terms (Freeman, “Toronto Has No History!”, 7). Pushed out, the Mississaugas accepted an offer from the Six Nations to settle an area of the Haldimand tract in the south-western Ontario townships of Oneida and Tuscarora, where the Mississaugas continue to live today as the *New Credit* band. In 2010, a comprehensive claim was signed between the Mississaugas of the New Credit First Nation and Canada and some meagre financial compensation was awarded, roughly based on land values in the period of the original agreement, in exchange for the final cession of these lands (Peter Edwards, “Shrugs greet historic \$145M Toronto land claim settlement,” *Toronto Star*, GTA Section, Tuesday June 8, 2010).

¹⁷⁹ Freeman, “Toronto Has No History!” 7.

¹⁸⁰ Notable exceptions include Nicholas Blomley, (see, for example, *Unsettling the City*, New York: Routledge, 2004), Jane Jacobs’ *Edge of Empire* (London; New York: Routledge, 1996), the work of Evelyn Peters (see, for example, *Three Myths about Aboriginals in Cities*, Canadian Federation for the Humanities and Social Sciences, 2004), though a number of emerging scholars will surely help transform this field, such as Heather Dorries and Owen Toews.

¹⁸¹ Freeman, “Toronto Has No History!” 22.

¹⁸² Wolfe, “Settler Colonialism and the Elimination of the Native,” 388.

¹⁸³ Wolfe, “Settler Colonialism and the Elimination of the Native,” 389.

¹⁸⁴ The Honourable Mr. Justice Mainville, *Casey Ratt et al versus Jean Maurice Matchewan et al*. Reasons for Judgment and Judgment, Docket: T-654-09, Citation: 2010 FC 160. Ottawa, Ontario, February 17, 2010.

¹⁸⁵ The Honourable Mr. Justice Zinn, *Harry Wawatie et al v Minister of Indian Affairs and Northern Development*, T-462-08, Citation 2009 FC 8, Ottawa, ON, January 6, 2009.

¹⁸⁶ It took almost a year from June 2010 to obtain university approval. At one point, after a third set of minor revisions were submitted to the Research Ethics Office, I waited four months for a response only to discover that these revisions had been misplaced by the office. My file had also been transferred mid-way through to the Innovations and Partnership Division of the University because this office processes agreements regarding access to proprietary materials or data for research purposes, referring to land claims research mentioned in my application. This office then erroneously assigned a Physical Sciences, Engineering, and Information Technology Division person to our case because my supervisor Scott Prudham teaches in the Department of Geography.

¹⁸⁷ See also: Renee Pulani Louis, “Can You Hear Us Now? Voices from the Margin: Using Indigenous Methodologies in Geographic Research,” *Geographic Research* 45.2 (June 2007): 130-139 and Jay Johnson, Garth Cant, Richard Howitt, Evelyn Peters. “Guest Editorial: Creating Anti-colonial Geographies: Embracing Indigenous Peoples’ Knowledges and Rights,” *Geographical Research* 45.2 (June 2007):117–120.

¹⁸⁸ Shawn Wilson, “What is an Indigenous methodology?” *Canadian Journal of Native Education* 25.2 (2001): 177.

¹⁸⁹ Deborah McGregor, Walter Bayha, Deborah Simmons, “‘Our Responsibility to Keep the Land Alive’: Voices of Northern Indigenous Researchers,” *Pimatisiwin: A Journal of Aboriginal and Indigenous Community Health* 8(1) 2010, 111.

¹⁹⁰ Pulani Louis, “Can You Hear Us Now?” 133. Pulani Louis cites the work of Kiowa writer N. Scott Momaday, “Native American attitudes to the environment,” *Seeing with a Native Eye: Essays on Native American Religion*. Ed. Walter Holden Capps (New York: Harper and Row, 1976), and R.A. Rundstrom and D. Deur, “Reciprocal appropriation: toward an ethics of cross-cultural research,” *Geography and Ethics*, Eds. Proctor, J.D. and Smith, D.M. (London and New York: Routledge, 1999), 239, for developing these conceptual readings, respectively.

¹⁹¹ Among these incalculable benefits are those to the formation of my self. My research has been guided by the community’s frameworks of knowledge and shifts away from the epistemological damage of the colonial research gaze. Shotwell and Parry describe a practice of anti-racism marked by the intersectional ‘self,’ which is interconnected with the ‘other’ “through co-entanglements and co-constructedness amidst complex webs of oppression and liberation” (Pamela Perry and Alexis Shotwell, “Relational Understandings of White Antiracist Praxis,” *Sociological Theory* 27.1 (2009): 41).¹⁹¹ The formation of one’s own self, in other words, is bound up in the engagement of the struggles of others.

¹⁹² Jay T. Johnson, Brian Murton, “Re/placing Native Science: Indigenous Voices in Contemporary Constructions of Nature,” *Geographical Research* 45.2 (June 2007): 122. The authors cite, among others, the following examples of scholars who have managed to overcome the colonial gaze: B. Braun, *The Intemperate Rainforest: Nature, Culture, and Power on Canada’s West Coast*. University of Minnesota Press, Minneapolis, 2002; B. Braun and N. Castree, *Remaking Reality: Nature at the Millenium*. (London: New York: Routledge, 1998); Castree, N. and Braun, B., 2001: *Social Nature: Theory, Practice, and Politics*. Blackwell, Malden, Mass. University Press, Cambridge, Mass. Donna Haraway, A game of cat’s cradle: science studies, feminist theory, cultural studies, *Configurations* 1 (1994), 59–71; Sarah Whatmore and S. Boucher, “Bargaining with nature: the discourse and practice of ‘environmental planning gain,’” *Transactions of the Institute of British Geographers* 18 (1993), 66–178.

¹⁹³ Johnson et al, “Re/placing Native Science,” 125.

¹⁹⁴ Johnson et al, “Re/placing Native Science,” 126. Quoted from Arturo Escobar, “Culture sits in places: reflections on globalism and subaltern strategies of localization,” *Political Geography* 20 (2001): 153.

¹⁹⁵ Pulani Louis, “Can You Hear Us Now?” 134.

¹⁹⁶ Sharon H. Venne, “Treaties Made in Good Faith,” in *Natives and Settlers, Now and Then: Historical Issues and Current Perspectives on Treaties and Land Claims in Canada*, Paul W. DePasquale, Ed. (Edmonton: The University of Alberta Press, 2007), 5.

¹⁹⁷ In a mediation judgment that dates back to 1997, Quebec Superior Court Judge Rejean Paul concluded that the Trilateral Agreement would likely be considered to be of treaty status if challenged in the courts.

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- ¹⁹⁸ Venne, "Treaties Made in Good Faith," 5.
- ¹⁹⁹ Russell Diabo, "Canada's War on First Nations," *Indigenous Sovereignty Week*, Presentation. Ottawa, Ontario, October 2009.
- ²⁰⁰ Fanon, *Black Skin, White Masks*, 72.
- ²⁰¹ For a lengthy discussion on this point, see: Vic Satzewich and Terry Wotherspoon, *First Nations: Race, Class, Gender Relations*, (Scarborough, ON: Nelson Canada, 1993).
- ²⁰² As Cherokee scholar Andrea Smith writes, communities of color can be both victims and complicit in white supremacy. This complicity arises from a stay of discrimination awarded to people of colour when they participate in the exploitation of other oppressed groups. Instead, the focus for all kinds of allies should be on solidarity across different forms of oppression: "This way, our alliances would not be solely based on shared victimization, but where we are complicit in the victimization of others. These approaches might help us to develop resistance strategies that do not inadvertently keep the system in place for all of us, and keep all of us accountable. In all of these cases, we would check our aspirations against the aspirations of other communities to ensure that our model of liberation does not become the model of oppression for others"²⁰² ("Heteropatriarchy and the Three Pillars of White Supremacy: Rethinking Women of Color Organizing," *Color of Violence: The INCITE! Anthology, INCITE! Women of Color Against Violence*, (South End Press, 2006), 69).
- ²⁰³ Albert Memmi, *The Colonizer and the Colonized* [1957] Beacon Paperback, (Boston: Beacon Press, 1965).
- ²⁰⁴ Alyosha Goldstein, "Where the Nation Takes Place: Proprietary Regimes, Antistatism and U.S. Settler Colonialism," Eds. Alyosha Goldstein and Alex Lubin, *Special Edition, The South Atlantic Quarterly* 107:4 (Fall 2008), 677.
- ²⁰⁵ This is the teaching of the Onakinakewin as told to me by Toby Decoursay on multiple occasions.
- ²⁰⁶ Morrison, "Algonquin History in the Ottawa River Watershed," *Cultural Heritage Edition*, 20.
- ²⁰⁷ James Morrison, "Algonquin History in the Ottawa River Watershed," Prepared for Sicani Research and Advisory Services, Ottawa, ON, November 28, 2005, 2.
- ²⁰⁸ Ojibway, Ottawa and Salteaux belong to the Middle Tier, which is defined by linguists as a single language with mutually-understandable dialects. See: Voegelin and Voegelin, "Linguistic Considerations of Northeastern North America," in *Man in Northeastern North America, Papers of the Robert S. Peabody Foundation for Archaeology* 3, 1946), 178-194.
- ²⁰⁹ James Morrison, "Algonquin History in the Ottawa River Watershed," Prepared for Sicani Research and Advisory Services, Ottawa, ON, November 28, 2005, [Omamiwinini Pimadjwovin *Cultural Heritage Edition*, accessed July 12, 2010, www.thealgonquinway.ca/pdf/algonquin-history.pdf], 24.
- ²¹⁰ Morrison, "Algonquin History in the Ottawa River Watershed," *Cultural Heritage Edition*, 2.
- ²¹¹ Morrison, "Algonquin History in the Ottawa River Watershed," *Cultural Heritage Edition*, 24. Thanks are also due here to Sue Roark Calnek for interpreting for me the connotations of these French designations.
- ²¹² Morrison, "Algonquin History in the Ottawa River Watershed," *Cultural Heritage Edition*, 24.
- ²¹³ Michel Thusky, in discussion with author, Telephone, May 28, 2012.
- ²¹⁴ See, R. v. Marshall [1999] 3 S.C.R. 456.
- ²¹⁵ Norman Matchewan, in discussion with the author, July 13, 2010, Barriere Lake.
- ²¹⁶ Peter Douglas Elias, *Socio-Economic Profile of the Algonquins of Barriere Lake*, January 1996 (Revised August 2002), Prepared for the Algonquin Nation Secretariat.
- ²¹⁷ Elias, *Socio-Economic Profile*, 10.
- ²¹⁸ Toby Decoursay, in discussion with the author, July 13, 2010, Barriere Lake.
- ²¹⁹ Morrison, "Algonquin History in the Ottawa River Watershed," *Cultural Heritage Edition*, 28.
- ²²⁰ James Morrison, "Report on Treaties of 1760 to 1764," Prepared for the Algonquin Nation Secretariat, March 2006.
- ²²¹ Morrison, "Report on Treaties of 1760 to 1764."
- ²²² John Borrows, "Wampum at Niagara: The Royal Proclamation, Canadian Legal History, and Self-Government," in *Aboriginal and Treaty Rights in Canada: Essays on Law, Equality, and Respect for Difference* (Vancouver: UBC Press, 1997).
- ²²³ Borrows, "Wampum at Niagara."
- ²²⁴ Borrows, "Wampum at Niagara."

²²⁵ Russell Diabo, in discussion with author, November 12, 2011. His points build from Article XL of the Articles of Capitulation, which reads as follows: “The savages of Indian allies of his most Christian Majesty, shall be maintained in the lands they inhabit, if they chuse to remain there; they shall not be molested on any pretence whatsoever, for having carried arms, and served his most Christian Majesty; they shall have, as well as the French, liberty of religion, and shall keep their missionaries. The actual Vicars, General, and the Bishop, when the Episcopal See shall be filled, shall have leave to send to them new missionaries when they shall judge it necessary” (*emphasis added*).

²²⁶ Dickason, *Canada's First Nations*, 78.

²²⁷ Canadian Broadcasting Corporation (CBC), First Ministers Conference, television broadcast, March 1987.

²²⁸ Cole Harris, “How Did Colonialism Dispossess? Comments from an Edge of Empire,” *Annals of the Association of American Geographers*, 94, no. 1 ((2004), 165-182.

²²⁹ Nicholas Brown, “Denaturalizing Accumulation by Dispossession in the Alberta/Montana Borderlands,” Presentation at the Native American and Indigenous Studies Association, June 4, 2012.

²³⁰ Giovanni Arrighi, Nicole Aschoff and Ben Scully, “Accumulation by Dispossession and its Limits: The Southern African Paradigm Revisited,” *Studies in Comparative International Development*, 2010, 45:4, 410-438; Gillian Hart, *Disabling Globalization: Places of Power in Post-Apartheid South Africa*, (Berkeley; Los Angeles: University of California Press, 2002).

²³¹ David Harvey, “The ‘New’ Imperialism: On Spatio-Temporal Fixes and Accumulation by Dispossession,” *The Socialist Register*, 2004, 63–87.

²³² Karl Marx, *Capital*, Vol. 1, trans, S. Moore and E. Aveling, Moscow, 1954, In David McLellan, ed. *Karl Marx: Selected Writings*, (Oxford; New York: Oxford University Press, Second Edition, 2000), 522.

²³³ Roughly speaking, two schools of thought have developed regarding the historical role of primitive accumulation. Massimo de Angelis calls one the “historical primitive accumulation” or so-called “Lenin camp” that theorizes primitive accumulation as prior to the emergence of capitalism, and the other, the “inherent-continuous primitive accumulation” or so-called “Luxemburg camp,” referring to Rosa Luxemburg’s theorization that the expansion of production relies on ongoing dependence on *non-capitalist spaces*, “as a market for its surplus values, as a source of supply for its means of production and a reservoir of labour for its wage system” (Massimo de Angelis, “Marx’s Theory of Primitive Accumulation: A Suggested Reinterpretation,” University of London, March 1999, accessed on July 11, 2012, <http://http://homepages.uel.ac.uk/M.DeAngelis/PRIMACCA.htm>) The genealogy of the latter scholarship is more germane to my current project of settler colonialism, exemplified by Michael Perelman’s *The Invention of Capitalism: Classical Political Economy and the Secret History of Primitive Accumulation* (Durham, NC: Duke University Press, 2000).

²³⁴ Perelman, *The Invention of Capitalism*.

²³⁵ Karl Marx, *Capital*, Vol. 1, trans, S. Moore and E. Aveling, Moscow, 1954, In David McLellan, ed. *Karl Marx: Selected Writings*, (Oxford; New York: Oxford University Press, Second Edition, 2000), 525.

²³⁶ Kevin B. Anderson, *Marx at the Margins: On Nationalism, Ethnicity, and Non-Western Societies*, (Chicago; London: University of Chicago Press, 2010), 242.

²³⁷ For example, Anderson writes that “In his studies of India, Algeria, and Latin America, Marx discerned the persistence of communal forms in the face of attempts by Western colonialism to destroy them in favor of private property forms,” noting that in cases such as Algeria, “these communal forms were tied directly to anticolonial resistance” (Anderson, *Marx at the Margins*, 242).

²³⁸ Wolfe, “Settler Colonialism,” 38.

²³⁹ As noted in supra note 233, Massimo de Angelis calls this interpretation of primitive accumulation the “inherent-continuous primitive accumulation” or so-called “Luxemburg camp” (“Marx’s Theory of Primitive Accumulation: A Suggested Reinterpretation,” University of London, March 1999). In Rosa Luxemburg’s *The Accumulation of Capital* [1913], she critiques Marx’s consistent and deliberate premise in all three Volumes of *Capital* that there are no classes other than capitalists and workers fulfilling the laws of capitalist accumulation. Illustrating the difference between simple and aggregate capitalism, Luxemburg saw that a share of surplus value had to be reinvested in the expansion of production. In a word, she *spatialized* the dialectic, theorizing that the expansion of production relies on *non-capitalist spaces*, “as a market for its surplus values, as a source of supply for its means of production and a reservoir of labour for its wage system” (London; New York: Routledge, 2003 edition, 348-349). As David Harvey explains, colonial policy, international trade, and war are the predominant methods of relations that Luxemburg

identifies between capitalist and non-capitalist societies (“The ‘New’ Imperialism,” 63–87). Luxemburg sees this international division of labour between capitalist and non-capitalist societies as organically linked to accumulation by the commodity market. In other words, the expansionary tendency of capitalism – which included processes of primitive accumulation – was crucial to ongoing social reproduction. Others who have taken up this “inherent-continuous primitive accumulation” theory include Maria Mies, who argues that feminists have long been calling attention to “extra-economic” means of accumulation as fundamental to capitalism (*Patriarchy and Accumulation on a World Scale*. New York: Zed Books, 1998) and Jim Glassman, who argues that capitalism does not seek full proletarianization, but rather capitalist accumulation and circulation today produces a deeply complex global geography of struggle (“Primitive Accumulation, accumulation by dispossession, accumulation by ‘extra-economic’ means,” *Progress in Human Geography* 30.5 (2006): 608 – 625).

²⁴⁰ Frances Abele and Daiva Stasiulis, “Canada as a ‘White Settler Colony’: What about Natives and Immigrants,” *The New Canadian Political Economy*, Clement, Wallace and Glen Williams, Eds. (McGill-Queen’s University: Kingston, Montreal, London, 1989), 253.

²⁴¹ Morrison, “Report on Treaties of 1760 to 1764,” 105. Morrison attributes the likelihood of Barriere Lake having participated in the War of 1812 to the fact that their immediate neighbours at *Kitcisakik* certainly had. The community possesses a medal that is also reported to have been gained through participation in this war.

²⁴² Morrison, “Report on Treaties of 1760 to 1764,” 106.

²⁴³ Rebecca Aird, “Alienation of Traditional Lands Through Conflicting Uses,” Report for the Algonquins of Barriere Lake, 1990, 1.

²⁴⁴ Peter Di Gangi, “Algonquins of Barriere Lake: Man-Made Impacts on the Community and Fish & Wildlife, 1870-1979,” Prepared for the Algonquins of Barriere Lake, March 2003, 6. On the point of epidemics, Di Gangi focuses on the 1880s, citing the following archival sources: NA RG10 Volume 2119 File 22, 639 Reel C-11 – Maniwaki Reserve – Outbreak of Smallpox (1880-1885): Logue to DSGIA, 10 August 1880 (RN 7966). NA RG10 Vol. 2402 File 83, 709 Reel C-11, 215 – Maniwaki Agency 0 Correspondence regarding Dr. Joseph Comeau, Physician to the River Desert band (1888-1890): Martin to SGIA, 25 February 1888 (RN 8311). Canada, Annual Report of the Dept of Indian Affairs for the Year ended 31st December, 1889 (Ottawa: Brown Chamberlin, Queen’s Printer, 1890): Part 1, pp/ 34-35: James Martin to SGIA, 15 August 1889 (RN 4837). NA RG10 Volume 2511 File 105,670, Reel C-11,232 – River Desert Agency – Request of the Chiefs of the River Desert Band for a grant or loan of \$500 to pay debts incurred through sickness and death caused by various diseases during the past year (1890): Petition from Maniwaki Chiefs to Indian Affairs, 29 April 1890 (RN 7979).

²⁴⁵ Elias, *Socio-Economic Profile*, 18.

²⁴⁶ Peter Di Gangi investigated contributions of the Ottawa Valley to the provincial treasury during this period. He examined Quebec’s first statistical handbook, published in 1913, which, he reports, “split the province into fourteen regions for the purposes of managing the timber harvest. Two of those regions were the ‘Upper Ottawa’ and the ‘Lower Ottawa.’ Between 1870 and 1913, the Upper Ottawa generated \$16,762,745.00 in provincial government revenues - 48.5% of the total. In the same period timber harvesting on the Lower Ottawa contributed \$3,624,026.00 to provincial coffers - 10.5% of the total. Together, then, these two regions generated 59% of Quebec’s revenues from timber for the period 1870-1913,” (“Man-Made Impacts,” 4). According to William Ryan, wood products were in third place among Quebec manufacturing industries between 1870 to 1900, foregrounding how definitively Barriere Lake lands underwrote a significant segment of Quebec’s industrial development (*The Clergy and Economic Growth in Quebec (1896-1914)*, (Quebec City: Presses de l’Université Laval, 1966)).

²⁴⁷ Paul-André Linteau, René Durocher, and Jean-Claude Robert. *Quebec: A History, 1867-1929* (James Lorimer & Company, Toronto, 1983), 111.

²⁴⁸ Di Gangi, “Man-Made Impacts,” 5.

²⁴⁹ Linteau, Durocher, Robert, *Quebec*, 114.

²⁵⁰ Linteau, Durocher, Robert, *Quebec*, 115.

²⁵¹ Leigh Ogston, “Algonquins of Barriere Lake Historical Report,” Prepared for the Algonquins of Barriere Lake, November 1987. At page 167 she cites Anastase Roi, *Maniwake et al vallee de la Gatineau* (Ottawa: Presses du ‘droit’, 1933), 65.

²⁵² Roi, *Maniwake*, 171.

²⁵³ DIA District Manager to Secretary, "Flooding at Barriere," Letter, File 373/30-22-0, Vol. 1, Hudson's Bay Company, North Bay, ON, August 22, 1929.

²⁵⁴ Di Gangi, "Man-Made Impacts," 19. He cites John A. Dales, *Hydroelectricity and Industrial Development in Quebec, 1890-1940* (Harvard University Press, 1957), 147-148.

²⁵⁵ Ontario Ministry of Natural Resources, Peterborough, Land Files, Report, File 89405, "Diversion of Waters from the Ottawa River watershed to the Gatineau River watershed, County of Pontiac," Quebec, 1932, 1.

²⁵⁶ In December 1940, Quebec set aside this corridor through an Order-in-Council, designating the 10-mile strip as a "tourist reserve." This move led to bitter complaints, not only by Barriere Lake, but by the Algonquins of Lac Simon and Grand Lac. See: National Archives Canada, RG10 Vol.6751 File 420-10X Pt.3, Reel C-8106: Quebec Game Laws – Correspondence & reports re: Abitibi & Grand Lake Indian Hunting Preserves, 1938-1940. Reel C-8106-8207: Chief Nicholas Papatie, Grand Lac, to Indian Affairs, 21 August 1940 (RN 1842).

²⁵⁷ Chief Makakos was sent word they were forbidden from hunting or fishing within 10 miles of the new highway due to its designation as a tourist showcase and to help recoup costs of the highway (Di Gangi, "Man-Made Impacts"). Makokos also complained the settlers were establishing campgrounds without consultation and without any consideration of his members' prior use of those sites.

²⁵⁸ Department of Indian Affairs, Public Archives Canada, Hugh Conn, Grand Lake Victoria Indian Hunting System, 1942 Annual Report, RG 10, Volume 6751, file 420-10x 5.

²⁵⁹ National Archives Canada, RG10 Vol.6752 File 420-10-1 Reel C-8107: Report on Fur Conservation Projects in the Province of Quebec & maps by Hugh Conn, circa 1943 (RN 3790).

²⁶⁰ NAC, Report on Fur Conservation Projects in the Province of Quebec & maps by Hugh Conn, circa 1943.

²⁶¹ NAC, RG10 Vol.6752 File 420-10-1-3 Reel C-8107: Third Annual Report on Grand Lac Victoria Indian Hunting Reserve, 1943 (RN 3789).

²⁶² Peter J. Usher and N.D. Bankes, *Property: The Basis of Inuit Hunting Rights*, (Inuit Committee on National Issues, 1996), 5.

²⁶³ Di Gangi sites at length from Rene Levesque's patrol diary from 1947 ("Man-Made Impacts, 24).

²⁶⁴ Di Gangi reports that "As late as 1949 they were told by Indian Agent Baker of Maniwaki that if they did not 'make their maps' they would be 'considered as poachers and if they did not act like the others they would soon be punished for trapping illegally.'" Later that year, departmental officials reported that in 1949 the Barriere Indians "rejoined the others and seems satisfied with their results" ("Man-Made Impacts," 26 and 29).

²⁶⁵ See: DIAND QRO File 373-23-4 Vol.2 – Report & returns, Superintendent's Semi-annual Reports, Maniwaki Indian Agency (11/57-12/67): Semi-annual report from Lorenzo Leclair, Superintendent, Maniwaki Indian Agency, 30 November 1957 (RN 10288); DIAND QRO File 373-23-4 Vol.2 – Report & returns, Superintendent's Semi-annual Reports, Maniwaki Indian Agency (11/57-12/67): Report of June 5 1961 (RN 10722); DIAND QRO File 373-23-4 Vol.2 – Report & returns, Superintendent's Semi-annual Reports, Maniwaki Indian Agency (11/57-12/67): Semi Annual report, 28 March 1967 (RN 10722).

²⁶⁶ Father Renaud, Director General of the Commission des oeuvres Indiennes et Esquimaudes des Peres Oblats (COOIE) was involved on behalf of the Oblates to get land set aside for the Barriere Lake reserve. Leigh Ogston interviewed him on the process: "No one thought about consulting the Indians there in those days. It was just a matter between the different governments. The Chiefs just wanted houses and couldn't understand why they weren't getting them. They did not understand the complicated politics going on between the federal and provincial governments" ("Algonquins of Barriere Lake Historical Report," unpaginated document).

²⁶⁷ QRO File 373-3-8-22 Vol. 1 – Complaints & Petitions, Barriere Lake, Caughnawaga District (3/70 – 4/71): memo to file from CT Blouin, Indian Affairs, March 1970 (RN 10295).

²⁶⁸ QRO File 373-3-8-22 Vol. 1 – Complaints & Petitions, Barriere Lake, Caughnawaga District (3/70 – 4/71): memo to file from CT Blouin, Indian Affairs, March 1970 (RN 10295).

²⁶⁹ DIAND File 373/30-22-0, Vol. 1., J. Edouard Guay to Department of Mines and Resources, Indian Affairs Branch, October 26 1945: "The Lands and Forests Act (section 67, chapter 93, R.S.Q. 1941) gives authority to the Lieutenant-Governor in Council to 'reserve and set apart, for the benefit of the various Indian tribes of the Province of Quebec, the usufruct of public lands described, surveyed and classified for

such purpose by the Minister of Lands and Forests.’ Said usufruct may be ‘transferred gratuitously... to the Government of Canada to be administered by it in trust for the said Indian tribes.’”

²⁷⁰ Chamber of the Executive Council, Quebec, Order-in-Council No. 1895, September 7, 1961.

²⁷¹ DIAND QRO File 373/3-7-22 Vol. 1 – Band Management, General, Barriere Lake Band, Montreal District (July 1964-March 1977): Report on a meeting with Indian Affairs at Rapid Lake, 20 October 1970, prepared by Kermot Moore (RN 7990).

²⁷² DIAND File E5430-31/0-Vol. 1: Joint BCR No. 1 1b re: hunting rights in Grand Lac Preserve, 11 April 1979 (RN 3340).

²⁷³ Toby Decoursay, in discussion with author, July 23 2009, Barriere Lake.

²⁷⁴ Diabo, discussion, November 2011.

²⁷⁵ Decoursay, discussion, July 23 2009.

²⁷⁶ Abele and Stasiulis, “Canada as a ‘White Settler Colony.’”

²⁷⁷ Abele and Stasiulis, “Canada as a ‘White Settler Colony,’” 253-4.

²⁷⁸ Leo Panitch, “Dependency and Class in Canadian Political Economy,” *Special Issue: Rethinking Canadian Political Economy, Studies in Political Economy* 6 (Autumn 1981): 16, *emphasis added*.

²⁷⁹ Brian Titley, *A Narrow Vision: Duncan Campbell Scott and the Administration of the Indian Act*, (Vancouver: University of British Columbia Press, 1986).

²⁸⁰ Abele and Stasiulis, “Canada as a ‘White Settler Colony,’” 256.

²⁸¹ George Manuel and Michael Posluns, *The Fourth World: An Indian Reality*, (Collier-Macmillan Canada, Ltd. Ontario; New York, 1974), 41.

²⁸² See the affidavit of Patrick Wabamoose at 7 in the Motion for Provisional Interlocutory Injunction Motion for Interlocutory Injunction for a Permanent Injunction and Declaration, Applicant: Jean-Maurice Matchewan, March 30, 1990; see also line 11 of the Motion.

²⁸³ Diabo, discussion, November 2011.

²⁸⁴ Jean Maurice Matchewan, in discussion with the author, February 18, 2009, Rapid Lake Reserve.

²⁸⁵ Diabo, discussion, November 2011.

²⁸⁶ Diabo, discussion, November 2011.

²⁸⁷ Jean Maurice Matchewan (former customary Chief, Barriere Lake), in discussion with author, February 18, 2009, Rapid Lake Reserve.

²⁸⁸ Rebecca Aird. “Quebec’s New Forestry Policy: Its Implications for the Algonquins of Barriere Lake and for Nature and Wildlife Conservation in Quebec.” Presentation to the Annual Meeting of the Canadian Parks and Wilderness Society, October 1988, 4.

²⁸⁹ Aird, “Quebec’s New Forestry Policy,” 6.

²⁹⁰ Aird, “Quebec’s New Forestry Policy,” 13-14, *emphasis added*.

²⁹¹ Aird, “Quebec’s New Forestry Policy,” 14.

²⁹² Aird, “Quebec’s New Forestry Policy,” 14.

²⁹³ Mike Blanchfield, “Indians blocks Hwy. 117 to protest building of power line on reserve,” *Ottawa Citizen*, Thursday July 28, 1988.

²⁹⁴ Sarah Cox, “Natives leave island protest,” *Ottawa Citizen*, September 23, 1988.

²⁹⁵ Mike Blanchfield, “Indians blocks Hwy. 117.”

²⁹⁶ Anne Tolson, “Native occupy island to protest land use,” *Ottawa Citizen*, September 20, 1998.

²⁹⁷ Cox, “Natives leave island protest.”

²⁹⁸ Pat Bell and Charles Lewis, “Mounties throw camping Natives off Hill,” *Ottawa Citizen*, September 29, 1988.

²⁹⁹ Diabo, discussion, November 2011.

³⁰⁰ Bell and Lewis, “Mounties throw camping Natives off Hill.”

³⁰¹ Bell and Lewis, “Mounties throw camping Natives off Hill.”

³⁰² Algonquins of Barriere Lake, “Barriere Lake Algonquins Angered by Superior Court Decision,” Press Release, April 10, 1990, Ottawa.

³⁰³ ABL, “Barriere Lake Algonquins Angered by Superior Court Decision.”

³⁰⁴ Clifford Lincoln (former Special Representative to the Algonquins of Barriere Lake), email communication with the author, May 8 2011.

³⁰⁵ “Barriere Lake: Algonquins vow to continue blockade of logging roads,” *The Ottawa Citizen*, 17 August 1990.

³⁰⁶ Diabo, discussion, November 2011.

³⁰⁷ Personal communication between Ellen Gabriel (spokesperson for the Mohawks during the reclamation) and journalist Martin Lucaks, Amnesty International Annual General Meeting, September 2008, as conveyed to the author by Lucaks on June 10, 2010.

³⁰⁸ Janis Hass, "Discontent will spread, Indians say," *The Ottawa Citizen*, 15 July 1990. Hass quotes Barriere Lake's lawyer stating that "[t]he federal government) is provoking an Indian war. And I'm not just talking about Mohawks. They're provoking all native people across Canada to stand united." The article reports that a contingent from Barriere Lake, including Chief Matchewan, was barred from entering Oka. In a letter to Quebec Premier Robert Bourassa, Matchewan issued the following warning: "We ask you to believe us when we say that you are making a terrible mistake in confronting the Mohawks in their legitimate demands and that you and your government will be sorry... We will show no less determination in defending ourselves than the Mohawks of Kanesatake have shown."

³⁰⁹ "Algonquin Indians end road blockade," [FIN Edition] *Toronto Star*, 21 Aug 1990: A11.

³¹⁰ Rhoda Metcalfe, "Quebec offers Barriere Lake natives plan for wildlife reserve," *Ottawa Citizen*, Sept 6 1990.

³¹¹ Metcalfe, "Quebec offers Barriere Lake natives plan for wildlife reserve."

³¹² Metcalfe, "Quebec offers Barriere Lake natives plan for wildlife reserve."

³¹³ Metcalfe, "Quebec offers Barriere Lake natives plan for wildlife reserve."

³¹⁴ Rhoda Metcalfe, "Algonquins give logger tentative approval to cut wood on reserve," *Ottawa Citizen*, Sept 21, 1990

³¹⁵ Metcalfe, "Algonquins give logger tentative approval to cut wood on reserve."

³¹⁶ Rhoda Metcalfe, "Ciaccia to take Algonquin case to Quebec cabinet," *Ottawa Citizen*, August 22, 1991.

³¹⁷ Metcalfe, "Ciaccia to take Algonquin case to Quebec cabinet."

³¹⁸ Metcalfe, "Ciaccia to take Algonquin case to Quebec cabinet."

³¹⁹ Rhoda Metcalfe, "Lumberman willing to negotiate with Indians," *Ottawa Citizen*, August 27, 1991.

³²⁰ David Nahwagahbow, personal communication with author, July 8, 2013.

³²¹ Minister of Supply and Services Canada, "Enhancing the Forests of Indian Lands: Forest Management Program of Indian Lands," Forestry Canada, 1989. However, no methodology is provided for arriving at this figure.

³²² Minister of Supply and Services Canada, "Enhancing the Forests of Indian Lands."

³²³ Secretariat of the Assembly of the First Nations of Quebec and Labrador, "The Occupation of Forest Land in Quebec and the Constitution of Forest Management Corporations," Presented to the Commission de l'économie et du travail, October 22, 2008, p.7.

³²⁴ Prior to the 1990 Barriere Lake blockades, Prime Minister Brian Mulroney brought the First Ministers back to the table to deal with the outstanding issue of Quebec's exclusion from the Constitution Act, 1982. Indigenous peoples had not opposed recognition of Quebec as a distinct society in the Meech Lake Accord, but it only served to amplify their own lack of distinct status within the Canadian state. Provincial legislatures had to unanimously ratify the Meech Lake Accord, but in the Manitoba legislature, Elijah Harper, an Oji-Cree from Red Sucker Lake and the only Indigenous member of the Manitoba legislature, managed to delay the vote, forcing the accord to fail on the grounds of time expiration. The Meech Lake ratification vote came on the heels of three years of failed First Ministers' Conferences, promising to develop self-governance provisions extending from rights enshrined, but not defined, in the Constitution Act of 1982. By the third in a series of meetings between Indigenous leaders and provincial authorities in 1997, state commitments were weak and clearly half-hearted. It was in this context that Quebec was granted distinction and special authority within the Meech Lake constitutional talks and Harper lay down his feather (Dickason, *Canada's First Nations*, 409).

³²⁵ Jean Maurice Matchewan, "Presentation of the Committee to Examine Matters Relating to the Accession of Quebec to Sovereignty," Quebec City, Quebec, February 4, 1992.

³²⁶ Metcalfe, "Ciaccia to take Algonquin case to Quebec cabinet."

³²⁷ The exact sum derived is \$56, 534, 540 (Cogesult, Quantification de la valeur économique des industries de la forêt, du tourisme, des loisirs et des autres industries et activités dans la région de l'Outaouais et le secteur couvert par l'entente trilatérale, Rapport Final," Mars 1996, ix).

³²⁸ This estimate was provided in a commissioned study by consulting firm Ottawa Engineering for Barriere Lake, 1993.

³²⁹ Cogesult, Quantification de la valeur économique des industries, ix.

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- ³³⁰ Sylvia Massicotte and Gilles Carpentier, "Principal economic indicators for the Quebec forestry sector – Presentations and analysis," Forestry Canada: Quebec Region, Information Report LAU-X-104E, 1993.
- ³³¹ McLaren, C. "Wonders of the Unknown Woods: Saving the Boreal Forest," *Equinox* 53 (September/October 1990): 51.
- ³³² Robert Beauregard and Luc Bouthillier, "Crisis in the Quebec forest industry: problems and possible solutions," *The Forestry Chronicle* 69.4 (August 1993): 406-408.
- ³³³ Beauregard and Bouthillier, "Crisis in the Quebec forest industry," 407.
- ³³⁴ Beauregard and Bouthillier, "Crisis in the Quebec forest industry," 407.
- ³³⁵ Glen S. Coulthard, "Subjects of Empire: Indigenous Peoples and the 'Politics of Recognition' in Canada," *Contemporary Political Theory* 6 (2007): 439.
- ³³⁶ United Nations Convention on Biological Diversity, September 30, 1997. The UNCBD statement was issued in response to a 1995 presentation made by Jean Maurice Matchewan at an inter-sessional meeting on Indigenous Peoples (Russell Diabo, in discussion with author, November 2011).
- ³³⁷ Claudia Notzke, "The Barriere Lake Trilateral Agreement," A Report Prepared for the Royal Commission on Aboriginal Peoples – Land, Resource and Environment Regimes Project, (Barriere Lake Indian Government - October 1995) 21.
- ³³⁸ Notzke, "The Barriere Lake Trilateral Agreement," 21.
- ³³⁹ For further critical reading on co-management arrangements between Canada, the provinces, territories and First Nations, see Paul Nadasdy's account of how the broader political context of co-management between Indigenous people and state bureaucrats perpetuates unequal power relations ("The Case of the Missing Sheep: Time, Space, and the Politics of 'Trust' in Co-Management Practice," *Traditional Ecological Knowledge and Natural Resource Management*, Charles R. Menzies, ed. Lincoln; London: University of Nebraska Press, 2006, 127-151); see Harvey A. Feit for a brilliant illustration of the ways in which state jurisdiction came to be exercised over the James Bay Cree through co-management conservation schemes that sought to complete Canada's unfinished sovereignty claims in the north ("Recognizing Co-management as Co-governance: Visions and Histories of Conservation at James Bay," *Anthropologica*; 2005; 47, 2); see Nancy Peluso, who shows how co-management conservation ideology has been used as an excuse for states to justify coercion against local populations ("Coercive Conservation?..." in *Global Environmental Change* 3.2 (1993): 199-218); and finally, see Roderick Neumann, who suggests that many "community-friendly" forms of conservation are closely linked to forms of disciplinary power ("Disciplining Peasants in Tanzania," *Violent Environments*, Peluso and Watt, eds. Ithaca, New York: Cornell University Press, 2001).
- ³⁴⁰ The Honourable Rejean F. Paul, "Mediation Report," Longueuil, September 14, 1992.
- ³⁴¹ Paul, "Mediation Report," 1992, 4.
- ³⁴² See, respectively, Scott Nickels, "Importance of Experiential Context for Understanding Indigenous Ecological Knowledge: The Algonquins of Barriere Lake, Quebec." Dissertation. Department of Geography, McGill University, Montreal November, 1999 and Elias, *Socio-Economic Profile of the Algonquins of Barriere Lake*.
- ³⁴³ Canada, Quebec, Algonquins of Barriere Lake, "The Trilateral Agreement," August 22, 1991, 2.
- ³⁴⁴ Algonquins of Barriere Lake, "Declaration and Petition," November 26, 1992. See also, Clifford Lincoln (Special Representative, ABL) to Andre Lafond (Special Representative, Quebec), February 6, 1992. In this letter, Lincoln holds Lafond to account for breach of sensitive area zones, despite repeated requests for an ABL monitoring role to be accepted. He also cites the fact that the volume of cut allowed for as per their agreement with ABL was exceeded by Quebec. Lincoln urges mediation by Judge Paul to move forward. According to Lincoln's letter, in response to these concerns, Quebec repeatedly pleads that they cannot circumvent their own laws.
- ³⁴⁵ Clifford Lincoln (Special Representative, ABL) to Secrétaire general associé, Secretariat aux Affaires autochtones, Letter, March 22, 1992.
- ³⁴⁶ Clifford Lincoln (Special Representative, ABL) to André Lafond, February 11, 1992.
- ³⁴⁷ Christos Sirros (Quebec Minister Indian Affairs) to Jean Maurice Matchewan (Chief, ABL), June 22, 1992.
- ³⁴⁸ Jean Maurice Matchewan (Chief, ABL), to Christos Sirros (Quebec Minister Indian Affairs) July 2, 1992.
- ³⁴⁹ Matchewan to Sirros, July 2, 1992.
- ³⁵⁰ Matchewan to Sirros, July 2, 1992.

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- ³⁵¹ David Nahwegahbow (Acting Special Representative for Barriere Lake Algonquins) to Andre Lafond (Quebec Special Representative) and Frank Vieni (Canada Special Representative), April 21, 1992.
- ³⁵² A Funding Mechanism Document had been negotiated the previous year precisely to avoid such restrictive funding and financial roadblocks to accomplish critical tasks that was ignored.
- ³⁵³ Christos Sirros (Quebec Minister Indian Affairs) to Jean Maurice Matchewan (Chief, ABL), July 22, 1992.
- ³⁵⁴ In my conclusion, however, I discuss, how in 1987 Barriere Lake used non-tied contribution dollars under the CLC policy to undertake some of preliminary research and traditional land use mapping before the Trilateral Agreement was signed.
- ³⁵⁵ Paul, "Mediation Report," 1992, 8, *emphasis added*.
- ³⁵⁶ Boyce Richardson, in collaboration with Russell Diabo, "Canadian Hunters Fights for the Forest: The Algonquins Striving for Territory and Good Management," in *Forests for the Future: Local Strategies for Forest Protection, Economic Welfare and Social Justice*, ed. Paul Wolvekamp (Zed Books, 1999), 209.
- ³⁵⁷ Paul, "Mediation Report," 1992, 5.
- ³⁵⁸ Paul, "Mediation Report," 1992, 9-10.
- ³⁵⁹ Richardson and Diabo, "Canadian Hunters Fights for the Forest," 209.
- ³⁶⁰ Christos Sirros (Quebec Minister Indian Affairs) to Jean Maurice Matchewan (Chief, ABL), Letter, April 28, 2003.
- ³⁶¹ Francois Gagnon, title unknown, *Le Droit*, April 30, 1993 [translated from French].
- ³⁶² Gagnon, title unknown, April 1993.
- ³⁶³ Assembly of First Nations, Media Advisory, April 30, 1993, Ottawa, ON.
- ³⁶⁴ Notzke, "The Barriere Lake Trilateral Agreement," (1995) 2.
- ³⁶⁵ Richardson and Diabo, "Canadian Hunters Fights for the Forest," 210.
- ³⁶⁶ Cited in J.S. Milloy, "The Early Indian Acts: Development Strategies and Constitutional Change," in *Sweet Promises: A Reader on Indian-White Relations in Canada*, ed. J.R. Miller, (University of Toronto Press: Toronto, London, Buffalo, 1991), SUPRANOTE 27, NA, RG 10, vol. 239, part 1, Rev. T. Hurlbert to R.J. Pennefather, 22 Dec. 1867. Milloy writes that "Hurlbert's letter also brings forward the department's solution" (153).
- ³⁶⁷ The full name of the Act is *An Act for the gradual enfranchisement of Indians, the better management of Indian affairs, and to extend the provisions of the Act 13th Victoria, Chapter 42*.
- ³⁶⁸ Milloy, "The Early Indian Acts," 150-151.
- ³⁶⁹ Diabo, discussion, November 2011.
- ³⁷⁰ Joseph Junior Wawatie (spokesperson for Provisional Government) to Guy McKenzie (Director General, Indian Affairs Canada), Letter, April 20, 1994.
- ³⁷¹ Jérôme Lapierre (Associate Director General, Indian and Northern Affairs Canada) to Joseph Junior Wawatie (spokesperson for Provisional Government), April 25, 1994.
- ³⁷² Ronald Irwin (Minister of Indian and Northern Affairs Canada) to Joseph Junior Wawatie (spokesperson for Provisional Government), April 30, 1994.
- ³⁷³ A recent Senate Standing Committee Report on First Nations governance lays out the legalities of customary bands. To avoid confusion here, it is helpful to point to a distinction the Senate report makes between two separate legal categories of custom bands. The first kind pertains to Barriere Lake – a band that has never been governed under the Indian Act election provisions – and the second kind pertains to bands that were once under the Indian Act election process, but then "reverted" to custom by meeting requirements of federal policy under the *Conversion to Community Election System Policy*. In the first case, bands are not governed under the regulatory oversight of the Department of Indian Affairs, whereas in the latter case, under the conversion to custom policy, bands' election protocols are considerably shaped by Department rules. See: Senate Standing Committee on Aboriginal Peoples, "First Nations Elections: The Choice is Inherently Theirs," *Report of the Standing Senate Committee on Aboriginal Peoples*, May 2010.
- ³⁷⁴ See, for example: Denis Chatain (Director General Quebec, Indian and Northern Affairs) to Chief and Councillors at Barriere Lake, Letter, December 22, 1994 or Gregor MacIntosh (Direct General, Registration, Revenues and Band Governance, Indian and Northern Affairs) to the Algonquins of Barriere Lake, Letter, November 4, 1994.
- ³⁷⁵ Charlie Angus, "Algonquins of Barriere Lake: Against All Odds," *Highgrader Magazine*, November/December 2001.

³⁷⁶ Barriere Lake Indian Government, “Press Release: SQ Keeps Harassing Rapid Lake Community,” October 27, 1994.

³⁷⁷ Barriere Lake, “SQ Keeps Harassing Rapid Lake Community.”

³⁷⁸ Angus, “Algonquins of Barriere Lake.”

³⁷⁹ Angus, “Algonquins of Barriere Lake.”

³⁸⁰ Carrie Buchanan, “Barriere Lake: Reserve grapples with report of abuse; Counsellors sent to aid young victims,” *The Ottawa Citizen* [Ottawa, ON] May 5, 1995: C.7, Final edition.

³⁸¹ Mike Shahin, “Analysis: Indifference, politics hinder reserve’s effort to heal wounds of child sex abuse; Report recommends Barriere Lake Algonquin use healing circles, not imprisonment,” *The Ottawa Citizen* [Ottawa, ON] December 19, 1995: B.1, Final edition.

³⁸² Shahin, “Analysis,” *Ottawa Citizen*.

³⁸³ Shahin, “Analysis,” *Ottawa Citizen*.

³⁸⁴ I would hasten to add here that this would not be the first incident of a settler colonial government using sexual abuse allegations for political purposes against Indigenous peoples. In 2007, in the Northern Territory of Australia, the Board of Inquiry into the Protection of Aboriginal Children from Sexual Abuse produced a report called “*Ampe Akelyernemane Meke Mekarle*, Little Children are Sacred.” The report, which alleged an unsafe and failed Indigenous society for women and children, prompted the Australian Government to launch the Northern Territory National Emergency Response, 2007. The suite of legislation included the *Northern Territory National Emergency Response Act 2007*, the *Families, Community Services and Indigenous Affairs (Northern Territory Emergency Response and Other Measures) Act 2007* and the *Social Security and Other Legislation Amendment (Welfare Payment Reform) Act 2007*, which were collectively referred to as the “NTER legislation.” This emergency response warranted “separate legal measures and administration” because a state of “juridical exceptionalism” was deemed necessary to deal with Aborigines (e.g. the *Racial Discrimination Act 1975* was suspended and criminal courts were banned from taking into account cultural consideration for Aborigine offenders) (Peter Billings, “Juridical Exceptionalism in Australian Law, Nostalgia and the Exclusion of ‘Others,’” *Griffith Law Review* 20.2 (2011): 279). As Peter Billings explains: “Perceived emergencies – broadly, border (in)security and physical (in)security – have resulted in the creation of legal spaces in which ‘Others’ are constituted within and without the juridical order by the sovereign: simultaneously subject to law’s commands and constraints while often beyond its protective reach.” (“Juridical Exceptionalism,” 272). The National Emergency Response has now been replaced by the Stronger Futures Policy, 2011.

³⁸⁵ David Nahwegahbow (Acting Special Representative for Barriere Lake Algonquins) to Gliberte Lavoie (Special Representative for Canada), Letter, October 31, 1994.

³⁸⁶ Department of Indian Affairs and Northern Development (DIAND), “Overview of the Situation at Barriere Lake,” Protected Security Classification, approved by Denis Chatain, (July 4, 1995), 4.

³⁸⁷ Interim Band Council (IBC) to Denis Chatain (Director General Quebec, Indian and Northern Affairs), Letter, (November 23, 1995).

³⁸⁸ DIAND, “Advice to Ministers,” January 1996.

³⁸⁹ Department of Indian Affairs and Northern Development (DIAND), Strategic Communication Planning, Communications Branch, “Advice to Minister: Former Barriere Lake Chief and Council Present Community Petition Supporting their Reinstatement,” (January 30, 1996); and, Department of Indian Affairs and Northern Development (DIAND), Strategic Communication Planning, Communications Branch, “Advice to Minister: Various Developments at Barriere Lake,” (January 30, 1996).

³⁹⁰ Two briefings – on December 20, 1995 and January 10, 1996, approved by Denis Chatain, the Regional Director General of the Quebec Region of INAC – reveal important new developments in the Department’s thinking. While in December, the issue posed in the ministerial briefing was, “Should [Department of Indian Affairs and Northern Development] DIAND recognize the results of the election petition of November 23, 1995, thereby confirming the choice of the new band council?” By January, they were asking: “How is DIAND Quebec Region, going to minimize impacts of its decision to recognize the interim Band Council as the legitimate Band Council of Barriere Lake?” (DIAND, Lands, Revenues and Trusts, “Recognition of New Council Elected According to Custom at Barriere Lake,” Internal file, Briefing, approved by Denis Chatain, December 20, 1995 and DIAND, Lands, Revenues and Trusts, “Recognition of New Council Elected According to Custom at Barriere Lake,” Internal file, Briefing, approved by Denis Chatain, January 10, 1996).

³⁹¹ DIAND, “Recognition of New Council,” Press Release, January 10, 1996, *emphasis added*.

³⁹² The Auditor-General included criticisms of the policy in her 2006 audit, noting that communities under third-party management have no way to dispute decisions made on their behalf; have no input in the selection of their managers; do not receive any actual training to develop management or finance skills; and have no recourse to any formal evaluations of the manager's work or an independent process to regain control over their finances. In addition, there is ample and discouraging evidence to support concerns that the policy has systematically abused the process to police First Nations bands with which it has disagreements. Barriere Lake features among these bands, but see also the case of Pikangikum First Nation in Manitoba and the Peigan Tribe, part of the Blackfoot Confederacy, in Alberta.

³⁹³ Martia Freeman, Director & General Counsel, A.L.S. and Ken Katz, Counsel, Administrative Legal Section and Ryan Rempel, Counsel, Administrative Law Section to Yves Cazelas, Counsel, DIAND Legal Services, "Algonquins of Barriere Lake – Request by "interim band council" for recognition," Memorandum, Protected: Solicitor-Client, December 1995.

³⁹⁴ Freeman and Katz, "Request by 'interim band council' for recognition," (DIAND Legal Services).

³⁹⁵ Jean Maurice Matchewan (Chief, ABL) to Ronald Irwin (Minister of Indian Affairs), Letter, January 29th, 1996. In this letter Matchewan writes that that community was prepared to hold a Referendum on community leadership "as per the January 14, 1996 Council Resolution we presented to you."

³⁹⁶ Barriere Lake Indian Government, "Response to the Department of Indian Affairs Document entitled 'Backgrounder.'" See also, Jean Maurice Matchewan (Chief, ABL) to David Nahwegahbow (ABL Legal Counsel), December 7, 1995, where Matchewan faxes 24 typed and signed statements of individuals who came into the band office to complain to Matchewan that they had no knowledge that their signatures were used for the IBC petition.

³⁹⁷ Jean Maurice Matchewan (Chief, ABL) to Ronald Irwin (Minister of Indian Affairs), January 29th, 1996.

³⁹⁸ David Nahwegahbow (ABL legal counsel) to Christos Sirros (Quebec Minister of Indian Affairs), Re: Algonquins of Barriere Lake, the Interim Band Council of Barriere Lake, et al, v. The Attorney General of Canada, et al, Federal Court of Canada, File No. T-2590-95, Letter, January 23, 1996.

³⁹⁹ *Mitchikanibikok Inik v. Michel Thusky* [1999] Federal Court of Canada, T-1761-98, at paras 5 and 6.

⁴⁰⁰ Jean Chrétien (Prime Minister of Canada) to Michel Gratton (Special Representative for Barriere Lake), August 29, 2002.

⁴⁰¹ Marc Perron, "Report by Special Ministerial Representative to the Algonquins of Barriere Lake," submitted to the Honourable Chuck Strahl, Minister of Indian and Northern Affairs Canada, December 20, 2007, 5, *emphasis added*. See also, Martin Lukacs, "Top Diplomat's Report to Minister Laid Out Strategy for Government Subversion of Algonquin Community," August 21, 2009, *Znet*, Accessed February 24, 2010: <<http://www.zcommunications.org/top-diplomat-s-report-to-minister-laid-out-strategy-for-government-subversion-of-algonquin-community-by-martin-lukacs>> and, Martin Lukacs, "Minister's Memo Exposes Motives for Removing Algonquin Chief," *Dominion Paper*, March 27, 2009, Accessed February 24, 2010: <<http://www.dominionpaper.ca/articles/2560>>

⁴⁰² Clifford Lincoln, in discussion with author, April 26 2011.

⁴⁰³ An originating Motion for Provisional Interlocutory Injunction, Interlocutory Injunction and Declaration, For Permanent Injunction was submitted to the Quebec Superior Court on April 5, 1994 by the Algonquins of Barriere Lake against Gerard Guay (No. 550-05-000492-945). A decision was rendered on May 9, 1994 by The Honourable Mr. Justice Jean-Pierre Plouffe, who granted the motion for provisional interlocutory injunction, determining that Gerard Guay could not represent the Provisional Government, could not come onto Barriere Lake territory, and must return all files, docs, and records belonging to the band.

⁴⁰⁴ Alex Roslin, "Long, cold days spent on the barricades," *Wind Speaker*, January 1, 1997.

⁴⁰⁵ Originating Notice of Motion, Federal Court of Canada, Trial Division, T-2590-95, Interim Band Council of the Algonquins of Barriere Lake, Lisa Chief, Henry Nottaway, Archie Ratt, Patrick Ratt and Marie-Claire Wawatie, as Council and Representatives of the Algonquins of Barriere Lake, applicants; and The Attorney General of Canada, Jean-Maurice Matchewan continuing to act of Chief, Jean Paul Ratt continuing to act as councilor, and Michel Thusky continuing to act as Band Administrator of the Algonquins of Barriere Lake Band, respondents [*hereafter IBC v Matchewan*]; December 8, 1995. The case was set to challenge the status quo of the 1980 Chief and Council. The year 1980 was the time of Jean Maurice Matchewan's councils' original customary selection.

⁴⁰⁶ Nahwegahbow makes note of the nature of this conflict of interest in his Affidavit for the case in para 9. He cites paragraph 4 of the Notice of Motion (see supra note 405), which requests a mandatory

interlocutory requiring the Respondents, their servants and agents “to surrender up to the applicants all items and records necessary to act as the duly constituted government of the Algonquins of Barriere Lake.”

⁴⁰⁷ Nahwegahbow, Notice of Motion, para 9.

⁴⁰⁸ Barriere Lake Indian Government, “Response to the Department of Indian Affairs Document entitled ‘Backgrounder: Barriere Lake Leadership Issues,’” February 19, 1996.

⁴⁰⁹ While in July 1994, the Provisional Government accused community leaders of designing the Trilateral Agreement to “sell off the territory,” by April, they were promising to “protect” and “improve” the Agreement, (Kitiganik Anicinabek Provisional Government, “Community Notice,” April 23, 1994).

⁴¹⁰ Federal Court of Canada, Trial Division, T-2590-95, *IBC v Matchewan*; Reasons for Order delivered orally from the Bench at Ottawa, Ontario on Thursday February 8, 1996. Whereas the courts determined the legality of the Ministers’ recognition in terms of the Indian Act, the Matchewan council asserted their case in terms of Indigenous rights. This intervention, Barriere Lake maintained, was a violation of the band’s self-government, a contravention of the Department of Indian Affairs’ own policies, and the move failed to recognize the inviolability of custom bands, thus was also an abrogation of section 35 protection of Aboriginal rights in the *Constitution Act*, 1982.

⁴¹¹ Federal Court of Canada, Trial Division, T-2590-95, *IBC v Matchewan*; Reasons for Order.

⁴¹² Rosalee Tizya, Press Conference Transcript, January 23, 1996, City Hall, Hull, Quebec.

⁴¹³ Former principal of the Rapid Lake school, Jonathan Robinson, explains that an education committee in the community was finally permitted to takeover control of education. An Algonquin-speaking education assistant was placed in each classroom, a proper play structure was built, a head start program was initiated to encourage kindergarten participation, and suddenly, student enrollment jumped and classroom participation livened up, with the assistance of Algonquin-speaking instructors. He stated, “What this means is for the first time in a generation a child can go into the school in Rapid Lake and speak their own language and what this means is that over the next 4 or 5 years, when they gain proficiency in Algonquin, they will then learn the French and English they haven’t been able to learn in the past 20 years” (Jonathan Robinson, Press Conference Transcript, January 23, 1996, City Hall, Hull, Quebec). This community-driven education committee was disbanded with the recognition of the IBC.

⁴¹⁴ Diabo, discussion, November 2011.

⁴¹⁵ Carrie Buchanan, “The bitterness at Barriere Lake,” *Ottawa Citizen*, February 3, 1996.

⁴¹⁶ Buchanan, “The bitterness at Barriere Lake.”

⁴¹⁷ Denis Gratton and Julie Lemieux, “Clan war continues among Algonquins of Barriere Lake: The Children are caught in the crossfire,” *Le Droit*, January 31, 1996.

⁴¹⁸ Angus, “Algonquins of Barriere Lake.”

⁴¹⁹ Marylynn Poucachiche, in discussion with author, January 21, 2009.

⁴²⁰ Michel Gratton, “Ottawa’s Barriere Lake move was undemocratic,” *The Gazette* [Montreal, Que] February 4, 1997: B.3, [FINAL Edition].

⁴²¹ Alex Roslin, “Algonquins to extend Barriere Lake blockade – 13 logging companies targeted in dispute over ancestral lands – mediator quits,” *The Gazette*, January 16, 1997.

⁴²² Roslin, “Algonquins to extend Barriere Lake blockade.”

⁴²³ Roslin, “Algonquins to extend Barriere Lake blockade.”

⁴²⁴ Algonquins of Barriere Lake, Band Council Resolution, 97-05, April 23, 1997.

⁴²⁵ Tony Wawatie, in discussion with author, February 1, 2011.

⁴²⁶ The Honourable Rejean Paul, “Mediation Report,” January 28, 1997.

⁴²⁷ Paul, “Mediation Report,” 1997.

⁴²⁸ Government of Quebec and Algonquins of Barriere Lake, “Agreement on Approach and Process For Completing Phases Two, Three And Undertaking Negotiations Under The Trilateral Agreement,” Quebec, May 22, 1998.

⁴²⁹ For example, the World Wildlife Fund petitioned Indian Affairs Minister Robert Nault to plead for reinstatement of the Trilateral process (Angus, “Algonquins of Barriere Lake: Against All Odds”). As well, other First Nations were learning about the Trilateral, and the cutting-edge documentation and mapping the community was producing, and were contacting Barriere Lake advisors to learn more (Russell Diabo, Discussion, April 4, 2010). A presentation on the Trilateral Agreement was made at the United Nations 4th Forum on Forests, held in Geneva, Switzerland, May 2004. Other presentations on the Trilateral Agreement approach were made to: National Aboriginal Forestry Association, Sustainable Forest Manamgenet Network, Forest Stewardship Council of Canada, Natural Resources Canada, Manitoba Model Forest

Network, Interior Alliance of First Nations, Carrier-Sekani Tribal Council, Ulkatcho First Nation, Neskonalith Indian Band, Adams Lake Indian Band, Union of B.C. Indian Chiefs, and Spallumcheen Indian Band (Trilateral Secretariat Communications Newsletter, Volume 2, Issue 3, September 2006).

⁴³⁰ Harry Wawatie (Chief, ABL) to Guy Chevrette (Quebec Minister of Natural Resource and Minister Responsible for Native Affairs), Letter, August 24, 2001.

⁴³¹ See: Algonquins of Barriere Lake, "Press Release: Complete Shutdown of Logging in La Verendrye Park Region Begins," August 9, 2001, where Chief Harry Wawatie states: "At a meeting... on July 16, 2001... the federal representative Sophie Lise Ratt indicated that we should use our community's capital project budget, meaning that urgently needed housing for our people would be partially sacrificed to compensate for the refusal of the Department of Indian Affairs to honour its financial obligations under the terms of the Trilateral Agreement. In light of the serious situation of over-crowding on our reserve, of course our people rejected the idea."

⁴³² Between December 4, 2002 and April 30, 2003, Health Canada undertook a series of inspections of the housing on the Rapid Lake Reserve at the request of their Community Health Representative. Health Canada's inspections revealed widespread mould contamination – at medium and elevated levels of risk to residents' health – as well as rotting walls, faulty electricity, deteriorating fixtures, walls, and windows, over-crowding, and in one case, lack of heating on the first floor of a house. In at least two cases, previous Health Canada inspections from November 2000 were cited, in which elevated health risks due to mould contamination and respiratory illness were urgently flagged but had never been resolved and where conditions had only worsened. Health Canada issued a series of reports from January 9, 2003 - June 3, 2003 based on inspections at Rapid Lake on December 4, 2002 and April 30, 2003. The results of these inspections are conveyed in letters of correspondence between Health Canada's Environmental Health Officer and Robert Smith, Director of Finance for the Algonquins of Barriere Lake between January 9, 2003 and June 3, 2003.

⁴³³ Harry Wawatie (Chief, ABL) to Jerome Lapierre, September 7, 2001.

⁴³⁴ Marc Lafreniere (Deputy Minister of Indian Affairs) to Harry Wawatie (Chief, ABL), September 25, 2001.

⁴³⁵ In addition, the Regional DIA office had not even begun to comply with the MOMI for an entire year after signing the agreement, leaving the band with only two years to undertake an ambitious restoration plan for the tiny, impoverished community.

⁴³⁶ INAC, "Statement Regarding the Situation with the Barriere Lake First Nation," Press Release, September 26, 2001.

⁴³⁷ Four Arrows, "The Algonquins of Barriere Lake: A Case Study in How to Kill Opportunity," <e-notes> newsletter, 17 March 2002.

⁴³⁸ Michel Gratton, in discussion with author, April 9, 2011.

⁴³⁹ Harry Wawatie (Chief, ABL) to Guy Chevrette (Quebec Minister Indian Affairs), September 17, 2001.

⁴⁴⁰ Algonquins of Barriere Lake, "Termination of Federal Funding Forces Complete Shutdown of Logging in La Verendrye Park," August 13, 2001.

⁴⁴¹ Quoted in Four Arrows, "The Algonquins of Barriere Lake: A Case Study in How to Kill Opportunity." Chief Harry Wawatie also quotes this letter in a press release on August 15, 2001, titled "Domtar's Intervention Welcomed by Algonquins."

⁴⁴² Giovanni Arrighi, *The Long Twentieth Century* (London: Verso, 1994), 34.

⁴⁴³ Arrighi, *The Long Twentieth Century*, 34.

⁴⁴⁴ Deborah Bird Rose, *Hidden Histories* (Canberra: Aboriginal Studies Press 1991), 46, quoted in Patrick Wolfe, "Settler Colonialism and the Elimination of the Native," *Journal of Genocide Research* 8:4 (2006), 338.

⁴⁴⁵ CJOH-TV News, "Coon Come Joins Algonquins' Protest on Victoria Island," October 3, 2001, Ottawa, ON.

⁴⁴⁶ Audra Simpson, "Settlement's Secrets," *Cultural Anthropology*, 26, no. 2 (2011), 205.

⁴⁴⁷ Wolfe, *Settler Colonialism and the Transformation of Anthropology*; Wolfe, "Settler Colonialism and the Elimination of the Native," 388.

⁴⁴⁸ Toby Decoursay, in discussion with author, July 22, 2009.

⁴⁴⁹ Toby Decoursay, in discussion with author, July 23, 2009.

⁴⁵⁰ Decoursay, discussion, July 23, 2009.

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- ⁴⁵¹ Toby Decoursay, discussion with the author and others, translators Marylynn Poucachiche and Tony Wawatie, July 18, 2009.
- ⁴⁵² Toby Decoursay, in discussion with author, September 28, 2009.
- ⁴⁵³ The customary code persists as an oral tradition despite the fact that the leadership laws of the Mitchikanibikok Anishnabe Onakinakewin were codified in 1996 as part of the restoration process following the reign of the IBC facilitated by Superior Court Judge Rejean Paul.
- ⁴⁵⁴ Eddy Nottaway, in discussion with author, September 30, 2009.
- ⁴⁵⁵ Bryan, "Property as Ontology," 4.
- ⁴⁵⁶ Though there have been important critical response to common property resource management studies (see, for example, Craig Johnson, "Uncommon Ground: The 'Poverty of History' in Common Property Discourse," *Development and Change*, 35.3 (2004): 407-433), the insights of scholars like Elinor Ostrom around the sociological relationship between resource control and self-determination are considerable and worth noting (*Governing the Commons: The Evolution of Institutions for Collective Action*, Cambridge: Cambridge University Press, 1990).
- ⁴⁵⁷ James Tully, email communication with author, October 16, 2009.
- ⁴⁵⁸ Sue Roark Calnek, "Algonquins of Barriere Lake Background Reports, Volume 3: The Social Organization of Barriere Lake Algonquin Land Use," November 2004, 58.
- ⁴⁵⁹ Roark Calnek, "Barriere Lake Algonquin Land Use," 58-59.
- ⁴⁶⁰ Roark Calnek, "Barriere Lake Algonquin Land Use," 58.
- ⁴⁶¹ Marylynn Poucachiche and Clayton Nottaway, "Anishnabe Law," Presentation at First Nations House, University of Toronto, November 26, 2010.
- ⁴⁶² Scott Nickels, "Traditional Knowledge of the Algonquins of Barriere Lake, Volume 1," Report. Prepared for the Trilateral Secretariat, Algonquins of Barriere Lake, August 1995. Broadly, the objectives of the Indigenous Knowledge program – part of Phase 1 of the Trilateral Agreement – were "to document Algonquin ecological and social knowledge for incorporation into the IRMP, and thereby facilitate harmonization of Algonquin and non-Algonquin land use regimes consistent with the interest of the Algonquins of Barriere Lake." Activities of the Indigenous Knowledge program included developing Sensitive Area Studies (SAS) maps, Measures to Harmonize (MTH) forestry with traditional activities of the Algonquins, toponymy studies, elders field trips, and work with the Forest Stewardship Council on defining a workable certification for sustainable forestry from an Algonquin perspective.
- ⁴⁶³ Sue Roark Calnek, personal communication, September 27, 2012.
- ⁴⁶⁴ Nickels' report relies mainly on information collected in semi-directed interviews with open-ended questions posed to as many community members as possible. Those Algonquins who proved extremely knowledgeable about the land were often consulted repeatedly to cross-check other individuals' information. Translators played a crucial role in the process, as Nickels' and the other researchers were determined to record all aspects of traditional knowledge in the Algonquin language. Translators at times were asked to break down Algonquin terms into smaller phonetic meanings in order to unpack and record the toponymic history embedded in the words. Researchers wanted to correct the status quo of land management, which until then had operated as a key method for suppressing Indigenous knowledge and culture. Affective participation meant clear translation: a premise of land management based on Indigenous ontology.
- ⁴⁶⁵ Nickels, "Traditional Knowledge," 2-50.
- ⁴⁶⁶ Nickels, "Traditional Knowledge," 2-51.
- ⁴⁶⁷ Decoursay, discussion, September 28, 2009.
- ⁴⁶⁸ Poucachiche and Nottaway, "Anishnabe Law."
- ⁴⁶⁹ Poucachiche and Nottaway, "Anishnabe Law."
- ⁴⁷⁰ Poucachiche and Nottaway, "Anishnabe Law."
- ⁴⁷¹ Nickels, "Traditional Knowledge," 3-5.
- ⁴⁷² ANS DOC 64301 DIAND Quebec Region File 301/1-2-2-3 Vol.1j- Conferences of Indians (1952-1955) Minutes of Conference between the Deputy Minister and Quebec Indians, Quebec 25-26 August 1955, quoted in Roark-Calnek, "Social Organization," 68.
- ⁴⁷³ Roark-Calnek, "Social Organization," 68.
- ⁴⁷⁴ Harry Wawatie et al, interview, December 1995, 1.

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- ⁴⁷⁵ Social customs interviews, Jacob Wawatie 20-23 August 1991; genealogy and oral history interview, Louise Wawatie Pien, 22 August 1990, Roark-Calnek, "Social Organization."
- ⁴⁷⁶ Peter Doug Elias, "The Customs of the Algonquins of Barriere Lake in respect of Leadership: An Opinion," Prepared for the Facilitators to the Elders of the Algonquins of Barriere Lake, March 31, 1997, 10.
- ⁴⁷⁷ Elias, "The Customs of the Algonquins of Barriere Lake," 11.
- ⁴⁷⁸ Elias, "The Customs of the Algonquins of Barriere Lake," 11.
- ⁴⁷⁹ Elias, "The Customs of the Algonquins of Barriere Lake," 11.
- ⁴⁸⁰ Harry Wawatie, Helen Wawatie, Genevieve Decoursay, Louise Ratt, Pierre Ratt and Michel Maranda, interview conducted by David Nahwagahbow, April 24, 1994, 1, translated by Michel Thusky, December 15, 1995, Maniwaki, QC.
- ⁴⁸¹ Harry Wawatie et al, interview, December 1995, 3.
- ⁴⁸² Harry Wawatie et al, interview, December 1995, 12.
- ⁴⁸³ Mitchikanibikok Anishnabe Onakinakewin, Institutions of Government, 4.1 (1).
- ⁴⁸⁴ Harry Wawatie et al, interview, December 1995, 12.
- ⁴⁸⁵ Roark-Calnek, "Social Organization," 72.
- ⁴⁸⁶ Roark-Calnek, "Social Organization," 72.
- ⁴⁸⁷ Tony Wawatie, in discussion with the author, April 24, 2009.
- ⁴⁸⁸ Leadership Selection Assemblies must be in accordance with section 8.6 of the *Anishnabe Onakinakewin*.
- ⁴⁸⁹ Harry Wawatie et al, December 1995, 17.
- ⁴⁹⁰ Harry Wawatie et al, December 1995, 17.
- ⁴⁹¹ Helen Wawatie, Genevieve Decoursay et al, December 1995, 17.
- ⁴⁹² Roark-Calnek, "Social Organization," 61.
- ⁴⁹³ Roark-Calnek, "Social Organization," 61.
- ⁴⁹⁴ Roark-Calnek, "Social Organization," 63.
- ⁴⁹⁵ Toby Decoursay, in discussion with author, July 23, 2009, Barriere Lake.
- ⁴⁹⁶ Roark-Calnek, "Social Organization," 68.
- ⁴⁹⁷ Roark-Calnek, "Social Organization," 68.
- ⁴⁹⁸ Decoursay, discussion, July 23 2009.
- ⁴⁹⁹ Decoursay, discussion, July 23 2009.
- ⁵⁰⁰ Hermes, "Jurisdiction in the Colonial Northeast," 53.
- ⁵⁰¹ Poucachiche, "Anishnabe Law."
- ⁵⁰² Poucachiche and Nottaway, "Anishnabe Law."
- ⁵⁰³ Elias, "Socio-Economic Profile," 71. Elias drew this information from an informal interview conducted by Sue Roark Calnek with Michel Thusky.
- ⁵⁰⁴ Norman Matchewan, in discussion with author, June 16, 2009.
- ⁵⁰⁵ Michel Thusky, in discussion with the author, Aug 2, 2011, telephone call.
- ⁵⁰⁶ Poucachiche and Nottaway, "Anishnabe Law."
- ⁵⁰⁷ Bryan, "Property as Ontology," 16.
- ⁵⁰⁸ Bryan, "Property as Ontology," 16.
- ⁵⁰⁹ Brenner and Elden, "State, Space, Territory," 363.
- ⁵¹⁰ Leanne Simpson, "Anishnabe Nationhood," *Nation to Nation Now: The Conversations*. Symposium. Toronto, March 23, 2013.
- ⁵¹¹ Frank Speck, "Family Hunting Territories and Social Life of Various Algonkian Bands of the Ottawa Valley," Canada Dept of Mines – Geological Survey – Memoir 70 No. 8, Anthropological Series, Ottawa, Government Printing Bureau, 1915.
- ⁵¹² Speck, "Family Hunting Territories," 4.
- ⁵¹³ Respectively, John M. Cooper, "Is the Algonquin Family Hunting Ground System Pre-Columbian?" *American Anthropologist* 41 (1939), 66-90; Robert Lowie, *Primitive Society* (New York: Boni and Liverlight), 1920.
- ⁵¹⁴ Adrian Tanner, "Algonquin Land Tenure and State Structures," *The Canadian Journal of Native Studies* III, 2: 311 1983), 312.

⁵¹⁵ Eleanor Leacock, *The Montagnais Hunting Territory and the Fur Trade*, American Anthropological Association, Memoir No. 78, 1954.

⁵¹⁶ See, for example: Diamond Jenness, "Origin of Copper Eskimos and Their Copper Culture," *Geographical Review* 13(4): 540-551. Another early and influential critic of Speck was Alfred G. Bailey, *The Conflict of European and Eastern Algonkian Cultures, 1504-1700: A Study in Canadian Civilization*. Dissertation [1937], republished by the University of Toronto, 1969. For a good overview of this literature more generally, see Charles A. Bishop and Toby Morantz, "Who owns the beaver? Northern Algonquian Land Tenure Reconsidered," *Anthropologica* 28.1-2 (1986): 7-9.

⁵¹⁷ Edward Rogers, *The Hunting Group-Hunting Territory Complex among the Mistassini Indians*, National Museum of Canada Bulletin (Ottawa: Dept. of Northern Affairs and National Resources, 1963), 195. For a deeper discussion into these debates, please see: Siomonn Pulla "A Redirection in Neo-Evolutionism?: A Retrospective Examination of the Algonquian Family Hunting Territories Debates," *Histories of Anthropology Annual* 7 (2011): 170-190.

⁵¹⁸ Harvey Feit, "Les territoires des chasse algonquiens avant leur 'découverte'?" *Recherches Amerindiennes au Quebec* 34.3 (2004): 5-21.

⁵¹⁹ Flanagan in fact cites a derivative source rather than referencing Leacock directly. His secondary source also refrains from mentioning Leacock by name, but the correlation is obvious. Flanagan writes: "There has been much scholarly debate over the extent to which eastern forest hunters developed institutions of collective and individual control over land in response to the incentives of the fur trade. European fashions for beaver and other pelts raised their value and certainly encouraged Indians in the direction of exercising control over trapping grounds. A modern author describes how the Motaignais of Labrador and Quebec assigned trapping rights in the eighteenth century: 'It was a highly sophisticated system. The Montagnais blazed trees with their family crests to delineate their hunting grounds, practiced retaliation against poachers and trespassers, developed a seasonal allotment system, and marked beaver houses'" (Robert J. Smith, "Resolving the Tragedy of the Commons by Creating Private Property Rights in Wildlife," *The Cato Journal* I (1981), 452) in Tom Flanagan, Christopher Alacantha, and André Le Dressay, *Beyond the Indian Act: Restoring Aboriginal Property Rights* (McGill-Queen's University Press, 2010), 38-39. The ideological purpose of Flanagan's book is to promote the First Nations Property Ownership Act, a bill proposing the privatization of reserve lands.

⁵²⁰ Frank G. Speck, "The Family Hunting Band as the Basis of Algonkian Social Organization," *American Anthropologist* 17 (1915): 290.

⁵²¹ As Lowie writes, "We cannot content ourselves with a blunt alternative: communism versus individualism. A people may be communist as regards one type of goods, yet recognize separate ownership with respect to other forms of property" (*Primitive Society*, 210).

⁵²² Tanner, "The New Hunting Territory Debate: An Introduction to Some Unresolved Issues," *Anthropologica* 28.1-2 (1986), 28.

⁵²³ Tanner, "The New Hunting Territory Debate," 21-22.

⁵²⁴ The concept of *fictitious commodity* is used by Polanyi, who observed that land, labour, and money could never be wholly subsumed under the all-prevailing market logic of buying and selling. This "crude fiction" by which the substance of society is subordinated to the needs of the market *disembeds* people from their social and ecological economies, as common lands are enclosed and people are forced into wage labour. These grounded economies are then replaced by "an institutional setting controlled and regulated more than ever by social authority," paradoxically endorsed as economic "freedom" (*The Great Transformation*, (Boston: Beacon Hill Press, 1957), 73 and 67, respectively).

⁵²⁵ Harvey, *The Limits to Capital*, 338.

⁵²⁶ Compartment here refers to a Heideggerian concept of being in the world – a true statement of a thing as it is. I use it because it amplifies an aspect of "conduct" that I wish to emphasize: that is, a relationship between truth and freedom that is grounded in our openness to the world, in the ways in which we intuit being itself through our encounters with the world. See: Martin Heidegger, "The Essence of Truth," in *Basic writings from Being and time (1927) to The task of thinking (1964)*, David Farrell Krell, ed., (New York: Harper & Row), 1977.

⁵²⁷ Roark Calnek, "Barriere Lake Algonquin Land Use," 4.

⁵²⁸ Roark Calnek, "Barriere Lake Algonquin Land Use," 4.

⁵²⁹ Roark Calnek, "Barriere Lake Algonquin Land Use," 4.

⁵³⁰ Roark Calnek, "Barriere Lake Algonquin Land Use," 4.

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- ⁵³¹ Roark Calnek, "Barriere Lake Algonquin Land Use," 5.
- ⁵³² Roark Calnek, "Barriere Lake Algonquin Land Use," 34.
- ⁵³³ Roark Calnek, "Barriere Lake Algonquin Land Use," 38.
- ⁵³⁴ Roark Calnek, "Barriere Lake Algonquin Land Use," 18.
- ⁵³⁵ Roark Calnek, "Barriere Lake Algonquin Land Use," 18.
- ⁵³⁶ Alexander Henry, "Travels and Adventures in Canada and the Indian Territories between the years 1760 and 1776, originally published in 1809," (Edmonton: M. Hurtig, 1969), 23 (RN 3357).
- ⁵³⁷ Roark Calnek, "Barriere Lake Algonquin Land Use," 33. Free areas could be found at key junctions on the territory, such as main camping sites and nearby the reserve at Cabonga. They were to be used by those who could not travel, due to infirmity or age, or otherwise inaccessible family hunting grounds. In the course of my own research, I also noted that key transportation routes such as highways were considered commons, though logging roads near people's bush cabins were considered family territories and consent needed to be obtained to gain access in these places.
- ⁵³⁸ Roark Calnek, "Barriere Lake Algonquin Land Use," 39.
- ⁵³⁹ Roark Calnek, "Barriere Lake Algonquin Land Use," 38.
- ⁵⁴⁰ Toby Decoursay, in discussion with the author, July 24, 2009, Barriere Lake.
- ⁵⁴¹ Elias, "Socio-Economic Profile of the Algonquins of Barriere Lake," 22.
- ⁵⁴² Hugh Conn, Grand Lake Victoria Indian Hunting System, 1942 Annual Report, submitted to the Department of Indian Affairs, Public Archives Canada, (RG 10, Volume 6751, file 420-10x 5).
- ⁵⁴³ The same case was to be found in the beaver preserves set up in James Bay Cree territory. As Toby Morantz describes: "[Quebec's] role in the beaver preserves followed along these lines: the government passed orders-in-council designating the territories but provided no funding or management. It was federal government personnel in the fur supervisor division of Indian Affairs that oversaw the running of the beaver sanctuaries and the sale of fur – individuals such as Hugh Conn, a looming figure in the north, judging by the correspondence" (*White Man's Gonna Getcha: The Colonial Challenge to the Crees in Quebec*, (Montreal: McGill-Queen's University Press, 2002), 221).
- ⁵⁴⁴ Department of Indian Affairs, Lands and Timber Branch, July 28, 1931, Memo to Deputy Minister, Re: Indian Hunting Reserves (Northern Quebec) which states that, "It is manifestly impossible to blaze out the boundaries of these large areas... but the invasion of white trappers can be effectively checked by, 1. Appointing two reliable Indians on each area to act as game guardians; 2. Enlisting the active co-operation of the R.C.M. Police at Amos, to assist such guardians and apprehend trespassers; 3. Posting up suitable linen notices at strategical points especially along the main routes of travel, and along the line of the Transcontinental" (Peter Di Gangi, "Algonquins of Barriere Lake: Man-Made Impacts on the Community and Fish and Wildlife, 1870-1979"). Di Gangi notes that based on what followed, conditions did not improve.
- ⁵⁴⁵ Elias, "Socio-Economic Profile," 25.
- ⁵⁴⁶ Anastase Roi, *Maniwake et la vallee de la Gatineau* (Ottawa: Presses du 'doit', 1933), 65, cited in Leigh Ogston, *Algonquins of Barriere Lake Historical Report*, 167.
- ⁵⁴⁷ Quebec Hydro Archives – citation incomplete: WB Hutchison, to Major W Blue, Gatineau Power Company, 2 June 1928 (RN 11214). Also Hutchison to Blue, 25 August 1929 (RN 11219), cited in Pete Di Gangi, "Man-Made Impacts," 18.
- ⁵⁴⁸ A notice on "Special Regulations" to Indian residents of the Grand Lake Victoria Trapping Reserve from May 15th, 1941 from Indian Affairs officials in Canada and Quebec prohibits big game hunting (Article 2) to Indians *and* to others "at all times." In case there was any misunderstanding that the preserve were for the exclusive benefit of Indians, an example of provincial priority is showcased in the new regulation that Indians could no longer camp where it would be a "nuisance" to tourists (Article 4), See: "A notice to Indian residents of the Grand Lake Victoria Trapping Reserve: Special Regulations," May 15th, 1941 from Harold W. McGill, Director, Indian Affairs Branch, Department of Mines and Resources, Dominion of Canada, and L.A. Richard, Deputy Minister, Department of Game and Fisheries, Province of Quebec, Public Archives of Canada, Indian Affairs, (RG 10, Volume 6751, file 420-10X 6).
- ⁵⁴⁹ Peter Di Gangi, "The Barriere Lake Band: Claims Research," October 1986, 5, cited in Leigh Ogston, "Algonquins of Barriere Lake Historical Report," November 1987, document unnumbered.
- ⁵⁵⁰ Harvey A. Feit, "Re-cognizing Co-management as Co-governance: Visions and Histories of Conservation at James Bay," *Anthropologica* 47.2, (2005).

⁵⁵¹ Feit, "Re-cognizing Co-management as Co-governance," 273.

⁵⁵² Feit, "Re-cognizing Co-management as Co-governance," 273.

⁵⁵³ Feit, "Re-cognizing Co-management as Co-governance," 273.

⁵⁵⁴ Feit, "Re-cognizing Co-management as Co-governance," 273.

⁵⁵⁵ As a field report from the local game warden confirms: "August 22. Friday, fair. Left at 8 am for Rapid lake and Barriere to see the Indians about their beaver maps, but when out there I found out they were all over the country and the few I could see would not cooperate because [Jules] Sioui had told them they almost own Canada and that the white men did not have anything to do with them also that they could trap where and when they felt like it," August 1947: Diary of field investigation from Rene Levesque, Quebec Game Warden, Senneterre. NA RG10 Vol. 6753 File 420-10-4GR-1: Quebec Fur Conservation - Correspondence re: the Grand Lac Victoria Preserve of the Maniwaki Agency (Maps) 1947-1950. Jules Sioui was a Huron-Wendat activist from Quebec who was a founding member of the North American Indian Brotherhood (see, Hugh Shewell, "Jules Sioui and Indian Political Radicalism in Canada, 1943-1944," *Journal of Canadian Studies* 34.3 (Fall 1999)). He came around and radicalized some of the Barriere Lake men during this period. Community members at Barriere Lake, such as Eddy Nottaway, still carry their North American treaty card that Sioui issued and distributed to represent members' status as sovereign Indigenous people.

⁵⁵⁶ Continuing from reports in 1947, the next year, game warden Rene Leveque reports on ongoing non-compliance by the Algonquins to map their territory: "The Barriere Indians as usual have declined to make their maps and as they have not been issued any beaver tags, they cannot trap beaver on the reserve. If the trap line system had been well organized in Pontiac we could seize every beaver without a tag in their possession, but if they declare that they have trapped the beavers they may have outside the reserve there is not very much we can do. The only way to catch these Indians is to find them trapping on the Reserve and this can only be done by using airplane to cover their old grounds. Many trips were made during the summer and fall to get their cooperation but without any success. I have not lost hope yet because by this contact with the Grand Lake Indians they might realize that we are working for their own benefit. A great help to get the cooperation of the Indians was the 25 dollars checks issued in the favor of the ones who made their maps and if they receive a 50 dollars one this year it will mean more cooperation from them," (1948: Annual Report for Grand Lake Victoria Hunting Reserve, 1948 from Rene Levesque, Quebec Game Warden to Indian Affairs . NA RG10 Vol.6752 File 420-10-1-3 Reel C-8107; NA RG10 Vol. 6754 File 420-10-4GR3 - Grand Lac Victoria Annual Report 1950).

⁵⁵⁷ The report documents events of November 6th, 1947: "Thursday, rain. Left Forbes Depot at 7 am for Larouche and High Portage which was the best place to watch for these Indians. When they arrived around 4 pm we tried to search every bag they had but as these Indians went wild (the squaws pointed guns at us) we might have missed one where the fur was. As the squaws start to hit us with paddles and whatever they could find I pulled out my revolver which kind of scared them a little. I have been in some mix-up with Indians but never seen the like of this trouble we had. We did the very best we could to find the beaver pelts but as there was 15 Indians and only four of us with only one revolver (mine) we had to be very careful not to get hurt. I was lucky to see one squaw who was getting ready to hit Cont [Constable] Christie [Christie] with an axe and stopped her. Finally after they had left by canoe, we search both sides of the portage and found a small bag containing part of the meat of one beaver, some moose and 6 muskrat pelts not yet dried," (November 1947: Diary of field investigation from Rene Levesque, Quebec Game warden. NA RG10 Vol. 6753 File 420-10-4GR-1: Quebec Fur Conservation - Correspondence re: the Grand Lac Victoria Preserve of the Maniwaki Agency (Maps) 1947-1950). The resistance seemed to be effective, even against the threat of RCMP force that the game warden considered unleashing against the non-compliant Algonquins. As Leveque reports on November 10th: "Monday, cloudy. Left at 8.30 for Ottawa and came back to Maniwaki at 7 pm. When at Mr Conn's office [federal fur manager] I phone Corporal Maloney of the RCMP to find out if his Department would put a charge against these Indians for what they did when we search their bags, but after talking it over with his Chief they decide not to do it, so in the future, we may as well leave those Indians do whatever they want because if a Mountie has not got any authority with them it is not safe for a game warden to mix up in their business" (Diary of field investigation from Rene Levesque, NA RG10 Vol. 6753 File 420-10-4GR-1).

⁵⁵⁸ The game warden reported that the Algonquins were getting increasingly "uncooperative" each year. At one point, the possibility of a black-list was raised: "Seeing that we don't seem to be able to control that

Barriere tribe, I think that your Department should call a meeting at Rapid Lake sometimes in the spring and after making a last try to get their cooperation, if it does not work, put them on the black list. As you know when the RCMP decide not to prosecute that gang for interfering like they did last fall, I am afraid that the Mounties won't be able to do very much in the future and if they cannot, it won't be safe for any white man to bother the Indians," (22 January 1948: Letter #2 from Rene Levesque, Quebec game warden to Hugh Conn, Fur Supervisor, Indian Affairs . NA RG10 Vol. 6753 File 420-10-4GR-1: Quebec Fur Conservation - Correspondence re: the Grand Lac Victoria Preserve of the Maniwaki Agency (Maps) 1947-1950).

⁵⁵⁹ 22 January 1948: Letter #2 from Rene Levesque.

⁵⁶⁰ The registered trapline regulations were introduced in 1945 by a Quebec Order-in-Council and were meant to be a source of revenue for Quebec to recoup costs of the Mont-Laurier Seneterre highway. See #3235 (17 Aug 1945); #3440 (28 Aug 1946); #1636 (14 June 1967); and 1559-72 (6 June 1972).

⁵⁶¹ Peter Di Gangi, "Claims Research," 13. To recoup millions of the highway costs, Quebec took advantage of preserve for tourist purposes. No commercial fishing would be allowed.

⁵⁶² Morantz, *White Man's Gonna Getcha*, 221.

⁵⁶³ NAC RG10 Vol.6752 File 420-10-1-3 Reel C-8107: Report on Fur Conservation Projects in the Province of Quebec maps by Hugh Conn, circa 1942 (RN 3790).

⁵⁶⁴ NAC RG10 Vol.6752 File 420-10-1-3 Reel C-8107: Report on Fur Conservation Projects in the Province of Quebec maps by Hugh Conn, circa 1942 (RN 3790).

⁵⁶⁵ Roark Calnek, "Barriere Lake Algonquin Family Narratives," 21.

⁵⁶⁶ "Plans showing the location of the territory were to be submitted for each license. The license could be lost if the territory was not trapped each year or if the trapper failed to follow the regulations. An annual inventory and report was required from each trapper (see: #1641 (14 Sept 67))" (Stu Herbert, Summary of Quebec Orders-in-Council (1928-1980). September 16, 1988, 6).

⁵⁶⁷ George Nottaway, Harry Wawatie, Trapline Map Identifications, Interviewed by Sue Roark-Calnek and Terry Tobias, Interpreter: Maggie Wawatie, February 7, 1993, BL Band Office, Maniwaki.

⁵⁶⁸ Tanner believes that the fur trade simply brought to light variations in the degree of *recognition* for pre-standing Algonkian tenure systems. He attributes the uneven application of recognition of Indigenous tenure regimes to the fact that the imposition of jurisdiction itself is subject to extremely uneven application, due to economics, resistance, monopoly, and relationship between industry and trade ("Algonquin Land Tenure and State Structures," *The Canadian Journal of Native Studies* 3.2 (1983): 311-320).

⁵⁶⁹ Hugh Conn, Grand Lake Victoria Indian Hunting System, 1942 Annual Report, submitted to the Department of Indian Affairs, Public Archives Canada, (RG 10, Volume 6751, file 420-10x 5).

⁵⁷⁰ Hugh Conn, Grand Lake Victoria Indian Hunting System, 1942 Annual Report, submitted to the Department of Indian Affairs, Public Archives Canada, (RG 10, Volume 6751, file 420-10x 5). Sue Roark Calnek notes this interpretation of Conn's interaction with Barriere Lakers in discussion with the author (September 27, 2012).

⁵⁷¹ Peter Di Gangi, "Claims Research."

⁵⁷² Toby Decoursay, in discussion with the author, July 24 2009, Barriere Lake.

⁵⁷³ Peter Di Gangi, "Claims Research," (Informant #8, #170, interviewed by SRC, 24 August 1990 at "Romance Lake" bush camp).

⁵⁷⁴ Peter Douglas Elias summarizes Scott Nickels' primary research in his sweeping research profiling the socio-economic history of Barriere Lake: "Elders stated that winds live at the ends of the earth in each of the primary directions. The four wind beings are kiwedinok, 'north wind,' câwanok 'south wind,' nigabiyankok, 'west wind,' and wâbanok, 'east wind' ... The winds are known and encountered by Algonquin on a daily basis" ("Socio-Economic Profile of the Algonquins of Barriere Lake," August 2002, 101).

⁵⁷⁵ Peter Di Gangi, "Barriere Lake Leadership: Excerpts from Oral History and HBCo Records," Prepared for the Algonquin Nation Secretariat, 1996. The feast baskets they refer to here presented food offerings for bush spirits associated with game renewal and change of seasons, customs of the Onakinakewin.

⁵⁷⁶ Dorsett and McVeigh, *Jurisdiction*, 15.

⁵⁷⁷ Harris, "How Did Colonialism Dispossess?" 175.

⁵⁷⁸ Jean-Maurice Matchewan (former customary Chief, Barriere Lake), in discussion with author, July 26 2009, Rapid Lake.

⁵⁷⁹ Feit, “Re-cognizing Co-management as Co-governance,” 282.

⁵⁸⁰ Feit, “Re-cognizing Co-management as Co-governance,” 281.

⁵⁸¹ Matchewan, discussion, July 2009.

⁵⁸² Bryan, “Property as Ontology,” 5.

⁵⁸³ Paul Nadasdy, “The Case of the Missing Sheep: Time, Space, and the Politics of ‘Trust’ in Co-Management Practice,” *Traditional Ecological Knowledge and Natural Resource Management*, Charles R. Menzies, ed. (Lincoln; London: University of Nebraska Press, 2006), 144.

⁵⁸⁴ Nadasdy, “The Case of the Missing Sheep,” 130.

⁵⁸⁵ Michel Foucault, *Society Must Be Defended: Lectures at the Collège de France, 1975-1976* (New York: Picador, 1997), 241.

⁵⁸⁶ Though, negligent policing of settler poaching, for example, raised serious questions about the earnestness of these efforts, so perhaps there was a kind of “letting” die at play through the lack of effort. It is hard to interpret exactly whether or not the intention was to save the Indians or to make the best appearance of saving the Indians. Intentions after all were decidedly mixed among participants.

⁵⁸⁷ Scott Lauria Morgensen, “The Biopolitics of Settler Colonialism: Right Here, Right Now,” *settler colonial studies* 1 (2001): 52.

⁵⁸⁸ Morgensen, “The Biopolitics of Settler Colonialism,” 56.

⁵⁸⁹ Toby Decoursay, in discussion with author, August 28, 2010.

⁵⁹⁰ Matchewan, discussion, July 2009.

⁵⁹¹ Peter, J. Usher, Frank J. Tough, and Robert M. Galois, “Reclaiming the land: Aboriginal title, treaty rights and land claims in Canada,” *Applied Geography* 12 (1992), 122.

⁵⁹² Here I must note that wage labour does not necessarily *cause* dispossession and Barriere Lake has for decades participated in the wage labour economy without losing their lands or their connection to the land. The best example of this case is the south-migration of community members to a mink farm in New York State, where Algonquin communities, including Barriere Lake, engaged in seasonal labour migration. Barriere Lakers would return to their territory to hunt and trap and take part in traditional activities on the land. Sue Roark Calnek has done extensive work on this migratory pattern that is unfortunately yet to be published. My point here though is that out-migration has intensified as conditions on the territory deteriorate, which generally means fewer people are using the land base on a regular basis. Whereas band membership according to the Onakinakewin is based on maintaining an ongoing connection to the land, this economic migration causes tensions within the community and raises questions about customary band membership and band jurisdiction more generally.

⁵⁹³ Usher et al, “Reclaiming the land,” 122, *emphasis added*.

⁵⁹⁴ Edward Soja. *Political Organization of Space*, Association of American Geographers, Commission on College Geography, Washington, DC, 1971, quoted on p. 805 in Stuart Elden, “Land, terrain, territory,” *Progress in Human Geography*, 34:6 (2010).

⁵⁹⁵ The Charter of Rights and Freedoms (1982) contains no express protection of private property rights. Unlike the American Bill of Rights (Amendments V and XIV) and the European Convention on Human Rights (Article 1 of Protocol No. 1) and also the International Convention on Civil and Political Rights (Article 17-1), Canada chose not carry over the protection of property rights from the 1960 Canadian Bill of Rights (for discussion on why property rights were not included in the patriated constitution, see Roy Romanow, John Whyte, and Howard Leeson, *Canada... Notwithstanding: The Making of the Constitution, 1976 – 1982* (1984) at 216-62). The Bill of Rights is an ordinary statute, which rose against a background of egregious racial discrimination that denied Chinese, Japanese, and Hutterite communities rights of employment, land and home ownership and it is still in effect, but rife with problems that make the courts reluctant to enforce, and is generally under-used (for discussion on the ongoing relevance of the Bill of Rights, see Philip W. Augustine, “Protection of the Right to Property Under the Canadian Charter of Rights and Freedoms” (1986) 18 *University of Ottawa LR* at 61-6). The Charter does contain two provisions in Section 7– the right to security and right to liberty – that have been interpreted as potentially protecting economic and property rights. In fact, one of the key fears about entrenching property rights in the constitution was the creation of “severe interpretive difficulties” in respect to Aboriginal and treaty rights.

⁵⁹⁶ Norman Matchewan, in discussion with the author, June 2010.

⁵⁹⁷ Under the *Indian Act* provisions on governance, Section 2 (1) defines the band council to mean, either (a) in the case of a band to which Section 74 applies, the council established pursuant to that section, or (b) in the case of a band to which Section 74 does not apply, the council chosen according to the custom of the

band, or, where there is no council, the Chief of the band chosen according to the custom of the band. The Algonquins of Barriere Lake fall under the (b) provisions: a customary band that is not governed under the election provisions of Section 74, but rather where the leadership is chosen according to the customs of the band.

⁵⁹⁸ *The Annotated Indian Act and Aboriginal Constitutional Provisions* (Scarborough, Ont.: Carswell, 1998).

⁵⁹⁹ The Haudenosaunee are a Confederacy comprised of Six Nations – the Seneca, Cayuga, Tuscarora, Onodaga, Oneida and Mohawk nations – bound together by a peaceful alliance known as “Kaianerakowa,” or Great Law of Peace. Until 1924, the Confederacy was the only governing body for the whole community of six nations. The Canadian government ordered the removal of the Haudenosaunee government using Section 74 of the Indian Act. For more on the events of 1924 at Six Nations, see Grace Li Xiu Woo, “Canada’s Forgotten Founders: The Modern Significance of the Haudenosaunee (Iroquois) Application for Membership in the League of Nations,” *L., SOC. JUST. & GLOBAL DEV. J.* (Apr. 30, 2003). Since that time, two bands in Manitoba were subject to Section 74 impositions in the 1980s – Dakota Tipi and Sandy Bay – however, both bands had been previously governed under Section 2 (1) a of the Indian Act, i.e. under band council elections. Both bands reverted to custom using the INAC *Conversion to Community Election System Policy*, so the situation was not strictly the same as at Barriere Lake, where the band’s leadership selection had never been under the Indian Act and where their Indigenous law was still the primary and unbroken source of their Aboriginal rights, title, and jurisdiction to their lands.

⁶⁰⁰ Chief Harry Wawatie resigned on July 10, 2006. In his letter of resignation, Wawatie regretfully submits that under his leadership, he failed to get the federal government back to the negotiating table to implement the 1997 MOMI or the 1991 Trilateral Agreement. He writes that at his age, he has neither the stamina nor the health to continue fighting with the government. Wawatie’s comments are cited in The Honourable Réjean Paul, S.C.J. Mediator’s Report, “The Algonquins of Barriere Lake, Prepared for the Algonquins of Barriere Lake and the authorities of the Quebec City office of Indian and Northern Affairs Canada,” Montreal, May 15 2007.

⁶⁰¹ Following Chief Wawatie’s resignation, Resolution # 03-08-06 of the Council of Elders was adopted on August 3, 2006 stating that the “Council of Elders hereby confirm, that the following people were selected as our new customary Chief and Council during a Leadership Assembly on July 24th 2006 and confirmed in a Community Meeting on August 1st 2006 in accordance with our First Nation’s *Mitchikanibikok Anishnabe Onakinakewin* (Customary Governance Code), and they represent a broad consensus of our Eligible Community Members”: Jean Maurice Matchewan as Chief, with Benjamin Nottaway, Moise Papatie, Jean Paul Ratt, and David Wawatie as Councillors.

⁶⁰² William Nottaway’s Council consisted of Patrick Ratt, Hector Jerome, Thomas Ratt, and Emmett Papatie.

⁶⁰³ On the failure of Indian Affairs to attach the Special Provisions (explaining the deficit) to the 2007 Contribution Agreement, see para 140 in the Application for Judicial Review, Federal Court File No. T-1514-06 Between The Elders Council Of Mitchikanibikok Inik and Minister Of Indian Affairs And Northern Development, August 10, 2006. It reads: “After the disputed 2006 appointment of a TPM to the ABL, DIAND executed a Contribution Agreement with the TPM which excluded the Special Provisions for the first time since 1996. This Contribution Agreement was executed between the TPM and DIAND, without the approval of the Chief and Council.”

⁶⁰⁴ Judge Réjean Paul was mandated on January 23rd 2007 to examine the situation at Barriere Lake and to make appropriate recommendations to the Minister of Indian Affairs. He lost the support of George Nottaway, who led the dissident council, and therefore stepped down from his official role as mediator, but he prepared a final mediator’s report that was submitted on May 15th 2007 (“The Algonquins of Barriere Lake: Mediator’s Report,” 2007).

⁶⁰⁵ The Honourable Réjean Paul, “The Algonquins of Barriere Lake: Mediator’s Report,” 2007, 4.

⁶⁰⁶ The community agreed to engage in an Alternative Dispute Resolution (ADR) process under the leadership of Deputy of Indian Affairs Michel Wernick, despite reservations. The process was initiated around the National Day of Action on June 29, 2008, when Barriere Lake camped out on Parliament Hill immediately before Canada Day. Discussion concluded with the appointment of Marc Perron as a Special Ministerial Representative, who was assigned to draft a report to “fact find” and make recommendations. His mandate was fuzzy in contrast to the demands of Barriere Lake that were material and urgent. They claimed that the imposition of Third Party Management (TPM) was a breach of the Crown’s fiduciary

obligations that had negatively affected the community and disintitiled the Crown from imposing TPM. As the community reported: “The Federal Court proceedings were suspended by agreement between ABL and DIA in October 2, 2007, to allow ADR. Unfortunately, the process with Mr. Perron has not worked-out” (Mitchikanibikok Inik, *Widmadwin*, Newsletter, February 18, 2008, 4). On December 20, 2007, Perron submitted his report to Minister of Indian Affairs Chuck Strahl, concluding that his ADR engagement with Barriere Lake resumed in a “dead end,” due to the community’s “self destruction mode” (Report: Special Ministerial Representative to the Algonquins of Barriere Lake, 14). Ironically, in an accompanying letter to Minister Strahl, Perron urges him to “revisit a return to the interrupted judicial procedure of last September. This, in my opinion, is the only possible way to implement government administrative and financial policies” (Marc Perron to Chuck Strahl (Minister, Indian Affairs), Letter, December 20, 2007).

⁶⁰⁷ Chuck Strahl (Minister of Indian Affairs) to Benjamin Nottaway (Acting Chief), Letter, January 29, 2008.

⁶⁰⁸ These charges were eventually cleared on May 2, 2013.

⁶⁰⁹ Casey Ratt to Chuck Strahl (Minister of Indian Affairs), Letter, January 31, 2008.

⁶¹⁰ Harry Wawatie (on behalf of Mitchikanibikok Inik Elders Council) to Minister of Indians Affairs (Canada federal office and Quebec regional office), Letter, February 4, 2008.

⁶¹¹ The court worker had second thoughts himself about the validity of his testimony regarding the legitimacy of Ratt Council election. He wrote: “After reading the report that I had sent you in regards to the above mentioned subject, I realized that my last sentence: ‘To the best of my knowledge, it was in accordance with the Mitchikanibikok Anishnabe Onakinakewin’, could cause confusion. This statement reflects only the way in which the candidates were nominated during the review and the choice of candidates by the members of Barriere Lake. It does not confirm that all other Leadership review regulations were observed. I cannot swear that Article 8.11 (2)(3)(4)(5) and (6) was observed because I only had access to the list of persons voting and the Mitchikanibikok Anishnabe Onakinakewin. I cannot guarantee therefore that the Elder’s Council was advised or that proper notification for a leadership review was carried out according to the regulations, that is to say, if everyone eligible to vote for Chief and Council had been duly notified” (Laurier Riel (Court-worker) to Minister Chuck Strahl, “Re: Leadership Review at Barriere Lake,” Letter, February 10, 2008). Riel, furthermore, had no expertise in the community’s customary code, in Anishnabe law, or even professional expertise in Canadian law. His confirmation of the leadership selection in the capacity of a court worker raises serious questions about why the government ignored Nottaway and Wawatie’s claims that the Ratt Council was not elected according to the Mitchikanibikok Anishnabe Onakinakewin.

⁶¹² Martin Lukacs, “Minister’s Memo Exposes Motives for Removing Algonquin Chief,” *The Dominion*, March 27, 2009.

⁶¹³ Harry Wawatie on behalf of Elders Council to Minister of Indian Affairs Chuck Strahl, Re: New Mitchikanibikok Inik Leadership Selection Process, Letter, March 31, 2008.

⁶¹⁴ Harry Wawatie on behalf of Elders Council to Minister of Indian Affairs Chuck Strahl, Re: New Mitchikanibikok Inik Leadership Selection Process, Letter, March 31, 2008.

⁶¹⁵ *Harry Wawatie, et al v. Minister of Indian Affairs and Northern Development*, Application Notice under section 18.1 of the *Federal Courts Act*, March 25, 2008.

⁶¹⁶ As Justice Zinn describes in para 10: “The Prothonotary accepted the respondent’s submission that the Minister was not acting as a federal board, commission, or other tribunal within the meaning of section 18.1 of the *Federal Courts Act* and thus there was no decision that was reviewable in this Court” (*Harry Wawatie et al, in their capacity as members of the Elders Council of Mitchikanibikok Inik v. Minister of Indian Affairs and Northern Development*, The Honourable Mr. Justice Zinn, Reasons for Order, Ottawa, Ontario, January 6, 2009).

⁶¹⁷ Justice Zinn accepted plaintiff’s submission of the Crown’s duty to consult with First Nations articulated in *Haida Nation v. British Columbia* (Minister of Forests), [2004] 3 S.C.R. 511, 2004 SCC 73 at para 25: “Whether the duty to consult can be said to arise in the present circumstances is not without question. This appears to be an area of evolving jurisprudence. In this respect, the observations of Justice Hugessen in *Shubenacadie Indian Band v. Canada (Attorney General)*, 2001 FCT 181, at paragraph 5, made in the context of a motion to strike an action involving aboriginal law, are apt: “If there is in a pleading a glimmer of a cause of action, even though vaguely or imperfectly stated, it should, in my view, be allowed to go forward” (*Wawatie, et al*, Reasons for Order).

⁶¹⁸ In paras 14-17, Justice Zinn lays out his reasoning for rejecting the Prothonotary's grounds based on Justice McGillis' decision in *Barriere Lake* (Federal Court of Canada, Trial Division, T-2590-95, *Interim Band Council et al, v. The Attorney General of Canada, et al*, Reasons for Order). Zinn notes that McGillis's ruling was not based on Indian Affairs' legal jurisdiction to determine the proper leadership at Barriere Lake, but rather on the *method* by which this determination could be scrutinized, as in the present case (*Wawatie, et al*, Reasons for Order).

⁶¹⁹ Ratt Council, Barriere Lake Press Release, October 6, 2008.

⁶²⁰ Ratt Council, Barriere Lake Press Release, October 6, 2008. In addition, a controversial school closure had also caused a major breach between families in the community. The reserve elementary school closure began in February 2008 was initiated by the Mitchikanibikok Inik Education Authority (MIEA) to assert pressure on Quebec and Canada, who had been noncommittal on MIEA's request for greater control over curriculum (i.e. reinstating Algonquin curriculum) and community input on educational affairs at the school (Mitchikanibikok Inik, *Widmadwin*, 1).

⁶²¹ One example of the projects the Ratt Council committed to is demonstrated by their win in December 2008, when the Algonquins of Barriere Lake picked up the Community Team of Year Award at the Dialogue for Life Suicide Prevention Conference in Montreal for their plan to identify, develop, and implement priority action plans to remedy social issues on the reserve. (Though it is unclear if this project ever developed further). But in terms of their actual community accountability and legitimacy, members of the Ratt Council did not live in the community, and like the IBC, were also a government in exile based in Maniwaki, meeting with government officials off-reserve for negotiations.

⁶²² Keith Penner, Facilitator's Report on the Leadership Selection Process in Accord with the Mitchikanibikok Anishnabe Onakinakewin (The Barriere Lake Customary Governance Code), Article VII Nikanikabwijik (The Council) Wasakawegan (The process for selecting leaders) s. 8.6 to s. 8.9, June 24, 2009, 8.

⁶²³ Penner, Facilitator's Report, 8.

⁶²⁴ In fact, this Application was a revived lawsuit of the injunctions Swinwood attempted to serve during the leadership selection process. There were some changes to the original Swinwood Application, for example, David Nahwegahbow, on behalf of his clients, managed to have Keith Penner and the Algonquin Nation Secretariat struck from the suit.

⁶²⁵ These discussions took place at a case conference held on November 9, 2009 before Prothonotary Tabib. Details of this case conference are included in the following communication: David Nahwegahbow to Michael Swinwood, Re: Clarification of the Decision of Justice Zinn in *Wawatie v. Canada (Indian Affairs and Northern Development)*, 2009 FC 8 (January 6, 2009), March 26, 2009.

⁶²⁶ Justice Mainville found that the leadership selection undertaken to appoint Casey Ratt Chief was in violation of the Mitchikanibikok Anishnabe Onakinakewin because the conveners did not follow the proper protocols of a leadership review process. Key here for Justice Mainville was that they neglected to invite the sitting Chief and Council to their meeting and in effect deposed the entire Council due to a grievance with the appointment of Benjamin Nottaway as Acting Chief (*Casey Ratt, et al v. Jean Maurice Matchewan, et al*. The Honourable Mr. Justice Mainville, Reasons for Judgment, 2010 FC 160, February 17, 2010, at para 119).

⁶²⁷ There were a number of inconsistencies in Justice Mainville's decision. For example, Mainville found that the purpose of the June 24, 2009 leadership selection process was simply a ruse to dislodge the Ratt Council and restore the Matchewan Council. However, Justice Mainville chastises the Ratt Council later in his judgment for refusing to participate in this leadership selection process, in effect, recognizing the efforts of the Matchewan-Nottaway Council to pursue a path of reconciliation with the Ratt Council.

⁶²⁸ According to Matchewan, Quebec MNR sent one set of documents to Matchewan and one set to Ratt for approval. For example, one document they both received were two *Permis d'intervention, pour l'approvisionnement d'une usine de transformation*, on June 2, 2010 advising of logging cut requests from Bois nobles Ka'N'Enda Itée and Louisiana-Pacific Canada Ltd., with dozens of additional forestry industry beneficiaries listed as such in the permit request.

⁶²⁹ A good example of the negotiations underway during this period can be found in a letter to the Quebec Minister of Natural Resources and Aboriginal Affairs, written on June 1, 2010 and signed by Jean Maurice Matchewan. In the letter, Matchewan reminds the ministers that the community has been waiting for four years for a response to implement the Joint Recommendations submitted to the Quebec Government on July 13, 2006 by their Special Representatives, Clifford Lincoln and John Ciaccia. Referring to a recent

letter sent on May 26, 2010 by the Ministers, Matchewan points out that they fell short of their Crown obligations under the law to consult and accommodate the Algonquins through negotiation of just settlement (*Haida*) in good faith (*Sparrow, Mikisew*). He reminds the ministers that the legal obligations in this case burdened the Crown to deal with the Joint Recommendations, the Bilateral Agreement, and the Trilateral Agreement provisions.

⁶³⁰ See the Ratt group's press release of November 12, 2010, where they state that, "Barriere Lake members... refuse to concede to the decision of the Department of Indian Affairs to do away with their Customary Governance." The title of the press release is "Barriere Lake Assert Right to Self-Determination," and the last line states, "The community is demanding the Canadian Government to respect their rights to self-determination."

⁶³¹ See: Norman Matchewan and Casey Ratt to Anita Decoursay and Wanda Thusky, Letter, October 27, 2010, where Matchewan and Ratt reference numerous open meetings held throughout 2009 where Section 74 was unanimously rejected and the Mitchikanibikok Anishnabe Onakinakewin affirmed.

⁶³² Resolution of the Elders, Re: Rejection of Minister of Indian Affairs Plan to Impose Section 74 Elective System, December 14, 2009; Community Resolution, Re: Support of Elders Resolution to Reject Minister of Indian Affairs Plan to Impose Section 74 Elective System, December 15, 2009.

⁶³³ Norman Matchewan, Crystal Ratt, Donat Thusky and David Wawatie to Pierre Nepton, Letter, May 26, 2010.

⁶³⁴ Chuck Strahl (Minister of Indian Affairs) to Casey Ratt Council and Jean Maurice Matchewan Council, Letter, October 30, 2009.

⁶³⁵ David Nahwegahbow to Mitchikanibikok Inik Customary Council, Re: Impact of a Decision by the Minister to put ABL into *Indian Act* Elections, Letter, November 10, 2009.

⁶³⁶ See: *R. v. Van der Peet* [1996] 2 S.C.R. 507 at para 74: "In considering whether a claim to an aboriginal right has been made out, courts must look at both the relationship of the aboriginal claimant to the land and at the practices, customs and traditions arising from the claimant's distinctive culture and society," and reiterated in *Delgamuukw v. British Columbia* [1997] 3 S.C.R. 1010 at 141 (emphasis added).

⁶³⁷ See, for example: *Delgamuukw*, where the court states that the Crown must demonstrate a compelling and substantive legislative objective to justify an infringement of Aboriginal title. See also: *R. v. Sparrow*, [1990] 1 S.C.R. 1075 and *R. v. Marshall (No. 2)* [1999] 3 S.C.R. 533 [hereafter *Sparrow*].

⁶³⁸ See: Section 3.2, Ministerial Order under SubSection 74(1), in the Custom Election Dispute Resolution Policy: "As a last resort, in a situation where a community is in chaos and it is impossible to get agreement to mediation or arbitration from the parties, the option exists to bring the First Nation under the *Indian Act* for election purposes through the use of a ministerial order under subSection 74(1). Such an action by the Minister is the antithesis of self-government and would be viewed very negatively as an intrusion into the affairs of the First Nation. However, there may be situations where the dispute is so volatile that no other option is viable."

⁶³⁹ Pierre Nepton, "Notice of Information to the Algonquins of Barriere Lake," Flyer, April 6, 2010.

⁶⁴⁰ Denis Chatain (INAC Director General, Quebec Region) to Scott Serson (Deputy Minister) and Shirley Serafini (Associate Deputy Minister), "Recognition of New Council Elected According to Custom at Barriere Lake," Protected Briefing, Dec. 20, 1995. Chatain writes that, "Recourse to Section 74 of the *Indian Act* could also be had to put the band back on the track, pending the definition of its electoral custom."

⁶⁴¹ Camil Simard (Director, Negotiations, Governance and Individual Affairs, Quebec Region, INAC) and Jean Boucher (Senior Negotiator, INAC), "Barriere Lake Impact Scenarios Acknowledging the New Band Council," Information prepared for Minister and Deputy Minister, March 3 2008. Scenario 1 identifies this option.

⁶⁴² Chuck Strahl (Minister of Indian Affairs) to Casey Ratt, Ricky Decoursay, Roger Jerome, Wayne Papatie, Donat Thusky, Jean-Maurice Matchewan, Benjamin Nottaway, Eugene Nottaway, Joey Decoursay, David Wawatie, Mitchikanibikok Inik, Letter, Oct 30 2009.

⁶⁴³ ICTMN Staff, "Indian Affairs Calls Indian Act Council 'Temporary Measure,'" *Indian Country Today*, December 27, 2010.

⁶⁴⁴ Norman Matchewan, in discussion with author, December 16, 2009.

⁶⁴⁵ As Barriere Lake communicated to Nepton: "Only one is between our Council and the Casey Ratt group, and that was heard by the Federal Court on February 1 and 2, 2010" (Jean Maurice Matchewan,

Benjamin Nottaway, Eugene Nottaway, Joey Decoursay, David Wawatie to Pierre Nepton, Re: Second Notice of Information to the Algonquins of Barriere Lake, Letter, February 10, 2010).

⁶⁴⁶ Matchewan et al to Nepton, February 2010.

⁶⁴⁷ Pierre Nepton, "Notice to the Algonquins of Barriere Lake, Concerning Recent Correspondence Received by Indian and Northern Affairs Canada from Community Members," June 18, 2010.

⁶⁴⁸ Algonquins of Barriere Lake, "Barriere Lake Set up Peaceful Blockade to Stop Unconstitutional Attack on their Customary Government; AFN Passes Emergency Resolution Condemning Minister Strahl," July 22, 2010.

⁶⁴⁹ Algonquins of Barriere Lake, "Barriere Lake Set up Peaceful Blockade."

⁶⁵⁰ Courtney Kirkby and Jamie Ross, "Indian Affairs confronted by Mitchikanibikokiniq (Barriere Lake Algonquins)," August 12, 2010 Accessed December 5, 2010: <<http://vimeo.com/14121623>>

⁶⁵¹ This information was contained in confidential surveillance documents gained by Access to Information request. The INAC report states: "As the Indian Act election process allows for nominations to be made through the mail, despite the meeting not taking place, the Electoral Officer was in receipt of five valid written nominations (one for Chief and 4 for Councillor positions). As the number of persons nominated did not exceed the number to be elected, the Electoral Officer acclaimed the five individuals as Chief and Councillors," ("Barriere Lake First Nation – Protest – Governance," INAC Emergency and Issue Management Weekly Summary, for the week ending August 13, 2010).

⁶⁵² Casey Ratt to Pierre Nepton, Re: Letter to Decline Nomination, Letter, August 20, 2010.

⁶⁵³ INAC Council to Algonquins of Barriere Lake, Letter, September 8, 2010. The letter acknowledges that not everyone in the community is supportive of the changes, but that they were encouraged nonetheless by the community to focus on two principles during their two-year term: "1. Develop a Reconciliation Process based on the revision and ratification of the ABL Customary Code of Governance; and 2. Continue to provide or improve, as deemed appropriate, new or current basic programs and services." No one whom I spoke to in the community knew anything about this consultation meeting taking place.

⁶⁵⁴ Indian Affairs Minister Chuck Strahl used this concept of restoring democracy to the community in his letter informing them of his decision to impose a Section 74 order on the community: "At this point, I see the establishment of a transparent, democratic and accessible leadership selection process as the only viable option available to address the long-standing governance disputes in the community and to ensure the well-being of the residents and members of Barriere Lake" (Chuck Strahl (Minister of Indian Affairs) to the Algonquins of Barriere Lake, Letter, October 30, 2009).

⁶⁵⁵ Algonquins of Barriere Lake, "Barriere Lake Set up Peaceful Blockade to Stop Unconstitutional Attack on their Customary Government; AFN Passes Emergency Resolution Condemning Minister Strahl," Press Release, Thursday, July 22, 2010.

⁶⁵⁶ Assembly of First Nations, "Support for Algonquins of Barriere Lake and Development of National Framework on First Nation-Driven Elections," July 20-22, 2010, Winnipeg, Manitoba.

⁶⁵⁷ National Chief Shawn Atleo met with Casey Ratt, Tony Wawatie, Jessica Thusky and Crystal Ratt in Montreal at the AFN Fall 2010 Policy and Dialogue Forum, November 8-9, 2010.

⁶⁵⁸ Algonquins of Barriere Lake Elders Council (on behalf of the Algonquins of Barriere Lake) to Minister of Indian Affairs Chuck Strahl, Robert Nicholson, Minister of Justice and Attorney General of Canada, Pierre Corbeil, Quebec Minister of Aboriginal Affairs, and Jacques Dupuis, Minister of Public Security, Re: Threat to Our Customary System of Governance by Illegitimate Federal and Provincial Decisions & Actions, Aug 25, 2010.

⁶⁵⁹ Joseph Boyden, "Why we try to protect our land: Lessons from Barriere Lake," *The Globe and Mail*, Dec. 13 2010; AFN, "Assembly of First Nations Supports Algonquins of Barriere Lake in Their Call for Canada to Respect Their Traditional Governance," Dec. 13, 2010.

⁶⁶⁰ *ICTMN Staff*, "Indian Affairs Calls Indian Act Council 'Temporary Measure.'"

⁶⁶¹ *ICTMN Staff*, "Indian Affairs Calls Indian Act Council 'Temporary Measure.'"

⁶⁶² *Casey Ratt et al v. Jean Maurice Matchewan et al.* Reasons for Judgment, 2010 FC 160, February 17, 2010, at paragraph 10.

⁶⁶³ Also, when the ANS could no longer represent Barriere Lake following the Mainville decision of February 2010, the Research Director of ANS had sealed all of the records pertaining to Barriere Lake and sent them to Nahwegahbow's office in Rama, Ontario, where they awaited resolution.

⁶⁶⁴ David Nahwegahbow, discussion with author, October 9, 2010.

⁶⁶⁵ A conflict of interest motion failed to remove Swinwood from the case when members Casey Ratt's Council refused to endorse the motion. Michel Thusky, discussion with author, September 14, 2012.

⁶⁶⁶ The INAC Council put out a notice to the community on May 2, 2011 regarding the Trilateral Agreement files. In the notice, they state that they initiated a fact-finding process on November 10, 2011 with Pierre Nepton and Lucien-Pierre Bouchard (Quebec), "by requesting clarification on the Trilateral Agreement Contribution funds" distributed to the Barriere Lake Algonquins. Since then, the INAC Council reports, they have been dealing with the matter through the courts, following Nahwegahbow filing his Application.

⁶⁶⁷ Terms of Reference: For Discussion Purposes, The Algonquins of Barriere Lake Reconciliation Process, July 7, 2011.

⁶⁶⁸ The Report on the Preliminary Directed Audit by Lindquist Avey Macdonald Baskerville, commissioned by the Quebec Regional Office of INAC, stated that one of the main reasons for the audit was that 32 allegations were brought to their attention by this individual. The political credibility of this individual was never called into question, despite the well-known machinations of the dissident group operating within Barriere Lake's community. See, Algonquins of Barriere Lake, Resolution of the Customary Council No. 01-14, Re: Retaining of Clayton Ruby (Ruby & Edwards) as Legal Counsel, August 28, 2001.

⁶⁶⁹ Algonquins of Barriere Lake, Resolution of the Customary Council No. 01-14.

⁶⁷⁰ Jean-Claude Sarrazin, an employee of INAC, contacted Nahwegahbow and requested he waive solicitor-client privileges in respect of an RCMP investigation in connection with "certain communications we purportedly had between April 1994 and June 1999." To which Nahwegahbow responds: "...I must admit to finding it strange that the RCMP would inquire through you about my involvement in these matters when my records show clearly over 3 years ago, on June 2, 1998, I spoke with Corporal Bacon of the RCMP, when he called me, regarding an investigation of the First Nation leadership. At the time, Corporal Bacon said he was putting the investigation 'on ice' when I informed him that the First Nation was in the middle of a political conflict with the federal government. I have not heard from Corporate Bacon or anyone else from the RCMP since" (David Nahwegahbow to Jean-Claude Sarrazin, Letter, August 23, 2001).

⁶⁷¹ Algonquins of Barriere Lake, Resolution of the Customary Council No. 01-14.

⁶⁷² Brett Popplewell, "The Algonquins of Barriere Lake and their battle with Indian Affairs," *Toronto Star*, October 29 2010.

⁶⁷³ I have in my possession two letters addressed to the Attorney General of Canada (AGC) from Barriere Lake forwarding serious grievances regarding health delivery on the reserve by Atmacita Hartel Financial Management. One letter is from Michel Thusky, dated July 21, 2011. He writes: "My daughter, Mel Thusky, has an urgent appointment in Montreal on Tuesday, July 26, 2011 and I have not been able to obtain the resources necessary and entitled to our family to travel to her hospital appointment. We do not have the necessary funds for gas, food, or accommodations – *if we do not obtain this funding immediately, my daughter's health is at serious risk.... Neither Health Canada nor Lemieux Nolet will provide these necessary funds, nor take responsibility for helping to obtain the funds, to travel to Montreal on Tuesday.* I have done my best to resolve this situation on my own accord and with my own limited resources, but have only reached dead-ends. Over the last two weeks, I have made repeated phone calls to Health Canada, but they do not return my calls. The Third Party Managers are on holidays and I cannot get through to anyone with the authority to release these funds." On December 6, 2011, the Elders Council at Barriere Lake sent a letter on behalf of the community to the AGC. The following is a telling excerpt: "Tonight a community meeting was held on the reserve where people shared dozens of stories of mistreatment and neglect regarding access to medical services at our Health Clinic on the Rapid Lake Reserve. The grievances expressed by community members ranged in kind, from failure to secure medical transportation to obtain necessary medical care at the nearest hospital, 150 km away in Maniwaki, to inadequate dental care on the reserve. We are concerned that the source of some of this mistreatment may be politically-motivated, since the current band council, which the community does not support, is based out of the Health Clinic, and may be informing medical practitioners' decisions about who to treat."

⁶⁷⁴ Michel Thusky, discussion with author, April 23, 2013.

⁶⁷⁵ Thusky, discussion, April 23, 2013.

⁶⁷⁶ Michel Thusky, discussion with author, August 9, 2011.

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- ⁶⁷⁷ Norman Matchewan and Casey Ratt to Anita Decoursay and Wanda Thusky, Re: Recap of October 23, 2020, Discussions and Recommendations, Letter, October 27, 2010.
- ⁶⁷⁸ The cover letter for the Information Package was dated on April 27, 2011. According to community members, later that year, the INAC Council also compiled all the affidavits submitted for the Trilateral case and distributed these as an Information Package to the community at large.
- ⁶⁷⁹ ICTMN Staff, “Indian Affairs Calls Indian Act Council ‘Temporary Measure.’”
- ⁶⁸⁰ Marketwire, “Cartier Selects 35 Priority Targets for First Drill Program on its Copper-Nickel Riviere Dore Project,” May 26, 2011.
- ⁶⁸¹ Barriere Lake Band Council to Algonquins of Barriere Lake, Re: Report on Meeting with Cartier Resources on March 17, 2011, Letter, April 27, 2011.
- ⁶⁸² Barriere Lake Solidarity, “Solidarity Update on the Algonquins of Barriere Lake,” Wednesday, March 23, 2011.
- ⁶⁸³ Mitchikanibikok Inik Council of Elders to Nathalie Normandeau (Ministre des ressources naturelles et de la Faune), Geoffrey Kelley (Ministre responsable des Affaires autochtones), Serge Simard (Ministre délégué aux Ressources naturelles et à la Faune), Re: Opposition to Natural Resource Exploitation within Trilateral Agreement Territory, Letter, April 13, 2001.
- ⁶⁸⁴ Mitchikanibikok Inik Council of Elders to Nathalie Normandeau, April 13, 2001 (*emphasis added*).
- ⁶⁸⁵ Pierre Corbeil (le ministre responsable des Affaires autochtones) and Nathalie Normandeau (La ministre des Ressources naturelles et de la Faune) to Casey Ratt and Jean Maurice Matchewan, Letter, May 26, 2010.
- ⁶⁸⁶ Jean Maurice Matchewan, discussion with the author, June 2010.
- ⁶⁸⁷ Cartier Resources Inc. “Cartier Suspends work on Rivière Doré Project,” Letter, July 8, 2011.
- ⁶⁸⁸ The mining stake on Barriere Lake lands is far from over. Cartier Resources Inc. signed a sale agreement with Copper One Inc. for \$150,000 for the acquisition of full interest in the Rivière Doré copper-nickel project (Cartier Resources Inc. “Cartier Signs a Sale Agreement in Respect to its Riviere Dore Copper-Nickel Project,” December 1, 2011). Insiders say the speculative gambles are only just beginning.
- ⁶⁸⁹ Barriere Lake Band Council to the Algonquins of Barriere Lake, Re: Algonquins of Barriere Lake Band Council’s Position Concerning Forestry, Letter, June 13, 2011.
- ⁶⁹⁰ Mitchikanibikok Inik Council of Elders to Nathalie Normandeau, et al, Re: Opposition to Natural Resource Exploitation within Trilateral Agreement Territory, April 13, 2001.
- ⁶⁹¹ Traditional Council of Elders of the One Nation, “Notice to cease all ongoing or planned activities on Algonquin territory that have not been agreed by the Council of Elders of the Algonquin Nation,” Rapid Lake, Algonquin territory, May 18, 2011.
- ⁶⁹² Barriere Lake Band Council to the Algonquins of Barriere Lake members, Re: Algonquins of Barriere Lake Band Council’s Position Concerning Forestry, June 13, 2011.
- ⁶⁹³ Barriere Lake Band Council to the Algonquins of Barriere Lake members, Re: Algonquins of Barriere Lake Band Council’s Position Concerning Forestry, June 13, 2011.
- ⁶⁹⁴ Norman Matchewan, in discussion with author, September 2011. Matchewan and others interrupted meetings in August, verifying that these parties were present, and reminding those present at the Maniwaki meeting that they had no authority to negotiate on the community’s behalf over land.
- ⁶⁹⁵ Mitchikanibikok Inik Council of Elders, Letter to Whom it May Concern, December 7, 2011. At the time the Algonquins drafted the letter, they were not even sure to whom it should be addressed, since they had not been informed of the logging in the territory.
- ⁶⁹⁶ Norman Matchewan, personal communication with author, email, June 30, 2012.
- ⁶⁹⁷ Tim McSorely, “Montreal rallies in support of Algonquin of Barriere Lake: Hundreds protest unsanctioned clear-cutting on unceded territory by Resolute Forest Products,” *Montreal Media Co-op*, July 20, 2012.
- ⁶⁹⁸ Martha Steigman, Director, “Barriere Lake Anishnabe Kachigwasin,” video, 2008.
- ⁶⁹⁹ Steigman, “Barriere Lake Anishnabe Kachigwasin.”
- ⁷⁰⁰ Norman Matchewan, “Barriere Lake Indians set up blockades as last resort: It was the only way to get governments to listen to us, Algonquins say,” *Montreal Gazette Op-Ed*, Wednesday, October 8, 2008.
- ⁷⁰¹ Matchewan, “Barriere Lake Indians set up blockades as last resort.”
- ⁷⁰² Jorge Barrera, “Ontario Chiefs criticize Quebec police action in blockade,” *Canwest News Service*, Saturday, October 11, 2008. Barrera reports that while the SQ confirmed that the police fired canisters containing a chemical irritant into the crowd, tear gas was not in fact used. Also, while Barrera reports that

Algonquins communicated to him that a three-year old girl was hit with a tear-gas canister, reports on the ground alleged that a band councilor member had been hit in the chest and hospitalized.

⁷⁰³ Steigman, "Barriere Lake Anishnabe Kachigwasin."

⁷⁰⁴ According to journalist Martin Lukacs, who obtained this information through an Access to Information request, the Quebec Ministry of Public Security figures on general police costs for 2008 amounted to approximately a million dollars allocated for the policing operation on Barriere Lake's territory.

⁷⁰⁵ Barrera, "Ontario Chiefs."

⁷⁰⁶ Algonquins of Barriere Lake, Community Newsletter, March 2008.

⁷⁰⁷ Barriere Lake Solidarity, "Quebec judge imprisons Algonquin Chief for two months for peaceful protest: Crown asks for one year to send 'clear message' to impoverished community," Press Release, Wednesday, December 10, 2008.

⁷⁰⁸ Tia Dafnos, "Pacification and Indigenous Struggles in Canada," 1. See also, Charles Tilly, "War Making and state making as organized crime," *Bringing the state back in*, P. Evans, D. Reuschmeyer, and T. Skocpol, eds. (New York: Cambridge University Press), 167-91, who defines pacification as the institutionalization of organized crime, and Pablo Idahosa and Robert Shenton, "The Africanist's 'New' Clothes," *Historical Materialism*, 12.4 (2004): 67-133. Both of these references are cited to support Anna Zalik's definition of pacification.

⁷⁰⁹ Tia Dafnos, "Pacification and Indigenous Struggles in Canada," 2.

⁷¹⁰ On the politics of recognition from critical Indigenous theory perspective, see Coulthard, "Subjects of Empire," 439.

⁷¹¹ Tia Dafnos, "Pacification and Indigenous Struggles in Canada," 3.

⁷¹² Anna Zalik, "Protest-as-Violence in Oilfields: The Contested Representation of Profiteering in Two Extractive Sites," *Accumulating Insecurity*, S. Feldman, C. Geisler and G. Menon, eds. (Athens, GA: University of Georgia Press, 2011), 264.

⁷¹⁴ For a good overview of the principles of consultation outlined in *Haida* [2004] 3 S.C.R. 511. 210 and *Taku River Tlingit First Nation v. British Columbia* [2004] 3 S.C.R. 550, see John Borrows, "Crown and Aboriginal Occupations of Land: A History & Comparison," *Ipperwash Inquiry* (2005), 66-67.

⁷¹⁵ Dorsett and McVeigh, *Jurisdiction*, 4.

⁷¹⁶ Blomley, "Law, Property, and the Spaces of Violence."

⁷¹⁷ Blomley, "Law, Property, and the Spaces of Violence," 132.

⁷¹⁸ Blomley, "Law, Property, and the Spaces of Violence," 121 and 124.

⁷¹⁹ Canadian Press, "Quebec, natives reach agreement," Saturday, June 15, 1991. The article recounts Matchewan's arrest in October 1989 when the Chief was arrested for blocking logging trucks from entering the wildlife reserve.

⁷²⁰ Roger Hayter and Trevor Barnes, "Canada's Resource Economy," *The Canadian Geographer* 45:1 (Spring 2001): 36-41.

⁷²¹ Roger Hayter and Trevor Barnes, "Innis' Staple Theory, Exports and Recession: British Columbia, 1981-86," *Economic Geography* 66:2 (April 1990): 156-173.

⁷²² Roger Hayter and Trevor Barnes, "Innis' Staple Theory."

⁷²³ For an overview of these schools of interpretation, see Glen Williams, "Canada in the International Economy," *The New Canadian Political Economy*, Wallace Clement and Glen Williams, eds. (McGill-Queen's University: Kingston, Montreal, London, 1989); and the Autumn 1981 special issue of *Studies in Political Economy* 6.

⁷²⁴ Indigenous peoples are engaged in writing out these histories of struggle and their meaning within the broader Canadian public and economy. The most prominent theorist of Indigenous macro-economics in Canada is Arthur Manuel, the Chair of the Indigenous Networks on Economies and Trade. His astute and far-reaching conclusions about the ways in which Indigenous lands are subsidizing the Canadian economy have been exercised in successful interventions, for example, at the World Trade Organization. For more on this case, see Arthur Manuel and Nicole Schabus, "Indigenous Peoples at the Margin of the Global Economy: A Violation of International Human Rights and International Trade Law," *Chapman Law Review*, 8.222 (2005): 235, and see also the following article by Martin Lukacs on Arthur Manuel's more recent economic work: "Indigenous rights are the best defence against Canada's resource rush," *The Guardian Blog*, April 26, 2013. See also these writers for more Indigenous thought on the links between racial oppression, economic exploitation, and revolutionary programs of resistance: Howard Adams, *Prison*

of Grass (Toronto: General Publishing, 1975), Maria Campbell, *Half-Breed* (Halifax, NS: Good Read Biographies, 1973), Harold Cardinal, *The Rebirth of Canada's Indians* (Edmonton: Hurtig Publishers, 1977), George Manuel, *Fourth World: An Indian Reality* (Don Mills, ON: Collier-Macmillan Canada, Ltd, 1974), and more recently, Leanne Simpson, ed. *Lighting the Eighth Fire: The Liberation, Resurgence, and Protection of Indigenous Nations* (Winnipeg: Arbiter Ring Publishing, 2008).

⁷²⁵ Melissa Clark-Jones, *A Staple State: Canadian Industrial Resources in the Cold War* (Toronto; Buffalo; London: University of Toronto Press, 1987), 1.

⁷²⁶ Natural Resources Canada, "Important Facts on Canada's Natural Resources," Accessed April 28, 2013: <<http://www.nrcan.gc.ca/statistics-facts/home/887>>

⁷²⁷ Clark-Jones adopts a class-based approach to understanding decision-making around resource management in Canada. While Clark-Jones focuses on this development in the Cold War context of Canada-U.S. relations, here I look at contemporary staple politics and Aboriginal policy in Canada.

⁷²⁸ Shawn McCarthy, "Budget bill gives Harper cabinet free hand on environmental assessments," *The Globe and Mail*, Wednesday, May 09 2012. Accessed on April 28, 2013:

<<http://www.theglobeandmail.com/news/politics/budget-bill-gives-harper-cabinet-free-hand-on-environmental-assessments/article4105864/>>

⁷²⁹ Canada is currently exporting 99 percent of its oil to the U.S. But Canada has been developing stronger trade partnerships with Asia (see: Canada, Foreign Affairs and International Trade Canada, Trans-Pacific Partnership Free Trade Agreement Negotiations. Accessed April 28, 2013:

<<http://www.international.gc.ca/trade-agreements-accords-commerciaux/agr-acc/tpp-ptp/index.aspx>>).

However, in order to transport Alberta oil overseas to Pacific Rim countries, pipelines would need to be built. Two key pipelines currently being proposed include a Trans-Mountain pipeline by Kinder Morgan to the BC Lower Mainland and a "Northern Gateway Pipeline" owned by Enbridge that would run from Edmonton, AB to Kitimat, BC. These pipelines have been fiercely contested by dozens of coastal First Nations in British Columbia (Dene Moore, "Coastal First Nations Quit Northern Gateway Pipeline Review," *Huffington Post Canada*, February 4, 2013. Accessed on April 29, 2013:

<http://www.huffingtonpost.ca/2013/02/04/coastal-first-nations-northern-gateway-pipeline_n_2616287.html>).

⁷³⁰ David McNally, "Staple Theory as Commodity Fetishism: Marx, Innis and Canadian Political Economy," *Studies in Political Economy* 6 (Autumn, 1981): 35-63.

⁷³¹ Patricia Marchak, "Canadian Political Economy," *Canadian Review of Sociology and Anthropology*, 22.5 (1985): 73.

⁷³² Peter Kulchyski, *Like the Sound of a Drum: Aboriginal Cultural Politics in Denendeh and Nunavut* (Winnipeg: University of Manitoba Press, 2005), 37.

⁷³³ Kulchyski, *Like the Sound of a Drum*, 51.

⁷³⁴ Kulchyski, *Like the Sound of a Drum*, 38.

⁷³⁵ Though Kulchyski adopts the kin ordered mode of production from Eric Wolfe's tripartite schematic (*Europe and the People Without History*, Berkeley: University of California Press, 2010), he rejects the "surplus" aspect of categorization.

⁷³⁶ Satzewich and Wotherspoon, *First Nations: Race, Class, Gender Relations*, 46.

⁷³⁷ Brenner, "A Thousand Leaves," 27.

⁷³⁸ The original analysis was done by Daniel Beavon and Martin Cooke in the late 1990s ("Measuring of Well-Being of First Nations Peoples," Research and Analysis Directorate, Department of Indian Affairs and Northern Development, October 2, 1998), but it was updated a few years later. The authors found that little had changed (Martin Cooke, Daniel Beavon, and Mindy McHardy, "Measuring the Well-Being of Aboriginal People: An Application of the United Nations' Human Development Index to Registered Indians in Canada, 1981-2001," Strategic Research and Analysis Directorate Indian and Northern Affairs Canada, Ottawa, 2004).

⁷³⁹ Indigenous Network on Economies and Trade, Nishnawbe Aski Nation, House of Smayusta, Pilalt Nation, Sutikahl, Skwelkwek'welt Protection Centre, Independent Indigenous Submission to the United Nations Human Rights Committee – On Canada's Fifth Periodic Report, October 2005, 9.

⁷⁴⁰ For a more complete account of this process, see: Roger Hayter and Trevor Barnes, "Canada's Resource Economy," 36-41.

⁷⁴¹ Manuel and Schabus, "Indigenous Peoples at the Margin of the Global Economy," 235.

- ⁷⁴² Carole Blackburn, "Searching for Guarantees in the Midst of Uncertainty: Negotiating Aboriginal Rights and Title in British Columbia," *American Anthropologist*, 107.4 (2005): 586–596.
- ⁷⁴³ Murray Angus "...And the last shall be first": Native Policy in an Era of Cutbacks (New Canada Publications/NC Press Limited, 1991 Edition, Toronto), 3.
- ⁷⁴⁴ Bruce Campbell and David Macdonald, "Straight Talk: Big Business and the Canada-US Free Trade Agreement Fifteen Years Later," *Canadian Centre for Policy Alternatives*, 5:2, December 22, 2003.
- ⁷⁴⁵ Clark-Jones, *A Staple State*, 8.
- ⁷⁴⁶ Clark-Jones, *A Staple State*, 8.
- ⁷⁴⁷ Owen Lippert, *Out of Our Past: A New Perspective on Aboriginal Land Claims in British Columbia*, (Vancouver: Fraser Institute, 1995).
- ⁷⁴⁸ Wendy Lerner, "Neoliberalism: Policy, Ideology, Governmentality," *Studies in Political Economy* 63 (Autumn 2000): 5-25.
- ⁷⁴⁹ Andrew Woolford, *Between Justice and Certainty: Treaty Making in British Columbia* (Vancouver; Toronto: UBC Press, 2005).
- ⁷⁵⁰ Woolford, *Between Justice and Certainty*, 158.
- ⁷⁵¹ Blomley, "Law, Property, and the Spaces of Violence."
- ⁷⁵² Eyal Weizman, *Hollow Land* (London; New York: Verso, 2007).
- ⁷⁵³ APTN National News, "Government announces it's opening reserve lands to prospecting companies," March 28, 2012.
- ⁷⁵⁴ Peters, "Geographies of Aboriginal People in Canada," 140. Peters cites data from DIAND 2000, Basic Departmental Data 1999, Ottawa, Minister of Public Works and Government Services Canada.
- ⁷⁵⁵ Statistics Canada, Census Snapshot of Canada — Urbanization. Accessed July 20, 2011: <<http://www.statcan.gc.ca/pub/11-008-x/2007004/10313-eng.htm>>.
- ⁷⁵⁶ See, for example: John L. Tobias, "Canada's Subjugation of the Plains Cree, 1879–1885," *Canadian Historical Review* 64.4 (1983): 519-548.
- ⁷⁵⁷ Canada, *The James Bay: Treaty Treaty No. 9 (Made in 1905 and 1906) and Adhesions Made in 1929 and 1930*, Ottawa, November 6, 1905; Reprinted from the edition of 1931 by Roger Duhamel, F.R.S.C., Queen's Printer and Controller of Stationery, Ottawa, 1964, *emphasis added*.
- ⁷⁵⁸ Tittley, *A Narrow Vision*, 10.
- ⁷⁵⁹ According to the *Indian Act* 1876 (3.1), a "band" is the federal government's language to describe "a body of Indians," though many bands prefer the term "First Nation" to describe their community. There are over 630 bands or First Nations in Canada (Assembly of First Nations, "Description of the AFN," Website. Accessed April 29, 2013: <<http://www.afn.ca/index.php/en/about-afn/description-of-the-afn>>).
- ⁷⁶⁰ This figure is cited in an APTN article, which references information gathered in ATI documents obtained by academics Jeffrey Monaghan and Kevin Walby (Jorge Barrera, "Canada will get no warning next time we strike, says Mohawk," *APTN National News*, February 18, 2012).
- ⁷⁶¹ CBC News, "Idle No More targets Canadian travel routes," *CBC News Canada*, January 5, 2013.
- ⁷⁶² RCMP Criminal Intelligence, "Aboriginal Communities, Issues, Events and Concerns 2009/10," Aboriginal Joint Intelligence Group.
- ⁷⁶³ This source and my general understanding of the function and development of the logistics industry comes to me via Professor Deborah Cowen. See: World Bank, *Connecting to Compete 2010: Trade Logistics in the Global Economy: The Logistics Performance Index and Its Indicators*, 2010.
- ⁷⁶⁴ This source also comes to me via Professor Deborah Cowen. See: Canadian Trucking Alliance, "Trucking in Canada," Accessed online May 28, 2013: <<http://www.cantruck.ca/iMISpublic/Content/NavigationMenu2/CTAIndustry/TruckinginCanada/default.htm>>
- ⁷⁶⁵ This figure represents all LIFL that are less than 50,000 hectares large. See Table 4, Global Forest Watch Canada, Boreal Forests and Aboriginal Lands, *Canada's Large Intact Forest Landscapes*, Edmonton, Alberta, Canada, 2003, 40.
- ⁷⁶⁶ Global Forest Watch, 40.
- ⁷⁶⁷ The mega-industrial tar sands operations in northern Alberta are unfolding on the traditional territories of the Lubicon Cree, Athabasca Dene Chipewyan, Mikisew Cree, and Beaver Lake Cree First Nations. Other bands in Treaty 8 are also affected, such as the Wood Buffalo Region where much of the mining is taking place, and the Peace River region, where *in situ* operations are based, as well as the Indigenous and non-Indigenous communities downstream from the unfolding ecological disaster. Groups like the

Indigenous Environmental Network (IEN) has brought pressure to bear on elected officials, the tar sands industry, and its financial investors, in addition to taking direct action and mobilizing political campaigns to disrupt the infrastructure of the industry through strategic geographic coordination with Indigenous communities living along proposed pipeline routes and highway transport routes. The best sources of information on these campaigns are found online. See IEN's site on tar sands at <http://www.ienearth.org/category/tar-sands/> and the UK Tar Sands Network site at <http://www.no-tar-sands.org/>. As an example of the success of their pressure campaign to shut down the tar sands, see: Daniel Tencer, "Alberta Oil Sands The Target of Europe's Dirty Fuel Label," *Huffington Post Canada*, October 4, 2011.

⁷⁶⁸ See the website for the Indigenous resistance community protecting sovereign Wet'suwet'en territory <<http://unistotencamp.com/>>.

⁷⁶⁹ Haudenosaunee Development Institute to Ann Marie Erickson, Secretary of the National Energy Board, Re: Enbridge's Line 9 Reversal Phase 1 Project, Our File No.: 030-062, Letter, September 20, 2011; Oneida Nation of the Thames to Ann Marie Erickson, Secretary of the National Energy Board, Re: Enbridge's Line 9 Reversal Phase 1 Project, Letter, October 12, 2011. See also: a video of Ron Plain, Aamijiwnaang First Nation, at an event in Toronto – "Line 9 West End Toronto Event, April 8, 2013 – <http://www.youtube.com/watch?feature=player_embedded&v=regaxff8Q3s>. For a good, comprehensive overview of the issues, see: Dave Vasey, "Stopping Line 9: Communities mobilize for Ontario's tar sands battle," *rabble.ca*, September 11, 2012.

⁷⁷⁰ Natural Resources Canada, "Important Facts on Canada's Natural Resources," Accessed April 28, 2013: <<http://www.nrcan.gc.ca/statistics-facts/home/887>>

⁷⁷¹ Canadian Boreal Initiative, "Mineral Exploration Conflicts in Canada's Boreal Forest," May 2008, 5.

⁷⁷² The exact sum derived is \$56, 534, 540 (Cogesult, Quantification de la valeur économique des industries de la forêt, du tourisme, des loisirs et des autres industries et activités dans la région de l'Outaouais et le secteur couvert par l'entente trilatérale, Rapport Final," Mars 1996, ix).

⁷⁷³ This estimate was provided in a commissioned study by consulting firm Ottawa Engineering for Barriere Lake, 1993, as noted in supra note 238.

⁷⁷⁴ The summons, served on April 29, 2011, stated: "Between September 1st and 8, 2009, at the Parc de la Vérendrye, in Abitibi, at the km 200, junction 29, prevented, interrupted or disturbed abitibi bowater in the use, use (jouissance in the judicial system also means use), or legitimate exploitation of a good which value is superior to 5000\$: the 'Esden' site and its access, thus committing a criminal crime under article 430 (1) d) (3) a) of the criminal code."

⁷⁷⁵ Jared Will (counsel for Norman Matchewan), discussion with author, June 11, 2012.

⁷⁷⁶ Will, discussion, June 11, 2012.

⁷⁷⁷ According to Will, these anomalies in consultation consisted of the fact that there was a leadership dispute taking place at the time that the logging permit was issued. Since Norman Matchewan and others in the community genuinely believed that the Ratt Council was not the legitimate governing authority, there were serious questions raised about which entity had decision-making powers in the community at that time Will, discussion, June 11, 2012).

⁷⁷⁸ In the Perron Report, the former diplomat states that, "The leadership of the ABL and their councilors will continue to want to breathe life into this unbelievable illusion [that the Trilateral Agreement could be restored]. It's their basic right." He recommends, "that under no circumstances should INAC or any other Federal instances contribute to perpetuate this utopia" ("Report: Special Ministerial Representative To the Algonquins of Barriere Lake," Document submitted to Honourable Chuck Strahl, Minister of Indian Affairs and Northern Development Canada, Dec. 20, 2007), 5.

⁷⁷⁹ Will, discussion, June 11, 2012.

⁷⁸⁰ Will, discussion, June 11, 2012.

⁷⁸¹ Barriere Lake Solidarity reported on the serious irregularities of the trial that led to the dismissal of charges: "Yves Paquette of AbitibiBowater (now Resolute Forest Products), the forestry company behind the cutting, incriminated himself by repeatedly lying during his cross-examination. Paquette claimed that he encountered no police on the site and was not able to enter the site because the logging road was entirely blocked by the cars of the Barriere Lake community members. However, after seeing video evidence that refuted the latter claim, Paquette also admitted to speaking to two intelligence officers from the Sûreté du Québec (SQ)... Vincent Larin, of the Quebec Ministry of Natural Resources, admitted on the stand that logging permits were issued without any consultation by his Ministry of the family groups whose territories

were being logged. Moreover, after first claiming that the cutting permits could not be altered once they were electronically signed and entered in the Ministry's computer system, he presented the Court with a cutting permit that was substantially different than the version that had been disclosed to the defense."

⁷⁸² Norman Matchewan, in discussion with author, May 13, 2012.

⁷⁸³ The date of this stop-over was on July 8, 2010. The community police contract expired in April 2010, and with no clear leadership in place to renew the contracts, the Barriere Lake police service was retired and the SQ returned to patrol the tiny community.

⁷⁸⁴ The date of Katherine Keye's funeral was on July 9, 2010.

⁷⁸⁵ Norman Matchewan, discussion with author, August 29, 2010. The event occurred several days prior to this conversation.

⁷⁸⁶ This list of charges and assaults was provided to me by Norman Matchewan. Matchewan and others also recounted a long string of conflicts between factions in the community biased towards the dissidents. Since I cannot verify these accounts and since the personal risk to people's safety is much higher in naming individuals than SQ officers, whose anonymity is protected by their uniforms, I have chosen to leave these out. Among these incidents, however, is an unprovoked SQ beating. On this last point, other fatal tragedies occurred that might have been avoided. On July 9, 2008, community members rallied in front of the Barriere Lake police station. Elder Jackie Keyes had a stroke and was rushed down the road to the Rapid Lake Health Clinic. Both the SQ and Barriere Lake community police refused, for some reason, to provide assistance. Perhaps they thought it was a ruse. Keyes succumbed to the stroke and the community still blames the neglect of the police for his death. Such incidents need not speak to the politically motivated nature of the SQ – they certainly did not receive direct orders from Canada or Quebec to let Keyes die that day, in front of friends and family – but they do speak to the general atmosphere of mistrust, and the consequence of years of racism, discrimination, and harassment. In another incident, on July 17, 2008, Terry Matchewan was assaulted by the Gatineau police in Gatineau. He was charged for his beating. Few bother to file complaints at all these days.

⁷⁸⁷ Chief Jean Maurice Matchewan and the people of Algonquins of Barriere Lake (written on their behalf by Benoit Tremblay, lawyer, Waswanipi Cree First Nation Letter) to SQ Commissaire, Ottawa, Letter, August 23, 1993.

⁷⁸⁸ Jean Maurice Matchewan, Customary Chief, to Honourable Claude Ryan, Minister of Public Security, Letter, August 8, 1993.

⁷⁸⁹ Martha Steigman for Barriere Lake Solidarity, "House Arrest," 2010.

⁷⁹⁰ Steigman, House Arrest.

⁷⁹¹ Steigman, House Arrest.

⁷⁹² Steigman, House Arrest.

⁷⁹³ Steigman, House Arrest.

⁷⁹⁴ Jean Maurice Matchewan, in discussion with author, July 12, 2010.

⁷⁹⁵ The Superior Court heard the appeal in mid-January and they were denied again.

⁷⁹⁶ There is relatively scarce information available on these protests, but see: Monique Manatch, "The Algonquin community in Kokomville, Quebec Fights Clearcutting by Domtar," *Brutality Canada: Police Brutality O Canada*. August 31, 2000. Accessed site Wednesday December 20, 2011:

<http://www.fortunecity.com/victorian/coop/10/la_verendrye.html> and Jacquie Johnson, "Algonquins Protest Logging in La Verendrye," *Peace and Environmental News*, February 2001.

⁷⁹⁷ The message was posted, for example, on the message boards of Cultural Foundation Native Expressions, Rabble.ca, and a support group was established on Facebook that has since been removed.

⁷⁹⁸ Clayton Nottaway, "Stop Canada's Cultural Genocide at Barriere Lake," Forum. Toronto, Ontario Institute for Studies in Education, University of Toronto, Presentation, Monday, November 1, 2010.

⁷⁹⁹ Tia Dafnos, "Pacification and Indigenous Struggles in Canada," 6.

⁸⁰⁰ According to ATI requests, the INAC department that produces the weekly hotspot reporting summaries and notifications – the Emergency Issues Management Directorate – was established in 2007 to monitor "civil unrest."

⁸⁰¹ Russell Diabo and Shiri Pasternak, "First Nations Under Surveillance: Harper Government Prepares for Native Unrest." *First Nations Strategic Bulletin*, Vol. 9, Issues 1-5, January-May 2011.

⁸⁰² See, for example: Tim Groves, "Canada's Spy Groups Divulge Secret Intelligence to Energy Companies," *The Dominion*, October 10, 2012 and Martin Lukacs, "Alberta, Ottawa, oil lobby formed secret committee," *Toronto Star*, March 12, 2012. In terms of government sharing across departments and

ministries, an RCMP presentation to CSIS lists the following “key partners” for sharing information: INAC, CSIS, Ontario Provincial Police, SQ, Canadian Border Services Agency, Department of National Defense, Natural Resources Canada, Transport Health, and Department of Fisheries (RCMP, “RCMP Operational Response to Aboriginal Occupations and Protest,” Presented to CSIS, April 3, 2007).

⁸⁰³ INAC Emergency and Issue Management Directorate (EIMD) Notification 1 – Protest at Bowater Forestry Site (“Matchewan Clan”), September 1, 2009. The source of reporting is recorded as INAC Quebec Region, filed by Silvie MacDonald, EIM Program Advisor. It turned out that Domtar was bringing out wood harvested the year before.

⁸⁰⁴ INAC, EIMD, September 1, 2009.

⁸⁰⁵ INAC, EIMD, September 1, 2009.

⁸⁰⁶ INAC, EIMD, September 1, 2009.

⁸⁰⁷ Russell Diabo and Shiri Pasternak provided the CBC with the Access to Information request documents in June 2011 verifying the Hot Spot Reporting program.

⁸⁰⁸ This statement was made by Michelle Yao, Director of Communications in the office of John Duncan, Minister of Aboriginal Affairs and Northern Development, claiming that the safety of citizens was at stake and that First Nations are not being targeted (CBC News, “Monitoring of First Nations beefed up in '06: documents Aboriginal affairs minister's office says First Nations not only public safety areas targeted,” June 13, 2011).

⁸⁰⁹ INAC, “Aboriginal Hotspots and Public Safety,” March 30, 2007.

⁸¹⁰ I would like to acknowledge here Tia Dafnos’ incredible ATI research, which she has generously shared with me, that includes files on Barriere Lake from various departments within INAC, CSIS, and the RCMP. Dafnos is a graduate student in sociology at York University who is doing her doctoral work on the criminalization of Indigenous dissent in Canada.

⁸¹¹ Wayne Russett, RCMP, Cpl L.W. Russett, Aboriginal and Ethnic Liaison Officer, NCO i/c Outreach Program A – Division National Capital Region communicates – Email. Recipient unknown.

⁸¹² INAC, Update on Algonquins of Barriere Lake (Information for Deputy Minister), Unclassified – QC135, August 5, 2008.

⁸¹³ Paul Barnsley, “How much goes to Indians? Not as much as you think!” *Wind Speaker*, Ottawa, Mar 1, 2002.

⁸¹⁴ Interior Alliance, “Chrétien Legislative Package Equates ‘Self-Government’ with Municipal Status: Interior Alliance Promises ‘Direct Action,’” Press Release, April 30, 2001.

⁸¹⁵ Despite opposition, Bill C27, “First Nations Financial Transparency Act, An Act to enhance the financial accountability and transparency of First Nations,” received Royal Assent on November 27, 2012. See also: Susan Lunn, “Liberal senators walk out on Aboriginal Affairs minister,” *CBC News*, Feb 6, 2013.

⁸¹⁶ APTN National News, “More First Nations under Drinking Water Advisories,” *National News*, Feb. 3, 2012. This article points out that the number of communities under drinking water advisories has in fact grown since 2006. For an excellent overview of government spending on Aboriginal bureaucracy, see Barnsley, “How much goes to Indians?”

⁸¹⁷ Kenneth Jackson, “Undercover help in arrests,” *The Ottawa Sun*, Thursday, July 15, 2010.

⁸¹⁸ Aboriginal Joint Intelligence Group, RCMP Criminal Intelligence, “Aboriginal Communities: Issue, Events and Concerns, 2009/10,” June 2009, 5.

⁸¹⁹ Tim Groves and Martin Lukacs, “Mounties spied on native protest groups,” *Toronto Star*, December 04, 2011.

⁸²⁰ One document released through ATI outlines “Critical infrastructure in proximity to Aboriginal Communities of Concern by Province” (Aboriginal Joint Intelligence Group, RCMP Criminal Intelligence, “Aboriginal Communities: Issue, Events and Concerns, 2009/10,” June 2009), 156-165.

⁸²¹ For an account of this role played by Indian agents, see Titley, *A Narrow Vision*, 13-15.

⁸²² Martin Lukacs, discussion with author, April 16, 2010. See also: Joe Friesen, “CSIS probes potential for violence on Quebec reserve,” *Globe and Mail*, Thursday, August 23, 2012.

⁸²³ Jackson, “Undercover help in arrests.”

⁸²⁴ RCMP, Criminal Intelligence, Aboriginal and Public Safety Community Public Safety Situation Report, “National Issues: Indigenous Sovereignty Week, October 25 – 31, 2009,” September 30, 2009, 4.

⁸²⁵ CSIS, Canada: Bi-Annual Update on the Threat from Terrorists and Extremists, November 14, 2008.

⁸²⁶ Jeffrey Monaghan and Kevin Walby, “Making up ‘Terror Identities’: Security Intelligence, Canada's Integrated Threat Assessment Centre and social movement suppression,” *Policing and Society* 10 (2011):

1-19. Tia Dafnos explained to me that there are a number of federal bodies involved in intelligence gathering. CSIS manages the Integrated Threat Assessment Centre (ITAC), which was recently re-named the Integrated Terrorism Centre to emphasize its new focus.

⁸²⁷ See the British Columbia Treaty Commission website: www.bctreaty.net

⁸²⁸ Order-in-Council Executive Chamber Council, Number 1637, Concerning Regulations Applicable in Beaver Reserves, Quebec June 14, 1967. As in the original 1928 Order-in-Council, the 1967 also provides exclusive use of provincially-created beaver reserves to the natives: “Only Indians and Eskimos may trap or hunt fur-bearing animals in the reserves in New Quebec, Fort Georges, Vieux Comptoir, Rupert, Nottaway, Abitbiti, Mistasinni, Grand-Lac Victoria, Roberval and Bersimis.”

⁸²⁹ As Usher explains, the courts have interpreted the rights of Aboriginal peoples on lands that they have used and occupied very restrictively, but at the very least, this land interest means the right to hunt, trap, fish, and gather in traditional areas of use and occupancy (Usher and Bankes, *Property*).

⁸³⁰ There are many serious problems with the official federal policy on Indigenous land settlement in Canada. Grievances with the process include notorious delays; arbitrary government withdrawals; high costs; an onus of proof on the First Nation to prove title; the fact that the government determines the validity of the claim against itself; meager settlements; a neutralization of communities for years as they drag slowly through decades-long negotiations; and there is no process for Métis people. There have also been six key areas which have been identified by groups at the negotiating table in BC. The “Common Table” in BC, established in spring 2008, issued a statement condemning the government’s “my way or the highway” approach to negotiations, specifically regarding: certainty, lands, governance, fiscal arrangements and taxation, and First Nation fisheries (Common Table Joint Table, May 2008). These grievances expressed outrage, for example, at the exchange of Aboriginal rights and title for treaty rights, the conversion of lands to fee simple, and the lack of constitutional rights of jurisdiction over their lands upon settlement. While Canada and BC responded with the “Common Table Report,” prepared by the British Columbia Treaty Commission (BCTC), April 1, 2008, these six areas of complaint remain off the negotiating table. While BC has a specific process to settle claims through the BCTC, set up in 1991, many analysts believe that BC is currently setting precedents for settling claims across Canada. Over half of all current CLCs are in BC today.

⁸³¹ Unfortunately, I do not have sufficient space to unpack the related Self-Government policy here and the ways in which it also undermines Indigenous jurisdiction.

⁸³² *Calder v. British Columbia (Attorney General)* [1973] S.C.R. 313, [1973] 4 W.W.R [Hereafter *Calder*].

⁸³³ Thomas R. Berger, *A Long and Terrible Shadow: White Values, Native Rights in the Americas, 1492-1992* (Vancouver; Toronto: Douglas & McIntyre, 1991). See Chapter 11: Native Claims and the Rule of Law.

⁸³⁴ Berger, *A Long and Terrible Shadow*, 154.

⁸³⁵ Canada, Indian and Northern Affairs. *Statement of the Government of Canada on Indian Policy*. Ottawa: Department of Indian and Northern Affairs, 1969. Accessed on May 1, 2013: <http://epe.lac-bac.gc.ca/100/200/301/inac-ainc/indian_policy-e/cp1969_e.pdf> Trudeau’s line is quoted in J.R. Miller, “Great White Father Knows Best: Oka and the Land Claims Process,” *Native studies Review* 7: 1 (1991), 38. The full quote ends with the phrase: “when we did the white paper.” The “white paper” of 1969, introduced by Trudeau’s government, attempted to erode Indigenous peoples’ distinct status in Canada, for example by scrapping the Indian Act and reserve system, under the auspices of liberal equality.

⁸³⁶ Johnny Mack, “Hoquotist: Reorienting through Storied Practice,” *Storied communities : narratives of contact and arrival in constituting political community*, Hester Lessard, Rebecca Johnson, and Jeremy Webber, eds. (Vancouver: UBC Press, 2011).

⁸³⁷ Department of Indian Affairs and Northern Development, “Statement Made by the Honourable Jean Chrétien, Minister of Indian Affairs and Northern Development on Claims of Indian and Inuit People,” *Communiqué*, 8 August 1973. The policy was reaffirmed in *In All Fairness: A Native Claims Policy – Comprehensive Claims*, Department of Indian Affairs and Northern Development, Ottawa, 1981.

⁸³⁸ Paul Rynard, “‘Welcome In, but Check Your Rights at the Door’: The James Bay and Nisga’a Agreements in Canada,” *Canadian Journal of Political Science*, 33:2 (June 2000): 211-243.

⁸³⁹ James Bay and Northern Quebec Agreement, Section 2: Principal Provisions, 2.1, *emphasis added*. Accessed online May 1, 2013: <www.gcc.ca>

⁸⁴⁰ Government of Canada, *In All Fairness: A Native Claims Policy – Comprehensive Claims*, Department of Indian Affairs and Northern Development, Ottawa, 1981, *emphasis added*.

⁸⁴¹ Department of Indian Affairs and Northern Development (DIAND), *Living Treaties: Lasting Agreements – Report of the Task Force To Review Comprehensive Claims Policy*, Ottawa, 1985. The Coolican Task Force was a five-member taskforce chaired by Murray Coolican and appointed by then Minister of Indian Affairs David Crombie.

⁸⁴² The group organized under the banner of the “Comprehensive Claims Coalition.” At the table were the Dene-Metis, Council of Yukon Indians, Conseil Attikamek-Montagnais, Tungavik Federation of Nunavut, Taku River Tlingit, and Nisga’a. Terry Fenge and Joanne Barnaby, “From Recommendations to Policy: Battling Inertia to Obtain a Land Claims Policy,” *Canadian Arctic Resources Committee*, 15.1 (January-April 1987), Accessed online May 1, 2013: <<http://carc.org/pubs/v15no1/4.htm>>

⁸⁴³ Fenge and Barnaby, “From Recommendations to Policy.”

⁸⁴⁴ Legislative Session: 1st Session, 36th Parliament Select Standing Committee on Aboriginal Affairs Transcripts of Proceedings 1996, (Hansard) Victoria, Thursday, April 24, 1997 Issue No. 35. Tim Koepke (Indian and Northern Affairs Canada), the Chief government negotiator for Yukon claims, is describing to the Committee the background of the Comprehensive Claims policy.

⁸⁴⁵ AFN, Comprehensive Claims Policy Reform Regional Discussion Forum Roll-up Report, March 28, 2012, 2. Keith Penner, the Liberal Opposition critic on Indian Affairs, provided the most scathing review of the Conservative reform under McKnight. He summarized what he saw as the government’s disdain for the reality of Aboriginal title: “The difficulty with the new claims policy, as with the old, is that it stems from a premise narrow in scope and fragile in structure, that is, that aboriginal title involves traditional use and occupancy which continues in certain respects up to the present. This so-called title as the Government sees it is an annoyance” (*Hansard*, House of Commons Debates, 18 December 1986, 2232, cited in Fenge and Barnaby, “From Recommendations to Policy”).

⁸⁴⁶ DIAND, *Living Treaties*, 30.

⁸⁴⁷ *Constitution Act, 1982* (Schedule B to the *Canada Act, 1982*, (U.K.) 1982 c. 11), Part II: “Rights of the Aboriginal Peoples of Canada.” Subsections 35(1) and (2) read: (1) The existing aboriginal and treaty rights of the aboriginal peoples of Canada are hereby recognized and affirmed; (2) In this Act, “aboriginal peoples of Canada” includes the Indian, Inuit and Métis peoples of Canada.

⁸⁴⁸ For a good summary, see: AFN, Executive Summary of Memorandum Regarding Canada’s Comprehensive Claims Policy, Prepared by Mark L. Stevenson and Albert Peeling for the Delgamuukw Implementation Strategic Committee, Released February 15, 2002. The DISC legal analysis provides an accessible overview of the legal discrepancies of the CLC policy. They write that the model perpetuated through the CLC process is not based on a recognition of rights, but rather on an exchange of Aboriginal rights and title for treaty rights – contrary to Section 35 of the Constitution and to *Delgamuukw*. Extinguishment provisions are also contrary to *Sparrow* – the first Supreme Court of Canada decision to come down post-patriation of the Constitution and adjudicate on the scope of Section 35(1) rights – which requires that government exercise “as little infringement as possible” as part of its fiduciary duties to Indigenous peoples. Further, whereas according to *Delgamuukw* Aboriginal title encompasses “the right to exclusive use and occupation” and the right to “choose to what uses the land can be put” and an “inescapable economic component” (at para 166) – albeit with grounds for allowable infringement – the CLC policy diminishes the nature of these rights further by allowing a broad scope of infringement in favour of third parties. The implications here are that the “negotiations and the CCP do not address the commercial nature of Aboriginal rights and title and the policy breaches the right of First Nations to choose how their land is used” (12), relegating Aboriginal existence to the past as merely subsistence economies. A final note on this issue is that the discrepancies between the common law and the CLC policy are clearly deliberate in the case of the Nisga’a Final Agreement (NFA). As Paul Rynard writes, the General Provisions of the NFA were “worded to supercede” *Delgamuukw*. She writes, “In that decision, the Court stated that Aboriginal title existed in Canadian law as a real common law right to property which encompassed full ownership of lands and natural resources. Any First Nation that can demonstrate that it exclusively occupied territories where British sovereignty was asserted can claim ownership as Aboriginal title to these lands” (“The James Bay and Nisga’a Agreements in Canada,” 220). However, the wording of NFA (2.24) begins: “Notwithstanding the common law” and goes on to forfeit these rights as set out in the agreement. In other words, Aboriginal rights as common law had to explicitly overcome.

⁸⁴⁹ *Delgamuukw*, supra note 1 at para. 140.

⁸⁵⁰ For the key cases on the Crown’s duty to consult and accommodate, see *Haida Nation v. British Columbia (Minister of Forests)* [2004] S.C.J. No. 70, 2004 SCC 73 and *Taku River Tlingit First Nation v.*

British Columbia (Project Assessment Director) [2004] S.C.J. No. 69, 2004 SCC 74. For a good legal analysis of these cases, see: Kent McNeil, "Aboriginal Rights, Resource Development, And The Source Of The Provincial Duty To Consult In Haida Nation And Taku River," *The Supreme Court Law Review* 29 (2005): 447-460.

⁸⁵¹ For the best example, see the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), Article 8.2. States shall provide effective mechanisms for prevention of, and redress for: (b) Any action which has the aim or effect of dispossessing them of their lands, territories or resources. Canada voted twice against the UNDRIP, once as a member of United Nations Human Rights Council on June 26, 2006 and once at the United Nations General Assembly on September 13, 2007. However, Canada endorsed the declaration on March 3, 2010 in Prime Minister Harper's *Speech from the Throne*, then issued a Statement of Support endorsing the UNDRIP on November 12, 2010. Canada has made clear that the UNDRIP is viewed as "a non-legally binding aspirational document" that can only be supported "in a manner fully consistent with Canada's Constitution and laws" (Aboriginal Affairs and Northern Development Canada, "Canada's Endorsement of the United Nations Declaration on the Rights of Indigenous Peoples," Accessed online March 7, 2013: <<http://www.aadnc-aandc.gc.ca/eng/1309374807748/1309374897928>>). Canada is also a signatory to the International Labor Organization's Convention 169, the UN Committee on the Elimination of Racial Discrimination, and the Convention on Biological Diversity.

⁸⁵² For example, Canada is a signatory to the International Covenant on Economic, Social and Cultural Rights (ICESCR), a treaty adopted by the UN General Assembly. The Indigenous Network on Economics and Trade submitted a shadow report on Canada's performance regarding their treatment of Indigenous peoples in 2007 and Canada responded that they no longer require Indigenous groups to extinguish their Aboriginal rights and title upon settlement. However, the Special Rapporteur of the Commission on Human Rights responded by saying that, "the inclusion of clauses in land claims agreements requiring Aboriginal peoples to 'release' certain rights has led to serious concerns that this may be merely another term for extinguishment" (UN Committee on Economic Social and Cultural Rights (CESCR) Concluding Observations on Canada," 2006, cited in INET to Olga Nakajo – CERD Secretariat, "Consideration of State Reports: Canada," Feb 19, 2007).

⁸⁵³ Para 2.23 of Nisga'a Final Agreement reads: "This Agreement *exhaustively* sets out Nisga'a section 35 rights, *the geographic extent of those rights, and those limitations to those rights*, to which the parties have agreed, and those rights are: a. the aboriginal rights, including aboriginal rights, including aboriginal rights, *as modified by this Agreement*, in Canada of the Nisga'a Nation and its people in and to Nisga'a Lands and other lands and resources in Canada; b. the jurisdictions, authorities, and the rights of Nisga'a Government; and c. the other Nisga'a section 35 rights" (*emphasis added*).

⁸⁵⁴ As Aboriginal Affairs and Northern Development explain, certainty over ownership is a key goal of the CLC policy. To accomplish this task, modification and non-assertion clauses are necessary: "Under the modified rights model, aboriginal rights are not extinguished, but are modified into the rights articulated and defined in the treaty. Under the non-assertion model, Aboriginal rights are not extinguished, and the Aboriginal group agrees to exercise only those rights articulated and defined in the treaty and to assert no other Aboriginal rights" (Canada, *Resolving Aboriginal Claims*, 2003).

⁸⁵⁵ Blackburn, "Searching for Guarantees in the Midst of Uncertainty," 592.

⁸⁵⁶ Blackburn, "Searching for Guarantees in the Midst of Uncertainty," 593.

⁸⁵⁷ AANDC, "Negotiating Tables." Accessed online May 9, 2013: <<http://www.aadnc-aandc.gc.ca/eng/1346782327802/1346782485058>>

⁸⁵⁸ See AANDC's website for a full listing of negotiations: Aboriginal Affairs and Northern Development Canada, "Comprehensive Land Claims," September 12, 2012. Accessed online May 8, 2013: <<http://www.aadnc-aandc.gc.ca/eng/1100100016296/1100100016297>>

⁸⁵⁹ AFN, *Comprehensive Claims Policy Reform Regional Discussion Forum Roll-up Report*, March 28, 2012, 2, *emphasis in original*.

⁸⁶⁰ Rudolph C. R yser, *Indigenous Nations and Modern Nation States: The Political Emergence of Nations Challenging State Power*, (New York; London: Routledge, 2012), 85.

⁸⁶¹ Basing my calculations for the most part on figures provided by the BCTC (except for Tla' o' qui' at numbers, which were obtained from the band council), I averaged out the land and cash settlement terms in 11 Agreements in Principle and Final Agreements.

⁸⁶² Algonquin Nation Secretariat AFN Briefing, “Briefing Note: Comprehensive Claims Policy and Process,” April 18, 2002, 4.

⁸⁶³ See: supra note 861.

⁸⁶⁴ Peter Russell, in discussion with the author, September 8, 2011.

⁸⁶⁵ Johnson, *Two Families*.

⁸⁶⁶ Arthur Manuel, “Federal Comprehensive Land Claims Policy,” Email, Sunday, August 8, 2010.

⁸⁶⁷ For a sample of this, see: Canadian Chamber of Commerce, “Ready for Business: Canada’s Aboriginal and Non-Aboriginal Businesses as Equal Partners,” Dec. 2010. The report recommends: “That the federal government work with the First Nations Tax Commission, interested First Nations communities, the provinces and other stakeholders to develop a voluntary legal framework and support structure to enable First Nations to have access to full, unrestricted fee simple ownership of their reserve lands” (8). The report also warns against “Jurisdictional chaos” which has been identified by CCC members who do regular business with Indigenous peoples is a source of “major frustration for them and their Aboriginal partners” (10).

⁸⁶⁸ Canada has a number of different property registration systems, which are governed under provincial jurisdiction. The Western provinces use the Torrens system, and in the Atlantic and Quebec provinces, a deed system is used, however in the Atlantic this is shifting towards a land registry system. Ontario has both a land titles and a deed registration system, the latter of which it is phasing out.

⁸⁶⁹ Canada, Assessment of Negotiations: Template Questionnaire, Core Data, Confidential, undated.

⁸⁷⁰ See the TFN Final Agreement here:

<http://www.gov.bc.ca/arr/firstnation/tsawwassen/down/final/tfn_fa.pdf>

The third treaty is with the Maa-nulth First Nations and it came into effect April 1, 2011, though the Final Agreement was signed two years earlier on April 9, 2009. The treaty was negotiated between Canada, British Columbia and the Huu-ay-aht, Ka:'yu:'k'th'/ Che:k'tles7et'h', Toquaht, Uchucklesaht and Ucluelet First Nations, whose lands are based on the west coast of Vancouver Island.

⁸⁷¹ Indigenous Network on Economies and Trade, Press Release, Geneva, Switzerland, February 19, 2009.

⁸⁷² Sandor Gyarmati, “Treaty process criticized: As another First Nation signs a treaty, some are speaking out against B.C.’s processes,” *The Delta Optimist*, August 24, 2012. Bertha Williams does have support outside of TFN. The Union of British Columbia Indian Chiefs remain critics of the BCTC and led by grand Chief Steward Phillip demonstrated outside of the BC Legislature where the Tsawwassen deal was signed into treaty.

⁸⁷³ Bertha Williams and Arthur Manuel, discussion with author, April 29, 2011.

⁸⁷⁴ Colin Ward, (Policy and Intergovernmental Affairs Manager, Tsawwassen First Nation), communication with author, email, Oct 20, 2011. The Tsawwassen Land Act can be accessed here:

<http://www.tsawwassenfirstnation.com/tfnlaws/land_act.php>

⁸⁷⁵ Ward communication, Oct 20, 2011.

⁸⁷⁶ Tom McCarthy, (Acting Chief Administrative Officer, Tsawwassen First Nation), communication with author, May 14, 2013.

⁸⁷⁷ Bertha Williams, communication with author, email, October 10, 2011. Each member of TFN who held a certificate of possession interest prior to the Treaty has now been replaced with a TSFI. Pre-Treaty Band Lands continue to be owned by the nation in fee simple.

⁸⁷⁸ Williams and Manuel, discussion, April 29, 2011.

⁸⁷⁹ See item 5 (“Land Selection”) under the policy, published online in 2003. The policy instructs that while an Agreement in Principle is being negotiated, the following tasks should commence simultaneously: “production of a map demarcating all the lands claimed by the Aboriginal group; full legal description of the boundaries to be surveyed; survey of the adjacent lands to the claimed area; municipal lands within the claimed settlement area must also be demarcated” (Resolving Aboriginal Claims - A Practical Guide to Canadian Experiences, Ottawa, 2003, Accessed online May 7, 2013: <<http://www.aadnc-aandc.gc.ca/eng/1100100014174/1100100014179#selpr>>).

⁸⁸⁰ See, *Guerin v. The Queen*, [1984] 2 SCR 335 (hereafter “*Guerin*”), where the Supreme Court of Canada confirmed that the federal government has a special duty to act in the best interests of Indigenous peoples.

⁸⁸¹ TFN Economic Development Corporation, Backgrounder, June 2011. However, Indigenous assertions of jurisdiction tend to die hard. Bertha Williams and another TFN Member have filed against the construction of the South Perimeter Road in the BC Supreme Court. Maintaining responsibility over their traditional lands, thus exercising their jurisdiction despite the extinguishment of their Aboriginal title, these

community members are fighting to protect the sacred and spiritual St. Mungo area where the road would pass through a native burial site (Mike Bothwell, "Tsawwassen Band oppose new road," Delta / CKNW (AM980), Radio, May 25, 2011).

⁸⁸² For more on this analysis, see: Shiri Pasternak, "The Economics of Insurgency: Thoughts on Idle No More and Critical Infrastructure," Rabble.ca, Jan. 14, 2013.

⁸⁸³ Flanagan et al, *Beyond the Indian Act*, 29.

⁸⁸⁴ Fiscal Realities Economists, *Expanding Commercial Activity on First Nation Lands: Lowering the Costs of Doing Business on Reserve*, November 1999. It is notable that the report is also cited in the 2003 November Report of the Auditor General of Canada, Chapter 9, Exhibit 9.2, though the Auditor General qualifies its inclusion, stating that, "We did not reconfirm the analysis of the project undertaken by Fiscal Realities Economists."

⁸⁸⁵ See the original announcement here: Translink, "Bus service comes to Tsawwassen First Nation," Press Release, December 31, 2008. Accessed online May 3, 2013: <<http://www.translink.ca/en/About-Us/Media/2008/December/Bus-service-comes-to-Tsawwassen-First-Nation.aspx>> and celebration here: Nancy Macdonald, "Going out on their own: Are First Nations groups in B.C. ready for independence?" *Macleans*, Wednesday, March 17, 2010. Accessed online May 7, 2013:

<<http://www2.macleans.ca/2010/03/17/going-out-on-their-own/>>. The article cites TFN Chief Kim Baird explaining how the Translink stop is the first, tangible benefit of the modern treaty.

⁸⁸⁶ Arthur Manuel, communication with author, email, March 18, 2010.

⁸⁸⁷ To add insult to injury, while Indigenous treaty rights benefit from constitutional protection under section 35(1) of the Constitution Act, 1867, Canadians enjoy none of these legal protections, yet apparently all of the privileges. The Charter of Rights and Freedoms (1982) contains no express protection of private property rights. Unlike the American Bill of Rights (Amendments V and XIV) and the European Convention on Human Rights (Article 1 of Protocol No. 1) and also the International Convention on Civil and Political Rights (Article 17-1), Canada chose not carry over the protection of property rights from the 1960 Canadian Bill of Rights (for discussion on why property rights were not included in the patriated constitution, see Roy Romanow, John Whyte, and Howard Leeson, *Canada ... Notwithstanding: The Making of the Constitution, 1976 – 1982* (1984) at 216-62). The Bill of Rights is an ordinary statute, which rose against a background of egregious racial discrimination that denied Chinese, Japanese, and Hutterite communities rights of employment, land and home ownership and it is still in effect, but rife with problems that make the courts reluctant to enforce, and is generally under-used (for discussion on the ongoing relevance of the Bill of Rights, see Philip W. Augustine, "Protection of the Right to Property Under the Canadian Charter of Rights and Freedoms" (1986) 18 *University of Ottawa LR* at 61-6). The Charter does contain two provisions in Section 7– the right to security and right to liberty – that have been interpreted as potentially protecting economic and property rights, but since property is not explicitly mentioned, these rights could be interpreted otherwise, as well, for example, as protecting bodily integrity or privacy.

⁸⁸⁸ Kent McNeil, "Reconciliation and Third-Party Interests: Tsilhqot'in Nation v. British Columbia," *Indigenous Law Journal* 8:1 (2010): 7-25. See also: *Hupacasath First Nation v. British Columbia (Minister of Forests)* et al. [2006] 1 CNLR 22, where the Crown's position on the incompatibility between Aboriginal title and fee simple was called into question.

⁸⁸⁹ Gerry Bellett, "Valuation of Tsawwassen band's land doubles," *Vancouver Sun*, September 16, 2010. Accessed online May 8, 2013:

<<http://www.vancouversun.com/business/Valuation+Tsawwassen+band+land+doubles/3532219/story.html>>

⁸⁹⁰ Jean Maurice Matchewan, discussion with author, July 26, 2009.

⁸⁹¹ Matchewan, discussion, July 26, 2009.

⁸⁹² AANDC does not distinguish in their accounts between CLC and Specific Claims (see: Aboriginal Affairs and Northern Development Canada, *Financial Statements for the year ended March 31, 2011* (unaudited), Section 12: Settled Claims. Accessed online May 31, 2013: <<http://www.aadnc-aandc.gc.ca/eng/1321563444598/1321563657529#chp17>>).

⁸⁹³ Mark Milke, "Incompleted, Illiberal and Expensive: A Review of Treaty Negotiations in BC" (Vancouver: The Fraser Institute, 2008, p. 63). Also, Lornie reported that for BC bands at the negotiating table, debt hovered at around \$400 million (Figures for BC, see: James M. Lornie, Special Representative To The Minister Of Aboriginal Affairs And Northern Development (AANDC), *Final Report: The Minister of Aboriginal Affairs And Northern Development*, November 30 2011. Accessed online March 7, 2013: <http://www.bctreaty.net/files/pdf_documents/Lornie-Report_30Nov2011.pdf>).

⁸⁹⁴ Indigenous Network on Economies and Trade, on behalf of, Chief Darrell Bob, Xaxli'p Indian Band; Dexter Quaw, hereditary Chief of the Lheidli T'enneh People; Bertha Williams of the Tsawwassen People; and the Skwelkwek'welt Protection Centre: In Relation to Canada, Request for Urgent Action under Early Warning Procedure to the Committee on the Elimination of Racial Discrimination (CERD) of the United Nations, February 9, 2009, 16, at para 55.

⁸⁹⁵ CERD, 16, at para 62.

⁸⁹⁶ Arthur Williams, "Lheidli T'enneh treaty itself is the problem," *Prince George Free Press*, November 23, 2010. Accessed online May 9, 2013:

<http://www.bclocalnews.com/bc_north/pgfreepress/opinion/110207189.html>

⁸⁹⁷ CERD, 17 at para 63.

⁸⁹⁸ CERD, 19 at para 70.

⁸⁹⁹ Canada, "International Convention on the Elimination of All Forms of Racial Discrimination Nineteenth and Twentieth Reports of Canada, Covering the period June 2005 – May 2009, Submission to CERD, at para 114: "Canada will also seek to ensure that loan funding offered to Aboriginal groups to permit their unfettered participation in the treaty process is properly understood as a mean to facilitate the achievement of constitutionally protected treaties for Aboriginal groups as well as a new relationship between federal and provincial governments and Aboriginal groups. In regard to the Xaxli'p First Nation, the Xaxli'p First Nation accepted loan monies to participate in the Treaty process and elected to withdraw from Treaty negotiations in 2001. Canada restates that Canada has written to the Xaxli'p First Nation to state that the obligation to repay the loan amount has been placed into abeyance and thus loan repayment is not being sought by Canada."

⁹⁰⁰ Art Adolph, in discussion with author, May 13, 2013.

⁹⁰¹ Williams, discussion, April 29, 2011.

⁹⁰² CERD, 11, at para 37. The CERD report cites an article on this point: Brian Lewis, "Funds Flow to ensure Yes vote on treaty deal," *The Province*, July 12, 2007.

⁹⁰³ This figure is by AANDC's own admission. See: Canada, "Comprehensive Land Claims," September 12, 2012. Accessed online May 8, 2013: <<http://www.aadnc-aandc.gc.ca/eng/1100100016296/1100100016297>>

⁹⁰⁴ For the key cases on the Crown's duty to consult and accommodate, see *Haida Nation v. British Columbia (Minister of Forests)* [2004] S.C.J. No. 70, 2004 SCC 73 and *Taku River Tlingit First Nation v. British Columbia (Project Assessment Director)* [2004] S.C.J. No. 69, 2004 SCC 74. For a good legal analysis of these cases, see: Kent McNeil, "Aboriginal Rights, Resource Development, And The Source Of The Provincial Duty To Consult In Haida Nation And Taku River," *The Supreme Court Law Review* 29 (2005): 447-460.

⁹⁰⁵ Tla-o-qui-aht Incremental Treaty Agreement, November 13, 2008. Accessed online May 8, 2013:

<http://www.gov.bc.ca/arr/treaty/down/tla_o_qui_aht_ita_final_for_signing_premier_nov0608.pdf>

⁹⁰⁶ BC Treaty Commission, "Financial and Economic Impacts of Treaty Settlements in BC," *Price Waterhouse Cooper*, November 2009, 45.

⁹⁰⁷ Murray W. Browne, "Fair or Foul? Legal Issues in BC Treaty Negotiations," Prepared for the Continuing Legal Education Society of British Columbia, May 2007, 1.1.15.

⁹⁰⁸ Russell Diabo to Algonquin Nation Secretariat, "Briefing Note: Aboriginal Title / Rights v. Federal Comprehensive Claims Policy," Feb. 11, 2013, 4.

⁹⁰⁹ Martin Lukacs, "Elusive Co-Management? The Barriere Lake Algonquin's Trilateral Agreement," unpublished ms.

⁹¹⁰ Russell Diabo, discussion with author, April 19, 2013.

⁹¹¹ The area defined as "Annex 1" of the Trilateral Agreement drew a line demarcating about 17,000 square kilometers of current use. Quebec found this area excessive and pushed successfully for a second, smaller area to be demarcated as a "study area" to pursue harmonization measures. This smaller area is "Annex 2" in the Trilateral Agreement. Barriere Lake knew that the north-western area that was left out of Annex 2 had recently been clear-cut and that it would take at least a generation for the forest to regenerate, so after consultation with the families of this excluded region, they agreed to Quebec's proposed changes. However, in the preamble to the Trilateral Agreement, the language stipulates that both areas be considered for protection: "Whereas Quebec and the Algonquins of Barriere Lake wish to ensure, on the territory currently used by the latter and included in Annex 1 and in Annex 2, the rational management of renewable

resources in view of making possible, with a concern for conservation, their versatile utilization, and the pursuit of the traditional activities by the Algonquins of Barriere Lake.”

⁹¹² Mary Everson, in discussion with author, May 2, 2011.

⁹¹³ Everson, discussion, May 2, 2011. Everson has also been critical of the content of the AIP, arguing that 5,000 hectares currently being offered represents an extremely diminished proportion of the community’s traditional lands: “That’s seven square miles. That’s nothing. We used to utilize 5,000 square miles gathering food, harvesting ... seven square miles is nothing.” The only people who will benefit, she contends, are those who will service the isolated, non-serviced area, with a sewer system, roads, and other amenities. She also worried, like Barriere Lake, that her people would not be able to afford the rising cost of living when the new taxes imposed by Treaty begin to kick in.

⁹¹⁴ Williams, discussion, April 29, 2011.

⁹¹⁵ Williams, discussion, April 29, 2011.

⁹¹⁶ AFN, Comprehensive Claims Policy Reform Regional Discussion Forum Roll-up Report, March 28, 2012, 2.

⁹¹⁷ See: Canada, “Guide for Federal Implementation of Comprehensive Claims and Self-Government Agreements,” Government of Canada, May 2011, at 5.2: “Information Sharing.”

⁹¹⁸ Russell Diabo, “Harper Launches Major First Nations Termination Plan: As Negotiating Tables Legitimize Canada’s Colonialism,” *First Nations Strategic Bulletin*, 10.7-10, (June-October 2012): 1-9.

⁹¹⁹ Diabo, “Harper Launches Major First Nations Termination Plan,” 1.

⁹²⁰ Russell Diabo, “Canada’s First Nation Termination Plan,” Nation to Nation Now Symposium, Toronto, March 23, 2013.

⁹²¹ *R. v. Van der Peet* [1996] 2 S.C.R. 507 (hereafter *Van Der Peet*).

⁹²² Diabo, Canada’s First Nation Termination Plan.”

⁹²³ Diabo, Canada’s First Nation Termination Plan.”

⁹²⁴ See: www.defendersoftheland.org

⁹²⁵ This precise sentiment is expressed to Arthur Manuel by the Minister of Indian Affairs. See: Robert Nault (Minister of Indian Affairs) to Arthur Manuel (Chair of Shushwap Tribal Council), “Re: Changes to Comprehensive Claims Policy,” Letter, July 18, 2000.

⁹²⁶ The following mandates passed at the AFN Annual General Assembly in 2010: Resolution 71/2011 – Comprehensive Claims Policy Reform Initiative – focusing on the Crown-First Nation Gathering held in January 2012, and emphasizing the need to advance CCP reform as a part of this event; Resolution 17/2011 – Specific Claims Tribunal Act Timelines – concerning Canada’s inappropriate use of timelines to limit negotiations; and, Resolution 14/2011 – Additions to Reserve and Economic Development and 70/2011 Improving the Additions to Reserve Policy and Process – both confirming the need to reform the ATR policy and process.

⁹²⁷ This is not unprecedented. The efforts of the Delgamuukw Implementation Committee (DISC) were derailed from inside, as well, when two AFN committees worked at cross-purposes to ultimately sabotage the efforts of DISC.

⁹²⁸ AFN, “Crown - First Nations Gathering Next Steps,” February 2012. Accessed online May 8, 2013: <http://www.afn.ca/uploads/files/cfng/cfng_next_steps_-_february_2012.pdf>

⁹²⁹ AFN, “First Nations Plan: Honouring our Past, Affirming our Rights, Seizing our Future,” Jan. 23-24, 2012, 38.

⁹³⁰ Russell Diabo, “Crown-First Nations Gathering: The Harper Government and AFN Politics,” *First Nations Strategic Bulletin*, First Nations Strategic Bulletin, 10.1-3 (Jan.-March 2012): 3.

⁹³¹ Meagan Fitzpatrick, “Attawapiskat handed victory by Federal Court: Judicial review says a 3rd-party manager was 'unreasonable' fix to housing crisis,” *CBC News*, Aug. 1, 2012.

⁹³² To pick just one of a number of excellent summaries of the movement’s demands, see: Wab Kinew, “Idle No More Is Not Just an ‘Indian Thing,’” *Huffington Post Canada*, December 17, 2012.

⁹³³ Jody Wilson-Raybould, “Regional Chief’s Quarterly Report to the Chiefs of BC,” British Columbia Assembly of First Nations, March 1, 2013.

⁹³⁴ AADNC-AANDC, Announcement, Email, April 23, 2013.

⁹³⁵ Diabo, “Canada’s First Nation Termination Plan.”

⁹³⁶ Price Waterhouse, “Economic Value of Uncertainty Associated with Native Claims in British Columbia,” Commissioned by Indian and Northern Affairs Canada, 1990; ARA Consulting Group. “Social and Economic Impacts of Aboriginal Land Claim Settlements: A Case Study Analysis,” Ministry of

Aboriginal Affairs, Province of British Columbia Federal Treaty Negotiations Office, Government of Canada, 1995; KPMG, "Benefits and Costs of Treaty Settlement in British Columbia: A Financial and Economic Perspective," Victoria, BC, 1996; Mustel Group, "Summary: Impact of Unresolved First Nations Land Claims on Investment in BC," Prepared for the British Columbia Treaty Commission, February 2004; Grant Thornton, "An Update to the Financial and Economic Analysis of Treaty Settlement in British Columbia," Prepared for the BC Treaty Commission, March 12, 2004; Grant Thornton, "Financial and Economic Analysis of Treaty Settlements in BC," Prepared for the BC Treaty Commission, 1999, Accessed online May 13, 2013: <<http://www.gov.bc.ca/arr/reports/thornton.html>>; PricewaterhouseCooper, "Financial and Economic Impacts of Treaty Settlement in BC," Prepared for the BC Treaty Commission, November 2009. For an overview of business perspectives on the BC treaty process more generally, see: BCTC, "Venturing into Treaty World," March 2004.

⁹³⁷ Price Waterhouse, "Economic Value of Uncertainty Associated with Native Claims in British Columbia," iii.

⁹³⁸ PricewaterhouseCooper, "Financial and Economic Impacts of Treaty Settlement in BC," Table 3, 10.

⁹³⁹ PricewaterhouseCooper, "Financial and Economic Impacts of Treaty Settlement in BC," Table 3, 10.

⁹⁴⁰ Ariel Fournier, "Sliammon protesters seek injunction to halt upcoming treaty vote," *theyee.ca*, July 6, 2012. This article provides a link to concerned Sliammon members' press release explaining why they were blocking the vote.

⁹⁴¹ See: Maa-nulth First Nations, "Maa-nulth First Nations Support Sliammon Voting Process," Press Release, Vancouver, June 26, 2012; and, Tsawwassen First Nation, "Tsawwassen First Nation supports Tla'amin First Nation's right to vote on their future," Press Release, June 22, 2012.

⁹⁴² Justine Hunter, "Head of BC Treaty Commission suggests shutting it down," *Globe and Mail*, Wednesday, Oct. 12, 2011.

⁹⁴³ Justine Hunter, "Clark seeks non-treaty deals with natives," *Globe and Mail*, A4 News, Friday, November 4, 2011.

⁹⁴⁴ Statement of the Second Indigenous Assembly Against Mining and Pipelines, November 6, 2011. Accessed online May 9, 2013: <<http://noii-van.resist.ca/?p=4533>>. Signed by Sliammon, Secwepemc, Wet'suwet'en, St'at'imc, Tsimshian, Dakelh, Carrier, Nuxalk, Tla-o-qui-aht, Haida Gwaii, Nak'azdli, Nlaka'Pamux, Siksika, Ahousaht, Ktunaxa, and Sayisi Dene.

⁹⁴⁵ Clifford Lincoln, in discussion with author, April 26, 2011.

⁹⁴⁶ Michel Gratton, in discussion with author, April 9, 2011.

⁹⁴⁷ Russell Diabo, in discussion with author, April 19, 2013.