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**MANIFESTATIONS OF POWER:
NATIVE RESPONSE TO SETTLEMENT IN
NINETEENTH CENTURY BRITISH COLUMBIA**

by

Bruce Colin Stadfeld

B.A., Brandon University, 1987

**THESIS SUBMITTED IN PARTIAL FULFILMENT OF
THE REQUIREMENTS FOR THE DEGREE OF
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Abstract

The Native world of nineteenth century British Columbia is often described as a place where Natives were powerless in the face of non-Native settlement. Settlers, backed by their government and its instruments of power--gunboats, legislation, bureaucrats, surveys, fences, and the law--swept defenceless Natives from the land and confined them to reserves. The colonial and provincial land records, as well as the reports of the department of Indian affairs, contain a wealth of information on individual disputes between Natives and non-Natives in the nineteenth century. An examination of these disputes reveals a much different pattern of interaction. Beyond the realm of government dictates and official wrangling, there existed a relationship predicated upon confrontation, negotiation, and conciliation. Confrontations over land precipitated the existence of a 'negotiated space' between Natives and non-Natives; in this space Native power was manifested. This power was fluid, organic and decentered; it was not an attribute confined to the 'powerful', but was a force that originated in the lives of active agents. The strategies and tools Natives utilized to create it ranged from private agreements, to shifting survey posts, to destroying fences. Their response to settlement also illustrates that they were involved with non-Natives over a contest of land definition. Land was recreated through the interaction of Natives and non-Natives during the settlement period. An analysis of individual conflicts illustrates that a combination of decentered power, malleable land, and negotiated space, was at the foundation of Native/non-Native interaction during the settlement of British Columbia.

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Introduction: Powerful Natives

In the mid-1970s Canadian historians began to re-interpret Natives' role in the early fur-trade period of Canadian history. Scholars such as Charles Bishop and Robin Fisher and Arthur J. Ray made convincing arguments for the dynamic and integral role that Natives played in the fur trade.¹ Since these studies scholars have continued to offer elaborations on many of the same themes such as Native/non-Native partnership, Native economic independence during the fur trade, and the resiliency of Native society.² These studies expanded on the independent and self-reliant nature of Native society during the pre-settlement period, but most have offered inadequate descriptions of the changes Native society experienced during the settlement era. Most contemporary studies have concentrated on illustrating Natives' adaptive abilities during the fur-trade period and have

¹ Charles A. Bishop, The Northern Ojibwa and the Fur Trade: An Historical and Ecological Study (Toronto: Holt, Rinehart and Wilson, 1975); Robin Fisher, Contact and Conflict: Indian-European Relations in British Columbia, 1774-1890 (Vancouver: University of British Columbia Press, 1977); Arthur J. Ray, Indians in the Fur Trade: Their Role as Hunters, Trappers and Middlemen in the Lands Southwest of Hudson Bay, 1660-1870 (Toronto: University of Toronto Press, 1974).

² Daniel Francis and Toby Morantz, Partners in Furs: A History of the Fur Trade in Eastern James Bay, 1600-1870 (Kingston: McGill-Queen's University Press, 1983); Arthur J. Ray and Donald B. Freeman, 'Give Us Good Measure': an economic analysis of relations between the Indians and the Hudson's Bay Company before 1763 (Toronto: University of Toronto Press, 1978); W.A. Sloan, "The Native Response to the Extension of the European Traders into the Athabasca and MacKenzie Basin, 1770-1814," Canadian Historical Review 60 (1979): 281-295; Paul C. Thistle, Indian-European Trade Relations in the Lower Saskatchewan River Region to 1840 (Winnipeg: The University of Manitoba Press, 1986).

then focussed on the growth of what they have described as Native dependence during the settlement period. The few studies that have attempted to argue for the presence of a dynamic Native society during the transitional period have either offered little evidence or have regressed to describing Natives as being victims of non-Native government oppression. The result is that Canadian historians still know very little about the Native experience during the settlement period and have not yet devised a satisfactory method for interpreting the nature of the change that created a fundamentally new society for both Natives and non-Natives.

The growth of studies of Native/non-Native relations in Canada has also not meant that Natives have assumed an integral position in Canadian history. As Bruce G. Trigger asserts "most historians continue to regard native people as peripheral to the mainstream of Canadian history."³ He argues that this is because even historians who study Native history view their work as "an extension of historical research into a new field rather than as an integral part of research on Canadian society."⁴ Trigger's solution emphasizes the benefits of anthropology and archaeology in eradicating historians' eurocentric concentration on first contact as the beginning of Native history. He also notes that part of the reason for the marginalization of Native history is that the majority of work in the field reinforces the idea that Natives "faded into insignificance" with the progression of non-Native settlement.⁵ There are several other major reasons for the marginalization of

³ Bruce G. Trigger, Natives and Newcomers: Canada's "Heroic Age" Reconsidered (Montreal: McGill-Queen's University Press, 1985) 47.

⁴ Trigger 48.

⁵ Trigger 48.

Native history. Some of the most obvious are the economic-determinist approach which dominates the field, the emphasis on the development of government policy as the history of Native peoples, and the implicit assumption that Natives should be described as relatively powerless 'victims' of non-Native oppression. All of these traits have led to the 'ghettoization' of Native history and the Native experience.

Any understanding of the underlining assumptions of the field of Native history in British Columbia must begin with Robin Fisher's Contact and Conflict. Fisher's study is the most comprehensive analysis of Native/non-Native relations in British Columbia and offers a convincing argument for Native adaptability during the fur-trade period. But Fisher describes a much different type of Native during the settlement period, partly because of his understanding of the abrupt changes that accompanied settlement. "In 1858 with unexpected suddenness, the fur trade was ended and the settlement was founded."⁶ Accordingly, the suddenness of the transition and the fundamental nature of the change was too much for Native society. He argues that while Natives were able to manipulate, if not dictate, the rate of change during the fur-trade period, when settlement began in earnest Natives were unable to "cope with the pace of change."⁷ This is an inadequate description of the complex system of interaction between Natives and non-Natives during the settlement period yet subsequent studies have done little to challenge it.

One of the few studies of Native adaptation in the post fur-trade period has been

⁶ Fisher, Contact and Conflict 210.

⁷ Fisher, Contact and Conflict 211.

Rolf Knight's Indians at Work.⁸ Knight offers significant insights into Native employment during the late nineteenth and early twentieth centuries. Knight contends that his examples of Natives working in a wide variety of industries proves that they were not economically marginalized during the settlement period. His analysis is flawed by a lack of documentation and an over-simplification of the issues.

A much more useful, although narrowly focussed, study of the question of Native economic adaptation during the settlement period has been offered by James Burrows. In a study of the Interior Salish of British Columbia during the late nineteenth century, Burrows describes the regional variations in employment opportunities available to Natives and the effects that the challenges of increased settlement had on Native employment opportunities. "Handicapped by restrictive government regulations...and by discrimination on the part of white employers, they found it increasingly difficult to respond to these new challenges."⁹ While Burrows' argument for the regional variation of the Native economic experience is important, his heavy reliance on the Department of Indian Affairs' records and his underlying theme of Native victimization weakens his study.

The origin of these problems is the economist-determinist approach that dominates the field. Even though anthropologists have accepted that the economies of pre-industrial

⁸ Rolf Knight, Indians at Work: An Informal History of Native Indian Labour in British Columbia, 1858-1930 (Vancouver: New Star Books, 1978).

⁹ James K. Burrows, "A Much-Needed Class of Labour': The Economy and Income of the Southern Interior Plateau Indians, 1897-1910," BC Studies 71 (Autumn 1986): 27-46.

societies are interwoven with social structures, many historians continue to assume that the Native experience during settlement can be understood from an analysis of their relation to the non-Native economy. E.P. Thompson's criticisms of simplistic divisions between economies and social structures, apply to the study of Native history. Thompson argues that historians cannot begin to understand economic structures "independently of the relations of power and domination, the concepts of use-right or private ownership," and that to ignore this relationship leads to "vulgar economic determinism."¹⁰

When Native peoples are not being relegated to the margins of British Columbia history because of their relationship to the non-Native economy, they are described as victims of settlement. Jean Barman argues that during the settlement period Natives were perceived as a "nuisances" and while they occasionally caused problems for settlers, they were "easily shunted aside."¹¹ Duane Thomson reasons that Natives were displaced from their lands because they were "second class citizens...left at the mercy" of local authorities who were manipulated by the non-Native population.¹² Peter Carstens attributes the Natives' failure to retain their land to the underlying system of coercion that was introduced with the fur trade and spread rapidly with the expansion of government.¹³ All

¹⁰ E.P. Thompson, "Folklore, Anthropology and Social History," Indian Historical Review 3 (1978) 262.

¹¹ Jean Barman, The West Beyond the West: A History of British Columbia (Toronto: University of Toronto Press, 1991) 152.

¹² Duane Thomson, "A History of the Okanagan: Indians and Whites in the Settlement Era, 1860-1920," diss., University of British Columbia, 1985, 343.

¹³ Peter Carstens, The Queen's People: A Study of Hegemony, Coercion, and Accommodation among the Okanagan of Canada (Toronto: University of Toronto Press, 1991).

of these studies concentrate on the inevitability of Native marginalization and the process of Native victimization at the hands of a racist and hostile non-Native society. While they have increased our understanding of non-Native oppression, they say more about how Natives were victimized than about how they responded to new forces in an attempt to control their lives.

Because of the emphasis on Native oppression, the field of Native history in British Columbia has most often been based upon the development of government policy. Although historians occasionally applaud themselves for bringing Natives 'out of the background'¹⁴, a preoccupation with government policy has meant that instead of Natives, it has been bureaucrats such as James Douglas, Joseph Trutch, and Gilbert Sproat who have come striding out of the background of British Columbia history. The debate often revolves around the actions of a select group of government officials who either devised or attempted to implement government policy¹⁵. These debates are important in relation to contemporary land claims, but the history of the actions of politicians and bureaucrats is not the history of Native peoples. Beyond the world of government memorandums and official wrangling there existed a dynamic and creative world of

¹⁴ Robin Fisher and Ken Coates, eds., Out of the Background: Readings in Canadian Native History (Toronto: Copp Clark Pitman, Ltd., 1988).

¹⁵ See, Robin Fisher, "Joseph Trutch and Indian Land Policy," BC Studies 12 (1971-72): 3-33; Robin Fisher, "An Exercise in Futility: The Joint Commission on Indian Land in British Columbia, 1875-1880," Canadian Historical Association, Historical Papers (1975): 79-94; Paul Tennant, Aboriginal Peoples and Politics: The Indian Land Question in British Columbia, 1849-1989 (Vancouver: University of British Columbia Press, 1990) 17-38; Barry M. Gough, "The Indian Policies of Great Britain and the United States in the Pacific Northwest in the Mid-Nineteenth Century," Canadian Journal of Native Studies 2 (1982): 321-337.

confrontation and conciliation between Natives and non-Natives. This is the world that needs to be understood in any attempt to understand both Native land claims and the Native experience during non-Native settlement.

To begin to understand this world, two important changes in approach need to be taken. First there is a need to concentrate on a topic that is so obvious that its importance is often overlooked: land. Most historians of Native history in British Columbia have noted the obvious importance of land in the history of the province. Wilson Duff, one of British Columbia's first serious students of Native history, commented on the basic political conflict that arose over the contest for land. "The arrival of colonists intent on taking up land raised a whole new set of patterns. Some agreement had to be reached on the ownership of land, and ways had to be found to make the Indians conform to the laws of the Colony."¹⁶ Even though Duff acknowledged the need for settlers to remove Natives from the land he dismissed its long-term impact and simply argued that it falls into the category of "unfinished business."¹⁷

A more sensitive analysis of the land issue has been put forward by Robin Fisher, who notes that land was, and is, a fundamental part of Native life in British Columbia and that it must be seen as a basic ingredient in the disputes that resulted between Natives and settlers. He states that to "relieve the Indian of his land was to deprive him of the place of his ancestors and take away part of his identity,"¹⁸ and that when settlement began

¹⁶ Wilson Duff, The Indian History of British Columbia, Volume II, The Impact of the White Man (Victoria: Museum of British Columbia, 1965) 60.

¹⁷ Duff 67.

¹⁸ Fisher, Contact and Conflict 103.

in earnest in British Columbia non-Natives "coveted Indian land."¹⁹ Although Fisher places much more importance on the issue of land control than any of his predecessors, he still underestimates the importance of the issue through his concentration on government land policy instead of how Natives and non-Natives actually struggled to control land. There is a need to shift the focus away from government policy and concentrate instead on how individuals vied for control of land at the base level.

To do this a more sophisticated approach to the land question is required, one which acknowledges that land is a historical construct, and that there is a symbiotic relationship between Native/non-Native interaction and changing definitions of land. The theoretical basis for analyzing this relationship lies in the field of environmental history. In the 1950s F. Fraser Darling noted that ecology is a basic ingredient in the process of societal development, and that any "attempt to study social and economic problems apart from the biological background would be to blindfold oneself."²⁰ Later adherents to Darling's arguments reiterated its primacy by stating that an analysis of how societies change the land "will result in a vision of nature and man bound in an organic set of interpenetrating resonances."²¹

Two examples of this type of environmental history are suggestive of its application to the study of Native/non-Native interaction. William Cronon's study of the

¹⁹ Fisher, Contact and Conflict 94.

²⁰ F. Fraser Darling, "The Ecological Approach to the Social Sciences," The Subversive Science: Essays Toward an Ecology of Man, eds. Paul Shepard and Daniel McKinley (Boston: Houghton Mifflin Company, 1969) 317-327, rpt. from American Scientist 39 (1951): 244-256; 323.

²¹ Paul Shepard and Daniel Mckinley, The Subversive Science, 317.

changing ecology of New England illustrates that land, instead of being static, is an evolving entity whose definition is altered through changing uses.²² His argument implies that land is a historical construct that is produced by cultural interaction. Richard White summarized the basis of this type of approach in his description of the changing ecology of Whidbey and Camano Islands in Washington State. "The real history of the area is not political history, nor in a strict sense, social history, although it contains elements of each. Instead it is the history of changes wrought in the natural environment by both Indian and white occupation and use of the land, and the consequences of these changes for the people who made them."²³ These studies acknowledge the fundamental role of land use in social development, although both emphasize the interaction between non-Natives and the land, not the place of land definition in the history of Native/non-Native interaction.

Alan Taylor has also illustrated the benefits of approaching land as a negotiated space and analyzing conflicts to recreate it. Taylor studied competing non-Native definitions of land in the northeastern United States, specifically disputes between 'yeoman' farmers and estate owners who sought to control large tracts of land. He concluded that their conflicts, which often resulted in the destruction of buildings and fences, was in fact a process of negotiation which defined the 'frontier'.²⁴ Taylor's study

²² William Cronon, Changes in the Land: Indians, Colonists, and the Ecology of New England (New York: Hill and Wang, 1983) 63.

²³ Richard White, Land Use, Environment, and Social Change: The Shaping of Island County, Washington (Seattle: University of Washington Press, 1980) 5.

²⁴ Alan Taylor, "A Kind of Warr': The Contest of Land on the Northeastern Frontier, 1750-1820," William and Mary Quarterly 46.3 (1989): 3-36.

reveals the benefits of analyzing the reconstruction of land between non-Native groups; it is even more important when attempting to understand relations between Natives and non-Natives.

European colonization of North America brought about a conflict of cultures that proceeded from European attempts to transform Native "cultural identity."²⁵ Attempts by non-Natives to change aboriginal religions, social organizations, and economies have received a great deal of attention, but little has been done on the conflict between Natives and non-Natives over the definition of land; a basic aspect of Native cultures. Native/non-Native interaction was rooted in conflicts over the definition of land,²⁶ with non-Natives attempting to reconstruct the landscape to suit their understanding of land usage and its relation to society.²⁷ The result of this process was not simply the remaking of North America in a European image, but instead the formation of a landscape hybrid that was created through conflicts between Natives and non-Natives.²⁸

To analyze Native/non-Native conflicts over land, there is a need to first understand the place of power in these conflicts and, more basically, what is meant by

²⁵ James Axtell, "The Invasion Within: The Contest of Cultures in Colonial North America," The European and the Indian: Essays in the Ethnohistory of Colonial North America (New York: Oxford University Press, 1981) 42.

²⁶ David K. Eliades, "Two World Collide: The European Advance into North America" A Cultural Geography of North American Indians, eds. Thomas E. Ross and Tyrel G. Moore (Boulder: Westview Press, Inc. 1987) 33-44.

²⁷ Peter A. Thomas, "Contrastive Subsistence Strategies and Land Use as Factors for Understanding Indian-White Relations in New England" Ethnohistory 23.1 (1976): 1-18.

²⁸ Karl W. Butzer, "The Indian Legacy in the American Landscape," The Making of the American Landscape, ed. Michael P. Conzen (Boston: Unwin Hyman, Ltd, 1990): 27-50.

power. Without such a consideration one runs the risk of continuing to describe Natives as being simple victims of government land policy that was orchestrated by powerful politicians and bureaucrats. An attempt to broach this issue was made in a recent article by Tina Loo.²⁹ Loo describes the conflict between British Columbia Natives and the governmental legal system over the practising of potlatching in an attempt to reinterpret the nature of Native/non-Native interaction. She argues that the imposition of the potlatch law on Native society was a complex and intricate process through which Natives were able to use the law's power in order to alter its impact and achieve their goals. In this analysis the law is not simply imposed on Natives but is a flexible and creative force. While Loo makes a notable contribution, her analysis still leaves Natives in the position of utilizing an external source of power, in this case the law. This results in them once again being objectified by non-Native agencies. In her description Natives are described as being creative and adaptable because they have the foresight to utilize the power which lies within non-Native law. The power lies elsewhere and Natives are thus defined by their ability to tap into it. The end result is once again a picture of a disempowered Native since their power is not something of their own creation but is instead found in the hands of non-Natives.

An important modification is to see power not as something which is external to historical agents, but instead as a manifestation of individual action. To do this there is a need for a more sophisticated definition of power than the one that is implicit to most

²⁹ Tina Loo, "Dan Cranmer's Potlatch: Law as Coercion, Symbol and, Rhetoric in British Columbia, 1884-1951," Canadian Historical Review 73 (June 1992): 125-65.

studies of the effect of settlement on Natives in British Columbia; one predicated on a dichotomy of the powerful and the powerless. Michel Foucault's theorizing on the nature of power holds many important lessons for the writing of Canadian Native history. Foucault states that power does not simply represent institutions that ensure obedience to the dictates of the state or a form of subjugation. Foucault opposes the implicit definition of power that pervades the writing of Native history in Canada. He warns against conceptualizing power as a "general system of domination exerted by one group over another, a system whose effects, through successive derivations, pervade the entire social body."³⁰ Foucault argues that it is folly to assume that state institutions are the repositories of power, instead they are only the "terminal forms power takes." Power, for Foucault, is the:

multiplicity of force relations immanent in the sphere in which they operate and which constitute their own organization; as the process which, through ceaseless struggles and confrontations, transforms, strengthens, or reverses them; as the support which these force relations find in one another, thus forming a chain or system, or on the contrary, the disjunctions and contradictions which isolate them from one another; and lastly, as the strategies in which they take effect, whose general design or institutional crystallization is embodied in the state apparatus, in the formation of the law, in the various social hegemonies.³¹

The source of power should not be looked for in government policy or the hands of government officials, but instead in "the moving substrate of force relations which, by virtue of their inequality, constantly engender states of power, but the latter are always

³⁰ Michel Foucault, The History of Sexuality, Volume I: An Introduction, trans. Robert Hurley, (1976; New York: Vintage Books, 1990) 92.

³¹ Foucault 92-93.

local and unstable."³² The goal is to analyze Native/non-Native conflict over land as a site of expression of this form of power. It was during attempts to control land that Natives and non-Natives exhibited the struggles, confrontations and strategies for survival that Foucault recognized as fundamental to the expression of power. An understanding of these 'force relations' between Natives and non-Natives, illustrates that "power is not an institution, and not a structure; neither is it a certain strength we are endowed with; it is the name that one attributes to a complex strategical situation in a particular society."³³

When power is conceived of in this way it becomes obvious that much of the writing in the field of Native history on the marginalization of Native society is based on a simplistic assumptions as to the nature of the power. Native historiography assumes and perpetuates the idea of binary opposites in the struggle for power. There are relatively powerful government officials or settlers, and relatively powerless Natives. But as Foucault argues, "there is no binary and all-encompassing opposition between rulers and ruled at the root of power relations...."³⁴ This is not to argue that all people have equal power or that power is so diffuse that hegemony is an illusion. Rather, "manifold relationships of force...are the basis for wide-ranging effects of cleavage that run through the social body as a whole....Major dominations are the hegemonic effects that are

³² Foucault 93.

³³ Foucault 93.

³⁴ Foucault 94.

sustained by all these confrontations."³⁵ Power can be created and does interact in such a manner as to influence broad societal relations, but an understanding of this power requires more than an examination of government policy; it requires an appreciation of the conflicts between peoples.

Addressing the definition of power will lead to a more sophisticated study of Native resistance and a questioning of the typical, and dominate, description of Native/non-Native relations as "a morality play that includes 'heroes' and 'villains.'"³⁶ Foucault argues that [w]here there is resistance, there is power" because "resistance is never in a position of exteriority in relation to power."³⁷ It is also important to emphasize that resistance is not strictly a manifestation of the victimized or the oppressed. Resistance is not "only a reaction or rebound, forming with respect to the basic domination an underside that is in the end always passive, doomed to perpetual defeat."³⁸ This is because the plurality of resistances forms a series of confrontations that, although they may not constitute large-scale 'successes', do signify the relative nature of power struggles.

When power is understood as a force which is diffuse, which is created and applied during conflict, it provides a new interpretation of Native/non-Native interaction. Foucault argued that one should not attempt to understand power relations by looking for

³⁵ Foucault 94.

³⁶ Paul H. Carlson, rev. of Lost Harvests: Prairie Indian Reserve Farmers and Government Policy, by Sarah Carter, American Indian Quarterly 16(1992): 432.

³⁷ Foucault 95.

³⁸ Foucault 96.

who has the power and who does not, but should "seek rather the pattern of modifications which the relationships of force imply by the very nature of their process."³⁹ He called this his rule of continual variations, and through it emphasized that power relations are not static, nor do they have focal points of application which resolve conflicts, instead they are based on "'matrices of transformations'".⁴⁰ This means that there is no single date, such as 1858, when the power dynamics between people shift. Instead, there is an ongoing process of transformation which is founded on conflicts between individuals, groups, and cultures. In the case of Native/non-Native relations this process of transformation can be analyzed by studying the discourse created between Natives and non-Natives when they struggled to redefine land.

Foucault's theorizing on power has challenged traditional historical practices which have marginalized 'powerless' groups such as Natives. "He sought to undermine the assumptions of a discipline that still ghettoizes histories of women, homosexuals, and minorities, a discipline that still understands power, for the most part, as an attribute of a nation or class."⁴¹ This can be best appreciated in the field of feminist theory, especially the work of Joan Wallach Scott.⁴² Scott was led to search for new approaches to the field of 'women's history' for reasons that are quite reminiscent of Trigger's

³⁹ Foucault 99.

⁴⁰ Foucault 99.

⁴¹ Patricia O'Brien, "Michel Foucault's History of Culture," The New Cultural History, ed. Lynn Hunt (Berkeley: University of California Press, 1989) 45.

⁴² Joan Wallach Scott, Gender and the Politics of History (New York: Columbia University Press, 1988).

complaints of Native history. She felt a "sense of frustration at the relatively limited impact women's history was having on historical studies generally...." Scott notes that her motivation is one that feminist's share with others who seek to "change the representation of other groups left out of history because of race, ethnicity, and class as well as gender."⁴³ To do this she proposed to analyze how societies produce knowledge and understand themselves and their internal conflicts through the construction of meanings; in her case gender, in the case of this study, land.

Most studies of Natives after the fur trade have been dominated by an implicit question: how were Natives marginalized? The focus of this study is to ask a significantly different question: how did Natives respond? It is an attempt to illustrate that a significantly different understanding of Native/non-Native history, one that appreciates the integral role of Native protest, results from the change of question. It is a preliminary analysis of the 'negotiated space' that existed between Natives and non-Natives in British Columbia during the 'disappearance of the commons'.⁴⁴ These conflicts, or 'force relations', were manifested in such seemingly benign objects as potato patches, surveys, and fences. An analysis of these 'technologies' of power illustrates that there is much more to Native/non-Native interaction than bureaucrats, the economy, and marginalization. It also reveals that the Native world of nineteenth century British Columbia was much more complicated and ambiguous than frequently described.

⁴³ Scott 3.

⁴⁴ Irene Spry, "The Great Transformation: The Disappearance of the Commons in Western Canada," Man and Nature on the Prairies, ed. Richard Allen (Regina: Canadian Plains Research Center, 1976) 21-45.

The size of the question dictates the breadth of the answer, an answer which is not tidy and exact. Many of the details about specific confrontations are unavailable, often even the final resolution is unclear. This is not as serious a problem as it could be, since what is being examined is not the results of these conflicts, but the strategies and tactics used by the participants. Also, the clarity of a detailed study has been sacrificed for the rewards of viewing the larger picture. Significant regional and temporal differences are not emphasized as they would be in a longer work. This is because the emphasis is on drawing attention to the larger themes of protest and conflict which reveal the existence of Native power. No attempt is made to understand the differing societal conceptions of power. The question of Native peoples' understandings of the concept of power is a fascinating subject, but one far outside the scope of this work.

Although many questions are not completely answered and many trails are not fully travelled, the conclusions are definite and unavoidable. The roots of contemporary Native protest lie in the type of individual confrontations described below. These confrontations were part of a larger struggle for the recreation of land in British Columbia. And, finally, these confrontations were manifestations of Native power.

Chapter One: Private Negotiations

The dynamics of individual negotiation and confrontations between settlers and Natives is a neglected aspect of Native/non-Native relations. Most studies have concentrated on the development of government policy and the broader impact of settlement on the displacement of Natives. The damage that this policy had on Native societies has been well documented. But little attention has been given to how individual Natives and settlers came together over the subject of land control. These confrontations are usually described as irritants which were relatively unimportant.¹ A larger perspective reveals fundamental patterns of Native/non-Native interaction that structured the world of Native power. A study of these confrontations uncovers the existence of a 'negotiated space' that existed between Natives and non-Natives outside of the realm of government control. These negotiations rarely resulted in unqualified Native 'victories'; in fact, as many studies of Native land policy have illustrated, colonial and provincial governments were most often able to impose their policies. But even obvious 'defeats' reveal the presence of negotiations.

This negotiated space often took the form of confrontations, and occasionally agreements, over land between Natives and non-Natives. When government officials were absent, Natives and settlers could negotiate agreements for land use between themselves. Philip Nind commented on the existence of these types of agreements when he reported

¹ For example Fisher describes many examples of Natives resisting settlement in the 1860s as "niggling incidents" which were "comparatively minor affairs"; Contact and Conflict 107.

on affairs in the Kamloops area in 1865. Approximately 500 Shuswap had claimed all the land "between the foot of the Great Shuswap Lake and the North River, a distance of nearly fifty miles...." The area consisted of thousands of acres of arable land "admirably adapted for settlement," but settlers were having a difficult time gaining access to the region because of the Shuswaps' determination to exercise their title. An example was a local cattleman's agreement to pay the Shuswap a monthly fee for the right to pasture his cattle on their land.² When settlers refused to meet Native demands the results were sometimes costly. A settler refused to pay similar compensation to Natives in the Penticton region and lost most of his stock because of a scarcity of winter grazing.³

The colonial government did not approve of agreements between Natives and non-Natives. When Thomas Dean, a Cowichan settler, notified the government in 1865 that he had entered into an agreement with a group of Cowichan to rent 100 acres of hay land on their reserve for \$50 per annum, the government's reaction was less than favourable.⁴ Acting surveyor general Pearse viewed it as so serious a matter that he advised the governor to issue a proclamation forbidding non-Natives from entering into agreements with Natives for either leases or purchases. Pearse feared these arrangements encouraged "extravagant ideas" of the value of Native land; ideas which would undoubtedly lead to

² Nind to colonial secretary, 17 July 1865, Papers Connected with the Indian Land Question 29.

³ Turnbull to Trutch, 17 January 1866, Papers Connected with the Indian Land Question 35-36.

⁴ Dean to acting colonial secretary, 3 February 1865, file 1, GR 504, BCARS.

"complications and difficulties."⁵ Rev. A.C. Garrett reached the same conclusions. He wrote to the colonial government in 1865 to inform it that many people considered the practice to be a "reckless policy" which fostered among Natives the idea of a "right existing where the government recognizes none...." Garrett worried that agreements between settlers and Natives would engender a belief in the latter that they held title to their land, and that this would lead to demands that the government could never meet.⁶

Although negotiations between Natives and settlers were common during the settlement period,⁷ when agreements could not be reached Natives were far from powerless in their attempts to retain control of land. Some settlers were either prevented from occupying pre-emptions or were driven-off by Natives. A familiar Native strategy, one that has stood the test of time, was the building of road blocks. The difficulty settlers encountered in moving through an uneven country with dirt trails for roads was intensified when Natives refused them passage across their reserves. A settler named Deacon on Mayne Island complained that a Native had felled trees across the only sleigh road to his farm and refused to move them, stating that "It is the Indians' ranch & not the white mans."⁸ When Natives at Plumper's Pass on Vancouver Island blocked the

⁵ Pearse to colonial secretary, 13 March 1865, C/AA/30.7J/4, BCARS.

⁶ Garrett to colonial secretary, 10 March 1865, file 911/9, colonial correspondence, BCARS (emphasis in text).

⁷ For examples of both successful and unsuccessful agreements see, White to commissioner of lands, 22 June 1871, Papers Connected with the Indian Land Question 94; The Inland Sentinel, 16 September 1880, p.1; Hakin[?] to commissioner of lands, 12 March 1891, file 1022/91, GR 1440, BCARS.

⁸ Deacon to commissioner of lands, 8 March 1886, file 509/86, GR 1440, BCARS.

road across their reserve in 1887, a settler named Collinson complained that he and his neighbours were unable to move their cattle to pasture, and that they could not "for a moment tolerate any such high handed work."⁹ In the Interior in the 1860s the Shuswap regularly prevented settlers from working their claims, Natives at Savona's Ferry burnt settler's pasture in order to drive them out of the district, and miners were prevented from prospecting.¹⁰

As settlers moved further into the province in the nineteenth century Native protest against their encroachments continued. By the end of the century confrontations between Natives and settlers were as prominent as ever, with the settlers sometimes failing in their attempts to uproot Natives. In 1897 Edmund Elkins complained of a confrontation between himself and a group of Chilcotin. Elkins had been the first settler to pre-empt land in Beautiful Valley and had travelled to the district with his brother, intending to improve the land and build a homestead. When they arrived in the valley they were confronted by a several Chilcotin who demanded that they leave the district. The brothers refused, a fight erupted, and ended with Edmund Elkins drenched with hot tea and minus a large piece of an ear. Elkins reported the incident to the justice of the peace at Alexis Creek and at the subsequent trial witnesses testified for both sides. Justice Hewer decided that it was an "ordinary fair fight between two men" and since the Chilcotin had "cause

⁹ Collinson to Lomas, 12 May 1887, vol. 1334, RG 10. For a roadblock on the Sechelt reserve see, Vowell to Gore, 11 March 1896, file 1133/96, GR 1440, BCARS, and Devlin to [?], 14 March 1896, file 1269/96, GR 1440, BCARS.

¹⁰ Pemberton to Trutch, 26 July 1866, Papers Connected with the Indian Land Question 37.

for grievance", the case should be dismissed. Soon afterward the Elkins brothers left the valley.¹¹

The most common description of these individual confrontations is that settlers easily forced Natives from their land because colonial and provincial governments were extremely responsive to settlers' complaints. Settlers had only to call out and bureaucrats would move in to action with all of the government's power behind them. This analysis is best summarized by the work of Robin Fisher, who, in his discussion of the activities of the Indian Reserve Commission, has argued that although complaints on behalf of Natives were frequently ignored by the government, it "always paid prompt attention to any letter containing the complaint of a settler."¹² Fisher's analysis ignores the uneven and subjective nature of government influence, elements that allowed for significant Native manipulation of circumstances. The long arm of the government was actually quite short in most places, leaving settlers frustrated with the lack of government response.

A primary reason for these complaints was that the government lacked the staff to make its presence felt. During the mid-1860s news of confrontations between settlers and Natives in the Comox district poured into Victoria. Surveyor General Pearse finally decided that the only response was for him to go to the district and attempt to negotiate settlements. When he asked for permission to travel to Comox, Governor Kennedy replied: "I cannot spare the only officer in the Survey Department for the time necessary

¹¹ Elkins to attorney general, 18 November 1897, file 1, 2133/97, box 4, GR 429, BCARS.

¹² Fisher, "An Exercise in Futility" 89.

to perform the duty--it must be deferred."¹³ If Comox was outside of the colonial government's range of influence in 1865, settlers in even more remote locals were definitely on their own to negotiate with Natives as best they could.

Even the establishment of federal government Indian agencies did not mean that confrontations between Natives and non-Natives were quickly settled by government officials. When settlers' complaints of disputes with Natives in the Alkali Lake district, west of Clinton, reached the provincial lands department in 1894, chief commissioner Vernon asked the local Indian agent to investigate. The Indian agent replied that because the site of the dispute was approximately 100 miles from his headquarters, it would take him six days to make the round trip. He was already working 15 hour days and could not spare the time to intervene in the case.¹⁴ Government presence in British Columbia gradually increased during the nineteenth century but it was always a few steps behind the advancement of non-Natives. This led to the sporadic and uneven distribution of government influence, a situation in which Natives were able to manifest power.

One strategy employed by Natives to exhibit this power, and lay claim to land, was the invocation of the same criteria for ownership that settlers cherished. The settler society's concept of land title was based on the notion of improvement. A person's hold on a piece of land was strengthened through evidence of cultivation and construction. Settlers did not receive full title to their land until they had occupied it for several years, cultivated the soil, and constructed buildings and fences. Natives quickly adapted to this

¹³ Pearse to colonial secretary, 5 May 1865, C/AA/30.7J/4, BCARS.

¹⁴ Loues[?] to Vernon, 7[?] August 1894, file 3337/94, GR 1440, BCARS.

alien definition of land tenure and began to use it as tool for the advancement of their own claims.

One way they did this was to provide evidence of historic Indian settlements. Under the Land Ordinance of 1861 settlers were disallowed from pre-empting either Indian reserves or settlements.¹⁵ A vexing problem that arose during the settlement period, and one which exemplified the issue of land definition, was the question of what constituted an Indian settlement. This question was broached during a land dispute between a settler named Scott and the Natives of the Chemainus district on Vancouver Island. In 1859 Scott received permission from the colonial land office to occupy land in the district, providing that it was not "occupied at any time by Indians...." By 1864 Scott's claim was challenged by local Natives who claimed that the land was the site of one of their historic settlements and therefore part of their reserve. The dispute finally reached the colonial government with the definition of an Indian settlement being the crux of the matter. In a relatively enlightened decision the government conceded that although the Native definition of a settlement was different from the traditional non-Native definition, it still constituted a settlement in the eyes of the government.¹⁶ Scott was ordered to relinquish his claim, although in order to soften the blow the government decided to offer him \$200 compensation for his improvements.¹⁷

¹⁵ Cail 15.

¹⁶ Pemberton, et al to acting colonial secretary, 3 October 1864, file 909/3, colonial correspondence, BCARS.

¹⁷ Pearse to acting colonial secretary, 5 October 1864, file 909/3, colonial correspondence, BCARS.

Scott's eviction was not an isolated incident. A similar case occurred near Comox in the 1870s. William Duncan, "a very industrious and successful settler" applied to the colonial government in 1870 for title to 100 acres of land which he described as bordering his pre-emption and being unoccupied. Duncan gained title to the land and proceeded to improve it over a number years, even paying for a private survey of the land in order to strengthen his title. When the Indian Reserve Commission visited the district in 1876 the local Natives informed it that the land Duncan had claimed was in fact an Indian settlement which, though not part of their reserve, they still considered to be their land. The Natives demanded that the commissioners force Duncan to abandon his claim. Subsequent investigation revealed that the land was obviously the site of an Native village, and, in fact, had been recognized as such by the local settlers prior to Duncan's claim. The commissioners recommended that Duncan's claim be cancelled and that the 100 acres be declared Native land.¹⁸

Colonial and provincial governments found the question of Indian settlements relatively uncomplicated in comparison to the difficulties that arose from the question of Native title based on 'improvements'. Natives soon realized that their claim to land was strengthened by both a show of numbers and evidence of improvement, usually fences, buildings, and cultivation. When John Douglas, Jr. attempted to claim 320 acres near Douglas Lake in 1878, Nicola Indians prevented him from settling on the land. The Nicola laid claim to the land by carrying out their own survey, cultivating the soil, and

¹⁸ Indian Reserve Commission to provincial secretary, 11 January 1878, GR 494, BCARS.

settling several families on the land. They then informed government authorities of their willingness to negotiate the exchange of part of their reserve at Nicola Lake for the land they had made their own at Douglas Lake.¹⁹

A similar incident occurred near Clinton in the late 1870s. Ronald Macdonald wrote to the commissioner of lands complaining that he had staked a claim for 320 acres near Bridge Creek and had filed it at the Clinton office. When he returned to his pre-emption he found that a group of Natives had taken possession of his pre-emption by destroying his survey stakes and erecting buildings and fences of their own. He estimated the Natives to number seven men and several women and children, and believed that they had come from a settlement about 15 miles down the river. According to Macdonald, the Natives claimed both sides of the Big Bridge Creek Valley for a distance of four miles and were busily improving the land by cultivating potato patches.²⁰

Much of the debate over improvements centred around this seemingly innocuous question of potato patches. Potatoes, which had been introduced to west coast Natives by the first Europeans,²¹ became one of the few symbols of improvement that Natives could employ in the face of non-Native encroachment. While settlers could ignore most other Native definitions of land tenure, the sight of cultivated soil made them stop and question their assumptions about Native land tenure.

¹⁹ Lessher to Vernon, 20 April 1878, file 24, 956/78, box 3, GR 868, BCARS.

²⁰ Macdonald to commissioner of lands, 13 May 1878, file 1122/78, GR 1440, BCARS.

²¹ For more on the introduction of potatoes see, Wayne Suttles "The Early Diffusion of the Potato Among the Coast Salish," Southwestern Journal of Anthropology 7 (1951): 272-288.

An example of the confusion that resulted from this blurring of cultural land definitions occurred in the Chemainus district in the 1860s. In 1867 it came to the government's attention that land disputes in the region were the result of Natives from Kuper Island visiting the district to fish and till the soil. According to surveyor Pearse, the Penelakut had "been in the habit from time immemorial of visiting the valley for the purpose of fishing, and planting potatoes in small detached plots." The issue of the fishing stations was easily resolved, since the amount of land in question was relatively small, but the question of potato patches was significant. Pearse believed that if the ban on pre-empting Indian settlements was applied to gardens "there would be no settlement at all of the whites, as the whole valley is covered with them...." The government decided that the best action was to divide and conquer. It attempted to reach agreements with individual Penelakut on compensation. The expectation was that this would avoid the necessity of dealing with the Natives' tribal claims, and of acknowledging that Natives had a "hereditary claim to the patches of land...."²²

In an attempt to settle the demands, Pearse visited the Chemainus district and reported to the colonial government that the matter could be settled through an exchange of land, an action which was authorized by the colonial secretary.²³ Pearse soon negotiated a formal agreement between the Penelakut and a local settler. The settler agreed to abandon his farm and improvements to the Penelakut in exchange for

²² Pearse to colonial secretary, 17 May 1867, file 949/4, colonial correspondence, BCARS.

²³ Pearse to colonial secretary, 5 June 1867, file 949/6, colonial correspondence, BCARS.

compensation from the government, while the Penelakut agreed to confine their potato gardens to the allotted area.²⁴

The Native use of potato gardens to claim land is clearly revealed in a dispute at Oyster Bay, on Vancouver Island, between Natives and a settler named John Brenton. After pre-empting land in the district Brenton was confronted by Natives who claimed the land as their own and cited the presence of potato patches as evidence of their working the land and striving to improve it. Failing to receive satisfaction from the local government agent, Brenton wrote to Joseph Trutch to complain of his circumstances. Although land at the head of Oyster Bay had been declared an Indian reserve, Brenton believed that his pre-emption was definitely not part of the allotment. Despite his repeated demands that the Natives abandon his pre-emption, "they still persist to come on the land to work, and tell me to keep away, that I have no right there." When the local government agent repeated Brenton's case to the Natives, they "say (as they always do in such cases) that the land is theirs; that they have used it before for growing potatoes; and that therefore the land belongs to them." Brenton maintained that although the Natives' ancestors may have grown potatoes on the land there was no evidence that the present generation had ever tilled the soil. But as "soon as they discovered that I had taken up the land, they came and forthwith commenced preparing this piece of land for growing their[sic] this season's potatoes; and but for my having taken it up they most

²⁴ Pearse to colonial secretary, 24 June 1867, file 949/8, colonial correspondence, BCARS.

assuredly would have never come there."²⁵ The government responded by promising to negotiate with the Natives to reconfirm the boundaries between Native and non-Native land in the district.²⁶

As non-Native settlement progressed through the province in the nineteenth century Natives were more than willing and able to take advantage of any tactics available to repel intrusions. These strategies often relied on the invocation of non-Native definitions of land tenure and could occasionally reach surprising proportions. As the Indian Reserve Commissioners travelled in the Interior in the summer of 1877 they addressed various disputes over land between Natives and settlers. In June they reported from Kamloops on a most notable case. Natives throughout the province had been successful in claiming land as part of their reserves by calling the government's attention to ancient burial sites. As expected, the government did not wish to disturb these mortal remains and so included these sites in the allotted reserves. When a Native named Sowah found himself in a dispute with a settler named Nelson over a piece of land, he cited the existence of a Native burial ground as evidence of title. Upon investigation the commissioners decided that the place was not an ancient burial ground, but that Sowah had only recently buried several of his friends on the land. The commissioners dismissed Sowah's claim, ordered him to stop burying people on the site, but did agree to ask

²⁵ Brenton to Trutch, 30 April 1870, Papers Connected with the Indian Land Question 81.

²⁶ Pearse to Brenton, 17 May 1870, Papers Connected with the Indian Land Question 82.

Nelson to leave the bodies in peace.²⁷ Natives throughout the province exhibited their ability to capitalize on the space that existed between government dictates and the actual implementation of the non-Native definition of land. Between the intent and the reality there existed an entire world of manipulation, coercion and negotiation; it was in this world that Native power was manifested. In most cases the final decision in the disputes reveals much less about Native resistance than the strategies employed by Natives and the frustration experienced by governments and settlers.

A specific case, that of Archibald Dods and the Cowichan, embodies many of the Native tactics and epitomizes the confused response exhibited by both government officials and frustrated settlers. Dods, a Vancouver Island settler, is best known for his expression of settler dissatisfaction with the provincial government in 1874; "Everybody says, 'sure what the devil is the good of a Government that can't get a few siwashes off a man's land.'²⁸ Fisher has cited Dods' dispute with the Cowichan as an example of the tension that existed between settlers and the Indian Reserve Commission.²⁹ But there was much more to the conflict than friction between settlers and government appointees, there was also a Native component. When the evolution of the dispute is pieced together over many years and analyzed in detail it becomes apparent that instead of simply being an example of the relationship between government and settlers, it was indicative of the strategies Natives employed in the negotiated space between themselves and non-Natives.

²⁷ Report of Indian Reserve Commission, 27 June 1877, file 1279, vol. 3596, RG 10.

²⁸ Dods to attorney general, 11 June 1874, quoted in Fisher, Contact and Conflict 175.

²⁹ Fisher, Contact and Conflict 196.

Few confrontations were as lengthy or as recorded as the Dods affair, but the breadth and persistence of Native protest over the alienation of their land are symbolized by the response of the Cowichan to Archibald Dods' pre-emption.

After discussing the potential of settlement in the Cowichan Valley with surveyor Pearse in Victoria in the summer of 1870, Dods travelled to the Cowichan and selected the west half of section 11, range 2 as the site of his homestead. He later wrote to Pearse to tell him that "the Indians are aware of my intentions and are quite satisfied."³⁰ Little did he know that he could not have uttered a more inaccurate statement. By the fall of 1873 Dods was complaining to the provincial government that a group of Cowichan was harassing him, and that they were being encouraged by the government's lack of response.³¹ Although Dods received his certificate of purchase later that fall, he reported that he was unable to work his land because of the actions of the Cowichan, who, according to Dods, had "all the property a settler has at their mercy."³²

Having received little assistance from the provincial government, Dods turned to the Indian Superintendent for help in driving the Cowichan from his pre-emption. Indian Superintendent Powell responded by asking the British Columbia attorney general to send the provincial police to the district to evict the Cowichan from Dods' land and also investigate the complaints of Alexander Munro, one of Dods' neighbours who was also

³⁰ Dods to Pearse, 28 July 1870, file 477c, colonial correspondence, BCARS.

³¹ Dods to Beaven, 18 September 1873, file 1559/73, GR 1440, BCARS.

³² Dods to Beaven, 27 November 1873, file 1989/73, GR 1440, BCARS.

reporting trouble with the Cowichan.³³ On 30 January 1874 police superintendent Sullivan arrived in the Cowichan and quickly managed to have himself chased from Munro's land by a determined group of Cowichan.³⁴ Sullivan continued on the next day to the site of Dods' dispute, telling Dods that he would protect him as best he could if he wanted to pull-down the Cowichan's fence. Dods replied that he did not think that this was a very good idea, since the Cowichan would probably just re-build it again. He was also afraid that such an act would only worsen his relations with the Cowichan; perhaps even encouraging them to burn his crop. Sullivan discussed the dispute with the Cowichan, who told him that they were not about to accept Dods' claim to the land, especially since it was based on an inaccurate survey of their reserve.³⁵

Since the provincial police had failed to evict the Cowichan, Dods turned once again to Powell for assistance. The Indian Superintendent recommended that the best approach was for Dods to negotiate with the Cowichan, but since Dods' obstinate and abrasive personality precluded conciliation, his only recourse was to apply to the courts to have them charged with trespassing.³⁶ Instead of the Cowichan being thrown-off of the land it was Dods who found himself unceremoniously chased from his pre-emption

³³ Powell to attorney general, 26 December 1873, Papers Connected with the Indian Land Question 123.

³⁴ For more on Munro see Chapter Three.

³⁵ Sullivan to attorney general, 5 January 1874, file 3, 1/74, box 1, GR 429, BCARS.

³⁶ Moffat to Indian commissioner, 26 February 1874, Papers Connected with the Indian Land Question 129.

on 18 February 1874.³⁷ Two days later Dods wrote to the attorney general complaining of the unfairness of his predicament. "I cannot of course take the law into my own hands while the country has a Government," wrote Dods, "but the Indians can and have done so with impunity."³⁸

By the summer of 1874 Dods' situation had further deteriorated, with him being prevented by the Cowichan from even building fences on his pre-emption. Meanwhile the Cowichan's fences were obstructing his cattle from reaching pasture or returning home to be milked. Dods even had to ask the Cowichan for permission to cut wood on land to which he held title. A frustrated Dods wrote to the provincial government in June 1874 to urge the use of force: "you must make them respect your power. They have a hundred times more respect for a gunboat than all the talk in creation."³⁹ The notion that the gunboat was the ultimate source of non-Native power during most of the nineteenth century is a prominent one because most scholars have emphasized dramatic and violent encounters between non-Natives and Natives.⁴⁰ Robin Fisher and Barry M. Gough have expressed this interpretation, but the most recent example has come from Cole Harris. In

³⁷ Morley to attorney general, 20 February 1874, Papers Connected with the Indian Land Question 128.

³⁸ Dods to attorney general, 20 February 1874, Papers Connected with the Indian Land Question 128.

³⁹ Dods to Walkem, 11 June 1874, file 3,87/74, box 1, GR 429, BCARS.

⁴⁰ See, Barry M. Gough, Gunboat Frontier: British Maritime Authority and Northwest Coast Indians 1846-90 (Vancouver: University of British Columbia Press, 1984) 211; Fisher, Contact and Conflict 54-55 and 106-108; and, Cole Harris, "The Lower Mainland" in Vancouver and its Region, Graeme Wynn and Timothy Oke, eds. (Vancouver: University of British Columbia Press, 1992) 48.

his overview of settlement in the lower mainland, Harris has argued that Natives were overwhelmed by the introduction of "quite alien sources of power, entirely outside of their experience...."⁴¹ This 'sovereign power' was grounded in the British monarch and expressed through the colonial office and the Royal Navy. For Harris the impact of this new power was best exemplified by Governor Douglas's execution of Natives on Vancouver Island. In 1852 a Cowichan a Nanaimo were accused of murdering a shepherd. A gunboat, the Beaver, was despatched in January 1853, the two men were apprehended and hanged on board ship. According to Harris, the presence of this type of coercive and violent power was so obvious that it rarely needed to be demonstrated, "a few summary executions did much to establish the new realities." The non-Native population, acting through its government, had to only occasionally demonstrate the "quick, brutal, episodic application of sovereign power" since "fear bred compliance."⁴²

One of the most glaring weaknesses of this analysis is that it ignores the indisputable fact that while the two Cowichan suffered the ultimate penalty before an alien power, the unfortunate shepherd also experienced a measure of Native power, and for him it also proved fatal. Harris' interpretation is a simplification of the realities of power dynamics. The Natives and non-Natives who struggled for the control of land in British Columbia were involved in a complex system of manipulation and negotiation. The power that imbued and influenced their lives was flexible and organic, it was not something that came out of the barrel of a gun. A show of force, whether by the

⁴¹ Harris, "The Lower Mainland" 48.

⁴² Harris, "The Lower Mainland" 67.

government or Natives, was an important factor in power relations, but it was only part of a complex dynamic. By focusing on rare violent confrontations, these types of analyses underestimate the importance and relevance of less violent forms of confrontation that predominated between settlers and Natives. The large majority of these confrontations were over land and were not serious enough, in the eyes of the government, to require armed intervention. In fact, when settlers such as Dods called for the use of force it indicated a relative absence of government control and influence. The cry of 'send a gunboat!' betrayed a lack of government power.

Since a gunboat was unlikely to appear on the horizon, Dods took Powell's advice and had the Cowichan charged with trespassing. When the day for the hearing arrived the Cowichan did not appear. A constable was despatched to apprehend the accused but was repelled by force. When a number of settlers gathered to lend assistance, the Cowichan congregated in large enough numbers to resist the arrest and the officer was forced to return without his man. Having again failed to force the Cowichan off of his pre-emption, Dods finally resorted to Powell's first suggestion and attempted to negotiate with them. Dods concluded from his following discussions that a payment of \$100 to \$150 would settle the matter. He asked the government to offer the Cowichan the compensation but was again disappointed by the government's refusal to assist him.⁴³

The dispute between the Cowichan and Archibald Dods is absent from the record for approximately two and half years, but resurfaces in the spring of 1877, with Dods still

⁴³ Dods to Beaven, 5 November 1874, Papers Connected with the Indian Land Question 150.

unable to retain control of his land or find satisfaction with either the provincial or federal governments. John Morley reported in March 1877 that the Cowichan were building a "large house" on Dods' claim. When Dods asked Morley for assistance, Morley replied that since the dispute was over ownership he could not interfere.⁴⁴ The Cowichan's improvements continued unabated. After building the house they erected more fences, one of which blocked the only road off of Dods' homestead.⁴⁵ His frustration erupted in a letter to George Vernon. "As I am writing there are two Indians, the chief and his son, who are taking down my fence and taking it away is there no law to protect me!" Scribbled on the bottom of the letter was the following: "On 4th May 1877 Mr. Dods was informed that his grievance must be settled between himself and the Indians."⁴⁶

The federal government had a similar response when Powell wrote to the department of the interior, asking for advice on the dispute. The deputy minister replied that as far as the department was concerned Powell "had no power in the matter" and that the dispute had to be settled "between those whose premises have been encroached and those who have so encroached."⁴⁷ The federal government's ineffectiveness was echoed by the province. In the spring of 1877 the British Columbia attorney general advised Dods that his only recourse was to take the case to the provincial supreme court. He asked Dods to appreciate the government's position; the "government would willingly assist

⁴⁴ Morley to department of lands, 2 March 1877, file 448/77, GR 1440, BCARS.

⁴⁵ Dods to Vernon, 12 April 1877, file 18, 757/77, box 3, GR 868, BCARS.

⁴⁶ Dods to Vernon, 18 April 1877, file 781/77, GR 1440, BCARS.

⁴⁷ Meredith to Powell, 9 April 1877, enclosed in Powell to Vernon, 25 April 1877, file 878/77, GR 1440, BCARS.

you," he wrote, "if they had the power...."⁴⁸

By the summer of the next year the dispute between Dods and the Cowichan had still not been settled. The provincial government, having grown increasingly irritated over the issue, was even prepared to accept advice from the Indian Reserve Commission in order to solve the problem. The commissioners suggested that the province pay Dods \$300 compensation for abandoning his land to the Cowichan. Lands commissioner Walkem was loath to accept the Commission's advice, since the provincial government did not want to recognize the Commission's authority to negotiate on its behalf, yet he acknowledged the expediency of the proposal and recommended its acceptance.⁴⁹

Presumably even this concession was not enough to dislodge the Cowichan, since eight years later they were still in possession of the land. In 1886 the Indian agent for the district, William Lomas, reported that at least six Cowichan resided on Dods' pre-emption and were cultivating it for their own purposes. The Cowichan had further strengthened their claim by burying several of their relatives on the land. When Lomas reiterated the government's position that the Natives had no right to the land the Cowichan replied that the land had always been theirs and if anyone was going to compensate Dods for his losses it should be the provincial government who had accepted Dods' payment for the pre-emption.⁵⁰

Since the government had taken his money for land that he had never been able

⁴⁸ Elliott to Dods, 28 May 1877, GR 494, BCARS.

⁴⁹ Walkem to provincial secretary, 15 August 1878, GR 494, BCARS.

⁵⁰ Lomas to Davie, 12 July 1886, vol. 1353, RG 10.

to utilize, Dods presumably felt no compunction about doing the same to some one else. Three months before Lomas' report, Dods had secured a \$200 mortgage on the property from Thornton Fell, a barrister in New Westminster. As Fell was later to testify, he had no idea at the time that Dods had been unable to secure control of the property for over sixteen years. In the fall of 1886 the ownership of the west half of section 11, range 2 finally did change hands, but it was not the Cowichan who were driven from the property. Instead Dods' claim was sold by the sheriff at auction to Thomas J. Williams for \$160. In order to protect his investment, Fell purchased the title to the land from Williams.⁵¹

It was now Fell's turn to try and use the government's power to drive the Cowichan from the land. He proceeded through the courts to attempt to have the Cowichan ejected for trespassing. When the case came before Judge Begbie in December 1886, he refused to allow the trial to proceed unless the Indian commissioner was charged along with the Natives. Begbie ruled that the Cowichan were wards of the Crown and so were in the same position as infants.⁵² Having failed, as Dods had, to defeat the Cowichan through the courts, Fell resorted to negotiation. In the summer of 1887 Fell wrote to Indian agent Lomas asking him to ascertain the present disposition of the Cowichan and to advise him on what amount of compensation would be required to satisfy them. Fell believed that only two Cowichan still lived on the land and that one of them could be settled with for a "nominal fee of \$20", but that the other was very

⁵¹ Fell to Vernon, 14 May 1889, file 1132/89, GR 1440, BCARS.

⁵² Fell to Vernon, 14 May 1889, file 1132/89, GR 1440, BCARS.

"troublesome."⁵³

The other Cowichan must have indeed been 'troublesome' since two years later Fell was still trying to gain possession of the property, though his influence with the provincial government proved greater than that of Archibald Dods. Fell convinced the government to convene a select committee of the provincial assembly to enquire into the dispute. After hearing evidence that the land should have been included as part of the neighbouring reserve in 1867, it being well known at the time that it had long been occupied by the Cowichan, and that any further attempt to remove the Cowichan would lead to violence and danger for the local settlers, the committee recommended that the government purchase the land from Fell and transfer it to the Cowichan.⁵⁴ Evidently, the committee's recommendation was not immediately acted upon, since two months later Fell offered to pay the Cowichan \$400 of his own money for their improvements, a dramatic increase from the \$20 he had initially believed sufficient.⁵⁵

At this point the paper trail of the Dods affair fades from sight. Whatever the final outcome was, the available information demonstrates that the power dynamics between settlers and Natives was much more complicated than is usually assumed. Cole Harris has stated that; "Neither understanding white law nor allowed access to white courts the Natives were helpless."⁵⁶ The world he describes seems to have little in common with

⁵³ Fell to Lomas, 28 July 1887, vol. 1334, RG 10.

⁵⁴ Report of select committee, enclosed in Fell to Vernon, 14 May 1889, file 1132/89, GR 1440, BCARS.

⁵⁵ Fell to Vernon, 14 May 1889, file 1132/89, GR 1440, BCARS.

⁵⁶ Harris, "The Lower Mainland" 59.

the Native world encountered by Archibald Dods, or the many other settlers who were frustrated by Native attempts to retain their land. Natives exhibited an ability and willingness to express power in creative and imaginative ways. Between Natives and non-Natives there existed a world of coercion, conciliation, and negotiation; far removed from government offices in Victoria and outside the range of the most powerful gunboat. The people who existed in this world were rarely able to fully achieve their goals or completely resist outside intrusions. In many ways they continued to win small victories, but lose the war. The small victories, though, reveal the existence of private negotiations that structured their interaction and expressed their power.

Chapter Two: Lines on a Map

Europeans arrived in North America with confidence in their convictions and ambitions, intent on remaking the land through industry and trade, and oblivious of the profound social organizations they were to confront. They came in contact with complex societies, with cultures founded on established systems of ordering and understanding the world. Europeans sought to replace Native knowledge with their own, and by doing so thoroughly transform Native cultural identity.¹ They believed that Native societies lacked structure and order. While missionaries were despatched to introduce the design of the European god, settlers set an admirable example by clearing the forests and cultivating the soil. The fruit of their labour would be more than the fall harvest. It would be seen in farming's civilizing effect on Native societies and dramatic changes in the land: the focal point of the Native/non-Native conflict.

Surveys were the first step. The 'wilderness' had to be subdued, straight lines drawn across it, and the tidy blocks sold to prospective settlers; on this firm foundation non-Native settlement would rest. In British Columbia, these instruments of settlement have been described as powerful tools of coercion that overwhelmed Native societies, they "were pervasive forms of disciplinary power, backed by a property owner, backed by the law, and requiring little official supervision."² An examination of the intricacies of Native/non-Native interaction, however, illustrates that the intent and the reality often

¹ For more on this subject see, Axtell, "The Invasion Within."

² Harris, "The Lower Mainland" 67.

failed to intersect.

In the minds of most non-Natives, the ideal situation would witness reliable surveys being conducted well in advance of any pre-emption or settlement. Governor James Douglas had this as his goal when settlement began in earnest in the late 1850s. But the colonial government was unable to carry out this policy because of a lack of money to pay for survey work. By the end of 1860 175,000 acres of land had been surveyed on Vancouver Island, being divided into 100 acre lots. On the mainland 41,000 acres had been divided into 160 acre lots. While the mainland surveys, made by the Royal Engineers, were reported to be relatively trustworthy, the surveys on Vancouver Island, most of which were done by private surveyors, were incomplete and often open to dispute. The colonial government was plagued by a lack of money to pay for surveys, and this, combined with the roughness of the country, led to continued frustration with the lines that were to transform the land.

The situation did not significantly improve after confederation. The survey department continued to be cursed by a lack of money and a shortage of qualified surveyors. The 1870 Land Ordinance further muddied the waters by allowing a surveyor to survey land by "such notes and bounds [as] he may think proper..."³ Subsequently, individuals persisted in defining boundaries in a haphazard, inconsistent manner. When combined with the problems created by unqualified surveyors, the result was pre-emptions whose "position was only roughly known to the Land Office."⁴ The difficulties intensified

³ B.C. Land Ordinance, quoted in Cail 61.

⁴ Cail 61.

in 1875 when the provincial government allowed private surveyors, if necessary, to abandon the township system which had been adopted in 1873. It even allowed surveyors to neglect connecting their new surveys with established ones. And the shortage of money persisted, with government expenditure reaching an embarrassing low of \$500 in 1879. It was not until 1907 that the amount expended began to "reflect the urgent need for extensive government surveys."⁵ One of British Columbia's distinctive characteristics was that, unlike other provinces, it allowed substantial settlement to precede adequate surveys.⁶ This fact is at the basis of British Columbia's peculiar history of Native/non-Native relations. It also allowed for the definition of land in British Columbia to become a site of struggle between Natives and non-Natives; it became a negotiated space in which Harris' disciplinary power became unrecognizable.

The Colonial government's inability to perform satisfactory surveys prior to non-Native settlement led to ubiquitous complaints by settlers and government officials that Natives and non-Natives were confronting each other over poorly defined boundaries. The difficulties that arose from the inadequate definition of land during the initial settlement period on Vancouver Island was expressed by the surveyor general's report to the colonial secretary in the spring of 1865. Pearse stated that "very grave difficulties" arose "almost daily" and if the measures were not quickly taken "confusion and litigation" would result. He suggested that many of the problems could be settled by carrying out an accurate survey of the Cowichan, Chemainus and Comox regions, and the production of maps, a

⁵ Cail 63.

⁶ Cail 247.

task which his under-funded office could not afford. The urgency felt by settlers over the matter of solidifying their holdings through the establishment of officially sanctioned boundaries was expressed through their willingness to support the government in the enterprise. Pearse noted that part of the cost of the work could be quickly recouped since many of the settlers would "gladly pay wholly or in part" for their land if they could only get their "boundaries definitely marked."⁷

Although settlers constantly complained about the problems that arose from the lack of surveys, both the colonial and provincial governments pursued a policy which dismissed the need to define boundaries in advance of settlement. The same policy was applied to definition of Indian reserves. In 1871 land commissioner Pearse reported to the colonial secretary that it had been the policy of the government to "lay out on the ground the Indian Reserves synchronously with the settlement of the district by the whites." The government was loath to officially assign land to Natives as long as a hope persisted that the 'Indian problem' would vanish over time. It had also found its policy effectual and less costly than surveying the land before settlement, especially since the survey posts were often "obliterated before the white men advanced...." According to Pearse, although Natives were "tenacious of their rights in the land when once surveyed" they would not "take the trouble to perpetuate these posts and marks, or to preserve them in any way."⁹ Native disregard for government surveys, and their frequent attempts to either destroy or

⁷ Pearse to acting colonial secretary, 13 March 1865, C/AA/30.7J/4, BCARS.

⁹ Pearse to colonial secretary, 16 October 1871, Papers Connected with the Indian Land Question 102-06.

alter surveys, combined with the government's ad hoc land policy to create an environment that illustrated the elasticity of land definition in nineteenth century British Columbia.

The government's policy meant that it usually despatched surveyors only after a conflict had arisen. In the late 1860s settlers began to pre-empt land in the Nicola Lake region. This intrusion immediately brought them in contact with Natives who resisted the usurpation of their land. The colonial government's response was predictable. Trutch ordered Peter O'Reilly to the district to survey reserves for the Natives since there was a sudden need to "prevent collision between them and the white settlers."¹⁰ But orders by government officials did not easily solve such problems, and Trutch's directive was far from being the end of the matter.

Twelve years later complaints were still being voiced about troubles that arose from poorly defined boundaries in the region. The matter was serious enough that it gained the attention of Prime Minister John A. Macdonald when a settler named Patterson wrote to the federal government to complain about the poorly defined reserves in the province. Patterson complained that the boundaries of reserves, especially in the Douglas and Nicola Lake region, were impossible to determine on the ground. Consequently, many settlers were either pre-empting Native land by mistake or were cutting timber on reserves and then were prevented from removing it because of Native intervention. Patterson believed that the Natives alone knew where the boundaries were because they had

¹⁰ Trutch to O'Reilly, 5 August 1868, Papers Connected with the Indian Land Question 50.

accompanied the surveyors on their rounds, while settlers "found it almost impossible to trace the lines of the Indian reserves." Indian Superintendent Powell was asked to broach the matter with "the Confidential Agent of the Dominion Government", Joseph Trutch. Trutch saw no reason to change the current policy of surveying reserves and recommended that Patterson's complaint be dismissed.¹¹ The ambiguous and porous nature of the government's survey policy, as espoused by Trutch, created an environment of uncertainty between Natives and settlers which led them into constant conflicts over land title. The policy meant that Natives were denied a critical instrument in their attempts to protect their land title against non-Native encroachment, and Natives were often unsuccessful in protecting their claims.¹² But it also precipitated the enlargement of the negotiated space in which Native power was manifested.

As settlers flooded into British Columbia in the 1880s discrepancies between surveys exacerbated the difficulties between Natives and non-Natives. In 1884 William Lomas, Indian agent for the Cowichan Agency, reported that many non-Natives were confident that their encroachments on reserves would not be punished since the flexibility of the reserve boundaries, coupled with the government's disposition on the question, would favour their position.¹³ Natives also recognized the danger that existed from the situation and were determined to defy both the government and settlers over the question of land title. In the Cowichan both Natives and settlers had little confidence in the

¹¹ Patterson to Macdonald, 19 December 1881, file 147, vol. 3573, RG 10.

¹² For more on Native frustration see; Fisher, "Joseph Trutch and Indian Land Policy," and "An Exercise in Futility."

¹³ Lomas to Powell, 26 May 1884, vol. 1353, RG 10.

authority of surveys, with the common understanding being that they were only temporary.¹⁴ The need to firmly fix the new borders was extremely urgent, prompting Lomas to suggest that the provincial government pass a law proclaiming all present reserve boundaries permanent.¹⁵

One of the reasons for a lack of respect for survey lines and land title, by both settlers and Natives, was the arbitrary nature of land entitlement. The colonial government established regulations for pre-empting crown land through the Land Ordinance of 1861. Unmarried colonists could pre-empt up to 150 acres of unsettled crown land, excluding reserves and Native settlements. If the land was unsurveyed, as it usually was, settlers had to provide the government with the best possible description of the land and a reasonable map of their own design.¹⁶ Therefore, the definition of land was often not determined by the government or its officials, but by settlers on the spot, often in relation to local Native groups. In many cases settlers and Natives negotiated or fought over boundaries that were at complete odds with government dictates. These disputes were compounded during the colonial period by inadequate recording of land title in Victoria and frequent ad hoc land grants by colonial governors, especially James Douglas.

A dispute that occurred in the Cowichan illustrates the type of confusion that existed between Natives and settlers. In 1864 it came to light that Patrick Brennan had

¹⁴ Lomas to Powell, 12 January 1885, vol. 1353, RG 10.

¹⁵ Lomas to Powell, 26 May 1884, vol. 1353, RG 10.

¹⁶ Cail 15.

laid claim to most of sections 15 and 16, range three, in the Cowichan district.¹⁷ The Cowichan did not accept Brennan's claim and reportedly harassed him and attacked his stock. Brennan was unable to reach an acceptable resolution with the Cowichan and wrote to Governor Kennedy in August 1864 to "implore your Excellency to give me protection...."¹⁸ As the government began to investigate Brennan's complaint the misunderstandings between the Cowichan, Brennan and the government increased. Brennan wrote to the lands department on 20 December 1864 stating that he wanted help in "retaining in peaceable possession" 220 acres, recorded as sections 15 and 16, range three, Cowichan District. Brennan contended that the land was granted to him by the late governor Douglas and that 20 acres of it was recorded "in some book in the land office."¹⁹ Acting attorney general B.W. Pearse informed the surveyor general that Brennan had recorded sections 13 and 14, range 4, Cowichan on 21 May 1861, under the land act of 1861. Pearse found, in the late surveyor general's diaries, the following passage.

27 July 1861 P. Brennan to have by Order of the Governor a legal claim given to him at a future time to not less than 20 acres of land improved by him at the entrance of the Cowichan River, Indian Reserve Potatoe[sic] grounds not to be interfered with, not less than 5 chains frontage and to be held by him on terms to be decided by the government, since he has established himself without permission, and by mistake on the Indian Reserve.²⁰

¹⁷ Pemberton report, 8 August 1864, file 908/7, colonial correspondence, BCARS.

¹⁸ Brennan to Kennedy, 30 August 1864, file 180/1, colonial correspondence, BCARS.

¹⁹ Brennan to lands department, 20 December 1864, C/AA/30.7J/4, BCARS.

²⁰ Pearse to surveyor general, 20 December 1864, C/AA/30.7J/4, BCARS.

Pearse felt Brennan should be granted the 20 acres since he had homesteaded it for so long and made significant improvements. A week later governor Kennedy decided that Brennan had "given a great deal of trouble in connexion with Indians & would cause still more if he were legally confirmed in possession. I cannot sanction the Indian Reserve being encroached upon till some final settlement is arrived at."²¹ Accordingly Pearse informed Brennan that the governor could not "sanction any encroachments on the Reserve made for the Indians."²²

Brennan, resolute in his position that Douglas had authorized his claim, refused to abandon the land. During the spring of 1865 reports continued to reach the surveyor's office in Victoria of non-Natives intruding on Native land in the Cowichan district. Acting on Pearse's advice, Governor Kennedy ordered that a constable be sent to the area to force an American squatter to remove a house he had built on the reserve, and to address Brennan's position. Brennan was informed that he would be allowed to harvest the crop he had sown, but that he would have to abandon the part of his farm that encroached on the Cowichan reserve at the end of the harvest season.²³

Brennan apparently refused to meet the government's demand and remained on the land after his crop was harvested. A year later, in the fall of 1866, the colonial government was still trying to solve the dispute. The ambiguity that surrounded claims such as Brennan's was expressed in Pearse's reiteration of the facts. He stated that

²¹ Kennedy to Pearse, 27 December 1864, C/AA/30.7J/4, BCARS.

²² Pearse to Brennan, 29 December 1864, C/AA/30.7J/4, BCARS.

²³ Pearse to Brennan, 26 April 1865, C/AA/30.7J/4, BCARS.

Brennan's house was located on section 14, range three but that he claimed 100 acres that included part of sections 15 and 16. Brennan asserted that surveyor general Pemberton had laid out the land for him. Pearse could find no record of the survey in the Victoria office, but once again noted that there was a note in Pemberton's diary which mentioned a promise of 20 acres to Brennan. Pearse's advice to Brennan was to be peaceful and quiet with the Cowichan, telling him that his only chance of securing his title was to apply for the land when "the whole Reserve was brought into the market."²⁴ A select committee was established to inquire into the matter, and a decision was made to once again inform Brennan that if he refused to abandon his claim legal proceedings would be taken against him.²⁵ Whether or not Brennan finally relinquished his claim to the 200 acres in the Cowichan is unclear, but it is certain that he did manage to make Douglas's promise of twenty-acres stand. On 21 June 1871 Brennan received a crown grant for 20 acres of land, ten acres in section 15 and ten in section 16, range three.²⁶

Brennan's dispute with the Cowichan exemplifies the level of uncertainty in the new definition of land that was being imposed in British Columbia. The government's inability to pay for proper surveys, its unwillingness to survey either reserves or crown land in advance of non-Native settlement, and arbitrary government grants of title, all combined to create an atmosphere of distrust and instability which emphasized the

²⁴ Pearse to Brennan, 8 September 1866, file 909/42, colonial correspondence, BCARS.

²⁵ Kennedy to Brennan, 15 September 1866, file 909/42, colonial correspondence, BCARS.

²⁶ Beaven to Powell, 29 July 1874, Papers Connected with the Indian Land Question 133-34.

importance of individual action. Both settlers and Natives realized that the opportunity existed for them to take an active part in creating the new boundaries of the province, boundaries that would serve their own purposes.

The government's resistance to establishing reserves allowed settlers, such as Brennan, to encroach on land that had been promised to Natives. Brennan's dispute with the Cowichan illustrated the uncertainty that existed over the new boundaries, and a dispute that arose in the 1880s between two recent immigrants from South Africa and Natives near Campbell River, exemplified both the importance of this uncertainty and the negotiated space that it engendered. In September 1887 the Nunn brothers made a pre-emption of land near an unsurveyed reserve in the Campbell River district, and proceeded to stake their claim and clear the land. On 11 December a family of Natives, headed by a man named Kwak-sis-tah, started to clear trees on the Nunns' pre-emption, claiming it as their own. When the Nunns protested Kwak-sis-tah informed them that his people owned all the land up to the "Quwicham" [?], and that the "white man' had no right in the country and wanted to know who told us to come up here...."²⁷ The Nunns reply was to turn to the government for assistance.

Kwak-sis-tah and his family continued to clear trees on the Nunns' pre-emption. They also acted to erase the new boundaries that the Nunns' had surveyed by removing the Nunn's eastern boundary stake. When the Nunns' did not abandon their claim Kwak-sis-tah again confronted them. According to the Nunns, he approached them in a "great rage, saying that it was 'his land', we had no right there, he told us to go to 'Hell',

²⁷ Nunn to Vowell, 15 December 1887, file 3046/87, GR 1440, BCARS.

abusing us and threatening that lots of Indians should come over from Cape Mudge and talk to us, he also said that he had driven lots of white men from Campbell River and that he would drive us." Kwak-sis-tah then placed a couple of staking posts in the ground, blazed a line through the bush, and stated that he planned to build a house on the spot. Although the Nunns were "accustomed to Natives, having lived amongst them for ten years in S. Africa" they despaired of their chances of preparing the land for spring seeding as long as Kwak-sis-tah and his family disputed their title.²⁸

The confrontation between Kwak-sis-tah and the Nunn brothers was exacerbated by the ambiguity and uncertainty that surrounded so many of the reserves in the province. The subsequent investigation into the affair revealed that Gilbert Sproat had allocated a reserve at Campbell River in the 1879, but that it had not been surveyed or accepted by the provincial government. When Sproat's successor, Peter O'Reilly, visited Campbell River in 1886 to inquire into the state of the reserve, the Natives of the district had been absent. Although Indian superintendent Powell informed the commissioner of lands, F.G. Vernon, that he would advise Kwak-sis-tah to refrain from violence, he stressed that "unless proper reserves are set aside, including the fisheries and habitations of the Indians resident in that locality" it would be very difficult to assure peace.²⁹

When the Nunns' plea for assistance reached the government in the spring of 1888, O'Reilly was in Europe. In his place Indian agent William Lomas was despatched

²⁸ Nunn to commissioner of lands, 15 December 1887, file 3046/87, GR 1440, BCARS.

²⁹ Powell to Vernon, 13 January 1888, file 87/88, GR 1440, BCARS.

to the site of the conflict. Lomas was entrusted with a copy of the map of the reserve Sproat had allocated, although it was emphasized that the map was for his "private information...."³⁰ Upon investigation Lomas reported that Kwak-sis-tah had not relinquished control of the land claimed by the Nunn brothers. He had, instead, sought to strengthen his claim to the land by convincing his sons, and several others, to join him on the site. The Natives busied themselves clearing more land and cultivating potato gardens.³¹ They apparently believed that such action would obliterate the Nunn's claim to the land and illustrate that the land was theirs.

The Nunns, being unsatisfied with the government's actions, proceeded to Victoria to gather information and press the government into action. On route they stopped to discuss the matter with M. Manson, the operator of a trading post on Cortez Island, and a man who believed himself an expert on the entire Native land problem. Manson told the Nunns that the land question was much more serious than most people assumed. According to him, Kwak-sis-tah, the "Chief of the Indians" had purchased extensive supplies of sugar and biscuit at his trading post during the previous months, intending, Manson believed, to give them to Natives further up the coast in an attempt to persuade them to join him in resisting the settlers' encroachments. Manson reported that Natives had told him that "they considered the 'Whites' there, as intruding on their rights, and that they did not intend to stand it long...." He warned the Nunns that if they returned to Campbell River without having settled the land question there would be even a greater

³⁰ Moffatt to Lomas, 5 March 1888, vol. 1334, RG 10 (emphasis in original).

³¹ Lomas to Moffatt, 19 March 1888, vol. 1354, RG 10.

danger of "blood being shed" since the Natives would view their failure as a sign of weakness, although he was confident though that if the government intervened the Natives would "submit without a word...."³²

Upon arriving in Victoria the Nunns met with commissioner Vernon, who informed them that it would take at least three weeks, and probably more, to settle the dispute. They reiterated Manson's advice, telling Vernon that they believed it inadvisable for them to return empty-handed, because the Natives were "watching what is being done in the matter" and if they returned empty-handed "they will conclude that we are 'interlopers' on the land and most probably (in fact I believe certainly) make further encroachments, which might lead to disturbances...."³³ The Nunns suggested that an officer of the Indian Department accompany them to Campbell River to inform Kwak-sis-tah that they had a legitimate right to the land, and that the government was willing and able to take action against him.

Whether the Nunns were able to finally force Kwak-sis-tah from their claim is unknown, but the available details of their conflict indicate that when the facts of individual disagreements are accessible, it is apparent that making surveys was a not simple matter of dispossessing Natives of their land. It is undeniable that this was the goal of the both the colonial and provincial governments and the settlers they represented. But Natives, such as Kwak-sis-tah, capitalized on their opportunities and exploited the

³² Manson to Nunn, 31 March 1888, enclosed in Nunn to commissioner of lands, 4 April 1888, file 725/88, GR 1440, BCARS.

³³ Nunn to Vernon, 6 April 1888, file 729/88, GR 1440, BCARS.

government's relative lack of presence, to confront settlers as best they could. And, as with Kwak-sis-tah, would often destroy settlers' surveys and make their own in an attempt to claim disputed land.

The tactics Natives employed were repeated throughout the province as non-Native settlement expanded and more surveys were made. In the 1860s conflicts on the south of Vancouver Island plagued the colonial government. As settlement expanded reports from further north and on the mainland began to stream in to government offices in Victoria. British Columbia's entrance into confederation in 1871 precipitated a new set of political wrangling between the provincial and federal governments over reserve allocation, but the conflicts between settlers and Natives followed a familiar pattern. In 1873 unrest in the Port Alberni region of Vancouver Island rose to such prominence that the federal privy council reported on the situation to the secretary of state for the provinces. Land had been sold by the province to Messr. Anderson and Company before compensation had been made to local Natives. Attempts to survey the land into separate lots for prospective settlers resulted in Natives driving off non-Natives with knives and left the federal government to conclude "that no property is safe with them at present."³⁴

The surveying of land, as in the Alberni incident, was most often the impetus to face-to-face conflicts between Natives and non-Natives. The surveys represented tangible, local evidence of the new political, economic, and social reality that was evolving out of the meeting of disparate cultures. Surveys were also one the most obvious ways for Natives to manifest their resistance to non-Native pressures. Throughout the nineteenth

³⁴ Report of the privy council, file 1496, vol. 3598, RG 10.

century colonial and provincial governments were constantly frustrated by the Natives' willingness to either remove or alter surveys. In 1863 in the Cowichan the colonial government believed disputes between settlers and Natives were increasing and threatened to escalate even more because of the confusion over survey lines. The discrepancies between official and private surveys were being further exacerbated by Natives destroying survey posts.³⁵ Two years later the government was forced to consider compensating the Cowichan for their land, since they believed that a failure to do so would certainly encourage the Cowichan to "remove the stakes and annoy the purchasers."³⁶

At the same time the colonial government was attempting to define reserves in the Interior. Governor Douglas instructed W.G. Cox to survey reserves for the Shuswap near Kamloops. Cox reported that he did not have time to "mark off their boundaries at that time on the ground, but chalked out the position and extent of the Shuswap Reserve at Kamloops, for the chief, and gave him papers to post up." It soon came to the government's attention that the reserve was much larger than anticipated. Cox believed that there could have been no mistake as to his intent, and that the answer had to be that "my papers have been removed, and the grounds allowed by me greatly added to."³⁷ A year later Joseph Trutch reported that the land claimed by the Shuswap had "been largely

³⁵ Pearse to colonial secretary, 17 October 1863, file 906/22, colonial correspondence, BCARS.

³⁶ Pearse to colonial secretary, 13 March 1865, C/AA/30.7J/4, BCARS.

³⁷ Cox to Nind, 16 July 1865, Papers Connected to the Indian Land Question 31.

added to by the changing of the position of the boundary stakes by the Indian claimants."³⁸ Trutch recommended that if the new boundaries were maintained the government should attempt to regain the land by purchasing it from the Shuswap. Government surveys were often no more than lines on a map in Victoria; settlers and Natives were busily defining land through negotiations and confrontations, in complete disregard of government's dictates.

If Natives were not removing survey stakes or changing their positions, they simply confronted surveyors and attempted to stop their work. In the spring of 1869 surveyor Mohun, under instructions from the colonial government, attempted to survey in the Cowichan district. The Cowichan, though, did not simply submit to the alienation of land. While Mohun was cutting a survey line a group of Cowichan led by chief Te-che-malt approached him and demanded that he discontinue his work. When he refused they simply confiscated his tools. Mohun was forced to abandon the task and contact the colonial government for assistance.³⁹ Police magistrate Pemberton and two provincial police constables were dispatched to the site of the confrontation.⁴⁰ Te-che-malt had returned Mohun's tools when he had discontinued the survey, and with the protection of the provincial police, Mohun returned to the survey line and completed his task within two days with out incident.⁴¹

³⁸ Trutch to colonial secretary, 17 January 1866, Papers Connected with the Indian Land Question 32-33.

³⁹ Pemberton to colonial secretary, 17 May 1869, file 1, GR 504, BCARS.

⁴⁰ Executive council minutes, 12 May 1869, colonial legislature, p. 121.

⁴¹ Pemberton to colonial secretary, 17 May 1869, file 1, GR 504, BCARS.

Incidents of Natives interfering with surveyors or altering existing surveys continued throughout the settlement period. The practice even created an excuse for some settlers to avoid paying taxes. In 1875 a farmer named Ralph informed the provincial lands department that while he was sure the province's surveyor, who had recently surveyed his land, had done a fine job, he would not pay his taxes because he was being charged for more land than he actually possessed. Ralph claimed that the local Natives had uprooted the survey stakes and replaced them in such a manner to decrease the size of his property. He also had doubts as to the legitimacy of the boundaries of the local reserve since there was rampant suspicion that the Natives had increased their own boundaries in the same manner.⁴² As settlement moved northward allegations continued and complaints continued to reach the provincial government. In 1909 reports arrived in the lands office that Natives in the Francois Lake region, south of Hazelton, were destroying the survey posts of surveyors and pre-emptors. Natives were pulling out survey posts that had been placed the previous spring, and throwing them in the lake. The attorney general decided to send a chief constable and three other constables to the region to "thoroughly police" the district, since if such action on the part of the Natives was not curtailed it would "lead to confusion in the surveys and endless trouble...."⁴³

The endless trouble the government was confronted with throughout the settlement process was not solely attributable to the Natives. Settlers were also occasionally accused

⁴² Ralph to commissioner of lands, 31 December 1875, file 4095/75, GR 1440, BCARS.

⁴³ Williams to commissioner of lands, 23 August 1909, file 15075/09, GR 1440, BCARS.

of altering surveys for their own purposes. When John McIvor attempted to purchase part of a reserve on the lower Fraser in 1867--his request was later refused--it came to light that he was suspected of removing the boundary stakes from the reserve in order to blur the lines of demarcation.⁴⁴ Similarly, after the Reserve Commission assigned a reserve near Deadman's Creek in 1877, a dissatisfied settler named C. Plumpmaker took the matter into his own hands and shifted the boundary stakes to increase his holdings and restrict the Natives to less land.⁴⁵

The fluidity of the new definition of land in British Columbia continued well after initial surveys were made and reserves established. Because so much depended on the negotiations between individuals on the spot, the boundaries were often in dispute for decades and government maps did not always reflect the reality of the situation. An exact definition of the Cowichan district was still lacking over 30 years after settlers began to move into the area. In 1858 and 1859 surveyor Oliver Wells had conducted the first surveys in the district. Maps were prepared in London based on Wells' notes and land was sold. It was later found that Wells' survey "was far from being accurate" and in fact contained "numerous errors...."⁴⁶ When Pearse and Mohun attempted to define the boundaries of the Indian reserves in 1867 they again found that Wells' survey was inaccurate, and they had to instruct settlers in the area to move their survey posts to accommodate the new survey lines. In the spring of 1893 the survey lines were still in

⁴⁴ Report of A.R. Howse, 29 May 1867, Papers Connected with the Indian Land Question 40.

⁴⁵ Lessher to Vernon, 20 April 1878, file 24, 956/78, box 3, GR 868, BCARS.

⁴⁶ Fry to commissioner of lands, 22 February 1893, file 582/93, BCARS.

dispute and surveyor Henry Fry was sent to the region to make yet another survey.

A few months later Fry was again dispatched to the region, this time to establish the difference between the Quamichan reserve survey and the official survey made by Wells. His conduct illustrates the legitimacy and importance that individual negotiations over land boundaries were accorded. Fry began his survey at a post that was not an established survey post but one that had gained authority through years of acceptance by the local settlers. Fry noted that the foundation of his subsequent survey was a "post [that] was not put in by O. Wells but has been established over 20 years and is accepted by the adjacent land owners as their corner."⁴⁷ The significance of Fry's actions were echoed by the local Indian agent, William Lomas, who commented on the differences between government maps and actual boundaries. Lomas informed his superiors that serious conflicts were once again common between Natives and settlers over the boundaries in his district and that the government's dictates were, for all intensive purposes, "only a change on paper."⁴⁸

Whether it was Natives or non-Natives altering government or private surveys, the pattern continued of individuals confronting each other over the new definition of land that non-Natives were attempting to impose on British Columbia. The definition that resulted was often dictated and shaped by these individual negotiations and conflicts; the land itself was recreated to reflect these power struggles. While contemporary government officials, and subsequent commentators, believed that it was a simply matter of imposing

⁴⁷ Fry to [?], 10 August 1893, vol. 7, add.mss 2621, BCARS.

⁴⁸ Lomas to Vowell, 6 May 1896, vol. 11015, RG 10.

the new pattern on the frontier, the people who participated in the changes existed in dramatically different world. Their world was a place where land was fluid and malleable, where it was often determined by individual action, and where both settlers and Natives were able exercise significant, although far from absolute, power in attempts to shape the new province.

Chapter Three: Building Fences

The dynamics of social relations are often revealed by studying the most unassuming subjects; the building and destruction of fences is a fine example. Although historians have been slow to appreciate the significance of fencing during settlement, geographers, with their interest in land definition, have observed the role of fences and have stressed their importance in symbolizing the fundamental changes that non-Native settlement represented.¹ The emphasis, though, has largely been on the role of fences in supporting non-Native settlement, and as being a tool for forcing agricultural production from the land.² Some scholars, such as William Cronon and Richard White, have expanded on the importance of fences, noting that they were a tool used in the process of 'bounding the land',³ and that they were an "actual and symbolic boundary line" that separated settlers' 'improved' land from the 'unimproved' wilderness.⁴ Fences have also been described as "the immediate point of conflict" between competing non-Native

¹ Wilbur Zelinsky, "Walls and Fences," Landscape 8.3 (Spring 1959): 14-20; John Fraser Hart and Eugene Cotton Mather, "The American Fence," Landscape 6.3 (1957): 4-9.

² Walter Prescott Webb, The Great Plains (New York: Grosset & Dunlap, 1931) 280-318; Leslie Hewes, "Early Fencing on the Western Margin of the Prairie," Annals, the Association of American Geographers 71.4 (1981) 499-526; Leslie Hewes and Christian L. Jung, "Early Fencing on the Middle Western Prairie," Annals, the Association of American Geographers 71.2 (1981) 177-201.

³ William Cronon, Changes in the Land.

⁴ White, Land Use, Environment and Social Change 41.

groups.⁵

The assumption of all these studies is that fences symbolized the adaptability, assumptions, and conflicts in non-Native societies. But fences also can be interpreted as an important sight of struggle between societies, between non-Natives and Natives. Settlers did not remake the 'wilderness' in isolation. They did so in relation, and often in opposition, to Native societies. The fences that they built marked the line between their understanding of the land and non-Native understandings. Natives did not simply accept the fences that began to dissect their traditional territory; just as they opposed and adapted to surveys, Natives understood the importance of fences and attempted to manipulate them to them to their own needs.

This resiliency and adaptability is illustrated by the Cowichan's tactics for retaining their land in the late 1860s. The reduction of the Cowichan's reserves in 1867 led to increased attempts by the Cowichan to gain compensation for the cut-offs as well as to strengthen their claim to the land they retained. They pursued the latter goal by petitioning the colonial government for assistance in fencing their reserves. The Cowichan produced a memo, supposedly given to them by Douglas in 1866, in which he promised to provide government assistance to fence the boundaries of their reserves.⁶ Obviously, the Cowichan realized that to protect their claim to reserved land they could not simply rely on government surveys, instead they had to adopt another tool of non-Native land

⁵ Richard White, 'It's Your Misfortune and None of My Own': A History of the American West (Norman: University of Oklahoma Press, 1991) 345.

⁶ Unsigned report, 19 April 1869, GR 494, BCARS.

definition. If they did not reinforce surveys with fences, government and individual settlers were likely to encroach on their land.⁷

The Cowichan's reliance on fences to determine and defend the boundaries of their reserves exemplifies the process of creating boundaries through the building of fences. In 1884, William Radford of South Saanich asked the local Indian Agent to persuade the local Natives to assist him in building a fence between his land and their reserve. He argued that since the fence would benefit both parties he should not be solely responsible for the cost of building it.⁸ Likewise, in 1887 Indian Agent William Lomas reported that he had reached an agreement on a long-standing land dispute between Natives and settlers on Mayne Island. Lomas had convinced the two groups that the only way to solve their disagreement over the boundaries of their land was to build a fence.⁹ The creation of boundaries through the building of fences during the settlement period was not restricted to relationships between settlers and Natives. In 1884 Chief Louis at Nanaimo was in a dispute over the ownership of a piece of land with a Native named Soloman. Chief Louis attempted to strengthen his claim to the land by building a fence along its boundaries. Soloman confronted Chief Louis and tried to obstruct him from building the fence.¹⁰ These incidents indicate that there was a strong belief among settlers and government

⁷ The relationship between surveys and fences was illustrated during land disputes in the Okanagan in 1879. Chief Williams wrote to the Indian commissioner stating: "When we protest they tell us we have no fences. We thought the line you drew for our reservations were[?] fences 'ipso facto'." Quoted in Carstens, *The Queen's People* 82.

⁸ Radford to Lomas, 6 July 1884, vol. 1331, RG 10.

⁹ Lomas to Moffat, 12 October 1887, vol. 1354, RG 10.

¹⁰ Moffat to Lomas, 16 May 1884, vol. 1331, RG 10.

officials in the nineteenth century that good fences did indeed make good neighbours.

As the settlement process progressed in British Columbia the relationship between the new boundaries that were being fixed on the landscape and fences became ever-more evident. In 1889 the Soda Creek Band at Lesser Dog Creek complained to the local Indian Agent, W.L. Meason, about their lack of water rights and the ill-defined nature of their reserve. They stated that Cox had reserved their land about twenty years previously but that they did not have a survey plan of it or stakes to show where their boundaries were. "As it now is we cannot claim any land except what is fenced, for we do not know where our lines are." The result was that settlers were cutting timber on land "which we think was once given to us." ¹¹ The Soda Creek Band's predicament illustrated the unsettled nature of land tenure in nineteenth century British Columbia. The introduction of non-Native settlement threw the established system of Native land definition into confusion and led to many decades of disputes between Natives and non-Natives. Native/non-Native interaction was often dominated by this issue and fences were used to establish boundaries in the new province.

The establishment of these boundaries meant that Natives were to be excluded from land that they once held and forced onto reserves. Because of this, fences began to signify more than the new definition of land in British Columbia; they began to be used as a tool for confining Natives on their reserves. Non-Natives quickly began to believe that fences could be used to solve the 'Indian problem'.

¹¹ Speech delivered by "Peter" at meeting of Soda Creek Band, 13 February 1889, enclosed in Moffat to chief commissioner of lands, 22 March 1889, file 653/89, GR 1440, BCARS.

During the 1860s the problem arising from the lack of definition of Native and non-Native land in the Cowichan valley continue to plague the colonial government. A proposed solution that gained much support among government officials was the suggestion that the government take it upon itself to fence in land that it had designated for Natives. Reverend A.C. Garrett explained the benefits of this plan in a letter to the surveyor general in 1865. Garrett described the Natives' resentment over the alienation of their land, the breaking of Douglas' promise to negotiate with them, and the damage that was being done to their property by settlers' stock. Garrett outlined a number of solutions, all of them based on the belief that the building of fences would alleviate the tension in the district. He concluded that since it would be impractical to force settlers to fence in their land, and since Natives could not be trusted to build proper fences for themselves, the only answer was for the government to fence in 100 acres for every Native village in the district. Of course, an added benefit from this action would be that approximately 3,000 acres of valuable agricultural land would become available to non-Native settlement. Garrett believed that the revenue derived from the sale of this land would easily cover the cost of extinguishing aboriginal title. Garrett's plan was enthusiastically supported by acting surveyor general Pearse, who estimated that the cost of fencing in the six villages on the reserve would be approximately \$500.¹²

Pearse continued to support Garrett's plan as the only solution that would separate the Cowichan's potato patches from the settlers' cattle, although the cost of fencing in the

¹² Garrett to Pearse, 10 March 1865, file 911/9, colonial correspondence, BCARS.

Cowichan kept increasing.¹³ By the winter of 1866 the disputes between the Cowichan and settlers were still far from being settled and the idea of fencing the Cowichan in was still foremost in Pearse's mind. He noted that while the Native title in the Sooke and Saanich districts had been recognized by the government, the Cowichan had an outstanding and legitimate claim to compensation. In order to avoid the violent conflicts experienced by the Americans, Pearse stressed that it was essential to settle the land question with the 200 odd Cowichan families, especially since there were many non-Natives who were eager to gain title to the fertile land in the Cowichan. He once again suggested that a first measure that could be taken to alleviate tensions between the Cowichan and the settlers was the building of fences around the Cowichan's potato patches. To reduce the expected cost of the fence-building he suggested that Natives could be hired by the government to build the fences, since they could be expected to work for less than non-Natives.¹⁴

By 1869 the colonial government had altered its policy on fencing in the Cowichan. It now believed that instead of the government constructing fences around the villages or paying the Natives to build fences, it was a better idea to supply the Natives with tools and supplies in order to assist them in building their own fences. When the Cowichan won a dispute with a settler over a piece of land in 1869, the colonial government responded by offering to supply them with tools, nails and other materials

¹³ Pearse memorandum, 15 March 1865, C/AA/30.7J/4, BCARS. Pearse's estimate for fencing in 100 acres for the six Cowichan villages was \$500 per village for a total of \$3,000.

¹⁴ Pearse to colonial secretary, 6 November 1866, C/AA/30.7J/4, BCARS.

necessary to fence in their land to a maximum of \$200.¹⁵ The government's eagerness to assist the Natives in fencing their land was reaffirmed by Thomas Morley when he travelled to the region in May 1869. Morley gathered together a group of Cowichan and, with the help of surveyor Mohun, walked over the land with the Natives pointing out the survey posts and boundaries of their reserve. He informed the Cowichan that no further alterations would be made in the size of their reserve and that the government would be glad to make them a grant of tools to facilitate the building of a fence around the land. Morley's report to Victoria, in which he expressed a belief that the Cowichan were satisfied with the arrangement and would be "no further trouble," illustrated that government officials were adept at ignoring the depth of the Native commitment to resist the loss of their land.¹⁶

The use of fences to restrict the movement of Natives is best exemplified by the report of magistrate Pemberton on his investigation of disputes in the Cowichan. Pemberton was despatched to the Cowichan in the summer of 1864 to investigate reports that Cowichan were harassing and killing settlers' stock. Upon investigation he reported that the Cowichan were attacking the settler's animals when they trespassed on the Cowichan's potato patches. The "cause of the evil," wrote Pemberton, "is the want of proper fences" and the remedy was "obvious: namely the erection of good substantial fences." He was so convinced that the building of strong and solid fences would solve

¹⁵ Trutch to Morley, 4 May 1869, Papers Connected with the Indian Land Question 61.

¹⁶ Morley to provincial secretary, 19 May 1869, file 1, GR 504, BCARS.

His description called for a cedar picket-fence with posts 6 inches by 4 inches and 8 feet long, with two feet charred for sinking into the ground. The posts were to be placed 9 feet apart and 4 by 2 1/2 inch rails nailed to them. Finally, pickets measuring 6 feet by 6 inches were to be sunk into the ground 6 inches and fastened between the rails.¹⁸ Pemberton's diagram is a graphic illustration of the importance of fences during settlement in nineteenth-century British Columbia. Many non-Natives believed that fences could be used to restrict the movement of Natives and to claim land for non-Native settlement. In this way Pemberton's diagram supports historical geographer Cole Harris' recent assertion that fences were a pervasive form of disciplinary power.¹⁹ But an analysis of the Native response to settlement reveals that the use of fences as tool for the expression of power was not strictly a non-Native tactic. Natives also made use of fences when they were attempting to either gain control or retain control of land.

The records of the period are filled with settlers' complaints that Natives had effectively taken possession of land outside of their allotted reserves by building a fence around it. An example is the complaint by a settler in 1878. Ronald Macdonald wrote to the commissioner of lands complaining that he had staked a claim for 320 acres near Bridge Creek and had filed it according to the provincial act at the Clinton office. When he returned to his pre-emption he found that a "small band of Indians" had taken possession of his pre-emption by erecting buildings and building a fence around it. He

¹⁸ Report of magistrate Pemberton, 14 September 1864, GR 1069, box 15, item 90/L, BCARS.

¹⁹ Harris, "The Lower Mainland" 67.

also noted that they had destroyed his boundary stakes and removed his land marks.²⁰ This type of confrontation between settlers and Natives was repeated over and over again throughout British Columbia.²¹ Such action by Natives was so widespread during the nineteenth century that Indian Reserve Commissioner Gilbert Sproat reported on it to the government. "The deliberate overstepping of the boundaries of other men's lands and enclosing portions," wrote Sproat in 1877, "with some vague notion of holding these portions by force, is a practice on the part of the Indians which should be checked at any cost."²²

But the government was unable to force Natives to stop using fences as a tool for controlling land, and although the ploy was not always successful, Natives were often able to thwart settlers and government officials. An example of Native success in the use of fences again comes from the Cowichan Valley. As Robin Fisher has described, many reserves in British Columbia were reduced in size during the nineteenth century in order to throw-open prime agriculture land to non-Native settlement. This process culminated in the McKenna-McBride Commission of 1913 and the wholesale reduction of reserves

²⁰ Macdonald to chief commissioner of lands and works, 13 May 1878, file 1122/78, GR 1440, BCARS.

²¹ For various examples of Natives using fences to claim land see: Beaven to superintendent of Indian affairs, 19 April 1873, Papers Connected with the Indian Land Question 115; Morley to chief commissioner of lands, 30 March 1876, file 671/76 GR 1440, BCARS; George Nelson to chief commissioner of lands, 20 April 1878, file 24, 956/78, box 3, GR 868, BCARS; Lessher[?] to Sproat, 3 June 1878, RG 10, file 1279, vol. 3596 RG 10; Vowell to Carter-Cotton, 13 October 1899, file 8498/99, GR 1440, BCARS.

²² Sproat to colonial secretary, 8 January 1877, GR 494, BCARS.

in the province.²³ Fisher has described this process in the usual manner of powerful government officials, namely Joseph Trutch, victimizing Natives in the name of 'settlement' and 'progress'. Although Natives were certainly unfairly deprived of their land, this does not mean that they were unable to manifest power in their attempts to retain their land. An examination of Native response illustrates that Natives could respond with creativity and determination to reserve reductions.

After reserves were surveyed in the Cowichan valley in the mid-1860s, Benjamin Pearse was despatched to the valley in 1867 to reduce their size. In March 1868 a settler named Rogers pre-empted a section of the cut-off land and travelled to the Cowichan to begin his improvements. When he arrived he discovered that a Cowichan named Te-che-malt had laid claim to the land by building a fence around it. Te-che-malt asserted that the land was not open to pre-emption and was in fact part of the reserve. According to William Lomas, Te-che-malt had approached him a month before Rogers' arrival and asked him to read the survey boundary posts for him, since he intended to fence part of the reserve and wanted to be sure of the boundaries. When Lomas departed Te-che-malt disregarded the survey and proceeded to fence the land that he wanted.²⁴

When Rogers arrived to claim his pre-emption Te-che-malt was working the land with three other Cowichan. Te-che-malt quickly decided that there was strength in numbers and so travelled to a near by village to recruit assistance. He told his friends and

²³ See, Robin Fisher, "Joseph Trutch and Indian Land Policy" BC Studies 12 (1971-72): 3-33; Robin Fisher, "An Exercise in Futility," 79-94.

²⁴ Lomas to Morley, 30 April 1869, Papers Connected with the Indian Land Question 59-60.

relatives that if a large number of them helped cultivate the land "they could hold it in spite of the government."²⁵ By the spring of 1869 there were between 12 and 14 Cowichan working the land that Rogers had pre-empted. The dispute between Rogers and Te-che-malt was finally settled by Governor Seymour who decided that the Cowichan had not been properly informed of the new reserve boundaries in 1867 and so would be allowed to retain the land that Te-che-malt had claimed. Subsequently, Trutch informed Rogers that his pre-emption had been cancelled and Te-che-malt confirmed in possession of the land.²⁶

Te-che-malt's success was not an isolated incident. Natives continued to exercise power over the redefinition of their land by building fences and were often able to resist considerable government pressure. A notable case was that of Alexander Munro. In 1858 Munro claimed sections 15 and 16, range 7, in the Cowichan; a total of 200 acres. As it was later explained, Munro soon discovered that the Cowichan "hankered much after this place."²⁷ Munro tried unsuccessfully for several years to gain control of his claim, but by 1869 he still faced extreme intransigency by the Cowichan who had fenced in a large portion of the two sections for their own use. One reason the colonial government had been extremely reluctant to recognize Te-che-malt's claim was that they feared that it would encourage other Natives, particularly the ones resisting Munro, to persist in their

²⁵ Lomas to Morley, 30 April 1869, Papers Connected with the Indian Land Question 59-60.

²⁶ Trutch to Morley, 4 May 1869, Papers Connected with the Indian Land Question 60-61.

²⁷ Report of Indian Reserve Commission, 21 March 1877, item 212, GR 1069, BCARS.

acts of defiance.²⁸ When the government did revoke Rogers' claim, it realized the need to reaffirm the new boundaries that were being imposed on the district. For this reason Trutch sent surveyor Mohun to the Cowichan to trace the boundaries of the reserve on the ground in the company of as many Cowichan as possible. Trutch also reiterated that the land sold to Munro had never been part of the original reserve and would not be granted to the Cowichan.²⁹

By 1874 Munro had failed in repeated attempts to oust the Cowichan from his pre-emption and had finally convinced the government to send the provincial police to the region in an attempt to evict the Cowichan.³⁰ When police constable Sullivan arrived on the scene he found that the Cowichan had built a "strong substantial fence" across Munro's land in an apparent attempt to annex it to adjoining reserves. Sullivan and several government officials watched as a man in Munro's employ started to pull-down the Cowichan's fence. He had only just begun when about 20 Cowichan appeared and assumed a "very threatening and hostile manner." One of them stepped forward and stated that if any more of the fence was torn-down Sullivan would be killed. Sullivan told the Cowichan that they had no right to build a fence on Munro's land and that they should instead be encouraging friendly relations with the settlers. The Cowichan replied that

²⁸ Morley to Trutch, 27 April 1869, Papers Connected with the Indian Land Question 58-59; and Lomas to Morley, 30 April 1869, Papers Connected with the Indian Land Question 59-60.

²⁹ Trutch to Morley, 4 May 1869, Papers Connected with the Indian Land Question 60-61.

³⁰ Powell to attorney general, 26 December 1873, Papers Connected with the Indian Land Question 123.

"God gave them the land and that they would die before they gave up possession of it." The Cowichan then set about repairing the fence while Sullivan and the rest of his contingent watched, afraid to interfere and start a battle which they knew they could not win.³¹

By the beginning of 1877 Munro had still not succeeded in acquiring control of his claim. He, therefore, decided to attempt to gain compensation for his losses by petitioning the Indian Reserve Commission. He stated that since his land was "held by the Indians in spite of all efforts to dispossess them," he believed the only acceptable option was for the government to reimburse him for his expenses, including interest, and confirm the Cowichan's title to the land. He stressed that he was not attempting to profit through speculation on the land. He had always planned to settle the land but had been "prevented by the Indians."³² Although the Commissioners initially recommended that the provincial government accept Munro's offer, subsequent investigations led them to decide otherwise. The commissioners learned that the leader of the Cowichan's resistance to Munro's claim was a man named Sin-a-meetza, who superintendent Powell had previously warned against claiming land outside the reserve. Sin-a-meetza had disregarded Powell's warnings, and had continued, with his companions, to make considerable improvements on Munro's claim. The commissioners, therefore, decided that any recommendation by them for Munro to be compensated would only confirm Sin-a-meetza

³¹ Sullivan to attorney general, 5 January 1874, file 3, 1/74, box 1, GR 429, BCARS.

³² Munro to Indian Reserve Commission, 8 January 1877, GR 494, BCARS.

in his "usurped possession"; this was definitely an undesirable result.³³ By 1878 the Indian Reserve Commission's suspicions had increased. They feared that the government's acquiescence during the Rogers/Te-che-malt dispute had encouraged the Cowichan to renew their resistance to non-Native encroachment. They even suspected that a number of the Cowichan who were preventing Munro from occupying his claim, were also involved in forcing Rogers out of the area. For all these reasons, the commissioners encouraged the provincial government to use any force necessary to drive the Cowichan from Munro's land.³⁴

Munro's dispute with the Cowichan, and many other such disputes throughout the province, illustrated that these problems were not as easily solved as the commissioners believed. Sullivan's attempt to remove the Cowichan's fences had shown that the government was no position to force the Cowichan from the land. Instead, the government had to wait for the Cowichan to relinquish control of the land of their own accord, or else hope that less violent measures would convince them to abandon their claim. Munro, however, was eager to see the issue resolved. Twenty years of struggling with the Cowichan led him, in 1879, to again argue in favour of the Cowichan's claim, in the hope that he would receive compensation from the government. The Cowichan's obvious success in resisting his claim forced Munro to conclude that "the Indians have had sufficient grounds for defending their property, that they have ample possession, and have

³³ Report of the Indian Reserve Commission, 21 March 1877, item 212, GR 1069, BCARS.

³⁴ Indian Reserve Commission to provincial secretary, 16 January 1878, GR 494, BCARS.

made extensive improvements; that it would be very difficult, as well as a hardship and an injustice to remove them: and that if the attempt be made they will again strenuously resist it...." Munro believed that there was little chance that he would be able to possess the land "in defiance of the Indians," and if they were forced off the land they would assuredly re-occupy it at the earliest possibility. Munro was disappointed that the Indian Reserve Commissioners had shirked their duty by failing to settle the matter and he now requested that the provincial government compensate him for his losses and confirm the Cowichan position of the land.³⁵

Munro's plea did not find favour with the provincial government. Instead, the Cowichan continued to occupy his claim for several years, until he eventually sold his title to a settler named Robinson in 1883.³⁶ While Robinson renewed efforts to force the Cowichan from the land, a Native named Le-empton infuriated the government by daring to apply for pre-emption of the disputed land. Le-empton's application, supported by Indian Agent Lomas, was not favourably received. In reply the government noted that Le-empton's actions were reprehensible and had been calculated to "exert a dangerous influence upon the minds of his people." The government was not about to award such a "troublemaker" with a privilege that it denied even the most "civilized" Natives.³⁷ After nearly 25 years of resistance, the Cowichan seem to have finally relinquished control of Munro's 200 acres in the summer of 1884. Lomas reported that "after

³⁵ Statement of Munro, 29 November 1879, item 212, GR 1069, BCARS.

³⁶ Powell to Lomas, 6[?] August 1883, vol. 1330, RG 10.

³⁷ Provincial secretary Robson to Lomas, 18 July 1884, vol. 1331, RG 10.

considerable difficulty," the Cowichan had been convinced to give up possession of the land.³⁸

Munro's experience with the Cowichan, and numerous other confrontations in the Cowichan Valley, exemplified the nature of Native/non-Native interaction during the settlement process. Although Natives were not always able to retain control of land in perpetuity, they were often able to express considerable power by building and destroying fences. As non-Native settlement spread throughout British Columbia in the late nineteenth century variations on the Munro/Cowichan story were re-enacted. In 1894 C. Harrison from the Queen Charlotte Islands wrote to premier Davie complaining of his losses at the hands of the local Haida. Harrison complained that the Haida were in the habit of dismantling his fences and building their own over land that he claimed. After tearing-down a fence the Haida had built on his land, Harrison returned to find a newly constructed fence with a notice from a Haida named Mark Spence, which read in part, "don't you take way that fence next time."³⁹ Similar complaints by settlers of Natives destroying their fences in an attempt to retain control of land accompanied the introduction of non-Native settlement.⁴⁰ These complaints continued well into the twentieth century. In 1904 John Marquart wrote from Coutlee that the fence around his land was a constant site of confrontation between himself and the local Natives, who "kept cutting & pulling it down as fast as I could repair it." He had been led to

³⁸ Annual Report of Indian Agent Lomas, 25 July 1884, file 756, pt. 2, vol 3662, RG 10.

³⁹ Harrison to Davie, 7 May 1894, file 2, 1354/94, box 3, GR 429, BCARS.

⁴⁰ See, Vowell to Gore, 5 November 1898, file 7486/98, GR 1440, BCARS.

understand that the Natives "considered it their range & I had not right to fence it. After having my crop destroyed for two years I had to quit."⁴¹

Fences, during settlement, were obviously a tool for the expression of power that both Natives and non-Natives were able to utilize. Just as Natives were able to build fences around land they desired, non-Natives were more than willing to destroy Native fences when they sought to gain control of Native land.⁴² In fact, the undefined nature of land in nineteenth century British Columbia meant that settlers' fences were not even safe from other settlers. William Duncan, a settler near Comox, complained in 1865 that his non-Native neighbours were in the habit of uprooting his fences and crossing his cultivated fields.⁴³ The problem was that because there was a lack of government designated roads in the district, settlers took it upon themselves to establish rough paths, and, as in Duncan's case, sometimes ignored their neighbours' boundaries. The problem was an important one because it illustrated that settlement, and the necessary Native/non-Native interaction that accompanied it, was largely based on the redefinition of land; the building of roads, as with the building of fences, was a symbol of the power struggles that permeated this process.

This redefinition of land during the nineteenth century was predicated upon the imposition of new purposes for the utilization of land. These differing purposes often led Natives and non-Natives to confront each other over land utilization, and fences were

⁴¹ Marquart to McBride, 12 June 1904, file 4852/04, GR 1440, BCARS.

⁴² See, Gibbs to Vowell, 1 November 1890, file 8954/99, GR 1440, BCARS.

⁴³ Duncan to Pearse, 17 June 1865, C/AA/30.7J/4, BCARS.

once again an important symbol of this conflict. Sproat indicated the nature of this dispute when he reported on the debate over Native fishing places on the Thompson River in 1878. Sproat reported that each passing year led to greater restrictions on Native access to their traditional fishing spots. As non-Native settlement increased, Natives often found fences blocking their paths to their fishing places. When they uprooted the fences and failed to put them up again, they reaffirmed their conflict with non-Natives over the definition of land.⁴⁴ Native/non-Native interaction during the nineteenth century was predicated upon this cultural conflict over the definition of land. Natives attempted to continue harvesting the land's produce, while non-Natives attempted to reshape British Columbia by building fences.

As with most studies of this kind, snippets from government correspondence and settlers' complaints do not begin to capture the fundamental changes that were taking place during the period or their importance to the participants. Personal experiences can often evoke an appreciation that evades even the most insightful quotation. The following excerpt from George Manuel's book The Fourth World, will hopefully rectify this shortcoming. Manuel was a Shuswap from the British Columbia Interior, and the following passage comes from his memories of experiences with his grandparents in the mid-1910s. His story emphasizes the effect that fences had upon Native culture, and it also illustrates that Natives did not simply acquiesce before this new definition of their land, but were able to resist it at a personal level in very meaningful ways.

⁴⁴ Sproat to [?], 26 February 1878, file 9361, vol. 3657, RG 10.

Late summer in my eighth year. The mountains were filled with life up to their snow-capped peaks. My grandmother had risen with the first sign of dawn that morning to get us ready for the long walk to our first berry-picking after the strawberries had ripened. Before she had stirred from her bed, I had already been awake long enough to walk the whole trail in my mind. Last year my grandfather had had to carry me the last part of the walk. This year I was determined to make it on my own and carry my filled basket home as well.

Now the sun was high and we had been on the trail for several hours. Soon we would reach the shady spot by the creek where we would have a bite of lunch. Then we would be a little less than two hours from the first bushes where we would pick.

I must have been thinking about that lunch and not looking straight ahead. Suddenly there was a gate blocking our way with a barbed-wire fence running away from it in both directions into the bushes. On the gate there was a lock and a white board with blackletters. I could not read them then, but they are still clear in my mind's eye today.

My grandparents talked awhile in quiet voices. Then my grandmother held her skirts with one hand and lifted herself over the gate with the other hand. My grandfather looked at her strangely when he handed her the walking stick and baskets. But he followed her, and so did I.

We were not a hundred steps beyond the gate when a white man came around a bend in the trail. As soon as he saw us he began to shout and wave his arms at my grandfather. Grandfather talked back to him in Chinook. I did not need to understand the words to know that they were both angered.

Grandfather had put down his baskets when the man had begun to speak to him. He was just bending over to gather them up when my grandmother picked up her stick and began to chase the whiteman. She spoke only our own Shuswap language but she had made herself well understood. He left. We stayed.

That woman was quite convinced that our people owned the land and that we had a special right to the bushes for which we were heading. No one had a right to fence it off.⁴⁵

Manuel's story illustrates the importance of fences in the settlement of British Columbia because it captures two very important ideas. First, it is obvious that fences

⁴⁵ George Manuel & Michael Posluns, The Fourth World: An Indian Reality (Don Mills: Collier-Macmillan Canada, Ltd., 1974) 48-50.

were more than nails, posts and rails. They symbolized the confrontation between different definitions of land tenure that was at the basis of settlement and Native/non-Native interaction. Settlement was much more than the development of government policy and the marginalization of Natives; it was about the recreation of land and the struggle that took place on the land between individual Natives and settlers. Manuel's story also emphasizes the fact that Natives were not powerless during this process of recreation. They could respond creatively and effectively in the face of settler encroachment. Just as Manuel's grandmother could climb the fence and chase the settler away with a stick, other Natives could build their own fences and destroy settlers' fences in meaningful attempts to retain control of their land. These two ideas are important because they illustrate that the Native world of nineteenth-century British Columbia was not a world where powerless Natives quietly retreated in the face of settlement. Instead it was a world where Natives manifested power at an individual level, and by doing so established a Native tradition that has been maintained subsequent generations.

Conclusion

A striking characteristic of the difference between academic interpretations of Native history and many contemporary Native peoples' understanding of their past is the disagreement over victims and heroes. Most studies written by non-Native scholars emphasize the hopelessness of the Native situation during the settlement period and the inevitability of social and economic marginalization. The persistence of this interpretation is exemplified in the most recent history of British Columbia. Jean Barman, in her discussion of the settlement period, has concluded that Natives were "easily shunted aside."¹ In contrast many Natives look back on over a hundred years of exploitation and forced assimilation, acknowledge the injustice, and then draw attention to the fact that they have survived. In Celebration of Our Survival², a recent publication compiled and written by British Columbia Natives, focuses on this specific point; no matter what destructive forces have been directed at their cultures, Native peoples have withstood the pressures and continued to insist on recognition and respect. The most incisive and compassionate example of this attitude is George Manuel's The Fourth World. Manuel argued that Natives are "entitled to declare a victory. We have survived" wrote Manuel "If others have also prospered on our land, let it stand as a sign between us that the Mother Earth can be good to all her children.... It is a myth of European warfare that one

¹ Jean Barman, The West Beyond the West: A History of British Columbia (Toronto: University of Toronto Press, 1991) 152.

² Doreen Jensen and Cheryl Brooks, eds. In Celebration of Our Survival: The First Nations of British Columbia (Vancouver: University of British Columbia Press, 1991).

man's victory requires another's defeat."³ A re-conceptualization of Native/non-Native interaction during the settlement period is needed to reconcile these differences of interpretation. Otherwise most non-Native scholars will continue to find historical victims, where many Natives find ancestors filled with strength and resolution.

The preceding chapters are a preliminary example of how asking different questions and revising dichotomies of winners and losers can begin to meet this goal. The model is based on a theoretical framework which includes the conceptualization of land as an historical construct. To appreciate the Native response to the forces of non-Native settlement the conflict should be viewed as more than a process of Natives being forced from their land by dominating settlers. Settlement was a process of re-creation and Natives were active participants. Settlers strove to impose a new definition on the land, one based on individual ownership and improvement. Natives resisted this remaking of their most important resource and responded in creative ways to retain their definition of the land. As with most cases of Native/non-Native confrontation, Natives were not inflexible. They adapted to the new criteria for land tenure and manipulated them as best they could.

This process of redefinition has important similarities with the enclosure movement in eighteenth century England, and historians' interpretation of settlement in British Columbia echoes many of the same biases that have dominated the British historiography on enclosures. Irene Sry's article on the loss of the commons in Canadian

³ George Manuel, The Fourth World: An Indian Reality 4.

prairies draws direct parallels with the loss of open land experienced by British peasants.⁴ Similarly, the recreation of land in British Columbia through settlement meant that Natives were deprived of their commons. In Britain enclosure was based on much the same process, one which denied peasants the right to harvest resources from land which they did not 'own' through fee-simple title.⁵ This goal was partly achieved through a familiar tactic; the building of fences. Land was partitioned and fences represented the end of communal rights and the loss of the commons.

Studies of the enclosure movement in Britain resemble interpretations of settlement in British Columbia in the way that they have largely ignored the question of resistance. There is much information on the effects on agricultural production and industrialization, and although the presence of peasant opposition has been acknowledged, even by the founders of the historiography,⁶ little has been done on the subject.⁷ Most historians, even the incomparable E.P. Thompson, have assumed that commoners were relatively passive in the face of enclosure because of their unfamiliarity with the law, their distance

⁴ Spry, "The Loss of the Commons."

⁵ Jerome Blum, "English Parliamentary Enclosure" The Journal of Modern History 53. 3 (Sept. 1981): 477-504.

⁶ J.L. Hammond and Barbara Hammond, The Village Labourer, 1760-1832 (London: Longmans, Green, and Co. Ltd, 1932) 5.

⁷ See, Michael Turner, Enclosures in Britain, 1750-1830 (London: MacMillan Press, 1984) 76; and Michael Turner, "Recent Progress in the Study of Parliamentary Enclosure" The Local Historian 12.1 (February, 1976):18-25. Fences have been the focus of research but the emphasis has been on the cost of fencing and the impact on the viability of agriculture, not on fences being a site of struggle between land definitions; see Robert C. Allen, Enclosure and the Yeoman (Oxford: Clarendon Press, 1992) 163-165.

from the seat of power, and the uneven implementation of enclosure.⁸ But recent studies of the peasant response to enclosure have revealed a much different picture. An analysis of the Northamptonshire resistance of the late eighteenth century illustrates that peasants "were shrewd realists when enclosure came in sight" and that "many of them were more active in their own defence than historians have allowed." J.M. Neeson has concluded, in opposition to the accepted interpretation, that "commoners thought themselves strong enough to disrupt and delay enclosure."⁹

The most significant similarity between these confrontations, which happened in much different places, at different times, for different reasons, and between drastically different groups, is the interpretation they have received by historians. Students of Native/non-Native interaction in nineteenth century British Columbia have largely ignored the importance of Native resistance just as British scholars have failed to recognize the peasants' ability to respond forcefully and meaningfully to the loss of their commons. Conceptualizing the confrontation as a process of land recreation begins to adjust this bias. It is a way of bringing the average person, the person who did not hold a position of obvious importance, but the one who made up the vast majority, out of the background.

The other facet of this model is a working theory of power. Foucault's rethinking of power dynamics, regardless of the weaknesses of his own implementation of his ideas

⁸ J.M. Neeson, "The Opponents of Enclosure in Eighteenth-Century Northamptonshire" Past & Present no.105 (November, 1984) 116.

⁹ Neeson, "The Opponents of Enclosure" 116.

or their reception by some historians,¹⁰ holds valuable lessons for scholars who are dedicated to the recovery of the history of marginalized groups. Historians of women's experiences have been quick to capitalize on Foucault's theoretical beginnings, and have begun to rethink power relations between women and patriarchal institutions.¹¹ Their elaborations on Foucault's power theories can be adapted, modified, and applied to the recovery of the history Native peoples. Scholars in both fields are confronted by a similar obstacle; how to interpret the history of oppressed peoples through sources mainly compiled by the oppressors and when burden with concepts which reaffirm the inevitability of victimization. Approaching power as a fluid, organic, and creative force, which is manifested by historical agents begins to meet this requirement.

When these two concepts, historically constructed land and organic power, are combined they represent the beginnings of a different conceptualization of the Native response to settlement in nineteenth century British Columbia. It is not a conceptualization which seeks to deny the incredible hardships Native have experienced, or mollify non-Native guilt over past wrongs. Neither it is an attempt to find disparate examples of Native 'victories'; something of which there is no need, since, as many Natives point out, they have won the ultimate victory, they have survived. Instead, it is an attempt to listen

¹⁰ See, Allan Megill, "The Reception of Foucault by Historians," Journal of the History of Ideas 28 (1987): 117-141; and, Mark Poster, "Foucault and History," Social Research 49 (1982):116-42.

¹¹ See, Joan Wallach Scott, Gender and the Politics of History; Linda Gordon, Heroes of Their Own Lives: The Politics and History of Family Violence, Boston 1880-1930 (New York: Viking, 1989); and Judith Walkowitz, Prostitution and Victorian Society: Women, Class, and the State (New York: Cambridge University Press, 1980).

to the voices of average Natives who withstood the changes brought by non-Native settlement. The current implementation of the model is far from being totally satisfactory. Important temporal and geographical differences have been under-emphasized, and the clarity of a regional study has been sacrificed in an attempt to sketch the larger patterns. These shortcomings are significant and need to be addressed in future research, but the conclusions are still undeniable.

Contemporary Native political awareness has a longer history than is usually acknowledged. Paul Tennant's recent survey of the Native land question in British Columbia¹² associates Native political reaction to the land question with petitions, meetings, associations and prominent Native leaders. All of these were integral characteristics of Native resistance, but their political struggle had an earlier beginning; it evolved from the type of conflicts and negotiations described here. The basis of this resistance was individual Natives who refused to quietly relinquish their land, and instead responded by insisting on negotiations, destroying surveys, and building fences. These individuals laid the foundation for Native protest and established a tradition which survives to this day.

¹² Paul Tennant, Aboriginal People and Politics.

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Abbreviations

BCARS	British Columbia Archives and Records Service
VCA	Vancouver City Archives
NAC	National Archives of Canada
UBCLSC	University of British Columbia Library, Special Collections

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