

**VALIDATION AND CONSTRAINT:
A DISCURSIVE EXAMINATION OF THE BRITISH COLUMBIA LAND
QUESTION IN AN ERA OF TREATY NEGOTIATIONS**

by

Tonio Sadik

B.A. (Honours), Carleton University, 1991

M.A., University of Windsor, 1993

THESIS SUBMITTED IN PARTIAL FULFILLMENT OF
THE REQUIREMENTS FOR THE DEGREE OF

DOCTOR OF PHILOSOPHY

In the
Department
of
Sociology and Anthropology

© Tonio Sadik 2008

SIMON FRASER UNIVERSITY

Fall 2008

All rights reserved. This work may not be
reproduced in whole or in part, by photocopy
or other means, without permission of the author.

APPROVAL

Name: Tonio Sadik
Degree: Doctor of Philosophy
Title of Thesis: Validation and Constraint: A Discursive Examination of the British Columbia Land Question in an Era of Treaty Negotiations

Examining Committee:

Chair: Dr. Wendy Chan
Associate Professor of Sociology

Dr. Noel Dyck
Senior Supervisor
Professor of Anthropology

Dr. Dara Culhane
Member
Associate Professor of Anthropology

Dr. Marianne Ignace
Member
Associate Professor of Anthropology

Dr. Paddy Smith
Internal Examiner
Professor of Political Science

Dr. Frances Abele
External Examiner
Professor, School of Public Policy and Administration
Carleton University

Date Defended/Approved: November 27, 2008



SIMON FRASER UNIVERSITY
LIBRARY

Declaration of Partial Copyright Licence

The author, whose copyright is declared on the title page of this work, has granted to Simon Fraser University the right to lend this thesis, project or extended essay to users of the Simon Fraser University Library, and to make partial or single copies only for such users or in response to a request from the library of any other university, or other educational institution, on its own behalf or for one of its users.

The author has further granted permission to Simon Fraser University to keep or make a digital copy for use in its circulating collection (currently available to the public at the "Institutional Repository" link of the SFU Library website <www.lib.sfu.ca> at: <<http://ir.lib.sfu.ca/handle/1892/112>>) and, without changing the content, to translate the thesis/project or extended essays, if technically possible, to any medium or format for the purpose of preservation of the digital work.

The author has further agreed that permission for multiple copying of this work for scholarly purposes may be granted by either the author or the Dean of Graduate Studies.

It is understood that copying or publication of this work for financial gain shall not be allowed without the author's written permission.

Permission for public performance, or limited permission for private scholarly use, of any multimedia materials forming part of this work, may have been granted by the author. This information may be found on the separately catalogued multimedia material and in the signed Partial Copyright Licence.

While licensing SFU to permit the above uses, the author retains copyright in the thesis, project or extended essays, including the right to change the work for subsequent purposes, including editing and publishing the work in whole or in part, and licensing other parties, as the author may desire.

The original Partial Copyright Licence attesting to these terms, and signed by this author, may be found in the original bound copy of this work, retained in the Simon Fraser University Archive.

Simon Fraser University Library
Burnaby, BC, Canada



SIMON FRASER UNIVERSITY
THINKING OF THE WORLD

STATEMENT OF ETHICS APPROVAL

The author, whose name appears on the title page of this work, has obtained, for the research described in this work, either:

(a) Human research ethics approval from the Simon Fraser University Office of Research Ethics,

or

(b) Advance approval of the animal care protocol from the University Animal Care Committee of Simon Fraser University;

or has conducted the research

(c) as a co-investigator, in a research project approved in advance,

or

(d) as a member of a course approved in advance for minimal risk human research, by the Office of Research Ethics.

A copy of the approval letter has been filed at the Theses Office of the University Library at the time of submission of this thesis or project.

The original application for approval and letter of approval are filed with the relevant offices. Inquiries may be directed to those authorities.

Bennett Library
Simon Fraser University
Burnaby, BC, Canada

ABSTRACT

In the early 1990s, when a process was established to negotiate modern-day treaties in British Columbia (BC), it was presumed that a majority of First Nation land claims would be resolved over the course of the following twelve years. Now, some fifteen years later, only two agreements have been reached as a part of this process. The reasons for this malaise are many, and while the relative failure of the treaty process in BC could be attributed to any number of factors, this thesis examines the inception of this process, with a focus on the period 1995-99, as a basis for challenging the perception that we have transcended the policy of denial that characterized indigenous-state relations in BC prior to the treaty process. Relying upon participant-observation, ethnographic interviews, and an analysis of media, this thesis asks: how has the discursive context of the BC land question been transformed by the treaty process? What impact did the perception that the public was being called upon to participate in forums about the BC land question have on the discursive construction of this policy field? And how did the perception that BC had entered a new era of recognition (rather than of denial) inform peoples' sense of what the treaty process was about and the outcomes it would lead to? The thesis argues that the historical policy of denial that characterized indigenous-state relations in BC continues to be embodied in a dialectic of validation and constraint that informs contemporary efforts to manage the BC land question. It is by advancing this analysis that this thesis seeks not only to bring an element of clarity to a process that continues to frustrate the aspirations of many First Nations in BC, but also highlights some of the contributions that anthropology has to make to a study of public policy.

Keywords: British Columbia; claims; discourse; First Nations; indigenous-state relations; media; policy; treaties

DEDICATION

This thesis is dedicated to my wife, Vicki, and our three children, Carmen, Sebastian, and Leonardo, who were but vitamins in a sprig of broccoli when this research began.

ACKNOWLEDGEMENTS

A project of this duration requires many acknowledgements.

Foremost, I wish to acknowledge my senior supervisor, Noel Dyck, for his unwavering patience, guidance and support in completing this thesis. In addition, my committee members, Dara Culhane and Marianne Ignace, have provided me with invaluable guidance over the duration of my graduate career. Each of these individuals has made an enormous contribution to my experience as a graduate student and to my intellectual development as an anthropologist. I am in their debt.

I also wish to acknowledge a number of other faculty in the Department of Sociology and Anthropology, including Marilyn Gates, Hari Sharma, and the late Ellen Gee, for their various interventions and efforts during my studies.

There were also a number of other individuals at Simon Fraser University that supported and encouraged me at various points. Foremost, I wish to acknowledge Lori Barkley's incredible support and friendship at a time when she was herself occupied with an enormous workload. More generally, my former co-workers at the Teaching Support Staff Union (TSSU) – Jude Morrison, Jody Jenson, and Lori Barkley – each in their own way contributed to my academic development. As well, Sue Frohlic, Richard Day, and Guy Letts provided me with a sounding board among my peers.

My eventual move and employment in Alert Bay, BC, also represented an important experience relative to this research. Chief Bill Cranmer, Ian Knipe, Nicole McClelland, Marty Weinstein, Don Svanvik, and the late (and dearly missed) Lawrence "Lou" Ambers provided me with incredible opportunities and experiences that have shaped me forever. As well, George "Satch" Speck, Garry Ullstrom, Roy Cranmer, and my former colleagues of the member nations of the Winalagalis Treaty Group provided me with a level of insight that can only be harnessed in practice. I cherish the many wonderful friendships and experiences that were a part of living and working in Alert Bay.

My current employment at the Assembly of First Nations (AFN) in Ottawa has also represented an incredible opportunity to engage in new issues and garner new skills relative to my research. Jennifer Brennan, Roger Jones, Dan Wilson, and Regina Toulouse have demonstrated a wide range of skills and professionalism that continue to hold me in awe. Richard Jock, Jennifer Brennan, Guy Poirier, and most recently, Bob Watts, were instrumental in supporting the completion of this thesis by providing me with the opportunity to do so while working in a context where there is no *down* time.

And finally, I am indebted to the many respondents who agreed to be interviewed, along with countless others – students, teachers, icons, and the invisible – who have in one way or another enabled me to complete this work, and to my parents, siblings, wife, and children for their unfailing support and encouragement.

I am grateful to each of you – thank you!

TABLE OF CONTENTS

APPROVAL ii

ABSTRACT iii

DEDICATION iv

ACKNOWLEDGEMENTS v

TABLE OF CONTENTS vi

LIST OF TABLES viii

CHAPTER 1: SITUATING THIS RESEARCH

1.1 – Introduction 1

1.2 – The BC Land Question 5

1.2.1 – Legal Action as a Source for Discourse 11

1.2.2 – The BC Treaty Commission Process 14

1.2.3 – The Nisga'a Treaty 18

1.3 – The Anthropological Contribution 22

1.3.1 – Anthropology and Public Policy 27

1.3.2 – The Anthropology of Media 31

1.4 – Research Methods 36

1.4.1 – Locating Myself 39

1.4.2 – Participant-Observation 45

1.4.3 – Interviewing 49

CHAPTER 2: TALKING ABOUT THE LAND QUESTION

2.1 – Introduction 53

2.2 – Quentin 55

2.3 – Elmer 64

2.4 – Karl 81

CHAPTER 3: THE BC LAND QUESTION IN HISTORICAL CONTEXT

3.1 – Introduction 87

3.2 – Colonization 90

3.3 – Repression 97

3.4 – Re-emergence 102

CHAPTER 4: THE CONTEMPORARY PERIOD

4.1 – Introduction 117

4.2 – The Emergence of the BC Treaty Process 121

4.2.1 – The Task Force Recommendations 124

4.2.2 – Treaties 134

4.3 – Concluding Comments 139

CHAPTER 5: MEDIA NARRATIVES

- 5.1 – Introduction 142
- 5.2 – Tracking Media 149
- 5.3 – Major Narratives in the Vancouver *Sun* 151
 - 5.3.1 – First Nation Peoples are a Homogenous Group 153
 - 5.3.2 – The Expectations of First Nation Peoples are Unreasonable 156
 - 5.3.3 – The Resolution of Land Settlements are Too Costly 160
 - 5.3.4 – First Nation Peoples Can't Take Care of Themselves 164
- 5.4 – Racialized News Texts 167
 - 5.4.1 – Racialization as a Process of Othering 170
 - 5.4.2 – Racialized News Texts in the Vancouver *Sun* 173
 - 5.4.3 – The Impact of Racialized News Texts 177
- 5.5 – Conclusions 182

CHAPTER 6: INTERSECTING NARRATIVES

- 6.1 – Introduction 185
- 6.2 – The Impact of the Nisga'a Negotiations 187
 - 6.2.1 – The Legal Stream 190
 - 6.2.2 – The Political Stream 195
 - 6.2.3 – The Economic Stream 205
- 6.3 – Conclusions 213

CHAPTER 7: CONCLUDING COMMENTS IN THE *PRESENT* TENSE

- 7.1 – Introduction 217
- 7.2 – Some Final Considerations 218
- 7.3 – Some Final Reflections on Anthropology 225

BIBLIOGRAPHY 228

APPENDICES 241

1. Sample Interview Schedule 242
2. List of Potential Respondents 244
3. Research Proposal Form 245
4. Request for Participation Form 246
5. Informed Consent Form 248
6. Recommendations of the BC Claims Task Force 250
7. The Six Stages of the BC Treaty Process 252
8. Treaty Negotiation Advisory Committee (TNAC) Member Organizations 256

LIST OF TABLES

TABLE 5.1: Distribution of articles published by the *Vancouver Sun* pertaining to First Nation issues that referenced *race* (1995-99) 174

CHAPTER 1 – SITUATING THIS RESEARCH

1.1 – Introduction

The British Columbia Treaty Commission (BCTC) opened its doors for negotiation in December 1993. At the time, it was thought that the process of negotiating individual treaties with the First Nations¹ of British Columbia (BC) would resolve a significant proportion of all claims in the following twelve years.² Since then, only two agreements have been reached as a part of this process,³ while many dozens remain outstanding.⁴ Currently, the prospect of reaching further settlements appear no better (and possibly worse) than at the commencement of this process. While the relative failure of the treaty process could be attributed to any number of factors – including the changing nature of federal and provincial politics, emerging case law that has the potential to change the basis of negotiations, or the respective mandates of the parties to the negotiations – this research focuses on the discursive context of the BC land question at the inception of this process and the manner in which it was transformed during a particularly formative period with respect to this policy field. This research argues that the historical policy of denial that characterized indigenous-state relations in BC prior to the inception of the treaty process continues to inform contemporary efforts to manage the BC land question in the present setting.

¹ The term First Nation came into use in the period following the patriation of the Constitution in 1982. It was later adopted by the BC Claims Task Force (1991) as the term used to define the entities that would participate in the newly proposed treaty process (see Chapter Four). The term is used here in its generic sense, rather than as a means to define a construct for nationhood. The term is sometimes also used to refer to a variety of different entities, from Bands to Aboriginal nations.

² Loan funding for First Nations engaged in the treaty process comes due twelve years after a First Nation enters the process. This issue is examined later in the thesis.

³ Agreements were reached with the Tsawwassen and Maa-nulth First Nations in 2007. However, only the Tsawwassen agreement has come into legal force to date.

⁴ There are some fifty-six other First Nations currently engaged in negotiations.

Relying upon findings based upon participant-observation research, ethnographic interviews, and the tracking of media during the period 1995-99, I argue that the relative failure of this process has its origin in a dialectic that continues to characterize indigenous-state relations in BC and the rest of Canada. At its core, this dialectic is based on the simultaneous recognition and denial of First Nation peoples in Canada. It is one that emerged most concretely with the patriation of the *Constitution* in 1982 and has manifested itself in many different forms throughout the policy field that pertains to indigenous-state relations in Canada. It is a dialectic based on what I characterize as the dual objectives of *validation* and *constraint*. It is, I suggest, the inability to reconcile these two objectives that remains at the heart of the relative failure to address substantively the BC land question in the present day. The objectives of validation and constraint emerge across a range of discourses examined in this research, in particular in the interviews carried out as a part of this work and in the media coverage of these issues. Embedded within this dialectic is the reluctance of governments⁵ to engage First Nations with sincerity as equal partners in this process, and it is this reluctance that represents a hold-over from the preceding era of denial. While the objectives of validation and constraint are not inherently in conflict with one another, it is the inability of governments to reconcile these objectives adequately among those who purport to have an interest in this policy field that remains a key impediment to successful outcomes from the process of tripartite negotiations. In pursuing this examination, this thesis advances three central propositions relating to the discursive context of the land question in BC during the period 1995-99, as well as to the ongoing discussion of the contribution that

⁵ This is not to suggest that governments – federal or provincial – represent monolithic entities, but rather that, from the standpoint of my focus on the BC land question, distinctions between governments are made only where such distinctions meaningfully inform the orientation of this work.

anthropology can make to the emerging field of public policy analysis and the study of media in the present setting.

First, this research advances a holistic perspective with respect to this policy field in order to demonstrate its finding that the relative failure to resolve the BC land question resides in a dialectic that continues to plague indigenous-state relations in Canada. The thesis advances the proposition that a successful resolution to the BC land question is unlikely to be achieved until this dialectic is fully reconciled or at least addressed in a more fulsome and genuine manner. This dialectic has eluded reconciliation since at least 1982 not only because of the complexity of issues and number of parties potentially involved, but also because of the symbolic context within which this policy field is cast and the strong emotive elements that have been deployed discursively as a basis for making sense of the BC land question. In short, the issue is not just one of having failed to reach mutually acceptable agreements with respect to how lands and resources ought to be divided up in BC; it is one of reconciling the place of First Nations relative to Canada's colonial past. In this way, this research relies upon ethnographic interviews as a basis for describing the discursive construction of the BC land question at a time when issues relating to the place of First Nations in BC were in particular flux.

Second, this research locates the mass media as a central site where discursive struggles over representation take place, and where different actors endeavoured to manage public understandings and meanings in ways that match their interests. On this basis, this research relies upon ethnographic interviews to support the proposition that media played a central role not only in informing peoples' perceptions of the land question, but also by representing a primary site where the meaning of the land question

was itself undergoing a discursive re-articulation. Viewed in this way, media does not represent a conduit between things that happen (i.e., events) and their (re)presentation. Rather, viewed ethnographically, media construct and represent their own *reality*; the discursive context for an analysis of media is found in the media as an end in itself. How media are interpreted, however, is a different question, one that arises ethnographically in interviews rather than in media coverage per se.

And finally, this research calls for a greater engagement of anthropology in the study of both public policy formation on the one hand, and an analysis of mass media on the other. Within anthropology, a focus on these fields has been respectively characterized as both “new” (see, Shore and Wright 1997) and long overdue (see, Spitulnik 1993; Rothenbuhler and Coman 2005). The undertaking here is one that identifies a unique contribution that anthropology can make to each of these distinct areas, as well as in relation to one another. While there is an extensive body of literature that examines the relationship between media and society writ large (e.g., Nesbitt-Larkin 2001; Hackett and Zhao 1998; Calhoun 1992; Herman and Chomsky 1988; Habermas 1962/1989), less is known about the discursive context of media and its impact on a more specifically defined policy field.

This thesis contains seven chapters. In this first chapter I establish the context for this research, describing both my theoretical orientation within anthropology and my methodological approach. I also review the primary issues relating to my subject matter in an effort to familiarize the reader with the main elements of my research focus. Chapter Two focuses on my ethnographic interviews. A total of twenty-two persons were interviewed for this research, and three interviews are explored in some detail to

typify the range of perspectives that I encountered in conducting this research. Chapter Three provides an historical account of the BC land question, demonstrating the tendencies towards validation and constraint historically. Chapter Four focuses on the contemporary context of the treaty process, elaborating on some of the technical issues that have emerged to inform this policy field. Chapter Five focuses on media. The emphasis is on tracking media coverage in the Vancouver *Sun* as a basis for identifying key narratives that have informed the discursive context of the land question. This also includes an extensive discussion of the idea of *race* and the impact of racialized news texts in the media. Chapter Six draws these materials together in an effort to identify and interconnect three discursive streams that have dominated this policy field through the 1990s. Chapter Seven brings these issues to a conclusion by refocusing this research in the present context of a perpetually faltering treaty process.

1.2 – The BC Land Question

Much of what has transpired over the past two decades with respect to the BC land question continues to defy simple explanation. The legal context for the resolution of claims continues to evolve and remains a complex field. The political context, while more stable in the province than it was prior to 2001,⁶ continues to be subject to the vagaries of party politics on all fronts. As a consequence, the policy context for indigenous-state relations remains fraught with dilemmas and inconsistencies. Even referring to a *land question* in BC is not as straight forward as it may seem. In the first place, it is a phrase that alludes to a question, but is not a question itself. As such, it is a

⁶ In 2001, Gordon Campbell was elected premier of the province. While his initial stance with respect to the land question was hostile, he has since become an unlikely advocate for a resolution of these issues on some fronts.

sign or marker of a question, but it does not divulge more than that. Whether this manner of referring to the status of land ownership in BC emerged merely by rhetorical happenchance or whether the questioning of the status of land ownership was deemed too provocative and was thereby masked has received little or no scholarly attention itself. Indeed, reference to the land question is by no means universal, or even dominant, and many euphemisms persist. For example, reference to *land claims* is perhaps most prevalent in mainstream contexts, and even as a shorthand for those engaged in this policy field,⁷ but, admittedly, this reference owes its popularity, at least in part, to the fact that it has generic meaning across Canada. The BC land question, on the other hand, is geographically and politically distinctive; references to a land question are not generally made in other parts of Canada.

My use of this phrase is deliberate and is selected for two reasons. First, it is a phrase that clearly had ethnographic currency at the time of my fieldwork. It was often referred to in discussions about the Nisga'a treaty, and it was a phrase that Chief Joseph Gosnell – former president of the Nisga'a Tribal Council, primary figure in the emergence of the Nisga'a treaty, and a prominent media personality in the latter half of the 1990s – commonly used. As such, it had some currency and validity in the mainstream. The second reason for using this phrase relates to the unsatisfactory meaning of other terms often used euphemistically. A reference to land claims has been interpreted by some First Nations as misrepresenting the full meaning of this issue. It has been alleged, for instance, that a reference to *land* does not adequately capture the breadth of this issue, and that a reference to *claims* trivializes the origins of these

⁷ For example, this issue was raised in my interview with Elmer examined in Chapter Two.

grievances.⁸ More significantly, however, disputes about terminology are themselves one of the many discursive manifestations of the tensions that characterize this policy field. Some question the utility of debating terminology, but such commentaries typically fail to recognize that disputes about words or names can have tremendous symbolic weight and are often emblematic of much more far-reaching questions about power and recognition (see, Shore and Wright 1997:18-24).⁹ Additionally, these disputes can reflect the extreme marginality of some participants relative to others, where some do not even have the ability to meaningfully inform the terms of a debate that purports to be about them (see, Ginsburg 2005:18).

As a consequence, the attention I pay to terminology is not merely a matter of semantics. Indeed, reference to the BC land question in the 1970s and 1980s by provincial political figures were often preceded by the term “so-called.”¹⁰ Reference to the “so-called land question” has a counter-intent in that it calls into question the validity of the assertion itself. From the standpoint of dominant institutions, to suggest that there is a *question* about the status of land ownership in BC has potentially far-reaching implications. In most settings, and certainly within the purview of the state, underlying Crown ownership of all lands is beyond question and, as such, may be beyond the capacity of state institutions to reconcile. It was only through the legal and political persistence of First Nations, and the practical threat that they represented to the vested

⁸ However, it would be misleading to suggest that reference to the “BC land question” has not undergone a similar critique.

⁹ References to *sovereignty* or *genocide* are examples of words that tend to provoke a strong response from governments.

¹⁰ See, for example: Mr. Reynolds, Hansard, Official Report of the Debates of the [BC] Legislative Assembly, March 12, 1986, Afternoon Sitting; Mr. G. Gibson, Hansard, Official Report of the Debates of the [BC] Legislative Assembly, April 3, 1974, Afternoon Sitting.

interests of the province, that the possibility that First Nations might have to be dealt with emerged. While the BC land question is a question about the ownership and control of lands and resources, more fundamentally, it is not a question at all, but an assertion that the status of land ownership and control under the Crown is not secure – an assertion that has potentially radical implications.

My examination of the BC land question focuses upon a particularly poignant period in the trajectory of this issue, a time when law and politics appeared to converge in what could be described as an opening in the public policy debate about the potential for its resolution. This was embodied in the Supreme Court of Canada's decision in *Sparrow*,¹¹ and the emerging willingness of the provincial government in BC¹² to recognize some basis for discussing First Nation claims in the early 1990s. While the focal point of this research is neither what is referred to as the *Sparrow* case nor provincial politics, with hindsight we can locate a significant convergence in these two narrative streams, one that provides an important backdrop to the land question. It is characterized by a series of punctuating events that include the emergence of a treaty with the Nisga'a, ongoing indigenous rights litigation, and a faltering provincial economy. A corresponding focal point for this research is the interrelation of the treaty process, a process that came into operation in December 1993, and the Nisga'a treaty negotiations that came to the public fore beginning in 1995. As such, this analysis focuses on a period when both of these processes were unfolding simultaneously. The Nisga'a treaty negotiations, it needs to be pointed out, did not come under the purview of the BC treaty process, but rather, preceded its inception and, as a consequence, unfolded along side it,

¹¹ *Regina v. Sparrow* [1990] 1 S.C.R. 1075, henceforth referred to as *Sparrow*. This case was the first Supreme Court decision to interpret the application of section 35 of the *Constitution*, patriated in 1982.

¹² Under the leadership of Bill Vander Zalm's Social Credit party.

rather than as a part of it. While these were distinct processes, however, they informed one another in a number of important ways. A second focal point for this research relates to emerging case law, in particular, the trajectory of the *Delgamuukw* decision from the Supreme Court of BC in 1991¹³ to the Supreme Court of Canada in 1997,¹⁴ and the impact that this decision had on how the provincial government responded to the need to signal a *success* in terms of the negotiation of claims in the province.

With a few exceptions, I do not look in much detail at either the workings of the treaty process, the content of the Nisga'a treaty, or the legal details of emerging case law. Rather, these issues / processes have already been examined by others in great detail. For example, the treaty process has been examined in detail by McKee (1996 and 2000) and, more recently, Penikett (2006). The Nisga'a treaty has been studied extensively on a number of fronts. Raunet (1984) provides an examination of the historical context of the Nisga'a treaty. Sterritt et al. (1998) provide a critical examination of this treaty based on its impacts on First Nation neighbours. Molloy (2000) describes this treaty from the standpoint of a (federal) negotiator involved in the process. And *BC Studies* (1998/99) devoted an entire issue to the Nisga'a treaty with essays by seven authors. Finally, the various stages of the *Delgamuukw* decisions have been written about by an array of scholars across a number of fields (e.g., Roth 2002; Yurkowski 2000; Fortune 1993), including an entire issue of *BC Studies* (1992), and several books (Culhane 1998; Persky 1998; Cassidy 1992).

While a great deal of scholarly work has focused on these issues over the past two decades – from political science, history, geography, native studies, economics, and law –

¹³ *Delgamuukw v. British Columbia* (1991), 79 D.L.R. (4th) 185 (B.C.S.C.), henceforth referred to as *Delgamuukw* (1991).

¹⁴ *Delgamuukw v. British Columbia*, [1997] 3 S.C.R. 1010, henceforth referred to as *Delgamuukw* (1997).

what has not been examined is the more general discursive transformation of this policy field during this particularly dynamic period. This research draws upon the unique capacities of anthropology to examine the diverse ways in which different parties endeavoured to manage the public understanding of the land question in ways that matched specific interests and served particular purposes. In this way, the BC land question is cast not as one or another kind of issue (e.g., legal, political, economic, etc.), but rather, as a combination of these in an effort to highlight linkages between the particularities of this context ethnographically and the broader context of indigenous-state relations. Anthropology's approach provides a more holistic focus on a set of issues that are necessarily connected and where new insights can be gained through an examination of the relationships between the general (or *universal*) and particular. My combined emphasis on ethnographic interviews and mass media coverage pertaining to First Nation peoples and issues attempts to situate this policy context as one that was impacted by a range of factors – legal, political and economic. Daniel Miller makes this point in arguing that the general and particular are generated by the same process and that understanding is “heightened”, not lessened, in recognizing that our understanding of an issue is “constantly being made redundant by the dynamics of our world” (2001:3-4).

At no point was there just one or even a few discourses at play. Rather, the emergence of a formal process to negotiate comprehensive land claim settlements in BC appeared to turn on its head former attempts to deny the existence of such claims, and this reversal had the affect of bringing a host of new issues, actors, and interlocutors on to the stage. At the same time, however, the emergence of a formal process to negotiate claims also established a normative framework within which the meaning of such claims

would be defined and constrained. It is at this nexus – between the validation¹⁵ of First Nation claims and the constraints imposed by a new framework – that this research focuses on validation and constraint as elements of a dialectical process that was brought to bear in the discursive context of the BC land question. The term *dialectical* is borrowed from Miller who states that it stands for “the centrality of contradiction” (2001:3), in this case, as it relates to the BC land question.¹⁶

1.2.1 – Legal Action as a Source for Discourse

One of the unique features of the legal arena is the potential that it creates for a party to generate a political wedge through successful legal action. The issuing of an award through the courts, or the threat of a finding against a government, has the potential to create a contingent liability that governments would often rather negotiate than leave to the courts given the precedent that an unfavourable decision could establish. While First Nations were prevented from advancing their claims through the courts until 1951 because of a prohibition contained in the *Indian Act*, beginning in the 1960s, litigation became an important vehicle for discourse on rights and, ultimately, political recognition in the 1970s. While the courts have rarely, if ever, made an unequivocal finding wholly in favour of First Nations, the Supreme Court of Canada has now repeatedly affirmed the need for political negotiations based on its limited recognition of Aboriginal rights and title.¹⁷ First Nations have sought to use these rulings politically, if not legally, but with

¹⁵ Also conceived as *recognition* in some contexts.

¹⁶ Miller’s use of the term “dialectic” draws on Hegel’s *The Philosophy of Right* (1821) as a means to suggest that “an enterprise that is older than anthropology itself might still be recognized as a vanguard in its potential for recasting and making relevant the holistic tradition within anthropology” (2001:3). More is said about this later in the thesis.

¹⁷ For example, in *Sparrow* (1990) and *Delgamuukw* (1997).

only limited tangible success (see, Scott 2004). Rather, such limited victories – from the Supreme Court and otherwise – have informed the discursive context of the land question. In one respect, legal interventions have contributed to the advancement of a burgeoning discourse relating to the BC land question. But in another vein, the legal context is unlikely to provide a resolution in and of itself.

Ownership is, at its heart, a legal concept. However, the question of whether or not the original inhabitants of the Americas *owned* the land they inhabited prior to European colonization is not so much a legal question as one of basic human doctrine. As a result, many social scientists and legal scholars have focused on the debate between Las Casas and Sepulveda during the 1500s in Spain as a defining point in determining how European settlement would occur in the so-called New World (e.g., Penikett 2006; Culhane 1998; Brody 1981). The fact is that in many cases the dispossession of lands and resources from First Nation peoples was illegal not just according to First Nation systems of ownership and transfer, but under Canadian and pre-Confederation law. The current establishment of a quasi-judicial tribunal in Canada with binding authority to adjudicate *specific*¹⁸ claims relating to the breach of a lawful obligation arising from a treaty or other agreement with First Nations underscores the very real present-day implications of what occurred in the past. *Comprehensive*¹⁹ claims, on the other hand, constitute a different set of circumstances where the legal obligation of Canadian and pre-Confederation governments to enter into treaties or other agreements with First Nations

¹⁸ Specific claims arise from the non-fulfillment of treaties and other lawful obligations, or the administration of land and other assets under the *Indian Act* or in other formal agreements.

¹⁹ Comprehensive claims are based on the concept of continuing Aboriginal rights and title that have not been dealt with by treaty or other legal means.

was not satisfied.²⁰ Therefore, we can conclude that the stakes are in fact potentially high to the extent that governments and their citizens are prepared to recognize legal and related obligations with respect to reconciling the status of land ownership and control with Aboriginal peoples.²¹

Perhaps it is not surprising that law figures prominently in most considerations of indigenous lands and resources. What is surprising, however, is how unselfconsciously we have accepted the epistemological basis of one set of legal traditions and not another. Here I am referring to the status of common law in Western / European cultures relative to the meaning and content of these concepts in Aboriginal cultures. While it may be *realistic* to accept the predominance of Canadian legal institutions and the multitude of judges, lawyers, academics and politicians who routinely make pronouncements that have the potential to affect profoundly the lives of indigenous peoples, the legal, social and spiritual cosmologies of First Nation peoples nevertheless have some bearing on how we must respond to challenges of land ownership and control in Canada (see, Mulrennan and Scott 2005).

Culhane (1998) re-affirms the problematic basis of contemporary legal thinking in her examination of the Supreme Court of BC's decision in 1991 with respect to *Delgamuukw*. But if we are to have any success in advancing an understanding of the very situated basis of contemporary Canadian legal thinking in contrast with other – including Aboriginal – ways of addressing questions of ownership and control, then anthropology continues to have an important role to play. Legal scholarship remains a key plank in the advancement of indigenous rights both in Canada and globally. But a

²⁰ The value of comprehensive claims typically far-exceed the value of specific claims.

²¹ This is not to suggest that treaty settlements have or will significantly change the political, economic or geographic make-up of the province.

reliance on an institution that is itself a product of the state and is in many ways, along with the police and military, among the most visible manifestations of state power, is not only potentially unwise from a philosophical standpoint, but may not achieve the desired ends in practice. As a creature of the state, courts are not particularly well suited to conduct its critique. Legal strategies are effectively carried out in tandem with other modes of resistance, but are unlikely to provide a satisfactory vehicle to recognize or, indeed, implement, the aspirations of indigenous peoples themselves. This awareness speaks to the useful, but circumscribed utility of legal interventions as they pertain to indigenous claims.²² Litigation has contributed to the advancement of a discourse relating to the BC land question, but it has not – and likely will not – provide a resolution in and of itself.²³

1.2.2 - The BC Treaty Commission Process

While the courts have provided an important venue for the advancement of the land question, the products of even a successful First Nation's court action are necessarily established in subsequent *political* negotiations. The BCTC process, formulated and implemented during the early 1990s, purported to recognize this limitation, and proposed moving the entirety of the process into a negotiated forum. The growing legal and political uncertainty of the BC land question over the 1970-80s created an impetus for governments to respond to First Nation claims and to do so by establishing a tightly controlled process to deal with a predetermined set of issues. Moreover, while the emergence of the BCTC process represented a significant shift on the part of the BC

²² Of course, individual lawyers and legal scholars may make contributions to the field of indigenous-state relations that go beyond these inherent disciplinary and institutional boundaries.

²³ This is discussed in more detail in Chapter Six.

government with respect to its historical policy of *denial*, it did not alter the most fundamental policy assumption behind the land question: the extinguishment of all and any rights that First Nations have to the vast majority of lands and resources in BC. In the language of policy makers, the treaty process was one that sought *certainty* and *finality*, and it is in the recognition of this that the dialectic of validation and constraint is most obviously brought to bear.

The treaty process was founded upon a series of six stages that, not unlike a neo-evolutionary ladder, was supposed to enable a First Nation of any size to proceed from the identification of a territory on a map through to a final treaty in a period that was to be less than twelve years. The initial stages of the treaty process are quite rudimentary. Not until the end of stage three is any form of community ratification necessary. Thereafter, community ratification is required after every stage. What many First Nations have found, however, was that once three, or four, or five years had been spent getting to the end of stage three, it was very hard to justify abandoning the process when, as yet, no substantive issues had been addressed or negotiated, and a sizeable debt may already have accumulated.²⁴ The appeal of the process, as it turns out, is not unlike the appeal of a new credit card: it is liberating, but only to the extent that there is credit to be had. Ultimately, many First Nations have found themselves to be part of a process that has not lived up to its promise, but is not easy to get out of. Like the credit card, exit is not possible unless one is willing (and able) to pay-off the debt. For many First Nations,

²⁴ The costs associated with participation in the treaty process are largely administrative (e.g., setting up a small office with requisite staff), but also involves hosting tripartite meetings, carrying out some research, communicating with community members, and hiring contractors / legal counsel.

their ongoing participation in the treaty process is driven by an inability to service their debt, along with a lack of other alternatives.²⁵

This paints a rather dire picture of the treaty process in the present setting, and while it is not an entirely accurate portrayal of the situation for all participants in the process, it speaks to some of the underlying flaws in the process itself. At its inception, which involved the participation of a number of prominent First Nation leaders, the treaty process heralded not only the hope for a negotiated resolution to the BC land question, but also a signal of the reversal of the Province's long-held denial that such a question existed at all. While there were skeptics, the sheer number of First Nation applicants to this process in the first days and weeks of its initiation speaks to the anticipation that many First Nations had.²⁶ Whether this sense of optimism would have been shared by their federal and provincial counterparts, however, would remain a matter of speculation.

As in any policy field, the risk created by a dramatic shift in policy on the part of a government has the potential to generate significant negative and/or unanticipated consequences. For this reason we see few truly spontaneous announcements coming from governments in this regard. Rather, policy change has been characterized according to four categories: symbolism, surfacing, succession, and substance (Abele, LaPointe and Prince 2005). Symbolism refers to "acts that have meaning not for their concrete results but for what they signal" (Abele et al. 2005:99). On the other end of what might be conceived as a spectrum are new measures intended to make a concrete difference in a given policy field, that is, substance. In between, Abele et al. (2005) describe surfacing

²⁵ This issue is explored in more detail in Chapter Four.

²⁶ When the BC Treaty Commission opened its doors on December 15, 1993, twenty-nine First Nations applied for entry into Stage One of this process on the first day. The number of applicants had increased to forty-one by June 2004 (see, BCTC Annual Report 2004).

and succession as two other categories for analyzing a given policy approach: the first refers to raising the political profile of processes that have been underway for some time; the latter to the purposeful replacement of existing policies by others. In short, policy does not emerge from a vacuum. Rather, it is necessarily the subject of a concerted effort, a rational calculus, and a particular context – however uncertain – it is a product of culture.

The emergence of the treaty process in the early 1990s was viewed as reflecting a dramatic shift on the part of the provincial government at the time that this about face was made. Not only did it come on the heels of the realization of the absence of a policy in the provincial context,²⁷ but it also involved engagement with the federal government and First Nations on a tripartite basis. With this shift, however, so too did voices emerge suggesting that the Province had gone *too far*. Although the prospect of a formal process to negotiate settlements was an element of validation for First Nation claims, ongoing provincial positioning suggested that this process would continue to be subject to extensive constraint. For example, the Final Report of the Native Affairs Advisory Council,²⁸ issued in April 1991, stated that:

The Province of British Columbia cannot... accept as the basis for negotiation of claims the position put forward by some that we must recognize the legal concept of Aboriginal title by which Indian groups claim absolute ownership of all land and resources within the province (1991:19).

This demonstrates the extent to which the treaty process, formally proposed by the BC Claims Task Force in their report issued only two months later,²⁹ would represent a

²⁷ Not until 1991 did the Province of BC recognize the concepts of Aboriginal rights and the inherent right to self-government. In essence, invisibility had characterized the provincial government's core position with respect to First Nation issues.

²⁸ See Chapters Three and Four.

²⁹ The BC Claims Task Force report led to the establishment of the treaty process.

tension between validation and constraint. Although a succession of governments would, again, lead to changing positions with respect to the interpretation of policy, at no point would the process be amenable to open-ended claims.

This is particularly the case given the undercurrent of a demand for extinguishment that still permeates the current scenario. While one could look to any number of sources to better understand the policy intent of governments with respect to the BC land question – the federal Comprehensive Claims Policy or the BC Claims Task Force report offer two examples – we ultimately get only a limited understanding of the context and intent of policy makers without some more detailed reference to the people and issues involved in the discursive construction of the land question at this time.

Without a doubt, the treaty process was brought on as a result of the political calculus of governments that hoped to achieve the quickest and most effective route through to the policy objective already identified above (i.e., certainty and finality / extinguishment). However, growing legal and political action and economic uncertainty provided the broader context within which the government sought to implement policy change.³⁰

1.2.3 – The Nisga’a Treaty

The BC land question is not only about land, but also the resources that make up land and the rights associated with controlling and benefiting from them. It is a fundamental question that pertains to peoples the world over as regards the right to a land-base and the right to be self-determining. The situation is more acute, however, with respect to indigenous peoples, particularly those of the Fourth World (Manuel and Posluns 1974;

³⁰ See, for example, Tennant (1990).

Dyck 1985), where the existence of a nation is not tied to the recognition of a state.

While issues of land and resource ownership are well understood in the taken-for-granted transactions of a national economy, they are not so well understood where the rights of indigenous peoples collide with those of a nation-state. It is the presumption that the place of First Nations within Canada has already been determined that precludes a more meaningful understanding of what is at stake in treaty negotiations. The emergence of the treaty process provided the government with the opportunity to define the *problem* in relation to the solution that had now been proffered. However, the emergence of the Nisga'a treaty negotiations in mainstream discourses, beginning in the mid-1990s, became a new focal point within this policy field, one that would raise the stakes for all concerned. Where the Province had failed to provide First Nations with a mechanism to address their claims prior to 1993, the provincial government was now in a position to advocate a particular kind of solution, and used the Nisga'a treaty as the basis for doing so. This was an important turning point for indigenous-state relations in BC.

The history of the Nisga'a nation in the colonial area is relatively unparalleled. Not only were they among the most outspoken First Nations with respect to their rights, but they were also responsible for advancing the first *land claim* through to the Supreme Court of Canada.³¹ Ironically, the Nisga'a were also the only First Nation in Canada to publicly support implementation of the federal White Paper policy that was issued in 1969, although it was ultimately defeated as a result of pan-Aboriginal advocacy and resistance (Weaver 1981). This is all to say that the Nisga'a stand-out as a particularly

³¹ *Calder v. Attorney General of BC* [1973] 34 D.L.R. (3d) 145 (S.C.C.), henceforth referred to as *Calder*.

active and outspoken First Nation in Canada, even if their demands have been relatively moderate.

Following the Supreme Court of Canada's decision in *Calder* (1973), the Nisga'a were the first BC First Nation to enter into modern-day comprehensive claims negotiations with the federal government. Initiated in 1976, the Nisga'a began to negotiate a treaty settlement with the federal government despite the provincial government's refusal to formally join the negotiations until 1989. As has been the practice in other cases, the federal government would negotiate those aspects over which it had jurisdiction, while other issues / sectors would remain outstanding without provincial cooperation. During the intervening period, between 1976 and 1989, however, the legal landscape for negotiations changed quite dramatically, not only as a result of *Calder*, but also in response to other legal decisions, as well as the patriation of the *Constitution Act, 1982*. When the provincial government in BC finally signalled its intent to join the federal government in negotiations with the Nisga'a in 1989, it was doing so in response to a number of factors – many of which were not *legal* matters *per se*.

After several years of tripartite negotiations, but with only limited publicity, the Nisga'a treaty negotiations rapidly became, beginning in 1995, a central issue in discourses about the BC land question. Triggered by the prospect of an agreement-in-principle with the Nisga'a, the mid-1990s marked a particularly dynamic period with respect to the different discourses that emerged in this setting. Not only was the treaty process still in its infancy, but ongoing litigation, sporadic direct action, a faltering economy, and frustrated constitutional manoeuvring served to frame the discursive

context of this policy field. While the Nisga'a treaty negotiations represented a distinct process with no formal links to any of these issues / activities, the negotiations leading up to the ratification of an agreement-in-principle in 1996, and the initialling of a final treaty in 1998, provided a unique opportunity to examine the various discursive constructions of the BC land question in what proved to be a particularly dynamic period for this policy field.

Cast as both panacea and pariah, the Nisga'a treaty had little chance of meeting the expectations of all concerned. When it finally came into force in 2000, it represented the tangible embodiment of an attempt to reconcile the dialectic that had been playing itself out for the better part of a decade. While a majority of Nisga'a citizens had supported it, this support did not come without extensive personal and family conflict.³² The Nisga'a treaty had become a yardstick against which all other First Nation issues were measured, but because of the diversity of discourses that permeated this field, making sense of this issue was far from straightforward. Various groups vied with governments, and the Nisga'a themselves, to attempt to manage the public understanding of the treaty, but it was the provincial government that had the most at stake. The Nisga'a treaty negotiations became the barometer of success / failure of First Nation issues generally and of the treaty process more specifically. Writing in 1995, Christopher McKee (1996) established the Nisga'a treaty negotiations as an axis between the success of the BCTC process on one side and blockades at Gustafson Lake and the Douglas Lake Ranch on the other.³³ In this regard, the Nisga'a treaty negotiations were imbued with a degree of policy significance unparalleled since the impact of the Supreme Court of

³² Personal interview with Nancy, November 19, 1999.

³³ A series of blockades had emerged during this period, initiated primarily by First Nations not engaged in the treaty process.

Canada's decision in *Calder*.³⁴ In an unprecedented move by the provincial government, hard copies of the Nisga'a Agreement-in-Principle and Final Agreement were made available to every British Columbian who wanted one following their release in 1996 and 1998 respectively. For a time, copies of the Nisga'a Final Agreement were so common in forums that purported to be about First Nation issues that they could easily have been mistaken for dictionaries. Even today, some eight years after it came into force, the Nisga'a treaty remains a benchmark that is indicative of the stagnant state of federal and provincial policy with respect to comprehensive claims in both BC and Canada.

1.3 – The Anthropological Contribution

The practice of anthropology in Canada during the nineteenth and much of the twentieth century was premised largely on “salvage” ethnography; the gathering of information prior to what was viewed as the inevitable “vanishing” of Aboriginal cultures (Dyck and Waldram 1993:8). The presumption of cultural superiority permeated all aspects of engagement between European settlers and Aboriginal peoples in Canada. And although this context was imbued with racist ideologies, much of what was perpetrated against First Nations in particular was couched in a discourse of benevolence; that is, *doing what was best for the Indians* (see, Dyck 1991). While it is sometimes argued that at least some of the programs carried out by governments and their collaborators represented their *best intentions*,³⁵ and that this should mitigate contemporary characterizations of the

³⁴ This Supreme Court of Canada decision in 1973 marked a turning point in federal policy with respect to the negotiation of comprehensive claims.

³⁵ Rosaldo also refers to seemingly innocent renditions of racial discrimination in earlier works of anthropology (1993:68).

past,³⁶ this argument needs to be assessed in light of the fact that such programs were being executed in tandem with the dispossession of enormous volumes of land and resources, not only to the detriment of First Nations, but to the direct benefit of the colonizers.

In the 1960s, the rejection of anthropology's colonial undertones with respect to the study of *primitive* societies led many anthropologists to broaden their foci to a study of humanity writ large. Interventions by indigenous scholars, most notably Harold Cardinal (1969) in Canada and Vine Deloria Jr. (1969) in the United States, confirmed the changing nature of this field. Anthropologists were no longer able to assume a position *above* their subjects, but were increasingly being called to account for their research findings by those whom they had studied. Sansom (1985) has described how the products of ethnographic research have sometimes been used by others to the detriment of those communities visited by anthropologists, and Weaver (1993) has shown how anthropology has been taken to task for its failure to bring the products of its research back to those that it has studied. These and other disciplinary challenges were long overdue, and, while this situation has been difficult and controversial for anthropologists to respond to, the results have led to a more critical and reflexive focus within anthropology.

Dyck and Waldram (1993) explored this situation as it relates to anthropology's role with respect to public policy and indigenous-state relations in Canada. The critique that is expressed most trenchantly by Dyck and Waldram asks whether "anthropological knowledge is intrinsically unreliable and irrelevant to the needs of policy makers"

³⁶ And, by extension, the potential for restitution (e.g., Flanagan 2000; Lippert 1995; Smith 1995).

(1993:13)? Anthropology does not have a particularly strong track record with respect to its impact on public policy in Canada. Although the Mackenzie Valley Pipeline Inquiry (Berger 1977; Brody 1981) and the negotiation of the James Bay Northern Quebec Agreement (Salisbury 1986; Feit 1985) mark highpoints where anthropology did *matter*, a lack of meaningful impacts arising from anthropological engagement, such as with the Hawthorn Report (1966/67), or the complete non-engagement of anthropology in favour of other disciplines, underscores the more enduring disciplinary challenge.

Dyck and Waldram (1993) respond to this situation by proposing two options. The first relates to re-asserting the traditional conceptual distance between an anthropologist and her or his subject, commonly constructed on a discursive artifice of objectivity and supported by the invocation of a self / other dichotomy. This is, in effect, a perspective based on a retreat from the critique that has been directed at anthropology relying upon the professional (and institutionally reinforced) guise of expertise and authority. The net effect of this approach would relegate the practice of anthropology to a series of procedures culminating in a monograph, the consequences of which would be of no direct concern to the anthropologist.³⁷ The second option is to acknowledge the critique of anthropology (embodied in terms of distance and representation) and to confront these directly. “In choosing to demystify their discipline,” Dyck and Waldram argue, “anthropologists have recognized the *interested* nature of all knowledge (emphasis mine)” (1993:14). This does not mean an abandonment of objectivity; rather, it means accepting the proposition that objectivity is achieved not by hiding the researcher-subject relationship, but by continuously re-visiting questions of scholarly comparison and

³⁷ Expressed plainly, this approach seems harsh, even offensive, but of course this remains the foundation upon which most scientific endeavor continues to be carried out.

assessment through open discussion both inside and outside the discipline (Dyck and Waldram 1993:14). While these are questions that should be of equal concern to all disciplines, it is from the context of anthropology's critique and re-emergence that these issues are not only particularly pertinent but, indeed, that unique opportunities have been created for them to be addressed and implemented.

For example, in an edited volume by Amit (2000), the focus is on exploring anthropology's most favoured methodology – ethnographic fieldwork – and whether this methodology is sufficient justification in and of itself for the pursuit of anthropological inquiry. Her findings, along with those of various authors who contributed to this volume, challenge this particular characterization of anthropology and its attendant implications. Amit suggests that to “over determine” the scope of fieldwork practices in anthropology is to “undermine the very strength of ethnography” (2000:17), thereby undermining a crucial aspect of the disciplinary contribution that anthropology has to make. Drawing on Wallman (1982), Amit describes the many ways in which anthropology helps to make linkages between the broad and the specific (Amit 2000:15-16), and this is a sentiment that has been expressed on numerous other occasions and in other related ways. For example, Harries-Jones made a similar argument in 1985 when calling for greater recognition of an *advocacy* anthropology whereby questions about objectivity are rejected as a basis for denying the meaningful contribution anthropology has to make – objectivity is gained through the observer, not by how information is revealed (Harries-Jones 1985:227). Others have identified the concept of *holism* as an aspect of anthropology that sets it apart from other scholarly work in that it unites the universal and the particular in a manner that other disciplinary approaches rarely do (e.g.,

Miller 2001). Miller describes holism as a value “not because there ever was a social group that was bounded and autonomous, but because understanding social life... [involves] attempting to encompass all that bears on society (2001:2).” Furthermore, Arce and Long (2000) have challenged the segmented ontology of disciplinary practice, re-asserting Latour’s (1993) notion of the “‘seamless fabric’ of lived experience” (Latour 1993, in Arce and Long 2000:7) as a basis for re-affirming the anthropological contribution.

In various ways, anthropologists have sought to re-affirm the importance of maintaining a focus on the myriad circumstances of lived experience and connecting these issues *up*, or even *through*,³⁸ to the larger, often institutionalized structures of power that appear to circumscribe the limits of what is possible.³⁹ I would argue, therefore, that anthropology’s contribution, while benefiting from a methodology grounded in ethnography, is equally important for the *kind* of perspective that it brings to scholarship. While this form of scholarship is often counter-hegemonic, and sometimes even anti-institutional, and, therefore, its interventions may be resisted and marginalized within the broader framework of a mainstream social order, the need for such research only grows as ontological distinctions between the *local* and the *global*, the *here* and the *there*, the *now* and the *future* are reified and distinguished as if one were not a part of the other. It is here that anthropology’s contribution is made most poignantly because it is

³⁸ See, Reinhold (1994:477-79), in Shore and Wright (2000:14).

³⁹ Here, I am borrowing from Bauman (in Harries-Jones 1985:233) when he says “the dominant culture consists of transforming everything which is not inevitable into the improbable... (1976:123).”

people – not subjects, citizens, stakeholders, or consumers⁴⁰ – that are ultimately informed by the issues that are examined as a part of any scholarship.

1.3.1 – Anthropology and Public Policy

The role of policy as an instrument of governance is a field of inquiry that has generally been under scrutinized in anthropology. While it has received some attention as an aspect of *political* anthropology (e.g., Vincent 1990), it has not in and of itself become a primary focal point for anthropologists or, indeed, other social scientists seeking to lay bare more fully issues of power and its *disguises* (see, Gledhill 1994). In 1997, Shore and Wright proposed such a new field suggesting that public policies are an “inherently and unequivocally *anthropological* phenomena (emphasis original)” (1997:7), and the emerging multi-disciplinary arena of public policy analysis in the present setting only underscores the importance of their proposal. Indigenous-state relations have become a policy field encompassing a myriad of disciplines in Canada, each with its own particular focus. Political science, for example, has been a dominant voice on the BC landscape, fuelled by the scholarship of Paul Tennant in the late 1980s and the 1990s. Tennant’s work (1990; 1983) has emphasized the compilation of an important corpus of political history in BC that has enabled indigenous scholars and others alike to ground their interests in a common source.⁴¹ This work has been complemented by historical

⁴⁰ It should be clarified that this perspective is not intended to have populist overtones. An emphasis on *people* is intended to highlight the consequences of action in contexts where peoples’ lives are affected but impacts are ignored. This perspective can be equally extended beyond people to plants, animals, and the broader field of social ecology where the relationship between people and *nature* is similarly highlighted.

⁴¹ It is important not to overstate this point. It would a mistake to characterize this as any form of consensus. Rather, Tennant’s work, particularly his 1990 publication of “Aboriginal Peoples and Politics”, simply provides a common touchstone for different parties to agree and disagree.

scholarship such as that of Robin Fisher (1992a & b) who sought to highlight historical narratives relating to indigenous-state relations that often clashed with *official* characterizations of BC's colonial past.

Similarly, legal scholarship has taken on increasing importance, particularly as the vanguard of this policy field has oscillated between an emphasis on law, and then politics, and then law again, and so forth. Douglas Sanders' contributions, beginning in the mid-1960s, laid an important foundation for legal scholarship in the defence of indigenous peoples.⁴² Since then, many others – some of whom continue to be involved in Aboriginal rights litigation⁴³ – continue to shape this policy field with their legal interventions. And less directly, but with no less significance, are the interventions that have come from economists and others focused on the global economic context who have been increasingly brought to bear on matters of state policy affecting indigenous peoples. Think tanks, such as the Laurier Institute, the Fraser Institute, the Conference Board of Canada, and the Public Policy Forum, have all brought an economic perspective to matters concerning the BC land question. “Prospering Together,” a book published by the Laurier Institute in 1998,⁴⁴ represented among the most visible attempts to link economic interests and indigenous issues in a manner that has informed the policy-making process.⁴⁵

⁴² The publication of “Native Rights in Canada” in 1970 by the Indian-Eskimo Association marked what Weaver referred to as “the first book to synthesize Canadian Indian law” (1981:18). It was written by Douglas Sanders.

⁴³ Thomas Berger, Kent McNeil, Bryan Schwartz, and Louise Mandell are but a few examples. Increasingly, indigenous legal scholars are themselves contributing to this policy field (e.g., John Borrows).

⁴⁴ Roslyn Kunin (ed.).

⁴⁵ The more recent publication of a text by Calvin Helin entitled “Dances with Dependency” (2006) represents an even more extreme attempt to make this linkage.

Think tanks have played a significant role in shaping this policy field, in part because governments have become self-conscious about appearing to lead processes that are considered more palatable when they appear to originate from “the people” (see, Mackey 1997). While matters affecting indigenous-state relations in Canada have long been the purview of government officials, particular attempts to characterize the treaty process as something more than just another state initiative aimed at resolving the Indian “problem” (see, Dyck 1991) have lent profile to such groups. Indeed, economic interests had come to the fore with respect to many social policy issues beginning in the late 1970s and 1980s, and the field of indigenous-state relations was no exception. Economic issues represented a pervasive reference point in discourses about the land question. While legal and social policy issues also had significant currency, the economy had become a litmus test against which all new policy initiatives would have to be measured. While this was in no way unique to either indigenous-state relations or to BC, as it turns out, it was one of the primary factors that appears to have informed the validation and constraint dialectic that this research advances.

Anthropology’s contribution to public policy analysis is not new, but its immediate impact on the policy process has been generally marginal overall. Its contribution, however, should not be discounted. The policy context of any issue is typically complex, and only more so when its target is a particular sub-set of the population. This highlights the ubiquity of policy, but at the same time the challenge relating to its definition. Policy is no single thing. It can refer to rules, regulations, legislation, or any of their combination. Policy is also neither solely political nor bureaucratic, but can function as a product of both. As such, policies are inherently

flexible, but can equally be applied in a rigid or draconian manner. Because of this variation, policy is best defined in terms of layers or even circuits; rarely is there just a single source of policy direction or interpretation. More often, policy builds up over time, a corpus of work develops, and it is informed by mundane procedure at one end, and political imperative at the other.

The policy context is also inherently discursive. Not only does it often rely upon symbols and metaphors, but it involves an element of construction – the definition of problems and solutions (see, Gusfield 1981), and the people to whom they will apply. And public policy formation is also about creating categories – us / them, you / me, self / other, good / bad. How these categories are constructed and defined can have tremendous implications for how people see themselves and one another. We need only consider how categories relating to, for example, age (child / adult / senior) are reified in policy in ways that have real impacts on situations that are in fact far more nuanced and subjective than a policy would imply.⁴⁶ But the policy context is also subtle, and in this way can have a range of effects, some which are intended and others that are not.⁴⁷ Much of how a policy impacts a particular group of people has to do with how it is ultimately applied as a part or program of the state apparatus. In this regard, institutional discourse becomes an important analytical consideration for the interpretation of policy.

Gale Miller proposed conducting ethnographies of institutional discourse as a means to account for the ways in which “interpretive and interactional activities are organized” and “how oral and textual discourses are arrayed across settings, and the

⁴⁶ The application of a “status” provision under the *Indian Act* is but one example of how profoundly the interpretation and implementation of a policy can affect a given population.

⁴⁷ Bill C-31, introduced in 1985 to address gender discrimination in the *Indian Act* is a case in point (see, e.g., Fiske and George 2006).

practical meanings that are produced” (1994:282). To this end, the focus is on “how setting members use institutional discourses to construct social contexts that structure... their mutual activities and reality claims” (Miller 1994:282). Related to this, Shore and Wright suggest that policies can be read in varied ways, including as cultural texts, classificatory devices, narrative forms, or as “rhetorical devices and discursive formations that function to empower some people and silence others” (1997:7). In this way, the policy context is also about linkages between institutional settings and the media. Major institutions are particularly well-suited to interacting with media, largely because they are designed with this in mind. For example, every major department and ministry within government is equipped with a public relations arm, usually staffed by a group of people who are familiar with the norms and practices of the media. This has, in turn, led media to rely upon such institutions for a large proportion of their news coverage. As a consequence, some groups are in a better position than others to inform the public’s understanding of an issue, thereby re-affirming the role of institutions in contributing to a particular discursive field. Anthropology can help to highlight these linkages as a basis for its examination of policy formation.

1.3.2 – The Anthropology of Media

The products of media surround us and yet people commonly feel immune to their effects. This oversight contributes to our receptivity to the messages with which we are increasingly inundated, thereby obscuring our recognition of media as both a cultural product (Anderson 1991) and vehicle of culture (Spitulnik 1993:294). This gap in our appreciation of the profound role that media plays as a “consciousness industry”

(Cunningham and Turner 1993) reinforces the need for an anthropology of media.

However, a focus on the study of media in anthropology is not limited to a focus on the stories or *messages* that emanate from it. The conception of media as a cultural product can include an analysis of media in terms of its production, the political-economy and social history of media institutions, as well as the various practices of media consumption (Spitulnik 1993:295).

Conceived as an ethnographic encounter, the consumption of media represents a significant facet of the overall “meaning making” context of a given issue (see, Holstein and Gubrium 1995). This is relevant in that an ethnographic approach to media must not only take account of *what* stories appear and *how* they are represented (Altheide 1996:24), but should also recognize that appearing in the media is itself an outcome that is often the consequence of a struggle – one that, in this case, is informed by the validation / constraint dialectic. This means viewing the media as a dynamic site where subjectivities are constructed and identities are contested (Spitulnik 1993:296). It is this dynamism that must be contrasted with a static conception of media that places significant ontological emphasis on the *meaning* an issue has at a given point in time. Arguably, mass media represent the foremost site for the (re)presentation and dissemination of discourse writ large. While the meanings attached to any issue are never fixed, our ontological sense of the media emphasizes the meaning an issue has in the present, rather than the meanings that it has over time. In this way, anthropology has the potential to contribute to a richer understanding of media by focusing not only on sources of media or what they are *saying*, but contributing to an awareness of how

discourse emerges and is structured, and how this relates to observable practice (Spitulnik 1993:298).

In as much as anthropology has long focused on *other* cultures, the anthropology of media has also had as its primary focus the penetration of mass media coverage into increasingly rural or isolated settings (Ginsburg 2005:19). But the impact of media is equally relevant in an urban context, even if this may be more difficult to discern due to the ubiquity of media forms and the range of factors that may shape public consciousness in such a setting. The context is one whereby all parties – the consumers of media, media’s subjects / objects, and its producers – are aware of the influence that this medium has on public perceptions and policy makers alike. As a result, mass media represents a site where things are not only *said* and *written*, but they actually *happen*. This is to say that an ethnographic approach to media may be less concerned with discerning the accuracy of media coverage,⁴⁸ than with how media functions as a site for organizing, interpreting, and disseminating discursive claims. This, in turn, has an impact on how people position themselves discursively with respect to an issue, something that had an important bearing on my interviews. As such, media does not just constitute a space or forum *between* an event and its (re)presentation, it is itself a site rife with possibilities for ethnographic analysis – it is an example of when “saying *is* doing” (see, Paine 1981).⁴⁹

A great deal of scholarly work has been carried out with respect to the role of media in society. While a small portion of it is anthropological, the bulk of this literature emerges from other disciplines whose primary focus is upon the practice and impact of

⁴⁸ That is, whether representations within the media are *accurate*.

⁴⁹ This is seen most readily in the way that stories from the media regularly become the de facto reality that is referred back to for historical purposes.

media. Habermas' *The Structural Transformations of the Public Sphere* (1962/1989), represents a significant touchstone in this regard. Habermas focuses on media as he traces the emergence of the public sphere to bourgeois English, French and German society in the seventeenth and eighteenth centuries. The importance of the public sphere, Habermas argues, lies in its potential as a mode for societal integration. Public discourse, or what is referred to as "communicative action" in his later work (e.g., Habermas 1987), is conceived as a rational-critical dialogue ostensibly free from specific interests, and it is this vision of Enlightenment rationality that he attempts to salvage as the basis for a viable public sphere in the contemporary era.

While it is problematic to rely solely upon Habermas' definition of the public sphere on an aggregate scale (see, e.g., Lister 1998; Dahlgren 1995; Fraser 1992), his conception remains useful for what it brings to a critique of the role of mass media in contemporary society. Curran has summarized Habermas' model of a public sphere as a neutral zone where access to information affecting the public good is widely available, discussion is free of domination, and all those participating do so on an equal basis (1996:82). Within this model, rational argumentation leads to the collective development of society that, in turn, influences public policy. Media, says Curran, can facilitate this process by providing an arena for public debate, and by reconstituting private citizens as a public body in the form of public opinion (1996:82-3). While mass media have in large part taken on the communicative function that Habermas suggests emerged between three and four centuries ago, he argues that mass media provide a poor substitute for a public sphere (Habermas 1962/1989:171).

The expansion of access has fundamentally altered the form and content of participation in the public sphere. Where Aristotle wrote that the ideal size of any state was a function of the largest number of citizens that could “be taken in at a single view” (as quoted in Hartley 1992:94), we have come to take for granted that our participation in the operation of the state will be mediated. With mass culture not only does the public sphere become depoliticized, but the birth of a public relations industry transforms so-called rational-critical debate into a form of engineered consent. The public sphere becomes a setting for states and corporate actors to attain legitimacy not by responding to an independent and critical public, but by seeking to instil motivations that conform to the needs of the overall system (Calhoun 1992:24-6). Plebiscites replace public discourse, and special interest groups replace direct contact (Calhoun 1992:27).

This vision of the role of mass media in the public sphere is both arresting and cynical. Public opinion becomes the antithesis of its former self, tending towards mass consumption and conformity. Public consultation becomes an exercise in publicity bent on the pursuit of acclamation. And public policy begins to reproduce itself in the form of measures that reinforce the status quo and serve the interests of state and corporate actors. Whether or not one accepts this problematic vision, it is difficult to deny its challenge to popular conceptions of a democratic public sphere, the role of media, and the policy process as a subset of this context. Dahlgren suggests that the definition of the *public* has itself become the subject of competing interests and argues that the popular conceptualization of the public in terms of aggregate statistics has operated to the benefit of both official politics and the media (Dahlgren 1995:19). We see this in the ways that public opinion is deployed as a means to rationalize the functions of the state and its

political actors, rather than respond to an engaged and informed public. This was borne out in many of my interviews where appeals to a particular conception of the public were commonplace. Polling has become a mainstay for groups vying for public legitimacy, and mass media represent one of the primary contexts wherein legitimacy is discursively constructed. This analysis helps to define the context within which an anthropology of media has a contribution to make.

1.4 - Research Methods

All scholarly work seeks in one way or another to further our understanding. Whether in law, sociology, or physics, at its core is the drive for knowledge as a basis for understanding. How one achieves this is largely the purview of a given discipline and its distinctive methodologies that, when properly applied, lead to a particular outcome. In the natural sciences disciplinary rigor is achieved through replication, but replication is not nearly so straightforward in the social sciences, and particularly not in anthropology; the same set of circumstances has the potential to lead to a wide array of outcomes. Although nature is not static either,⁵⁰ social activity is by its definition variable⁵¹ or *soft* – thus the distinction between the so-called *hard* and *soft* sciences. It is precisely because it is more difficult to predict outcomes with respect to a social context that the social sciences are sometimes cast as something *less* than rigorous compared to the natural sciences. Does this make the pursuit of anthropological knowledge futile (i.e., if any

⁵⁰ The longstanding perception that nature, the environment, the planet, etc., is a *constant* (i.e., static) has itself resulted in incalculable losses and damage seen most profoundly in what today is defined as “climate change” – the cumulative effect of characterizing the planet as an unlimited resource and dumping ground.
⁵¹ For example, the certainty that is implied by *laws* in the natural sciences are not appropriately applied to what is often characterized as *human nature* in the social sciences.

range of outcomes is possible)? No – the pursuit of anthropological knowledge is not merely about predictability; this can be achieved easily enough statistically.⁵² The pursuit of anthropological knowledge is about *understanding*, as is the case with all scholarship.

Reflecting on anthropology's contributions to our understanding of, for example, indigenous-state relations in Canada, we might be drawn to the James Bay Cree of Northern Quebec⁵³ or the Dene peoples along the Mackenzie River Valley.⁵⁴ These are but two scenarios where anthropologists were able to highlight particular sets of issues that would otherwise not have come to the fore in these two contexts. More specifically, Feit calls for a particular kind of anthropology that does not lose sight of “local level-actions that shape micro-level responses to macro-level interventions” (1985:27) as a basis for maintaining the important linkages between the universal and particular. This is especially significant where one set of interests has the potential to trump another⁵⁵ – when other interests are not acknowledged, listened to, or even visible. It is in such situations that ethnography contributes to a more particular understanding that can challenge a prevailing normative order. Some would have us believe that hydroelectric development and gas pipelines are an inevitability, that to stand in the way of *progress* is

⁵² This should not be read in contradiction to the potential that there will always been an array of possible outcomes.

⁵³ See, for example, Salisbury (1986) and Feit (1985).

⁵⁴ See, for example, Brody (1981).

⁵⁵ For example, when the economic interests of building a pipeline or hydroelectric dam conflict with the social and cultural interests of the indigenous peoples living where these may be built.

a lost cause.⁵⁶ And it is here that Harries-Jones summarizes the role of the anthropologist *cum advocate*:

The advocate's task is to question both the inevitability of events and the certainty of propositions behind them. Providing alternative premises, empowering dependent cultures, engaging in the self-production of knowledge – these are the activities of the advocate in industrial societies (1985:233).

While the sense of the anthropologist working as a champion of the underdog needs to be tempered by the very real recognition that indigenous peoples have been very effective in speaking on their own behalf, it is the tendency that, left unchecked, the potential remains for the wealthy and powerful to advance a vision of the world that serves only their ends. This is not grand theory; it is the simple recognition that neo-liberalism and all that it brings has already had untold consequences for people on our planet, and it is the poorest, the most marginalized – typically the indigenous peoples – that bear the brunt of this onslaught first.

Social activity – be it embodied in law, politics, households or the workplace – is something that has to be contended with (even in the *hard* sciences), and the question is how best to do so? Different disciplines often go about trying to respond to the same sets of issues, but typically do so in different ways. For example, a legal scholar looks at the policy process with a different set of issues in mind than might a political scientist. Both might bring pertinent insights to the issue, but their insights are likely to be based on a different set of factors and/or assumptions. They would also likely be the product of different methodologies. The point here is not to elevate one discipline over the other or

⁵⁶ Feit (1985:30), quoting Sanders [no date], provides an example of how the James Bay Cree were told that "...when the white man wants something he takes it" thereby alluding to the apparent inevitability of a given outcome.

to suggest that one way of doing something is necessarily better than another. Rather, it is precisely because there are different ways of approaching the same subject that it is necessary to be self-conscious / selective about how it is approached. Being selective is about being clear about what one is trying to do – don't send an ethnographer to do heart surgery, but don't send a surgeon to do ethnography either – but also recognizing that it is from among a variety of disciplines and approaches that the most striking insights will ultimately be attained.

1.4.1 - Locating Myself

This research began as a result of an oversight on my part. Having carried out research for a master's degree in sociology at the University of Windsor that related to First Nations policing,⁵⁷ I felt sufficiently informed about First Nation issues in Canada to carry out further work in this field. Upon my arrival in BC, I soon recognized the mistake I had made. Generalizations about First Nation peoples abound, and I was a victim of these as much as anyone else. One of these reaches back over five hundred years and relates to Columbus' enduring blunder: that of thinking that he had reached the East Indies, thereby referring to all inhabitants of the Americas as *Indians*. The term stands for all of the populations of the so-called New World, in disregard of their differences (Goldie 1989:5), and has become the lingua franca of Canadian Indian administration and remains the bedrock of mainstream thinking about First Nation

⁵⁷ Research for my master's degree in sociology was carried-out with the Walpole Island First Nation, a geographically-bounded island community on the Canadian / American border located on the St. Clair River half-way between Sarnia and Detroit. The focus of my research was on the development of a tribal policing program in this community.

peoples today. Added to this are the unique circumstances under which BC entered into Confederation and, indeed, the relatively short colonial history that preceded it.⁵⁸

The terrain of land claims, and First Nation issues more generally, remains littered with opportunists hoping to cash-in on the *industry* that has emerged in this area since the 1970s.⁵⁹ Colonizers and colonized aside, government funding, litigation, and the lure of overstated land and cash settlements have made this a potential boon for business and professionals alike. Lawyers, politicians, academics, and others have all looked to this issue with an eye to opportunity. Moreover, many First Nation communities are being courted by corporations eager to maintain their access to resources that could some day become a part of treaty settlements, or hoping to cash in on new resources that may come on-line with the finalization of treaties (see, Anderson 1997: especially pages 1490-3). In both cases, however, the risks are largely one-sided; industry does not care whose resources it exploits, and professionals can always move on to seek out other clients. It is the members of communities who suffer the greatest risk of losing something: having to give up their autonomy in exchange for jobs; trading-in legal and political rights for economic benefits; sacrificing long-term sustainability in exchange for short-term gains. These tensions – between First Nation communities starved for economic development, and outsiders keen on exploiting an opportunity – are at the heart of the BC land question.

I describe this scenario not to place myself above it. I have on several occasions been held to account for my work with First Nation peoples and institutions. More often, however, I have had to find an appropriate way to respond to the suggestion that I have

⁵⁸ See Chapter Two.

⁵⁹ See, Dyck (2006), for a provocative intervention in this regard.

made a shrewd career move by focusing upon this area as my field of study. It is with the latter proposition that I am most uncomfortable; it is a feeling that stems from the possibility that it just might be in the interest of many engaged in this work to ensure that settlements are never reached. This was brought home by a comment made to me shortly after the Supreme Court of Canada's 1997 decision in *Delgamuukw*. I had met a non-First Nations informant for an interview, and on our way to a nearby coffee shop I casually asked them how they felt about the recent ruling. Their only response was to say that at least he/she "wouldn't be out of a job" for some time to come.⁶⁰ For all of the talk about how First Nation peoples have attained greater levels of visibility and voice in the public sphere, it is comments like these that belie the rhetoric of *gathering strength* or *sharing power*.⁶¹

Through this research I hope to highlight a different set of considerations relating to the BC land question. A set of considerations that may help to shift the public's gaze away from First Nation peoples, and onto themselves and their institutions and representatives. The issue for me is not one of *trying to learn more about Indians*, but trying to better understand the more enduring barriers that lie beneath the as yet unresolved BC land question. It is an attempt to bring a reflexive understanding to indigenous-state relations, and it is also a call for action against those who continue to wield power only to further their own interests, typically in disregard of others. It is a challenge to the status quo where the status quo continues to represent – despite all of the rhetoric – an unfettered sense of entitlement to the lands and resources of BC. It is despite the so-called victories – such as *Delgamuukw* – that governments continue to

⁶⁰ I have not disclosed this person's identity for reasons of confidentiality.

⁶¹ Both of these references are to federal initiatives.

reinforce the illusion that negotiated settlements are being offered in the place of nothing (Clark 1990:9); that a failure to reach settlements has no implications at all.⁶²

There are a number of compelling reasons that make this research anthropological, rather than sociological or something more akin to some other discipline in the social sciences. Although my undergraduate and first graduate degrees are in sociology, early in my doctoral work my research interests quickly gravitated towards anthropology. This was due, in part, to the methodology that I began to employ, one based on ethnography. But it was also due to the kinds of questions that I was asking and the challenges that I faced in arriving at satisfactory answers. My fieldsite, while bounded in the most general sense by the geo-political perimeter of the province, was in fact a discursive one, comprised of multiple layers and circuits, all of which sought to make a particular kind of sense of the land question. While a focus on political institutions or the courts or even BC's settlement history with respect to the BC land question could all lead to very plausible research projects, none of these in and of themselves was going to respond adequately to the questions and propositions that attracted me.

As with all social settings, the context in which the BC land question had salience was dynamic and contested, and there were a number of methodological options that could be applied to make sense of the situation. One would have been to define my research as reflecting a snapshot in time. Although my focus was temporally limited to the period 1995-99, my interest in the dynamism of this discursive context was in

⁶² John Borrows makes a similar point in respect to treaty making when he says "First Nation peoples most often must bear the burden of proof in treaty cases while the Crown does not have to substantiate which benefits it receives from the agreements. The Crown's position is unexplainedly the default position (1999:7)."

contrast with such an approach, focusing on connections unfolding in a processual manner rather than as a slice in time. Indeed, even a snapshot, let alone a five year window, does not exist in isolation from the years that preceded it (and, with the benefit of hindsight, those that have followed). The fact that anthropology is premised on immersion in a field situation helped to reinforce my sense that I was not merely seeking to distil one point or issue as the basis for responding to a series of questions and propositions, but rather, that it would be through the articulation of the different circuits of activity based on participant-observation that insights would be most usefully gathered. Indeed, it is on this basis that I was able to identify and advance what I have referred to as a validation / constraint dialectic.

Another methodological option would have been to focus on only one or another category of issues, often defined according to an academic field or discrete sphere of activity. This approach is akin to using a *lens* to highlight some kinds of issues but filter out others. For example, the BC land question could be examined from a basis of what the law says (e.g., courts, legislation, lawyers, etc.). This would be one means of *making sense* of the BC land question, but would not enable me to make the connections that I was seeing as I began to ask other questions relating to the larger context of indigenous-state relations in Canada. Law is a critical component of the land question, but it is only one among several.

Ultimately, it was in anthropology that I found a methodology – ethnography – that enabled me to conduct the kind of research that I thought was best suited to the questions that I was asking. One might say that anthropology is *riskier* than some other disciplinary approaches in that, even with a rigorous methodology and consistent

approach to fieldwork, it is possible to come up with far more *material* than can be put to effective use. Indeed, other methodologies, such as a focus on law as described above, often require one to set aside some categories of issues precisely because this can help to ensure a more viable (i.e., discrete) outcome. Of course, anthropology, and ethnography, conceived methodologically, also requires the anthropologist to set aside certain categories of issues, but the context for doing this is typically subjective and, therefore, informed by the relevance to the research rather than pre-determined by disciplinary guidelines. Hence, while anthropology is more open-ended and there is always a risk that an anthropologist has set aside (or ignored) certain sets of issues that would in fact have led to a more productive basis for developing insights (see, Dyck and Waldram 1993:15), the potential for a rich outcome nevertheless remains.

This research was carried-out over a five year period of participant-observation, including conducting ethnographic interviews and tracking media, while living and working in BC. It is non-traditional in the sense that it was locally focused at *home* rather than *away* (see, Caputo 2000), but it is also a reflection of a now well-established body of anthropology that focuses on “where one normally lives” (Dyck 2000:32) to the extent that the anthropological field has traditionally been “demarcated by the metaphor of travel” (Amit 2000:8). As I began to explore the BC land question, and became attuned to the significant differences that characterize the terrain of land claims in BC as opposed to Ontario, where I had completed my first two degrees, I became increasingly concerned about how this issue was being represented in the media. It was in my attempt to lay bare what I perceived as a misrepresentation of this issue in the media that I began to conceive of this – the misrepresentation itself – as the focus of my research. However, as I began

to problematize media as my focal point, I also realized that, while media represent an important site for the construction and dissemination of discourse, there was still a larger discursive context within which media operated. It was within this larger context, and its relation to a wider set of issues and narratives, that I began to define my research anthropologically.

1.4.2 - Participant-Observation

While my examination of the BC land question has included both participation and observation, I was aware that my participation in particular would have a significant influence on the outcome of my research. Participation is by its very definition the most active way for a researcher to gain insights into an issue, and it is also one of the most effective ways to build and maintain one's interest in a research project that may span several years. Participation does not necessarily include advocacy (see, Paine 1985), but it certainly may. One of my earliest interests in the BC land question pertained to the emergence of so-called *citizens* groups that had taken an active stand against the trilateral resolution of the BC land question. It was my initial exposure to some of these groups at public forums and through the media that provided a catalyst for this work. While my ultimate involvement with these groups was limited to interviews with a few individuals, it was my desire to challenge such views that led me to envision a more specific research project.

While participant-observation has a long history in the social sciences, my interest in the BC land question has brought me into contact with these issues on a wide range of levels and has transformed my involvement in this subject area from one of research, to

include teaching, working, and advocating in this field. While my subsequent work as an employee of a First Nation engaged in treaty negotiations, coupled with my current role as a policy analyst with the Assembly of First Nations, informs my understanding of these issues, I have intentionally sought to maintain the original orientation of my research. Participant-observation is the thread that weaves together all of these experiences. My involvement in this research began on a timid footing. Over the years, however, as I came to more fully understand the complexities of the land question, I began to take a more active stand against those who I felt were misrepresenting these issues. In some cases this has made me the target of jeering, and in others I have become the subject of applause.

It is not unlikely, however, that someone reading this thesis will at some point question whether I have jeopardized my objectivity. I would take exception to this view. While I would not deny that I agree with some positions more than others, neither would I agree with the suggestion that this necessarily jeopardizes my ability to carry out research in a methodologically sound manner. I share with many of my contemporaries the belief that if academia has a contribution to make, it needs to begin with a willingness to share ideas and engage in dialogue with all people (not only other academics). The research I have carried out is based on my exposure to a set of issues both as a practitioner of anthropology *and* as someone working with First Nations, government officials, and representatives of industry, business and so forth. These experiences have only helped to inform my work as an anthropologist, not taken something away from it. As such, I am not prepared to assume a (false) cloak of objectivity – that is, to deny the validity of the broad range of experiences that I have – precisely because the issues that I

am examining are value-laden, subjective, and highly contingent. Rather, my intention is to be clear about the things that I think I have learned and to be honest about the conclusions that I draw as a result.

My research began in 1994 with an interest in what I was reading in news media as it related to the land question. In early-1995 I began to track some specific media sources, focusing upon the *Vancouver Sun*, and I also began to attend public forums in the vicinity of the Lower Mainland that purported to relate to *land claims*. With the inception of the treaty process and the emerging Nisga'a treaty negotiations as a focus of public discourse, a range of different groups – including the media – began to ask questions and make pronouncements about the BC land question. So too did public forums become commonplace, and many, if not most of them approached this topic from a decidedly populist slant. For example, one advertisement for a meeting in 1995 billed itself as a “Special Public Information Meeting,” even though it was unclear why it was *special* or what the nature of the *public information* would be beyond reference to “BC Native Land Claims.”⁶³ Advertisements for public meetings of the Select Standing Committee on Aboriginal Affairs, struck by the provincial government in 1996, proclaimed that treaty negotiations were “...Our Future” and that this was “Your Chance to Participate.”⁶⁴ The same tenor applied in the broader context of indigenous-state relations nationally, where, for example, a conference focusing on the report of the Royal Commission on Aboriginal Peoples (1996), hosted by the University of Victoria, was entitled “Calling People Together.”⁶⁵

⁶³ Ridge-Meadows *News*, 1995.

⁶⁴ *Vancouver Sun*, November 23, 1996:G5.

⁶⁵ “Calling People Together: Beyond the RCAP Report.” Victoria Conference Center, February 3-5, 1997.

It was in this context that I began to attend public forums, and this was soon expanded to include treaty negotiation sessions, conferences, some internal treaty-related meetings,⁶⁶ and a few land-related confrontations such as those at 100 Mile House (Gustafsen Lake) and Penticton (Apex ski resort). The final leg of this research involved personal interviews carried-out with a total of twenty-two individuals. Hence, my research grew from a desire to inform myself about the land question in BC in a general way, a desire that ultimately turned into the project itself. It was in the context of participant-observation that I took up a significant proportion of the invitations to attend public events, but there were in fact far more events – just in the Lower Mainland – than I could ever have hoped to attend. Viewed ethnographically, I was forced to ask myself what impact the perception that the public was being called upon to participate in forums about the BC land question had on the discursive construction of this policy field? Moreover, how did the perception that BC had entered a new era of recognition (rather than denial) inform peoples’ sense of what the treaty process was about and the outcomes it would lead to? Finally, what role did the media play in informing peoples’ understanding of the BC land question and how did this relate to their more general understanding of First Nation peoples and issues? These and other questions became the foundation of the research that I ultimately carry out.

⁶⁶ These included, for the most part, Regional Advisory Committee (RAC) meetings in the Lower Mainland and the Fraser and Pemberton Valleys. The process leading to their establishment is explored in Chapter Six.

1.4.3 - Interviewing

Interviews for this research were conducted using a standardized, open-ended interview schedule that enabled me to cover a range of issues without precluding input that might arise as a result of any unique contingencies.⁶⁷ While this schedule was modified to suit the particularities of each specific respondent, the questions remained essentially similar. It was not my intention to pre-structure the interviews, but rather, to allow each respondent to answer my questions in the way they felt most appropriate and to elaborate where they felt it necessary. I took this less formal approach for two reasons: first, it is my feeling that people are more at ease in an interview when the context is not rigidly structured; and second, in addition to getting answers to my questions, I was also interested in the narrative forms that responses to my questions would take. Drawing on Holstein and Gubrium, I recognized that interviews were “interactional events” (1995:2) where the meaning of the interview would be derived not from a comparison to what an *objective* answer might be, but from the context in which the question was asked. The definition of this context was central to my research, and while it could have been defined in relation to media or law or politics, the most meaningful context from the standpoint of ethnographic interviews was discursive. Only when I was aware that time limitations were a pressing concern, or that the subject matter being discussed was truly peripheral to my research, did I attempt to steer an interview back to the questions I had set out.

A total of twenty-one personal interviews were carried out with a total of twenty-two different persons.⁶⁸ Respondents were selected based upon their involvement in the

⁶⁷ A copy of a Sample Interview Schedule is reproduced in Appendix 1.

⁶⁸ In one case, two persons were interviewed at the same time.

treaty process and my access to them for an interview. In most cases potential interview candidates were approached in-person with an agreement that I would follow-up by way of a phone call. I would also offer potential interview candidates copies of a *Research Proposal form*⁶⁹ and *Request for Participation form*⁷⁰ at the time of making a request thereby minimizing the need for a discussion about my research if circumstances did not permit. Follow-up was within one to two weeks, and the interview was scheduled to suit the wishes of the prospective respondent. In some cases, follow-up was unsuccessful, and although the intent may have been there, an interview could not be scheduled. Approximately two-thirds of the requests made for an interview resulted in a formal interview being carried out. In some cases interviews had been scheduled only to be cancelled for one of a variety of reasons, while in other cases it became clear that an individual was simply not interested in participating in my research. Whether or not an individual agreed to be interviewed seemed to be contingent upon a variety of factors including: how busy they were (i.e., competing demands); how interested they were in the issues that my research involved (i.e., their orientation); and their level of public visibility. Generally speaking, the greater a person's public profile, the more difficult it was to secure an interview with them.⁷¹

In requesting an interview I would usually indicate that one hour would be sufficient, but actual Interviews ranged from between fifty minutes to over five hours depending upon the wishes of the respondent. I would also indicate that I wished to tape record the interview, but that tape recording was not essential. I was ultimately able to

⁶⁹ See Appendix 3 for a copy of this form.

⁷⁰ See Appendix 4 for a copy of this form.

⁷¹ For example, although I was able to make contact with several high-profile individuals, I was ultimately unable to secure interviews with them.

tape record all but one interview. In carrying out interviews, I would begin by re-introducing myself and the topic of my research, and would then review the contents of my *Informed Consent Form*⁷² as approved by the Simon Fraser University *Research Ethics Review Committee*. Each respondent was asked to initial beside the statements with which they agreed in respect to both my cassette recording of the interview and the level of confidentiality they desired. They were also asked to sign and date the form. After each interview was completed, candidates were asked to re-examine their position in respect to what they had indicated on the *Informed Consent Form*, and were provided with a copy of the pertinent information that it contained. Respondents were also asked whether they wished to review a final transcript of their interview,⁷³ and whether they wanted to receive a final copy of my thesis when it was completed.⁷⁴

Of the twenty-two persons interviewed, twenty-one were cassette recorded, and all recordings have been transcribed in verbatim.⁷⁵ Transcripts vary from between twelve pages (single spaced) to forty pages in length. The affiliation of respondents to the treaty process can be broken down as follows:

- 6 worked directly for either the federal or provincial government as a part of the treaty process;
- 2 worked directly for a First Nation engaged in treaty negotiations;
- 7 worked for another body formally involved in the treaty process (e.g., TNAC⁷⁶); and
- 7 were not formally affiliated with the process but had expressed some stand – publicly or otherwise – with respect to this process.

⁷² See Appendix 5 for a copy of this form.

⁷³ A total of eight persons requested a copy of their interview transcript, three of whom followed-up with corrections, clarifications, or deletions.

⁷⁴ When asked, all candidates responded in the affirmative.

⁷⁵ In one case, an interview extended over five hours. In this case, and due to the wide range of issues discussed, I stopping recoding the interview after three hours.

⁷⁶ Treaty Negotiation Advisory Committee – see Appendix 8.

Respondents could also be grouped according to their gender⁷⁷ or whether or not they self-identified as members of a First Nation,⁷⁸ but my focus does not intentionally apply these lenses to this research. My interest in carrying out ethnographic interviews was driven largely by a contradiction that I perceived in how governments opted to deal with the BC land question – embodied in what I have described as a dialectic of validation and constraint – and, therefore, my interviews began with a focus on government officials and only then grew to incorporate a wider field of respondents based on a more nuanced appreciation of the discursive landscape of this policy field.⁷⁹ While there were other criteria that could be applied to categorize my respondents (e.g., age, socio-economic status), consistent information to define these groupings did not appear to be particularly relevant to the orientation of my work and, therefore, did not arise as a part of my interviews.

⁷⁷ Seven of my respondents were women, while fifteen were men.

⁷⁸ This research does not purport to *study* First Nation peoples. As such, I chose not to ask my respondents whether they were of First Nation descent. However, nine of my respondents identified themselves as having a First Nation background.

⁷⁹ This is not to say that I did not anticipate interviewing others; only that my starting point was clearly going to be government officials.

CHAPTER 2 – TALKING ABOUT THE LAND QUESTION

2.1 – Introduction

Ethnographic interviewing is by no means a straightforward activity. The purpose of conducting interviews *ethnographically* relates to the difference between recording peoples' views and trying to understand how people come to form certain views.

Holstein and Gubrium (1995) describe this distinction based on the difference between what people think, and how it is that they come to think it. Their focus is on “meaning-making” as both a process and a product (Holstein and Gubrium 1995:5). As such, interviews are characterized as “interactional events” whereby meaning emerges in relation to the ongoing construction of communicative contingencies (Holstein and Gubrium 1995:2-10). While this perspective has the potential to lead to a richer and more nuanced understanding of the interview process, it also suggests that the meaning an interview has will vary based on a variety of factors including with whom, how, where, why and when an interview takes place. As such, what is communicated as part of an interview has the potential to differ based on such contingencies, thereby creating opportunities for meaning-making on the part of both the interviewer and respondent. In this way, the discursive setting of an interview necessarily involves contingencies that provide opportunities to better understand how meaning is constructed.

Although I carried out twenty-one personal interviews with a total of twenty-two individuals for this research, not all of these interviews have had the same relevance given my discursive orientation. While all of my interviews embodied the conveyance of one form of information or another (effectively, the *what* portion of Holstein and Gubrium's distinction above), my interest in the discursive construction of the BC land

question at a time when issues relating to the place of First Nations in BC were in particular flux, established a focal point that was more evident in some interviews than others. As a result, my reliance on some interviews and not others reflects a selective approach based on my ability to elicit a dialogue with my respondents that in turn garnered the kind of information that was required for this research.

Of the twenty-two people interviewed for this research, fifteen have been more central to my analysis. The remaining seven, while still reflected in some respects, were either focused more narrowly⁸⁰ or too generally⁸¹ to provide a consistent corpus of material to be relied upon. Of the fifteen more central interviews, while these involved a range of individuals from across the four categories of affiliation set out in Chapter One, I have selected three particularly poignant interviews to typify the range of views articulated by my respondents and to provide a context within which to understand the wide-ranging issues that have emerged as a part of this research. This is not to suggest that the other interviews are not relied upon, but only that these three interviews – with Quentin, Elmer and Karl⁸² – have come to represent a discursive touchstone at the core of this research based on the information that I have gathered.

Both Quentin and Elmer are White, middle-aged males working within the treaty process, while Karl was a White activist not formally affiliated with the process at all. Where Quentin worked directly for an arm of the federal government that had been established in response to the inception of the treaty process, Elmer was an elected official with a Regional District who played a formal role in several specific sets of

⁸⁰ For example, my interview with a representative from BC Hydro dealt with a narrower set of issues relating to BC Hydro's activities.

⁸¹ For example, my interview with a prominent elder / activist, while very informative, canvassed an extremely broad range of issues that were not directly relevant to this research.

⁸² The names of all my informants have been changed to maintain their confidentiality.

negotiations that were taking place in rural BC. My interviews with these individuals took place in December 1997, and August and November 1998 respectively. Each of the interviews is dealt with here in turn.

2.2 – Quentin

Quentin, who was not originally from BC, but had been brought into this process from the federal public service in another part of Canada, had a wide range of experience working for the federal government. I interviewed him in his office, located in a large office tower situated in downtown Vancouver. He described his experience working as a public servant, suggesting that he had been “in and around Aboriginal issues in one way, shape, or form, for the better part of twenty-two years.”⁸³ From this standpoint, Quentin’s familiarity with the land question in BC was informed by a range of First Nation issues in Canada, including those related to other provinces / regions. He is presented in this research as typifying someone who is both familiar with First Nation issues and supports the treaty process. He described his familiarity with First Nation issues based on a recognition that Aboriginal peoples are often characterized as an homogenous group.

I have been fascinated by the cultural plurality of Aboriginals in Canada. I think that the layman often assumes that Aboriginals are one in the same from sea to sea to sea, and of course nothing could be farther from the truth. I've never encountered a richer culture, more interesting heritage. I'm fascinated by many of its manifestations, particularly the art. I really treasure the art and have become a serious collector of some of it, I really have. So it holds my interest and of course it has virtually every aspect of life connected to it because you are dealing with human beings and their issues. So it's, I think, totally seductive at times. I lament aspects of it. I find them very hard to accept. I think the country's treatment of Aboriginal peoples has been woeful at times. I don't think it's a particularly sterling part of our history.⁸⁴

⁸³ Personal interview with Quentin, December 15, 1997.

⁸⁴ Personal interview with Quentin, December 15, 1997.

Quentin's characterization of his interest in Aboriginal peoples corresponds to several themes that are prominent not only in discourses about Aboriginal peoples, but also those relating to Canadian nationalism more generally. In particular, his use of the word "plurality" draws on what has become a defining feature of Canada – the concept of multiculturalism. But it is precisely this feature of multiculturalism – the subsuming of difference (i.e., plurality) within the context of a pre-defined whole – upon which Quentin's narrative relies.⁸⁵ While Quentin's affirmative recognition of First Nations was repeatedly expressed throughout the interview, the discursive rendering of this recognition squarely set apart the acceptability of some kinds of difference from others.

For example, Quentin's focus on "art" is indicative of a particular form of cultural recognition. Apart from representing a relatively benign form of difference, as seen from a Western perspective, art represents the objectification of culture – something that is produced, sold, and collected – rather than an intrinsic part of culture itself.⁸⁶ In this way, Quentin's reference to "having never encountered a richer culture" draws on a narrative that continues to have implications for how different peoples have been characterized as *primitive* or *advanced* in evolutionary terms. Although his intention to elevate First Nations is implicit in this respect, it is the acknowledgement of this hierarchy that re-affirms the significance of such narratives as a continuing element in the discursive construction of similarity / difference in this policy field.

In this excerpt, Quentin also draws on what I refer to as a *discourse of remorse*. By this I intend to refer to a litany of acknowledgements that often precede government attempts to address one aspect or another of the Indian *problem*. The intent of such

⁸⁵ See, Day and Sadik (2002).

⁸⁶ It is interesting to note that the English language does not have different words to distinguish the two intended meanings of *culture* – the one that we are born into and the other that we can acquire.

discourses, ostensibly, is to acknowledge the various harms done to indigenous peoples as a consequence of colonialism, or some facet thereof. Most recently, on June 11, 2008, Prime Minister Stephen Harper apologized for the legacy of residential schools that has contributed to generations of loss and abuse for Aboriginal peoples in Canada.⁸⁷ However, like the treaty process itself, the apology also further contributes to the sense of separation that contemporary federal policy seeks in distinguishing itself from the past.⁸⁸ This is an interest that, no doubt, helps to motivate public officials to make such expressions of remorse in the first place. In describing this, however, my intention is not to impute these motives in Quentin, but rather, to locate this discourse within a broader discursive framework. Taken together, these features – plurality, culture, and remorse – inform the discursive context of the BC land question and, in particular, the dialectic of validation and constraint that has characterized Indigenous-state relations writ large.

This was the case again later in the interview where Quentin described why he felt it important that land claims settlements be negotiated.

European immigrants came to this land as visitors. I think that there's been a disenfranchisement that has gone on aided and abetted by those immigrant governments, and I think that there is a moral obligation here on governments to address Aboriginal claims, Aboriginal ownership to land and resources. And I think many Aboriginal people want to do this within the context of being Canadian, which is to me thrilling, and which is to me why this country, the ability for our government to agree to this, the intent of our government, the posture of our government to agree to do this, to address these claims, is the reason why we live in the greatest country in the world, and make no mistake I love this country.

⁸⁷ The residential schools apology was delivered by Stephen Harper in the House of Commons on June 11, 2008.

⁸⁸ David Chartrand, a Métis writer commenting on an official apology for the hanging of Métis leader Louis Riel, once stated “let the stain remain” (1999:NA). In this way he was signaling a need to retain the sense of shame related to historical action rather than vanquishing it to the past.

Perhaps more than any other, this excerpt illustrates the extent to which validation and constraint have emerged as concepts central to this research. On the one hand, Quentin acknowledges a “disenfranchisement that has gone on aided and abetted by those immigrant governments” that not only accepts some culpability, but does so using language that implicitly adopts criminal overtones. On the other hand, this acknowledgement is sharply curtailed by the statement “many Aboriginal people want to do this within the context of being Canadian,” a statement that imposes the condition of “being Canadian” as an aspect of his acknowledgement. These dual elements are at the heart of this dialectic that, rather than having become a critical subject of negotiations between governments and First Nations, is their imputed starting point.

Tied to this are also interests that have long informed governments’ approaches to this policy field. Among the most prevalent in the period examined as a part of this research are economic interests.

[British Columbia] happens to be facing that part of the world [Asia] which has had a healthy run lately in terms of its economies. Maybe there are some corrections coming now, but there are enormous possibilities for trade and for commerce which will help all Canadians, all British Columbians, Aboriginal and non. But only if we can create certainty here so that investors will look upon this as a prudent place to put capital, to bring investment, to create wealth, to create employment, to do all of those things which will make for a healthy economy here – albeit in a measured way.

How these interests have shaped this policy field is a matter that came up in many of my interviews. No doubt, economic interests are among the foremost concerns of government but, of course, also of industry (i.e., the economic sector / finance / global capital). What impact this has on public perceptions, however, is another matter. To some extent, and this can be seen in other policy areas as well, economic interests have come to dominate the discursive context of the BC land question. Much of the analysis

that drives criticism of the treaty process is based on economic arguments, arguments that are also re-affirmed in the narratives that appear in the media. This is to say that the interests of global capital and industry have been conflated and attributed to the public at large. The erosion of the post-World War II welfare state has led industry and governments alike increasingly to cast issues, which are at their core matters of law and social justice, in economic terms. Quentin relies upon such a characterization.

You know, the man in the street says 'will my ox be gored by this process I read about so often in the newspapers?' There is an element out there in society, and there always seems to be these elements in societies, even ones as liberal and democratic as Canada, that says the only way to defeat this is to mount fear and misinformation around it. To destroy it, to pull it down, to show it as being a deficient process based on what some bleeding hearts might say we must do. I think that's terribly short-sighted. I mean, I think that says that, I think those people are interested in perpetuating what we have now, which is deficient, which is lacking both in its compassion for Aboriginal people, but in not ensuring that they have an adequate base to become very productive citizens.

The “ox” in this case represents the livelihood and assets of mainstream British Columbians, and the short-sightedness that Quentin refers to is in large part the contribution that First Nations could make economically. While his focus was on groups that were actively opposing the treaty process, his explanation is equally focused on establishing an appropriate rationale for the treaty process writ large. This is evident in his emphasis on the future contributions that First Nations might make.

There's enormous potential, and the contribution that Aboriginal men and women can make and, in fact, if you look and get to experience, as I do every year, the national Aboriginal Achievement Awards, one can hardly believe some of the things these people have done, often coming from very minimal back grounds and from very minimal circumstances. I think of this as an opportunity, this whole Aboriginal set of issues around land claims, to be one of the great stories in this country's history in the coming millennium.

For Quentin, the treaty process bears tremendous symbolic importance, not only as a means of unleashing the potential that is obvious in his characterization of First Nation

peoples, but also in distinguishing past government policy from that of the present and the future. Like many people who are uncomfortable with Canada's past, Quentin expresses a strong desire to overcome this past by way of his construction of a more benevolent future. His reference to the issue of land claims as "one of the great stories in this country's history in the coming millennium" constructs the treaty process in the past as a means of displacing Canada's history in the present. Similar types of constructions were used at other points in the interview as, for example, when he said "I'm hoping that the history that we are making now will improve on what's gone on before." Seen from the vantage point of the future, this characterization of the treaty process over-writes Canada's colonial past in an effort to establish a new basis upon which to assess Canada's treatment of First Nations in the present.

I used this characterization as launching point for a question about Quentin's perspective on groups opposed to the treaty process.

In many instances, they're people who have for a lengthy period of time enjoyed an advantageous position in a resource industry of some kind. The notion that there might be a new set of landlords out there, with respect to either land or resources specifically, is threatening to them. But they must find a broad base of support to defeat this, so they look to sensationalize the nature of claims. They look to provide misinformation about the nature of the claims. They seize on the fear, they seize on the mythology that surrounds this process because public education has been lacking, and public education efforts need to be substantially upgraded in order to get to a broader base of society, both Aboriginal and non-Aboriginal. So, I think that by and large that's where they come from, and there are racists - unfortunately - again, I think that virtually any society you can name has them. I'm afraid to say that we Canadians are no exception in that regard.

I then asked Quentin about the Citizens' Voice on Native Claims – a group that opposed many elements of the Nisga'a treaty negotiations and, by extension, the treaty process – as a means of reflecting on public perceptions of the treaty process.

...the Citizens' Voice on Native Claims is a group which has been quite vocal in their opposition, in particular to the Nisga'a treaty, and in their calls for a referendum. There's no question about that. They make their position very clear, they have spent extraordinary amounts of money on advertisements, whether they be audio in nature or through the print media. We are told who the organizers of this movement are, but we have not been told, and we can only surmise, who the true backers are of this exercise. My own view is that British Columbians and Canadians are not subscribing to their message. My own view is that their's is a process which is designed to fail, ultimately. I do monitor them, quite closely in fact. I don't take what they say lightly. I think there are some clever people involved in that campaign, but I think that reason and logic will prevail, people will see that this is a very small minority of people who take this view. People will see that if one persists in the sorts of ideas that the Citizens' Voice would advance, that we are not going to solve land claim questions in this country, and that the economy will suffer as a result, and that there will be heightened tension amongst our, the cultural plurality that is British Columbia because Aboriginal people will become frustrated.

It is interesting to note that, in as much as Quentin was critical of groups who used fear as a basis for rejecting the treaty process he relied upon a similar construction to build support for his own cause. For those people who didn't agree with the process on its own merits, references to Aboriginal "frustration" were another means of building support for the treaty process by tacitly signalling the potential that blockades would re-emerge as a familiar form of direct action used by First Nations to garner attention over land disputes. This, as it turns out, may have been a significant policy imperative relating to the inception of the treaty process, one that may have operated quite apart from a desire to ever reach treaties. It is perhaps on this basis that Quentin felt confident of the support that the treaty process had in British Columbia at the time of my interview.

I think by and large what we've seen from our own polling and from other indicators, letters to the editor of major daily newspapers, articles, editorials, op-ed pieces, by and large citizens of this province, and indeed Canadians, generally want Aboriginal claims to land and resources settled, and the treaty process is one that has enjoyed a fair amount of support.

This reading of the polls and media represents a selective assessment of the process. While the views of my respondents were mixed as they related to media coverage,⁸⁹ Quentin was among the most sanguine in this regard.

This said, the number of groups publicly expressing opposition to the treaty process in the media appeared to outnumber those that were in favour. While there is no clear indicator to affirm this perception on my part, Quentin's perceived need to correct himself in the excerpt below was indicative of the challenge that governments faced at the time.

We are interested in all groups which have an opinion on this subject matter because, without that, how can we be accurate? How can we come to an accurate judgement about what the public opinion is out there? And so, we're interested in all of it. We're interested whether it's dissenting in many instances, some instances rather, or whether it is in favour of the process as it seems to be in other instances (emphasis mine).

Despite the challenges, Quentin was prepared to firmly advance the idea that the treaty process responded adequately to the BC land question and that, as such, it was supported by the public, thereby pointing to a validation of the process.

I think that time has shown, even to this point in the process, that governments, more than one now, are on the right track. And this is indeed something which is supportable by the public at large.

To this end, the idea that the treaty process represented a new and significant break from the past also helped Quentin to rationalize the challenges that he would have faced in his position, particularly the resistance that had become publicly apparent as a result of actions such as those of groups like the Citizens' Voice on Native Claims.

In fairness to society, to society here in British Columbia, it's been an awfully long time since this has been a major item on the agenda in this province. So, there is bound to be - at the inception of these kinds of processes - a certain

⁸⁹ It is fair to say that almost none of my respondents were satisfied with the media's coverage of this issue. Allegations of bias / complicity were made on a range of grounds.

amount of scepticism; a certain amount of distrust for the process; a certain amount of disbelief that it's going to amount to something which is going to be acceptable, manageable, and fair. And, of course, that is the objective: to create a new relationship with our Aboriginal peoples through the treaty process that is fair, equitable, and affordable - fair, equitable, and affordable.

This rationalization was also a part of situating the treaty process in a global context, one that put the negotiation of treaties in BC alongside other processes that were unfolding in other parts of the world, most significantly, the process of reconciliation that had emerged in post-apartheid South Africa.

So, I think, once again, although there are instances where perhaps we could improve on it, Canada and British Columbia are at the cutting edge of a process which is occurring internationally, and in other parts of the world along these same lines. And we're held up, yet again, as a beacon of hope for our treatment of our minorities; for our treatment of our women, and that includes Aboriginal women; and our treatment, in essence, of our very varied members of society. And I think this is good..., I'm terribly proud to be a Canadian, and to be able to say that such a process like this exists, and as hokey as that might sound to some, it's not hokey to me.

Overall, my interview with Quentin represented a perspective that supported the existing treaty process, one that established the treaty process as a new process distinct from past attempts to address the land question. Quentin's expression of views had a powerful impact on me, not necessarily because I agreed with him, but because of how strongly and passionately he was prepared to express them. While he was willing to challenge others as a part of our exchange (e.g., the Citizens' Voice on Native Claims), his contribution to this discursive field was largely one of consent. While validation was a primary discursive feature in what he was trying to convey, Quentin's strong expression of support for both the process, but also his being a "proud" Canadian, operated to circumscribe the meaning that this validation would have within the broader context of indigenous-state relations. As such, my interview with Quentin was representative of

many of the interviews that I carried out with individuals who were working as a direct part of this process. While Quentin expressed many of his views in a manner that was in some ways atypical in this context, it is precisely this feature of the interview that lent itself to the discursive orientation of this research.

2.3 – Elmer

Elmer's narrative embodies a set of perspectives that are in sharp contrast with those of Quentin. Elmer was working as an elected representative on one of the regionally affiliated bodies that was established soon after the initiation of the treaty process, in this case, one of more than two-dozen Treaty Advisory Committees (TACs) that were operating in the province at the time.⁹⁰ Elmer was living in rural BC, although he found himself in and around the Lower Mainland of BC on a regular basis. My interview with Elmer typifies him as someone who is familiar with First Nation issues but opposed to the treaty process. While there are obviously many variations within this perspective, Elmer's is one that captures many of the concerns that were being expressed by rural British Columbians, particularly those working in the resource sectors (see, e.g., Furniss 1999). His is a perspective that denies First Nations any distinctive recognition. I interviewed Elmer at his home, sitting in his backyard on a sunny afternoon, located in a remote resource-based village several hours outside of Vancouver. The location and timing of this interview afforded us a private and unconstrained opportunity to engage in a dialogue.

⁹⁰ Treaty Advisory Committees were established as a part of this process as a means of seeking regional level input from municipal governments, regional districts, and commercial and other potential stakeholders.

Elmer was outspoken in his expression of views. This is a feature of the interview that likely only arose because of the setting in which it took place. While TAC representatives would necessarily have brought potentially antagonistic elements to the treaty setting, Elmer's narrative emerged in a manner that would have been unlikely had it taken place in an office or other professional setting. This feature of the interview establishes an important contingency relating to the range of issues that we were able to discuss. While I began to feel somewhat uncomfortable about the nature of some of the issues that Elmer raised, I also recognized that this was a unique opportunity, from an ethnographic standpoint, to better understand a perspective that I may not have agreed with, but that was nevertheless prevalent in my research setting. My questions to Elmer remained non-judgemental, but at times, in an effort to explore a particular perspective in greater depth, I would position myself as the devil's advocate.

The interview began with a focus on his role as a TAC representative, but quickly shifted to a more personalized discussion about his own experience living in rural BC. Like many British Columbians who are first or second generation immigrants, Elmer recounted a period of hardship that was associated with coming to the province:

My parents came here as immigrants with no money [and] three kids. My father was in his early forties, got a job for thirty bucks a week, we lived in a shack like a wood shed, that's where we lived. And the first winter that we were here, my mother shovelled the snow out of the God damn middle of the shack. So coming from adversity is something that I understand, having to get up in the morning and having to go to work to help the family is something I understand.

This narrative of hardship is a part of what Furniss (1999) calls the "frontier cultural complex" that has its origins in the myth of the frontier and assumes that European colonization was both necessary and beneficial. It positions the speaker, in this case Elmer, as having earned his/her right to the potential benefits of living in the province.

Discursively, however, it was also sometimes advanced in contrast with the claims of First Nations who have long been stereotypically characterized as dependent, lazy, and unwilling to work for what they need (see, Berkhofer 1978; Francis 1992).

Where Quentin recognized remorse as one basis for rectifying historical wrongs, Elmer's perspective was one that rejected any basis for restitution.

I don't agree with doing what we're doing at all to fix the ills of the past. My own personal opinion is that's history, you don't re-write history, you move on from there. We do have an improper system that controls the lives of Indian people in this country. Get rid of the Indian Act, everyone's equal, we all go forward, we all go forward together.

While Elmer's characterization is consistent with that of Quentin in that it implicitly accepts a clear cut distinction between the past and present (i.e., the treaty process), his sense of what needs to be done differs sharply. For Elmer, contemporary attempts to rectify historical injustices appeared to challenge the status quo in a manner that was not acceptable to him. His narrative about the treaty process began by highlighting its failure to adequately represent the views of rural British Columbians.

...quite frankly [I] see the public and the concerns of the public in rural British Columbia, if not totally ignored, really not being taken into account.

This is a theme that evolves throughout the interview, one that developed into a major narrative and corresponded with the efforts of groups such as the Citizens' Voice on Native Claims and the Reform Party who alleged that negotiations were taking place behind closed doors and with inadequate public input.⁹¹ However, given Elmer's role as a TAC representative, his perception of this issue was more nuanced and complex than it might otherwise have been.

⁹¹ Such allegations were a significant element in justifying calls for a referendum on treaty settlements.

The issue, for Elmer, could not just be reduced to a greater emphasis on the incorporation of rural views, but rather, included questions about the role of the provincial government in this process, the role of industry and the economic sector, and the place of First Nations in the province. Two excerpts below highlight his expression of these concerns.

...the federal government has a mandate to clear up what it considers its problem with Native people. I don't know how, but it's co-opted the Province into participating with it to clear the problem up.

...

[The treaty process] encompasses a tremendous amount of economic impact activity, it incorporates social issues, there's a lot of social engineering, if you want to use that word, that's part of the process, as a whole. Yet it's called land claims. The Feds appear to want to resolve the concerns of the past, they don't, however, seem to be prepared to go all the way in one step. And I guess what troubles me is their process of taking interim moves in the process, even though they are doing the completion of treaty, is the impact that that's going to have on rural British Columbia, on resource-based communities. This one and... other small communities are resource-based. We hear the talk all the time, 'we don't need to worry about that because the tourist industry is growing,' 'tourism is a growing opportunity.' But I'm here to tell you that the folks here who run skidders or who cut trees or who work in the mill or who drive logging trucks have been used to an income, low-end, fifty thousand dollars a year, some of them up to a hundred if they're running logging trucks, and so forth. You don't replace that with tourism jobs, it just doesn't cut it, it doesn't do it. You don't replace twenty-five dollar an hour minimum income with eight to ten dollar an hour minimum income. It doesn't work.

There is also an expression of suspicion relating to perceived outsiders that is based on where people are from and what their role is in the treaty process. In this way, Elmer distinguished his role from that of government negotiators in the process.

[My] role is to keep raising the issues, to keep raising them over and over and over again as the treaty process carries through, and to continue on each of the areas that are being discussed to inject what would be the local knowledge of the impact of taking those decisions and negotiating those kinds of agreements under treaty. If you take a provincial negotiator, that's their job, they live in Victoria, they've been hired whether they lived in Victoria before, maybe they came from Ontario, who knows where they came from? They have some background or some experience,

either legal background or they have negotiating experience or whatever, they're hired by the department of Aboriginal affairs,⁹² they enter into these processes, they sit at half a dozen different tables maybe and work through the process. At the end of the day, whatever deal they cut, they still have a job and they go back to Victoria or if they're federal negotiators they go back to Ottawa if that's where they come from, and they leave us here to deal with whatever deal was cut.

Within the context that he describes, Elmer defines himself, and those whom he represents, as being more vulnerable vis-à-vis potential treaty settlements than the actual people doing the negotiation. And, to this end, the relationship between Elmer in his role on the TAC and government negotiators was described as problematic.

We're part of the provincial negotiating team, but we don't participate directly at the table. We sit at the table but we don't participate directly at the table, our role is to advise.

...

Many times I will put forward issues that are of concern, I'll go to the table meeting, and it won't be mentioned at all. ... And in a lot of cases it's not mentioned because it would interfere with the mandate, the fuzzy mandate the Province has and their objective. They might take the decision as a negotiator if they were to raise that particular issue at that particular time it might impact what they feel is their progress and so forth. At the same time, it certainly would not be appreciated if, even though we're a member of the team, if we spoke up.

...

That's the whole process, if we don't like it we can lump it. We are a member of the team under a protocol agreement as an advisor. Their only obligation to us is what they choose to call accountability.

As Elmer's narrative emerged, in addition to expressing concerns about the process itself, he also began to describe his dissatisfaction with how First Nations were participating in the process. In particular, his concern is expressed in relation to the economic circumstances of the province – a key issue that was highlighted in the narrative of Quentin as well.

There isn't enough money to do it and the Province knows it and the Feds know it and I think some of the Natives know it and that's why some of them are there early, so that they can get some before it's all gone. Others come to the table with an

⁹² Federal and provincial negotiators work for the federal and provincial governments respectively (either as employees or contractors). A chief negotiator reports to the minister of a respective Aboriginal affairs department, while other negotiators report to a respective chief negotiator.

attitude that they still think there's a bottomless pit just like they've lived under the auspices of the federal government for the last hundred years. Money, where does it come from? It comes from the government, right? There's plenty. We asked one chief negotiator from one of the Native groups, 'what are you going to do when there isn't enough money to pay all this, what are you going to do about this?' He said, 'well, frankly, that's not my problem, that's your problem, that's the government's problem.' What do you say to someone like that?

This characterization draws upon narratives that were prominent in the media at the time that cast treaty settlements as too costly and suggested that First Nation peoples couldn't take care of themselves (see Chapter Five). A focus on the cost of treaty settlements was common in discourses about the land question, and figures relating to such costs were a common feature in of the media's coverage of this issue. However, the idea that First Nation peoples couldn't take care of themselves was one that typically arose by implication. In this case, Elmer positioned the purported speaker as advocating a position that was untenable – “What do you say to someone like that?” The larger narrative that began to emerge was one of *victimization*.

I have two concerns, one is affordability, and the other deals with what I would call equity and fairness. At the end of the day there should be equal rights for everyone, as Canadians. ... There's no need for special levels of governance, and there's no need for putting boundaries around Native communities creating fiefdoms, kingdoms, whatever you want to call them. This to me is a negative process...

The idea that everyone ought to be “equal” is one that had received significant attention on the platform of the Reform Party. Equality, within this framework, is a starting point rather than an outcome. In 1995, the Fraser Institute⁹³ suggested that the land question be resolved by lottery – that every British Columbian would randomly acquire ownership over an equal sized piece of land (Lippert 1995). It would then be up to each individual to determine what to do with their land.

⁹³ A BC based think-tank with ultra-conservative leanings.

This kind of conception of equality has serious implications not only for First Nations, but all marginalized groups. It locates the source of freedom and accomplishment at the level of the individual. Some would rise to the top, others would falter, but everyone would have had an *equal* chance in getting there. I would suggest that it takes very little imagination to recognize that, under the Fraser Institute’s approach, for example, the lion’s share of the province would rest in the hands of a few extremely wealthy individuals before too long. While the purported impact of *equality* using less sensational examples may not be quite as obvious, the outcomes, I would argue, would be roughly the same. In short, Elmer’s use of the concept of equality, while resonating with some segments of the population, did not in fact culminate in a desire for restitution for First Nations in BC. This became clearer as the interview went on.

...there is a racial issue, a very strong racial issue to the Indian issue in British Columbia.

The idea of *race* came up in several contexts with respect to this research. In this case, Elmer’s emphasis is on how *race* is an issue in singling First Nations out for special treatment (e.g., “rights-plus”).⁹⁴ The policies that were used to distinguish First Nations and Canadians – to remove them from their territories and to access the lands and resources under their control – were nothing if not racist. However, the question of whether policies employed to address these injustices are themselves racist is a debate that continues in its own right. In Chapter Five I describe how the idea of *race* was mobilized in the media during periods when the Nisga’a Agreement-in-Principle and Final Agreement were coming to the fore of public consciousness but, more particularly, how *race* was not an explicit theme during other periods. Elmer’s reference to a “racial issue” demonstrates how the idea

⁹⁴ This concept was first introduced in the Hawthorn Report issued in 1966/67. It was later re-advanced by one of the authors of the Hawthorn Report in 2000 (see, Cairns 2000).

of *race* is a factor within this discursive context whether or not it is referenced explicitly. As such, racialized discourses bring an important explanatory element to narratives that purport to deal with questions of sameness / difference in the context of indigenous-state relations. It raises the question of whether First Nations are *really* different (i.e., racially), or whether they are different just because of government policies that treat them differently.

The concept of multiculturalism is instructive in this regard. Multiculturalism was deployed as a concept, in part, to dispense with the need to discuss *race* as the basis of defining (or validating) difference, while simultaneously adopting a position that difference is okay within certain limits. That such a framework does not suitably encompass the full range of cultures in Canada is made most poignantly in how Elmer deploys this concept as means to signal the need for First Nations to fit in.

And if we're a country that prides itself on being multicultural, homogeneous-multicultural, why would Native people wish to directly set themselves apart both geographically and in governments? Why would they want to do that?

...

The protection of culture and language and so on can very comfortably, clearly, very comfortably be dealt within the confines of the normal process that happens here in Canada. The people of Italian extraction, people with Croatian extraction, the Asian-Chinese, different Asian cultural groups, they maintain their language, they have their cultural centre, you know, but they're Canadians just like the rest of us. Maybe the East Indians are a classic example. Not only are they culturally different, but they are religiously different then the norm here in Canada. Within the confines of the Canadian Constitution there's no impediment to their ability to maintain their culture and their religion here in Canada. And they don't do it from a separatist position. In fact, what I hear them saying is, some of the statements that are being made by the East Indian community with respect to racial issues is they're saying 'come on guys, we are making the attempt to be like you, why can't you accommodate it and accept it?'

These statements reaffirm the perception that there is a population that represents the “norm” in Canada, and that the balance of cultures represent an Other that is, or ought to be, adequately accommodated within the concept of the multicultural. Who exactly East

Indians are trying “to be like” is clear only to the extent that everyone in the multicultural basket is Other. Elmer’s narrative relies upon this conception of multiculturalism as a basis for rejecting special recognition for First Nations. With this as the discursive context for the BC land question, the available options for policy makers would be sharply constrained.

Tied to issues of identity and belonging are questions about how First Nation peoples are often portrayed in the media and other public settings. The popular portrayal of First Nations as being coddled by government – that, for example, they have free on-demand access to housing, education, and healthcare – operates against the interests of mutuality and inclusion from any perspective. Set alongside such characterizations, is a large body of research that has repeatedly demonstrated that First Nation peoples and communities exist on the very lowest rungs of virtually every socio-economic indices that has been applied in Canada.⁹⁵ Nevertheless, the perception that First Nation peoples receive an inordinate share of federal transfers and support remains prevalent.

The problem is that the federal government chose a hundred years ago to put Natives on reserve, it chose to keep them there, and chose to look after them from cradle to grave and provide for all their needs. Now the Natives complain that they don't get enough money to look after needs the way they want them looked after. They get plenty of money. They get their housing paid for, they get their infrastructure paid for, their education is looked after, they get more social welfare than the people across the street, they get loads of money. There's almost ten billion dollars a year that goes into Native communities across the country, plenty of money. I know about this community because I did work for the people, I built houses, I put in water systems, I put in sewage systems, millions of dollars was spent in this community. The process here was to get them to work on the projects, you can't get them out of bed in the morning. Why do they want to get out of bed in the morning? If they sit at home, they're looked after? That's the problem.

The complexity of social ills affecting First Nations is surely significant. Superficially, the fact that First Nation peoples appear to represent an Other in the Canadian context has made

⁹⁵ See, for example, Indian and Northern Affairs Canada (Strategic Research and Analysis Directorate), *Community Well-Being Index* (2004).

it easy for some leaders and politicians to suggest that the solution to such social problems is to make them *more the same*. Assimilation has been a dominant theme in Canada for over a century and was, for example, the central thrust of the White Paper in 1969 (see, Weaver 1981). But the perception that the “problem” Elmer points to can be quickly resolved by removing those features that recognize First Nations as *different* – in this case, those excluding *race* (e.g., reserves, the *Indian Act*, treaties, etc.) – is not just a reflection of concerns about a deeply flawed federal system of Indian administration and tutelage (see, Dyck 1991), but is also an expression of a particular ideological perspective.

It's aggravating, it's aggravating to everyone who lives in this community, just by example, to see people [First Nations in the neighbouring community] doing absolutely nothing and functioning on taxpayers' dollars. I put a garden in, I plant fruit trees. There's fruit trees on the reserve, they never even pick the fruit. They've got a lot of the agricultural land down in the delta here, there hasn't been anything planted down there for thirty years. So what you've got here is people who are paying taxes to support a community around it, a community who blocks roads and stops them from going to work.

This perspective highlights the dialectic that is at the heart of the dual tendencies toward validation and constraint. Validation in this case is constructed as an aspect of being a part of the national majority (rather than being recognized as Other), and constraint is conceived based on an imputed privilege embodied in characterizations of First Nation peoples as lazy and obstructionist. In this way, poverty and unemployment are not social problems that arise from within a larger political-economic context that has marginalized First Nations for decades. Rather, these features, which typify many First Nation reserves in BC and Canada, are reconstructed as either individualized failings, the results of coddling governments, or both. This perception of inequality operates as a significant catalyst for rural opposition to the treaty process.⁹⁶

⁹⁶ See, also, Furniss (1999) for an exploration of this issue.

Elmer's opposition to the process, however, was not only about the "problem" with First Nations, it was also a reflection of his deep mistrust of the federal government and, specifically, a perception that the Province ought not to be party to a treaty.

...the Canadian government does not have the mandate to give the bill [bangs table] to the people of British Columbia, either by way of encouraging land claims and cash settlements, or by having its supreme court legislate those on to a sovereign province of British Columbia. We're being dumped with a bill here. British Columbia, the people that live here, that pay taxes here, are getting whacked with a bill that's not their bill to pay. ... It's Canada's bill to pay. It's Canada's responsibility. There may be some different points of views about the legalities, but as I understand the legalities, all the way through the process from territorial government up, the Province [bangs table repeatedly] met it's obligations. And the federal government gave clearance to the Province to carry on its business as sovereign and to have those Crown lands. Now the federal government is changing the law and re-writing history, and is sending the bill back to British Columbia.

This concern about Provincial involvement is as much about who is being "dumped with a bill" as it is about the kinds of treaty settlements that are envisaged. A key factor underscoring the need for Provincial involvement in treaty negotiations relates to the division of federal and provincial powers in the *British North America (BNA) Act, 1867*. Simply put, section 92 of the *BNA Act* gave jurisdiction over lands and resources to the Provinces. As such, with the exception of small parcels of lands that have been designated as federal lands for specific purposes,⁹⁷ the majority of lands in Canada are controlled by the Provinces.⁹⁸ Hence, while the federal government can allocate cash compensation as a part of a treaty settlement, the allocation of lands remains largely within the purview of the Provinces. Although there are a number of further jurisdictional questions that emerge in this context, the essence of Elmer's concern was tied to a desire for cash-only settlements. Cash-only settlements would limit the potential impact of treaties not only in terms of land

⁹⁷ For example, military bases, national parks, and First Nation reserves.

⁹⁸ The territories are notably excluded from this designation.

quantum, but also with respect to the retention of Provincial jurisdiction over lands that would subsequently be acquired in fee simple by a respective First Nation.

...there's a difference between paying the bill with resources and paying the bill with cash. I'm a proponent of a cash settlement. If they have land and there's some reason that they should be paid for the land that they don't have any more, fine, pay them for it. Let them use that money then, if they wish to, to go and buy land just like anybody else buys land. Not to deed them land or give them land and to draw a circle around that land and isolate it from the rest of British Columbia. And not just to isolate it geographically, but to isolate it governmentally by establishing a third level of government [bangs table repeatedly]. This is not just one person's opinion, a lot of people I'm sure have this opinion. What we need to do, if there is a need to have a resolution on the land issue, calculate the value of the land, give them a cheque, go to the map with your eraser, and erase the boundaries of the reserves, right? We're all off and running.

Here, again, Elmer's statements highlight the dialectic of validation and constraint. The solution lies not in what needs to be done, but rather, in what needs to be undone. This perception, however, is tied to a particular set of politics, one that has its basis in the laissez-faire economics that had become more prominent as a result of the ascent of the Reform Party beginning in the late 1980s and early 1990s. This was borne out later in the interview. Even in such a context, however, the perception that First Nations could not deal with the results of a treaty settlement was still described as a concern.

...I'm here to tell you that if there are fifty treaties done in this province, forty of them will be seen as a windfall, ten of them will be seen as an opportunity. And that's not going to resolve our problem, we're just going to spend a whole lot of God damn money. We're all going to have a good time for a while, we're going to get a bulge in spending in the economy because it will all go through like a soap and water enema, that money will go through those communities. They'll spend it [slaps hands] just as fast as they get it, just like they do with all the money that they get now. Go through every one of the reserves in BC and count how many bank accounts there are. Native people don't put money in the bank, they spend it as fast as they get it, they spend it, and that's exactly what's going to happen with all settlement monies.

This, again, is a narrative that is explored in Chapter Five where I examine the media's characterization of potential treaty settlements. The net result is a perception that, not only was constraint prudent, but it was entirely justified.

Like Quentin's allusion to public support for the treaty process, the sense of frustration that permeates Elmer's experience in the process is mitigated by an appeal to the public. Both Quentin and Elmer appeal to a particular conception of the public in an effort to reinforce their claims. In Quentin's case the public represented a moderate bastion of support. In Elmer's case the public is ill-informed and, by implication, would not countenance settlements that would lead to the kind of destruction / injustice that Elmer foreshadows. Correspondingly, where Quentin is relatively sanguine about the role of media, Elmer expressed a high degree of cynicism.

The public doesn't know about all this stuff, all the gyrations that are going on because people have objectives and a mandate. It's really interesting, we get one radio station here, CBC, and of course what we get is the federal manifesto on Native issues. If anyone comes on who has a differing point of view they are cut off instantly, they are so biased it's unbelievable. It's not hard to figure out why they are a government radio station. We think all this stuff only happens in Third World countries, but the government here has its ability to influence.

Elmer's reference to the Third World is indicative of a level of fear that comes with the unpredictability of governments whose actions are purportedly driven by ideology without a sound basis for accountability. Whether in the context of media, or within the more day-to-day settings of everyday life, fear operates to close people off from one another. This was a feeling expressed by Elmer in describing his engagement with others in his own community.

The question I get from the people that I represent here is 'what the hell are you doing at that God damn table, what are you doing there?' 'Well, we're discussing a treaty.' 'Well, if you're discussing a treaty get them [First Nations] off the God damn road over here so I can get my truck in and go and work.' 'Well, that's a different issue, those guys aren't in the treaty process.' 'Well we don't give a damn

whether they're in or out, the God damn Indians have been doing that for years, do something with them, get them off the road.' This is the reality here.

Although Elmer shared the frustrations of those whom he described, his role on the TAC placed him in a position that was difficult to reconcile given his desire to affect the outcomes of treaty negotiations however unsatisfactorily this was playing out in practice. These expressions of concern from his friends and neighbours contributed to his sense of victimization as a consequence of this process, and these were only further accentuated by what he perceived as a fundamental injustice arising from the perceived power that First Nations had over the Province.

...[First Nations are] working from a position of strength, and we've got the tail wagging the dog, we've got three to three-point-five percent of the population holding the rest of us to ransom.

Here again is a central contradiction that regularly emerges in the discursive construction of indigenous-state relations in BC. On the one hand, First Nations are cast as representing a tiny minority of the population that should hardly receive the degree of attention and compensation that the treaty process potentially embodies. On the other hand, this tiny minority is cast as threatening the very viability of the province. In neither scenario are First Nations accorded the recognition that is required to resolve the land question.

Critical as Elmer was of ideologically driven governments, his own perspective reflected a deeply held ideologically belief as well – something that he only acknowledged late in the interview. He did so by calling for a particular kind of solution to the issues that the treaty process was supposed to address.

The free enterprise system works, and contrary to what a lot of our provincial governments and federal government in many respects is trying to do with this country, which is to change it from a free enterprise system into some mutation of a socialist utopia – now I've declared my politics – we still function on free enterprise, and we still need investment from outside of our borders [bangs table repeatedly].

The Native communities are removed from that activity because they're federal lands. Wipe out the boundaries.

Contrary to the removal of boundaries that characterized his own ideological perspective, Elmer recognized that many First Nations saw this issue differently. At first, I had some difficulty understanding the specific meaning of what he was trying to communicate.

However, it soon became clear that his perspective was rooted in the mainstream narratives of history and development.

Elmer: Their attitude about us here is we don't belong here, this is their valley, this is their traditional lands, we've screwed it up we've put all these hydro towers in here, generating plants, we killed all the fish, we've chased all the animals away, we shouldn't be here.

Tonio: Where does that attitude come from, where do you hear that?

Elmer: From the Natives.

Tonio: Does someone say that to you, or does it come in more subtle forms?

Elmer: No, they say it right out loud 'we were fine here before you guys came along.' The truth is they weren't fine, they were starving here is what was happening them. They weren't fine at all, and their position with respect to the land doesn't hold a lot of water, actually. You know they're talking about occupying the land, they didn't occupy the God damn land at all, they were nomads that travelled around from here to there and they stayed in one place long enough until they spoiled it so bad that they couldn't stay there anymore, then they moved on.

Elmer's understanding of the situation clearly differs from that of his purported speaker, and his reference to "hydro towers" was particularly significant in this regard. The towers that he referred to crossed through the surrounding properties, including the reserve, and were used to bring power from a nearby (rural) dam to the Lower Mainland. From Elmer's perspective, this kind of development – core infrastructure – was the hallmark of *modern* society; indeed, it represented the kind of technological advancement that is sometimes used to distinguish *primitive* First Nation societies ("nomads") from those of European settlers.

The irony of his statements arose coincidentally in a conversation that followed another interview that I carried out some weeks later.⁹⁹ In this conversation, my respondent also commented on the hydro towers on this reserve. However, in doing so, he pointed out that, although hydro towers crossed the reserve, electrical power for the reserve was produced using diesel generators – *just because hydro lines crossed the reserve didn't mean that the reserve had access to this power*. Seen from this perspective, it was clearer to me why some First Nations might not welcome such development.

First Nations have long been characterized as *noble* and *virtuous* in European pre-contact mythology. It is this mythology that Elmer's narrative contrasts with. Different constructions of First Nations' histories figure prominently in among the various characterizations of First Nations both in the past and in the present. These constructions have been used to manage public understandings and meanings with respect to First Nation issues with profound and devastating consequences.

This is 1998, it's not six-thousand years ago, it's not when the White man first came here. People have lost their lands in occupation throughout history. My background is Saxon. Guess what? Normans came along [and] took it all away, we took it all away from the Druids, the Normans took it from us. Life goes on. You don't come back afterwards and say 'we want it put back the way it was before that happened, before the evolution of history, we want it all replaced and put back.' That's not the way the world works. Do we need to recognize that there's a segment of the population that are not participating? Absolutely. Do we need to do something about it? Absolutely, no doubt. Do we need to do it in such a way that we continue to isolate them socially and racially? No, we shouldn't be doing that.

There is in essence a recognition that *something* took place in the past, but this tacit validation coexists alongside a set of discourses that sharply constrain the responses that could follow (see, Scott 2004). Discursively, these constraints operate at multiple levels

⁹⁹ Personal interview with Harold, September 24, 1998.

beginning with an unwillingness to subscribe to a common understanding of the past,¹⁰⁰ and culminating in the definition of the realm of what is possible within strict limits bounded by the status quo. This was typified in Elmer's earlier reference (above) to "[t]hat's not the way the world works" as an example of how the range of what is possible is constrained discursively through the assertion of a particular reality, regardless of whether or not it is shared by others.

Such comments are widespread and can emanate from any number of sources, including those that shape the political-economic context of the country. Comments such as those of the late Chief Justice of the Supreme Court of Canada, Antonio Lamar, where, in *Delgamuukw* (1997), he wrote "[l]et's face it, we are all here to stay," while heralding a more inclusive vision of the province, do not exactly prompt a radical reconceptualization of the status quo. Far from it, contemporary discourses about what is possible in relation to the BC land question continue to be circumscribed by a (mis)perception that the views that characterize this policy field are in fact wide-ranging.¹⁰¹ While the narratives of Quentin and Elmer differ in many ways, the fact that both characterize the treaty process as a significant break from the past is an important element in recognizing the profound symbolism that was embodied in the inception of the treaty process; a symbolism that has prompted widespread discussion about the land question without actually affecting very much that has taken place on the ground. This failure to achieve meaningful results was captured most poignantly in my interview with Karl.

¹⁰⁰ The most significant exception to this was the "historical background" section contained in the BC Task Force Report of June 1991.

¹⁰¹ Here I borrow my thinking from Gramsci's (1971) elucidation of the concept of hegemony.

2.4 – Karl

Karl is a non-Aboriginal activist and artist who had committed himself to the cause of First Nations' sovereignty. Although he had no formal role in respect to the treaty process, as an activist and outspoken proponent of First Nation rights, the perspectives that he brought to this research represented another position that necessarily needed to be accounted for as a part of my focus on the discursive context of the land question. Karl was active in this issue within the context of a small group of other activists who, in turn, were more widely affiliated with the indigenous sovereignty movement in Canada and elsewhere.¹⁰² He is represented in this research as typifying someone who is familiar with First Nation issues, but opposed to the treaty process. Unlike Elmer, however, Karl's opposition to the treaty process arose from a perspective of *recognition*. I interviewed Karl in Victoria, in a crowded café.

Karl's concerns focused most prominently on the exclusion of some voices from the discursive construction of the land question within the context of the BC treaty process, and the Nisga'a treaty in particular.

...we try to raise certain questions in our work... to get people to look at [the treaty process] from a slightly different perspective.

...

...a lot of the people that we communicate with, who are often referred to as 'traditionalists,' have another perspective on [the treaty process]. They see the current process as genocidal, pure and simple, designed to further assimilate themselves and their societies into the body politic of Canada. And I guess their vision or visions, and they're different certainly, involves some degree of resistance to that, that mainstream heavily publicized view such as the Nisga'a treaty.

¹⁰² The indigenous sovereignty movement is comprised of many different groupings including traditionalists, anarchists, and those associated with AIM (American Indian Movement) and Leonard Peltier who, in 1977, was sentenced to life imprisonment for the murder of two FBI Agents who died during a 1975 shoot-out on the Pine Ridge Reservation in the United States.

Rather than acknowledging the treaty process as the basis for either accepting or rejecting a discussion about the BC land question, Karl challenged the very idea that this process was about negotiating treaties in the first place.

Karl: I have real doubts with this being called a treaty, number one. Most of the standard law dictionaries define a treaty somewhat different than this. A treaty, historically, is a relationship, a contractual (contract really isn't the word) but an agreement of some kind between sovereign bodies politic. Clearly this [the Nisga'a treaty] doesn't fit into that category, and also the fact of the extinguishment part of this which is also not generally well known, this is in that sense a surrender agreement in the full and final treaty language, what they are calling a treaty is a full and final settlement. There's quite a body of work that would posit that the process is an illegal one, it's a fraudulent one.

Tonio: Based on what?

Karl: Based on the fact that, in the absence of treaties, that those indigenous nations have retained their sovereignty.

The issue of sovereignty is one that I have not been able to examine as a central focus of this work. However, the absence of this perspective within the discursive context of this policy field is what warrants its inclusion here. It is, in fact, the absence of some discourses that affirms the constructed nature of this policy context. Karl describes his experience of exclusion.

Well, I'll tell you something, to get an issue on to the agenda, to have it debated in public, is very very difficult. It has to be. It's generally put out there by some very powerful actors and it's then perceived that it just kind of made it up there... The actors collaborate quite closely to make sure that the discourse goes along within acceptable parameters, and anything outside of that just doesn't make it.

Whether or not one agrees with Karl's particular assessment, there is an interesting correlation in what Karl describes with the experience of some anthropologists in trying to affect public policy writ large. While the contexts are different, the experience of exclusion – including some of the reasons why – are not necessarily unrelated.

Beyond his concern with exclusion, however, Karl also expressed concerns about how the treaty process had unfolded, with a particular emphasis on the Nisga'a treaty negotiations.

...there's been a tendency of Canada and the Provinces to devalue, I believe, existing Aboriginal rights to just a pale shadow of what they are, and then conduct negotiations based on that. And what we are trying to say is that there is a reasonably decent body of law that suggests that their rights are much vaster, and on the international front there's real progress being made in some areas, the [United Nations] Working Group on Indigenous Peoples. And I think if you compare this process here to some of that international work that's gone on you'll find that this is highly suspect, a highly suspect process. I think already we see that there are problems, and the whole point is that those things that we're discussing have not effectively made it into the public arena of debate.

It is the recognition that is inherent in my use of the term *validation* that Karl alleges is absent in the treaty process that raises his concern. He rejects the notion that the treaty process represents something new. Rather, he defines the treaty process as the “next stage” of colonialism.

We have one of the parties creating various scenarios and then saying ‘okay, we’re going to conduct these things and we’re to call them negotiations, and we’re going to have a treaty,’... And, as has happened in every other stage of Canadian colonialism, we’ll sell the next stage of genocide as a progressive measure, whether it’s residential schools or whatever, we’ll sell it to you as, we’ll get the consent of the public for this on the basis that this is an honourable settlement, and we have to make good on the problems of the past, etcetera.

The idea that the treaty process represents just another federal program aimed at First Nations is in sharp contrast with most other characterizations. It is an observation that can be usefully applied to a re-assessment of the treaty process not only in the 1990s, but even more persuasively in the decade that has followed. I asked Karl about his use of the term “genocide.”

...if we go to the definitions of genocide, I think if all the effective powers rest with, let's say, one's competitor... over the same land base – at least that's how it's worked out historically – in effect, what you have is really a fulfilment of somebody

like [Duncan] Campbell Scott's dictum in 1920 saying 'our object is to continue until there is not a single Indian left who has not been absorbed into the body politic of Canada.' That is what this treaty process is doing; it's absorbing people into the body politic of Canada.

...

...the treaty process doesn't really change the status quo a whole lot, not substantially enough to resist and effectively stop that process of genocide. I would argue that the treaty process is designed to facilitate that process.

Karl also alleged that the Nisga'a treaty was driven by governments, and institutions established by governments, rather than by First Nations acting autonomously. His implication is that First Nations' involvement cannot automatically be equated with First Nations' support or consent. This is in contrast, for example, with the perspective that suggests that First Nations were a central part of designing the treaty process within the context of the BC Claims Task Force.

It's been reduced to two voices only, the pro-government Nisga'a tribal council, we need the deal, and then you have what is perceived, what I can say, the red-neck Liberal, Reform, etcetera. So, for instance, if one is to critique the treaty, that's not out there in the public discourse.

Karl's description of the discursive context is one that doesn't bother to distinguish the various parties that make up this context; implicit is the perspective that they are not sufficiently different to warrant a closer analysis. At one point in the interview he quipped that "these rednecks are our only hope" – the idea that the dismantling of the process may come from the far-right; that the absence of a treaty process is preferable to treaties under the existing process. The fact that this commonality exists can be linked to the validation / constraint dialectic – the ostensible need for constraint is informed by one's position with respect to validation. Described as a graph, the relationship between *validation* and *constraint* is more akin to a bell-curve than a diagonal line; the need for constraint increases with validation, but only to a point where it once again subsides to zero. Where both Karl

and Elmer may share a perspective relating to the need for constraint (i.e., none), they differ in their willingness to concede validation. Elmer's unwillingness to recognize First Nations obviates the need to consider the application of any constraint. Karl's unqualified recognition of First Nations operates in much the same way.

Like both Quentin and Elmer, Karl also appeals to a particular conception of the public, a public that is essentially fair and that would compel governments to behave differently if they only knew what was going on.

I think at the end of the day people are supporting this deal, this Nisga'a deal, out of a real honest sense that they know there's been bad things done in the past and they'd like to see that changed. And I think if you were to show them some of the evidence indicating that this process isn't particularly fair, and that maybe that this is less about, quote, 'giving' the Native people something as it is accomplishing some very long and well-documented intentions of a settler state, that's a whole different matter.

That each of these respondents feels comfortable appropriating public support in defence of their position is likely not tied to anything specific about this issue. What it does highlight, however, is how significant constructions of the public are. That is, to be in a position to define public opinion authoritatively – either through polling, persuasion, or otherwise – is a powerful and sought after position. For Karl, however, recognizing that this was unlikely to happen in his case, he criticized the self-congratulatory sentiment that was sometimes evident in characterizations of the treaty process.¹⁰³

So maybe the best we can do is just, let's be honest about what we're doing here, what we're forcing Nisga'a people [to do], the situation and the choices the very limited set of choices they have. Let's not tell ourselves, once again, pat ourselves collectively as a country on the back, because it's obscene, it's gross.

...

I think the level of denial about it is right up there. You know, it's the great gap... between peoples' perception that they're living in, basically, a benign place, but

¹⁰³ For example, this was evident at various points in my interview with Quentin.

there's been a few excessive bumps along the way, but basically we are getting on with doing the right thing, which is really not true.

These interviews establish a benchmark upon which the balance of my research rests.

While these and other interviews continue to be referenced in the chapters that follow, the narratives that emerged as a part of my interviews with Quentin, Elmer, and Karl embody much of the range of views that emerged across my twenty-two interviews.

CHAPTER 3: THE BC LAND QUESTION IN HISTORICAL CONTEXT

3.1 - Introduction

In this chapter, I trace several of the key historical events that have come to inform the social construction of the land question in BC in the contemporary era. While this chapter is intended primarily as an historical account, my objective is to ensure that readers do not look to my focus on the inception of the treaty process in BC during the 1990s as either an unremarkable achievement or a radical new milestone. Rather, there is a degree of historical continuity that appropriately bridges the inception of the treaty process with its historical antecedents. This continuity does not just reflect the political machinations of particular leaders and governments, but finds its more enduring value in the legal and political traditions that have informed indigenous-state relations in Canada for several centuries. This chapter draws on key events in the settlement history of BC in particular as a means to situate my focus on the treaty process as one that is not dissimilar in intent from the periods that preceded it. The BC land question has existed for a long time, and the issues and problems to which it relates in the present remain remarkably similar to those that were identified in the past. What has changed – and this is perhaps the secondary objective of this chapter – is the manner in which these issues and problems have been described.

The state, in its various configurations (e.g., Department of Indian Affairs, Indian Agents, courts, police, etc.), has historically denied and suppressed the articulation of the BC land question so as to thwart calls for a fair and impartial hearing from First Nations and their supporters. Seen as the aftermath of a colonial encounter, the settlement history of Canada and BC, as regards First Nation peoples, is not the regrettable outcome of a

profound misunderstanding on the part of colonial governments and settlers,¹⁰⁴ but represented the systematic subjugation of indigenous peoples and cultures so as to vacate the Americas for settlement and resource exploitation. As prominent indigenous rights lawyer Louise Mandell has pointed out, First Nation land rights arise from an ancestral occupation of lands for thousands of years. What is really not understood is how the Crown acquired these rights for itself (1987:359) – what Culhane has referred to as the “mystical foundation of Crown title” (1998:154).

Understanding the contemporary land question requires one to understand the settlement history of Canada and BC. Colonialism in its purest form is neither practice nor process. It is an ideology, one that continues to inform contemporary understandings of the relationship between First Nation peoples and the settler society.¹⁰⁵ One might ask how settlers one or two centuries ago might have described their incursion on to Indian lands? Would their objectives and justifications have been very different from those described by Quentin or Elmer? Seen in this way, colonialism does not represent an outcome, but rather, is indicative of a particular way of looking at others. It is an ideology that is premised on notions of superiority and inferiority, and in its practice, accrues benefits to some at the expense of others; arguably, this is as true today as it was one-hundred years ago. British and European colonialism has relied upon legal orthodoxy for its justification, an orthodoxy that has its roots in religion. For this reason, the origins and trajectories of colonialism are also found in its jurisprudence. Hence, to understand the colonial encounter in Canada and BC, it is necessary to understand the

¹⁰⁴ As they would have us believe in the present.

¹⁰⁵ I wish to acknowledge the important contribution that Dara Culhane has made to my understanding of this issue, first, through her doctoral dissertation cum publication (1998), but also through the many opportunities that I have had to take part in her classes and in other discussions with her.

legal fictions that have been used to legitimize the outcomes that, today, have become hegemonic. At the core of this jurisprudence is the concept of First Nations (or Aboriginal) title.

First Nations title is a legal concept that has gained increasing currency over the past four decades, and has its origin in the Privy Council's 1888 decision in *St. Catherine's Milling and Lumber Co.*¹⁰⁶ In this case, First Nations title was defined as a "personal and usufructory right." This definition has evolved since 1888, and was most clearly defined in 1997 in the Supreme Court of Canada's ruling in *Delgamuukw*. In this decision, the Court went to some lengths to define the content of First Nations title. Simply put, First Nations title was defined as a *sui generis* right in land that confers the power "to use land for a variety of activities, not all of which need be aspects of practices, customs and traditions..." (in Persky 1998:86). However, the Court put a significant limitation upon this definition by decreeing that the range of uses "must not be irreconcilable with the nature of the attachment to the land which forms the basis of a particular group's First Nations title" (in Persky 1998:86). In this sense, a significant limitation was placed on the potential uses of First Nations title lands in that their exercise must not destroy the value that was used to establish title in the first place.¹⁰⁷ In this context, as in the one that this research recognizes more specifically, the dialectic of validation and constraint has also some bearing.

¹⁰⁶ *St Catherine's Milling and Lumber Co. v. The Queen (1888)*, 14 App. Cas. 46.

¹⁰⁷ The Supreme Court used strip mining as an example of an activity that would be inconsistent with a First Nation's title claim that was based upon, for example, hunting (in Persky 1998:93).

3.2 - Colonization (1492 - 1876)

The narrative of *contact* is among the most over-stated and deeply ingrained stereotypes informing popular understandings of the relationship between indigenous peoples and the state in Canada. Contact marks the moment that First Nations' history becomes simultaneously relevant and irrelevant. Relevant because it is the moment that Europeans enter the stage, irrelevant because the moment Europeans enter the stage the destiny of First Nation peoples is represented as a foregone conclusion. It is as if contact itself – like a sperm meeting an ovum – forecloses the inevitability of the outcome. This is not only literally false given that Vikings on the East Coast had preceded Columbus' *discovery* of America by some hundreds of years, but it is also false in the sense of what actually happened in 1492: nothing. As interesting as cultural encounters can be, the momentous part of contact was not that European and First Nation peoples met: it was instead what the Europeans did following their meeting. Simply put, aided by a host of diseases that ravaged the indigenous peoples of the Americas over a multitude of successive generations, and by virtue of their more sophisticated military technologies, Europeans were able to usurp First Nation lands and, through force of numbers, were ultimately able to establish colonies and assert their control over First Nation peoples (see, Chomsky 1993). Hence, it is the horror of what contact has meant, rather than contact itself, which underscores the relationship that has ensued between First Nation and European peoples.

Although Francis Drake had explored the American portion of the Pacific Coast in as early as 1579, not until 1774 is there a recorded European landing on what is now British Columbia (Tennant 1990). This was more than a decade after the signing of the

Royal Proclamation of 1763 which defined Britain's relationship with First Nation peoples in the so-called New World. The *Royal Proclamation* was a document drawn up during a period when the British, under George III, faced a number of difficulties relating to the maintenance of their hegemony over North America vis-à-vis both other colonial powers and indigenous populations (Wa and Uukw 1992:73). In what have become known as the "Indian provisions," the *Royal Proclamation* made a variety of assertions regarding the state's role in land acquisition, impinging upon the sovereignty of First Nations, but at the same time acknowledging various rights that they held. Asch (1984:57-8) reiterates its key policies, which can be summarized as follows: (1) land can only be bought (and therefore sold) to a representative of the sovereign; (2) such transfers can only be made by an authorized representative of a respective First Nation's group; (3) such transfers had to be made in public; and (4) lands not ceded or purchased in this way were to be reserved for First Nation peoples as their hunting grounds. Although the specific interests that First Nation groups had in the land were not defined by the *Royal Proclamation*, it was clear that the *Royal Proclamation* did acknowledge some form of interest that was obtainable through cession or purchase (Asch 1984:58).

The matter that arose in a number of subsequent court cases pertained to whether these interests (or rights) were simply being recognized by the *Royal Proclamation*, or if in fact they had been created by it (Culhane 1998). In either case, had the *Royal Proclamation* applied to British Columbia, the Province would have been under a greater obligation to recognize various principles in dealing with First Nations – something which it had steadfastly denied through to 1990. The question of its application to BC was finally resolved in 1997 when the Supreme Court of Canada, in *Delgamuukw*, ruled

that First Nations title was only recognized, not created, by the *Royal Proclamation*, thereby making its applicability to BC moot.¹⁰⁸ Hence, although the question of its applicability to BC was laid to rest, contemporary scholars consider the *Royal Proclamation* to be the first written constitutional document for British North America recognizing territorial rights, and procedures for their surrender (Chartier 1985:56).

Notwithstanding the question of the *Royal Proclamation's* application to what was to become BC, these issues did not arise as such until late in the nineteenth century and, in the meantime, First Nations in British Columbia continued to enjoy a high degree of autonomy. Only in 1849, when the Colony of Vancouver Island was established, and the Hudson's Bay Company received a grant for the purpose of colonizing the area, did significant numbers of Europeans begin to settle in what is now BC. Although Europeans had already settled some areas, and trading had become relatively wide spread, not only did First Nation groups manage to maintain their customary ways of life, but some argue that they held the upper hand in trade relations with Europeans (see, Fisher 1992a). However, beginning in 1858, with the onslaught of Europeans looking for gold, this relationship began to change.¹⁰⁹ The sudden influx of tens of thousands of (im)migrants led the British government to establish mainland British Columbia as a Colony in addition to Vancouver Island, appointing the Island's governor, James Douglas, as governor of both regions. The influx of gold seekers led to one of the worst small pox epidemics to hit BC, wiping out a full one-third of the First Nation population

¹⁰⁸ It should be noted that this was a critical victory for First Nation peoples given that this issue occupied a central place in First Nation rights discourse and litigation for over a century. This was at issue in the 1991 decision of the BC Supreme Court in *Delgamuukw* where Chief Justice Allan McEachern refuted the applicability of the *Royal Proclamation* to British Columbia (Reasons for Judgement 1991:83-98). This led many scholars to challenge the legal basis of his judgement (see, e.g., Culhane 1998; Cassidy 1992), and his interpretation of BC settlement history (see, e.g., Culhane 1998; Fortune 1993; Fisher 1992b).

¹⁰⁹ For a specific account of the social and economic consequences of this period on one Interior First Nation (the Okanagan) see Carstens (1991:29-53).

over the two year period 1862-63 (Tennant 1990). This drive for resources – be it fur, fish, timber or gold – more than anything else, underscores the basis of the relationship that has characterized interaction between indigenous people and the state in any period.¹¹⁰

Douglas, the Hudson's Bay Company chief official in the area, remains a controversial figure in the European settlement history of British Columbia.¹¹¹ Not until 1858, with his appointment as governor of the mainland, did he resign his post with the Hudson's Bay Company. His role in establishing land policy, while perhaps more positive than some others who followed, did not altogether benefit First Nation peoples in the long run. In his initial dealings with First Nation groups he did in fact make purchases of land that involved the drawing up of documents and some form of exchange.¹¹² However, this policy was to change. By 1860, Douglas was allowing settlement on lands not yet purchased from First Nation groups, and although he attempted to arrange purchases, neither the colony nor the British government was willing to pay for them (Tennant 1990:21-2). Underlying this outcome, however, are two important considerations: first, that Douglas was (at least in part) moved to attempt to extinguish Indian title on lands being settled to allay fears of a reprisal by First Nations,¹¹³ and second, that the refusal to pay on the part of the British government in no

¹¹⁰ One might argue that the upcoming Winter Olympic Games in BC in 2010 constitute the current equivalent.

¹¹¹ Some disagreement exists among scholars as to the role James Douglas played in British Columbia's settlement, specifically, whether his influence was positive or negative. For differing perspectives on this point see: Fisher 1992a:xi-xxiv; Carstens 1991:55-62; and Tennant 1990:17-38.

¹¹² Between 1850 and 1854, Douglas arranged for the purchase of fourteen parcels of land on the Colony of Vancouver Island, which in turn have been viewed as *treaties* since 1964-65 when the issue was raised in *R v. White and Bob*.

¹¹³ On this point, Tennant notes that Douglas, in reference to the extinguishment of title, takes this to be a "very necessary precaution" (1990:21).

way reflected a belief that title was not vested in First Nation peoples.¹¹⁴ Indeed, by 1862, subsequent to his request that payments be made, Douglas ceased to offer payments for lands even when monies were available (Tennant 1990:23). The duplicity inherent in this stance is another feature of indigenous-state relations that continues to have bearing in the contemporary context.

This tradition was continued by his successor, A.E. Kennedy, in 1864, even though there continued to be an acknowledgement of First Nation title by all parties involved.¹¹⁵ In the same year that Kennedy was appointed governor, Joseph Trutch became Chief Commissioner of Lands and Works, and in 1866, Vancouver Island and the mainland were united as a single colony. With Confederation in 1867, the federal government, under Sir John A. Macdonald, in 1869, introduced a policy in respect to the acquisition of lands through the Hudson's Bay Company. Asch identifies the core of this policy in an Order-in-Council, dated 1870, which states that:

...upon the transference of the territories in question to the Canadian government, the claims of the Indian tribes to compensation for land required for the purposes of settlement will be considered and settled in conformity with the equitable principles which uniformly governed the British Crown in its dealings with the First Nations (Statutes Order 1870, in Asch 1984:58).

Moreover, Asch (1984:58) notes that this Order-in-Council acknowledged, as did the *Royal Proclamation*, the view of a pre-existing First Nation interest. What it did not address was the issue of lands not required for settlement (at that time). In 1871, the federal government began signing treaties, and these coincided with the westward and northward patterns of European migration and settlement (Asch 1984:58). In 1923, when

¹¹⁴ For example, the Duke of Newcastle, in replying to Douglas' request for funds, makes explicit reference to the Colony's need for the "acquisition of title" (see, Indian-Eskimo Association [date unknown]:119-20).

¹¹⁵ In addition to First Nation peoples themselves, both the elected Assembly, and the Colonial Office in London, as well as Kennedy himself, acknowledged the existence of some form of indigenous title (Tennant 1990:25).

the Crown entered into what are known as the Williams treaties, the federal government signed its last treaty for over fifty years, leaving vast tracts of First Nations' land untreated. Among them was most of BC.

It was in 1871 that British Columbia joined Canada as a province in Confederation, the same year that Trutch left his posting with Lands and Works to become the first lieutenant-governor of BC. Trutch, who had carried on from Douglas, though in a different capacity, has been characterized as having a particularly racist attitude towards First Nation peoples, and this was reflected in the demeaning approach that he took to First Nation policy. Those policies of Douglas that had benefited First Nation peoples, Trutch worked to curtail, asserting explicitly that British Columbia Indians had never "owned" the land (Wa and Uukw 1992:80-1). Although Douglas had already set a precedent in allocating only ten acres of land to each First Nation family (Indian-Eskimo Association [date unknown]:121-2), where First Nation families in some other parts of Canada were receiving six-hundred acres, Trutch worked to formalize this policy of smaller allotments. Indeed, under the Terms of Union, Trutch drafted one clause that ensured that ten acres would remain the norm in BC.¹¹⁶ Relying at least in part upon the federal government's ignorance regarding reserve allocations in BC, Trutch declared that land allotments would remain "...of such extent as it has hitherto been the practice..." (in Tennant 1990:43-4). Having become one of the Terms of Union, it has

¹¹⁶ Clause 13 of the Terms of Union dealt with the transfer of reserve lands in BC to the federal government. However, the complexity of this transfer, coupled with a series of disputes between the Province and federal government, prevented this transfer from taking place until 1938 (Indian-Eskimo Association [date unknown]:123; also, Titley 1986:135-61).

been argued that the Province was no longer under a formal obligation to obey directions from Ottawa on this matter.¹¹⁷

Trutch's policies proved both advantageous and enduring among settlers, and served to remove the question of Indian title as a matter of public discourse. What discourse did continue centred not upon the question of title, but on reserve size, that is, the extent of the Crown's *generosity* in allowing First Nation peoples to use land that was not considered theirs (Tennant 1990:41) – a perspective redolent of some contemporary discourse as well. Trutch's denial of title and increasing confinement to, and reduction of, reserves corresponded with the growing number of oppressive policies emerging from Ottawa. Although Tennant (1990:39-52) argues that federal authorities were unaware of what was happening in British Columbia, their desire for harmony under Confederation, coupled with the emergence of the *Indian Act* in 1876, leave one sceptical as to the true intentions of the Macdonald government. The overriding point, however, is that the handling of the BC land question had become a political matter, subject to the vagaries of individual politicians and party politics, closely tied to the economic interests of those who sought access to BC's lands and resources – something also borne out in the discursive context of the contemporary land question. However, while the situation for First Nation peoples in BC may have been worse than in some other parts of Canada at that time, such distinctions were to become increasingly blurred.

¹¹⁷ For example, Drake-Terry (1989:107-10) describes how, in 1873, the provincial government defied the federal government's request to increase reserve allotments from ten to twenty acres.

3.3 - Repression (1876 - 1951)

The imposition of the *Indian Act* in 1876 provides a turning point in indigenous-state relations in Canada. In addition to the imposition of residential schools in the 1880s,¹¹⁸ the banning of the potlatch¹¹⁹ in 1884 further exemplified the tack that government officials (and missionaries) were taking as an expression of their perception of the so-called Indian problem. Where First Nation peoples had maintained a relatively high degree of self-determination well beyond contact, and this had, at least at the policy level, been recognized by the colonial government, the *Indian Act* formalized the federal government's commitment to assimilate First Nation peoples. Turning point as it was, First Nation peoples had already begun to organize and were preparing to express their concerns to government officials.¹²⁰ Of these concerns, title, treaties, and self-government were paramount (Tennant 1990:57) – issues that, again, continue to resonate in the contemporary setting. However, the expression of these concerns was largely ignored, and even though a commission had been set up in the late 1880s to respond to them, in the end, it served only to strengthen what had already been established as the status quo.¹²¹

The 1890s were marked by increasing First Nations political activity. With the initiation of the Yukon gold rush in the late 1890s, tens of thousands of Americans and

¹¹⁸ See Celia Haig-Brown's (1988) book "Resistance and Renewal" for an account of experiences relating to the development of residential schools in British Columbia (Kamloops).

¹¹⁹ For more information pertaining to the potlatch itself, its prohibition in BC, and, in particular, on the Northwest Coast see Cole and Chaikin (1990).

¹²⁰ Tennant (1990:53-67) describes how various First Nation leaders had been traveling both to Ottawa and Victoria to have their concerns heard.

¹²¹ The "Commission Appointed to Enquire into the Conditions of Indians of the North-west Coast" (also called the "North Coast Enquiry") was formed in 1887 and issued its report in 1888. It was a two member, joint federal-provincial commission. It made three main recommendations: (1) that land claims be ignored; (2) that Indians be under the control of Indian Agents; and (3) that a provincial police force be established (Tennant 1990:65).

Europeans began to stream into northern British Columbia leading First Nation groups in the area to bolster their demands for a land settlement. Due to the lack of a provincial presence in the area however, federal authorities acted unilaterally in extending the federal Treaty 8 (from what is now Alberta) into northern British Columbia. As a result, Treaty 8, which comprises some twenty-seven percent of British Columbia's land mass, became the first and only area in British Columbia ever to be recognized under a federal treaty.¹²² Moreover, contrary to the claims of the provincial government, it stands as irrefutable evidence that First Nation title had been recognized in British Columbia, and that the *Royal Proclamation of 1763* should have applied to First Nation peoples in the province (Tennant 1990:67).

Having, among other things, taken over a newspaper in the 1890s, the Nisga'a, in particular, had established a well organized lobby by the turn of the century. By 1909, the Nisga'a Chiefs, including Arthur Calder,¹²³ had formed a Land Committee in an effort to increase their effectiveness in dealing with the federal and provincial governments. The formation of this, and other, First Nation organizations was seen as increasingly important in light of the Province's continuing refusal, under Premier Richard McBride, to even set out reserves.¹²⁴ Moreover, the formation of these organizations began to lead to increased intertribal cooperation among northern and southern Coastal groups, as well as within the Interior (Tennant 1990:86-7). In 1910, when Liberal Prime Minister Wilfrid Laurier visited British Columbia, several First Nation delegations met with him,

¹²² With the exception of the fourteen relatively small tracts of land on Vancouver Island, negotiated by Douglas, which were to be defined as treaties in the 1960s.

¹²³ Arthur Calder was the adoptive father of Frank Calder, the central figure in the Supreme Court of Canada's 1973 *Calder* decision.

¹²⁴ McBride's publicly stated view that reserve lands would be better used by Whites, and subsequent refusal to even lay out reserves, left many areas of land open for White pre-emption (Tennant 1990:86).

which led him to express his concern over the Province's handling of the land question, and prompted the federal government to apply political pressure on the Province to do so. However, the Laurier government was defeated by a Conservative government in 1911, the outlook of which was more in keeping with that of McBride. Whatever pressure might have come to bear under the Liberals was summarily lost as a consequence.

In 1913, a Royal Commission was set up to settle the differences between the Dominion and Province respecting First Nation lands and affairs (Tennant 1990:88). The McKenna-McBride Commission, as it became known, spent three years holding hearings and examining reserves throughout the province, issuing its report in 1916. Apart from the overall scepticism that surrounded the mandate of the McKenna-McBride Commission,¹²⁵ the Nisga'a Land Committee had already been pursuing at least one other course of action to resolve questions about land and title. They had, in 1913, sent a petition to England stating their expectations under the Royal Proclamation, and making it clear to the provincial and federal governments that they had done so. There was, however, a level of misunderstanding as to whom they had addressed their petition, and only later was it discovered that it had not in fact been sent to the Judicial Committee of the Privy Council¹²⁶ as had been thought at the time (Tennant 1990:91). In the meantime, however, this misunderstanding operated to give the Nisga'a confidence that their demands would be heard and to rouse governments' concern regarding this possibility.

This concern was reflected in the response of Duncan Campbell Scott,¹²⁷ the newly appointed deputy superintendent general of Indian Affairs who, in 1914, attempted

¹²⁵ Even before the Commission was underway, it was noted that its mandate dealt only with the question of reserves, and made no mention of treaties, title, or self-government (Tennant 1990:88).

¹²⁶ At the time, this was Canada's highest court.

¹²⁷ Referenced in my interview with Karl (see Chapter Two).

to undermine the petition by making it appear as if the government was in fact working to address the land question. Through an Order-In-Council, Scott offered the Nisga'a an opportunity to have their claim heard in court provided that they accepted a number of conditions. These conditions were so outrageous, however, that not only did the Nisga'a reject the offer, but it prompted them to seek wider First Nations political cooperation (Titley 1986:143-4). By 1916, the Allied Tribes of British Columbia had been formed, representing tribal groups from both Coastal and Interior British Columbia, thereby establishing a province-wide political organization to pursue the land question. Its aim was to take land claims through the courts to the Judicial Committee of the Privy Council, but to leave open an option to negotiate with the government (Titley 1986:144).

The McKenna-McBride Commission issued its report only days after the formation of the Allied Tribes of BC. As had been anticipated, it made no mention of title, nor did it attempt to address disparities in the size of reserves across Canada or, for that matter, any of the other concerns raised by First Nation peoples. Rather, it recommended a slight increase in the total reserve land acreage in BC, but also that the size of some other reserves in BC be reduced. Although the Commission provided for a net increase of sixty-two square miles of reserve land in the province, the value of the land lost was worth some five times of that gained (Tennant 1990). Moreover, no attempt was made to balance gains with losses, thereby creating enormous disparities between the size of reserves in relation to their population. Fortunately, the Commission's report was not immediately implemented. Indeed, according to the *Indian Act*, in order for lands to be cut-off, consent had to be obtained from a majority of the adult male members in the band affected. In 1920, Scott recommended that this

requirement for consent be overridden through an act of Parliament. The *British Columbia Indian Lands Settlement Act* authorized the implementation of the Commission's recommendations and eliminated the consent required from First Nation peoples under the *Indian Act*. At the same time, residential schools were becoming more widespread, and enforcement of the anti-potlatch provision contained in the *Indian Act*, which had been strengthened over the past decade, was stepped up.

At the same time, however, a ruling pertaining to a case in Southern Nigeria had established indigenous title as a pre-existing right.¹²⁸ In it, Viscount Haldane had argued that such title “must be presumed to have continued to exist unless the contrary is established by the context or the circumstances” (in Culhane 1998:69). While this had positive potential for First Nation peoples in British Columbia, the flow of information to them was minimal, and there is some indication that the government may have moved to head-off the potential implications of this ruling (Tennant 1990:101-2). Documents were being withheld from the Allied Tribes of BC leadership,¹²⁹ and, in 1924, the McKenna-McBride Commission's report was finally passed formalizing the removal of land from some reserves.¹³⁰ The Allied Tribes, however, remained active. So active, in fact, that a special joint Senate-House committee was set up to enquire into their claims as set out in a lengthy petition which they had prepared and made public in 1919. However, Titley (1986:154-7) makes it clear that, far from a genuine concern for First Nation peoples, the primary motivation for the establishment of this committee was to prevent any claims

¹²⁸ *Amodu Tijani v. Southern Nigeria* [1921] 2 A.C. 399 (p.c.) at 403.

¹²⁹ Most notable were the *Papers Connected with the Indian Land Question* – a compilation of materials, published in 1875, pertaining to land claims (Tennant 1990:102); they have since been made available through the BC Ministry of Aboriginal Affairs.

¹³⁰ It took some time for this report to be implemented due to disagreements between federal Indian Affairs and the Province. Two individuals, W.E. Ditchburn and J.W. Clark, were appointed to “review” the Commission's report for implementation in 1920, which was completed in 1923 (Titley 1986:148-9).

from reaching the courts. Although Peter Kelly and Andrew Paull, the key spokespersons for the Allied Tribes, did finally receive an opportunity to present their case, upon the completion of the hearings the committee unanimously rejected all of the Allied Tribes' claims (Titley 1986:157). This aspect of consultation with First Nations would repeat itself several more times in the decades to come.

In addition to rejecting First Nation claims, the committee made two recommendations: (1) that First Nations receive an annual allotment of one-hundred-thousand dollars in lieu of treaty payments, and (2) that all land claims activities be done away with. Duncan Campbell Scott, the instigator of this prohibition, prepared the necessary amendment to the *Indian Act* which was quickly passed by Parliament in 1927. This amendment was inserted into the *Indian Act* as section 141, next to the anti-potlatch provision, to prevent anyone, First Nations or not, from bringing forth a claim.¹³¹ Consequently, not only did section 141 eliminate the possibility that First Nation peoples might reach the Judicial Committee of the Privy Council, it put an affective end to the Allied Tribes of British Columbia. As Tennant puts it, "(F)rom the white perspective, the Indian land question in British Columbia had been resolved" (1990:113).

3.4 - Re-emergence (1951 - 1991)

The events that led up to the 1920s that culminated in the rigid enforcement of the potlatch prohibition and the sending of many First Nation children to residential schools (see, e.g., Haig-Brown 1988), combined with a successive onslaught of epidemics

¹³¹ The inclusion of non-First Nations in this prohibition was a reflection of the attitude that First Nation peoples' discontent was due to so-called White agitators. In particular, A.E. O'Meara, a lawyer and Anglican Minister, had helped the Allied Tribes and Nisga'a Land Committee to develop their claims over a period of more than two decades (see, Titley 1986:139-57), and it was through this legislation that such persons were silenced.

through the 1800s, destroyed a significant part of the social fabric that held these cultures together. Furthermore, First Nation peoples had been disempowered under the *Indian Act* and the corresponding authority of Indian Agents, who reached the height of their powers in the early 1900s. Although potlatching and other ceremonial activities continued covertly and in related forms (see, e.g., Sewid-Smith 1979:45-55), the decades that followed the 1920s were uneventful to the extent that the prosecution of the land question had been effectively suppressed.¹³² Not until the post-World War II period did the concept of human rights re-ignite the possibility of resurrecting a land question. In an effort to maintain a favourable international image, in 1949, First Nation peoples received the right to vote in provincial elections.¹³³ Further, the *Indian Act* was amended in 1951 to remove the ban on potlatching and the prohibition against claims-related activities. However, these amendments to the *Indian Act* did not reflect a mood of renewed interest in the land question on the part of the public or politicians; on the contrary, they signalled the end of any concern about them at all. For the most part, governments assumed that the potlatch, along with some of the other most visible manifestations of Northwest Coast culture, had finally vanished and, moreover, the threat of foreign meddling had been eliminated when the Judicial Committee of the Privy Council – a foreign body – ceased to be Canada's highest court in 1949.

Given that these changes were not the reflection of a renaissance on the part of federal or provincial thinking with respect to First Nation rights or claims, it took some time for First Nation groups to even become aware of the renewed possibilities that had

¹³² Although the anti-potlatching law had been created in 1884, not until 1919 was a First Nation person sentenced to “penal servitude” under this law (Cole and Chaikin 1990:111).

¹³³ Tennant (1990:121) notes that First Nation peoples received the provincial vote only as an after-thought, following the lifting of this prohibition on persons of Japanese, Chinese, and Indo-Pakistani descent. The federal franchise was not granted to First Nations until 1960.

emerged as a consequence. Not until 1960, under the Conservative government of John Diefenbaker, were First Nation peoples granted the right to vote in federal elections, and not until 1963 was a First Nation title case to be heard by a provincial court. In *White and Bob*,¹³⁴ two members of the Nanaimo (Snuneymuxw) Indian Band were arrested for hunting deer without a permit and out of season. The issue that arose, argued in court by Thomas Berger, pertained to the band's right to hunt under an agreement signed by James Douglas for the purchase of land on Vancouver Island in the 1850s.¹³⁵ Berger made three key arguments: (1) that the purchase agreement executed by Douglas constituted a treaty; (2) that this agreement recognized a pre-existing right in accord with the *Royal Proclamation of 1763*; and (3) that the *Royal Proclamation* stood as a guarantee of Aboriginal and treaty rights in British Columbia (Tennant 1990:218). The appeal, which was heard by a panel of five judges, acquitted White and Bob ruling that the Douglas agreement was in fact a treaty. However, only one of the three judges ruling in favour of the defendants, Mr. Justice Norris, considered the *Royal Proclamation* relevant to the case. On appeal to the Supreme Court of Canada in 1964, the provincial appeal court ruling was confirmed, but again only on the narrow question of whether the agreement was a treaty. However, while Norris' opinion in regard to the *Royal Proclamation* was not accepted, neither was it rejected, and this relative victory had the effect of reviving the issue of First Nation rights in British Columbia, and across Canada. Such limited victories – be they *White and Bob* (1964), *Calder* (1973), or *Delgamuukw* (1997) –

¹³⁴ *Regina v. White and Bob* (1964), 50 D.L.R. (2d) 613 (B.C.C.A.), affirmed (1965) 52 D.L.R. (2d) 481n (S.C.C.), henceforth referred to as *White and Bob*.

¹³⁵ Although the case in question dealt with only one of the fourteen agreements entered into by Douglas, findings in the case would apply to all of the agreements.

establish the legal framework of the BC land question and re-affirm the tension between validation and constraint that permeates this policy field.

Indeed, the Nisga'a Tribal Council was aware that the success of *R v. White and Bob* could be applied to the issue of First Nation title in general, and proceeded to hire Berger to establish a case to that effect (Tennant 1990:219). At around the same time, politicians began to express some interest in the land question. This had begun with Diefenbaker's extension of the federal franchise to First Nations in 1960, and continued with Liberal Prime Minister Lester B. Pearson's promise to establish an Indian Claims Commission in 1963 (Tennant 1990:131). Moreover, in that same year, Harry B. Hawthorn, a prominent BC anthropologist,¹³⁶ and his co-researchers began to prepare a document for the Department of Indian Affairs which was to be entitled *A Survey of Contemporary Indians of Canada*. The "Hawthorn Report," as it became known, was issued in two volumes in the mid-1960s, and made several significant recommendations with respect to First Nation peoples. Among them, it concluded that integration and assimilation were not reasonable avenues to pursue on the part of the government, and that Indians should be regarded as "citizens-plus" – a group with rights beyond those of other Canadians as a result of their indigenous heritage (Comeau and Santin 1990:18). It argued that remedies lay in broad scale social and economic development, and cautioned against simplistic legal and legislative action (Weaver 1981). However, even though it had received a favourable response from the Department of Indian Affairs, the Hawthorn

¹³⁶ Weaver (1981:21) notes that Hawthorn had been involved in an earlier study of Indians in BC (1958), along with Cyril Belshaw and Stuart Jamieson, and that this had established him in the eyes of officials to lead the national study.

Report was set aside in 1969, and policy-makers, under the Liberal government of Pierre Trudeau, introduced what has become known as the White Paper policy.¹³⁷

Although the White Paper never made it past the policy document stage, it remains one of the federal government's most notorious expressions of top-down policy making (see, Weaver 1981). Not only did the White Paper ignore the recommendations of Hawthorn Report, but it was ostensibly itself the product of a full year of government consultation with First Nation peoples that, too, was almost entirely ignored. Like the McKenna-McBride Commission before it, the federal government's White Paper advanced a set of interests that reflected the specific views of a small cadre officials whose objective, in this case, was to terminate all of the distinctive features that characterized First Nations on the Canadian landscape, including the *Indian Act*, reserves, and treaties. The result, issued in June 1969, was a report recommending, among other things, the abolition of: the *Indian Act*; the Department of Indian Affairs; treaties; land title; and most anything else that could be deemed distinctively *Indian*. Indeed, this document reflected the liberal ideology of its makers who felt that any argument against equality (e.g., distinct recognition) was tantamount to discrimination (Weaver 1981:168).¹³⁸ It was met by strong and decisive First Nation opposition – the basis of which helped to foster the first sustained national pan-Aboriginal movement in Canada –

¹³⁷ In its final form, this policy document was entitled the "Statement of the Government of Canada on Indian Policy, 1969." The term *white paper* is one given to any policy document produced for the government, and any racial connotation is coincidental.

¹³⁸ Weaver (1981:168) points out that the White Paper's emphasis on "equality, individual choice and responsibility, and freedom" was seen as the only antidote to a history of "discrimination, isolation and separation". This was particularly ironic in light of the findings of the Hawthorn Report which had, among other things, recommended that Indians be accorded a "citizens-plus" status.

leading, ultimately, to the formal revocation of the White Paper as a federal policy initiative in 1971.¹³⁹

In the meantime, however, beginning in April 1969, the Nisga'a had managed to bring their claim into court. This case, *Calder*, attempted to establish that First Nation rights and title had not been extinguished at any point prior to Confederation. The Nisga'a's argument was based upon establishing three elements: (1) that they did, at the time of contact, have a system of land tenure reconcilable with Canadian law (i.e., pre-existing title); (2) that documents, such as the *Royal Proclamation of 1763*, did establish the intent of the sovereign to respect First Nations' usufructory rights; and (3) that the colonial legislature had not passed any acts expressly extinguishing First Nation title (Asch 1984:47-8). This case had three rounds, the first of which was in the Supreme Court of BC. In this decision, Justice Gould agreed with the Province, dismissing the case, and asserting that First Nation title had been extinguished by legislation in the colonial period, although he did not specify whether the Nisga'a had had title to be extinguished in the first place (Asch 1984:48). Round two, heard in the BC Court of Appeal in 1970, involved three judges who unanimously agreed with the previous ruling. However, one of the judges went even further, asserting that the Nisga'a society had been too "primitive" to have possessed laws that were recognizable (Asch 1984:49),¹⁴⁰ and therefore that pre-existing title had never existed.

Finally, in 1971, the case was heard by seven judges in the Supreme Court of Canada. Their decision, which was handed down in 1973, was split four-three against the

¹³⁹ Many allege that the initiatives identified in the White Paper have continued to inform federal policy with respect to First Nations through to the present day. See Weaver (1981) for a concise account of events leading to the formulation of the White Paper.

¹⁴⁰ See, also, Schulte-Tenckhoff (1998) for a more general examination of jurisprudence in this regard.

Nisga'a claim, where six of the seven judges dealt in detail with the substantive points raised by the suit.¹⁴¹ While technically a loss, this case in fact represented a significant victory for First Nation peoples in Canada by establishing the existence of First Nation rights. What the six judges had been split over was the present state of those rights. Three judges had found that the extinguishment of First Nation title had to be explicit and, therefore, had not taken place, while the other three judges had ruled that implicit extinguishment would be sufficient, and was deemed to have taken place. Hence, this three-three tie represented a victory in and of itself – with the loss being attributed to a technicality cited by the seventh judge. As Tennant (1990:221) points out, this case provided grounds for concern on the part of the Province. Not only had the Province's argument in regard to pre-existing title been rejected, but three of the six judges had found that title still existed.

Indeed, this limited victory, in conjunction with burgeoning First Nation political activity across Canada,¹⁴² prompted the federal government to take a more serious look at the whole issue of claims. It was in 1973 that Prime Minister Trudeau mused that perhaps First Nation peoples had “more rights than we thought” (in Tennant 1990:172) – a comment that was in stark contrast with his government’s original intent in the White Paper. This was followed by a policy directive issued by the then Minister of Indian Affairs, Jean Chrétien, that acknowledged the principle that First Nation interests could still exist (see, Asch 1984:65). This turning point represented a watershed in First Nation

¹⁴¹ The seventh judge had refused to consider the merits of the case on the basis of a technicality: that unlike most other provinces, in BC the Nisga'a had needed to obtain a "fiat" from Victoria to be able to take the province to court in the first place (Raunet 1984:159).

¹⁴² At about the same time, the Quebec Cree, the Dene of the Northwest Territories, the Yukon Indians, and the Inuit had all begun to take serious actions against massive “development” projects planned in their regions (Raunet 1984:161-2).

/ federal government relations with respect to the negotiation of comprehensive claims, and although many have claimed that the policies embodied in the White Paper of 1969 continued to provide the basis for federal action with respect to First Nation issues, *Calder* represented the catalyst for the establishment of a federal process to address comprehensive claims in the contemporary era. It also led the Nisga'a to begin comprehensive claims negotiations with the federal government.

Although treaties have a long history in the narratives of colonialism and settlement in Canada, there was a significant hiatus between the signing of Canada's last historic treaty in 1923 and the signing of its first modern-day treaty in 1975. The James Bay and Northern Quebec Agreement (JBNQA), entered into by the James Bay Cree and Inuit of northern Quebec, was drafted so as to reconcile the interests of the indigenous peoples of the James Bay region with the Quebec government's development of a massive and controversial hydro-electric project in the James Bay basin (see, Feit 1985).¹⁴³ The JBNQA was followed by the federal government's adoption of a comprehensive claims policy that formalized its intent to negotiate comprehensive [land] claims with those First Nation groups with whom treaties had never been signed. And, so, the saga of negotiations with the Nisga'a began in 1976, and would revolve around the federal government for the next fifteen years – with the Province participating only in an observer status.

In 1975, however, another court case had been initiated, this time by Delbert Guerin, Chief of the Musqueam Band. It dealt with a lease of one-hundred and sixty-two acres of land to the Shaughnessy Golf Club in the late 1950s. Arranged by the local

¹⁴³ Although this agreement has generally not been referred to as a treaty, for all intents and purposes, it embodies the same characteristics (e.g., land and governance provisions, cultural provisions, etc.).

Indian Agent, Guerin had discovered that vital information had been withheld from the band at the time of the signing of the lease, and that its terms were grossly in favour of the Golf Club. The band sued the federal government for breach of trust and was awarded ten-million dollars in damages. This was overturned by the Federal Court of Appeal, and then overturned again by the Supreme Court of Canada in 1984. In his judgement, Chief Justice Dickson recognized First Nation title as a legal right, verifying the validity of pre-existing title (Tennant 1990:222). This was to have profound implications in BC. The *Guerin* decision¹⁴⁴ had established pre-existing title as a legal right that still had force on all First Nation lands, whether on or off reserve. The implication in BC was that First Nation groups could finally protect their interests as represented in their land claims vis-à-vis the Province. Three weeks after the *Guerin* decision, the Nuu'chah'nulth established a blockade on Meares Island (only a small portion of which was a reserve) preventing MacMillan Bloedel¹⁴⁵ from carrying out clear-cut logging that had been authorized by the Province. At the same time, several of the Chiefs involved in the blockade filed their land claims in court, and further, applied for an injunction to halt logging until their claims were settled. Although the injunction was at first rejected by the Supreme Court of BC, the BC Court of Appeal agreed to hear the appeal with a panel of five judges. The injunction was granted on a three-two split and, furthermore, all five judges affirmed the validity of First Nation claims in BC, asserting – not for the last time – that the Province should negotiate settlements with First Nations (Tennant 1990:224).

¹⁴⁴ *Guerin v. The Queen* (1984), 13 D.L.R. (4th) 321 (S.C.C.), henceforth referred to as *Guerin*.

¹⁴⁵ MacMillan Bloedel (or “MacBlo”) was a Vancouver based forestry company that had assumed control over many of the forestry tenures in BC. It was bought-out by the American forestry giant, Weyerhaeuser, in 1999.

In many respects the Meares Island injunction provided a turning point for the land question in BC. Not only did it allow other bands to attain similar injunctions, but industry / business began to have doubts about the Province's strategic denial of the land question. In six cases, the courts overrode the Province's attempt to ignore First Nation title, and granted injunctions to First Nation groups who were making Aboriginal title claims (see, Tennant 1990:225). In addition to the relative success that First Nation groups were achieving in regard to seeking injunctions from the courts to curb resource extraction in BC, the patriation of Canada's *Constitution* in 1982 had altered the contemporary legal-political context as regarded the recognition of First Nation rights in Canada. First Nation groups had developed an extensive lobby leading up to its patriation (Sanders 1985:151-89), one that resulted in the adoption of a limited package of reforms that included section 35(1) stating that "...existing First Nations and treaty rights... are hereby recognized and affirmed." This section formalized some commitment on the part of the Canadian government to acknowledge First Nation peoples and their claims, and although the impact in BC was by no means immediate, this was certainly one element among several that ultimately forced the provincial government to reconsider its policy of denial in 1989-90. With these amendments to the *Constitution*, and the promise of four First Ministers' Conferences to deal with the issue of self-government, it seemed that settlements across Canada could and would ensue. This was not to be. Instead, the four Conferences, held between 1983 and 1987, failed to resolve anything. Provincial leaders argued that the concept of self-government was too vague to enshrine in the *Constitution*. Ironically, only months later, the same leaders prepared to designate Quebec a *distinct* society, but Elijah Harper, a Cree member of the Manitoba

legislature, ultimately halted the passing of the Meech Lake Accord which had ignored First Nation peoples in its recognition of Quebec as both distinct and a founding nation.¹⁴⁶ Although the Conservative government of Brian Mulroney had been more receptive to First Nation peoples' concerns than previous federal governments, its final attempt to bring Quebec into Confederation, and limited recognition of First Nation sovereignty under the proposed 1992 Charlottown Accord, was met with distrust on the part of many First Nation peoples and, too, ultimately failed.

In BC, the 1980s saw the emergence of a number of further distinct developments. For one, in 1981, the provincial government agreed to re-examine the issue of lands cut-off from reserves under the McKenna-McBride Commission earlier in the century. Although the provincial government refused to acknowledge First Nation title in the reallocation of these lands, at least this one aspect of the land question was being addressed by the Province. The first settlement was reached in 1982, involving the Penticton Band, and included the return of several hundred acres and fourteen-million dollars in compensation (Tennant 1990:202). On another front, in 1986, the Sechelt Band was able to negotiate a form of limited self-government with the province and federal government. Called the *Sechelt Indian Band Self-Government Act*, this legislation recognized the Band Council as the governing body within a circumscribed area. Additionally, this legislation took precedence over most federal and provincial laws that had governed the Sechelt. However, this delegated form of authority – what has been called a municipal model of self-government – met with significant disapproval from a range of First Nation groups (see, McNeil 1996). In particular, what this agreement had done was to extend primarily administrative powers to the Sechelt, rather than anything

¹⁴⁶ The Meech Lake Accord was ultimately defeated in 1990.

that resembled substantive decision making powers or autonomy. Similar in scope to the powers delegated to a municipal city council, this settlement had sacrificed the principle of nationhood for which a large sector of the First Nations community in BC had been struggling. Indeed, this settlement did little to acknowledge the unique social, political, and historical circumstances of First Nation peoples in Canada, nor did it involve any form of land settlement (Comeau and Santin 1990:60). Rather, while satisfying many of the immediate needs of this community, the Sechelt agreement represented a lowering of the horizon towards which First Nation groups in BC had been struggling.

In 1988, after decades of political sparring, one political organization was formed as a coordinating forum to represent a majority of First Nations in BC.¹⁴⁷ The First Nations Congress was a provincial organization, led by the late Chief Joe Mathias, which had as its highest priority the mandate to press for land claims negotiations. This, combined with the continued granting of injunctions on the part of the courts, led the provincial premier to establish a Native Affairs Advisory Council (NAAC) in 1989. By late in this year, the Council had visited some half-dozen First Nation communities, and in all cases had been met by repeated demands for negotiations. With seeming public support, and a provincial election looming, the right-of-centre Social Credit government, under Premier Vander Zalm, began to reconsider the prospect of carrying-out negotiations with First Nations.

¹⁴⁷ Tennant (1990:211) points out that the term First Nation was still uncommon at this time in BC, and could mean "tribal group" or "band". Indeed, it was decided by the organizers of this Congress that membership would be limited to groups who designated themselves as "First Nations," but this term was never clearly defined.

And yet, the courts had not been making it easy for First Nation groups to pursue the land question. In 1980, in a Northwest Territories case known as *Baker Lake*,¹⁴⁸ Justice Mahoney had ruled that proof of a respective First Nation group's membership in an organized society was a pre-requisite to the existence of First Nation title. This was outlined as a four part test that stipulated that First Nation groups would have to prove: (1) that they and their ancestors were members of an *organized* society; (2) that they occupied the specific territory over which they are asserting their title; (3) that this occupation was to the exclusion of other organized societies; and (4) that the occupation was an established fact at the time sovereignty was asserted by England (Opekokew 1987:30). This test was further developed in an Ontario case in 1985 known as *Bear Island*.¹⁴⁹ In this case, it was stipulated that proof of the nature of First Nation rights and land-holding be required and, furthermore, that "exclusive occupation" be evident to the date of the commencement of the court action (Culhane 1998:99).

Finally, in *Sparrow* (1990), the Supreme Court of Canada, while not explicitly adding to this test, gave it a contemporary interpretation. Among other things, this ruling, reached under Chief Justice Brian Dickson, recognized common law First Nation title as a right under section 35(1) of the *Constitution* and, moreover, called for a "generous, liberal and purposive interpretation of s. 35(1)" (in Culhane 1998:102). This was the first case which was to deal explicitly with the so-called *empty box*¹⁵⁰ that had been created by the *Constitution*, and it set several important precedents. First, it confirmed that First

¹⁴⁸ *Hamlet of Baker Lake et al v. Minister of Indian Affairs and Northern development et al* [1980] 5 WWR 193, 50 CCC (2d) 377 (FCTD).

¹⁴⁹ *Attorney General of Ontario v. Bear Island Foundation* [1985] 49 O.R. (2d) 353, 15 D.L.R. (4th) 321 (Ont. H.C.).

¹⁵⁰ Reference to an *empty box* acknowledged the recognition that the *Constitution* had provided, without defining the specific rights that this recognition entailed (see, Culhane 1998).

Nation rights could not be extinguished through federal or provincial laws, but only regulated. Second, it also confirmed that the federal government had a responsibility to carry out its trust relationship with First Nation peoples in a generous and honourable manner. And finally, it established that the burden of proof in justifying an infringement of these rights rested with the Crown (Fleras and Elliott 1992:30-1). While this case had represented a clear victory for First Nation groups, it did little to further the land question in BC. Unless explicit, rather than implicit, extinguishment of title was established as a requirement, or, provincial / colonial powers were to be deemed incapable of affecting extinguishment under any circumstances, section 35 would have little direct effect on the outcome of the land question.

In the same year that the *Sparrow* case had begun, 1984, the Gitxsan¹⁵¹ and Wet'suwet'en had filed their statement of claim with the Supreme Court of BC. However, not until 1987 did their trial begin in what was to become the longest First Nation title case in Canadian history – involving 374 days in court, and 141 days taking evidence out of court. In this case, *Delgamuukw*, forty-three Gitxsan and Wet'suwet'en Chiefs claimed title to some fifty-four-thousand square kilometres of Crown land in north-western BC. It was anticipated that this case, which spanned four years, would provide a turning-point for land claim settlements in this province. So much so that just one day before the decision was to be handed down, on March 7, 1991, the Nisga'a, along with the federal and provincial governments, announced that they had reached a tripartite agreement with respect to the negotiation of their claim (Culhane 1998:29). In contrast with this, on March 8, Chief Justice McEachern ruled that:

¹⁵¹ I use the contemporary spelling of "Gitxsan". Different spellings appear in some excerpts.

[P]re-Confederation colonial enactments construed in their historical setting exhibit a clear and plain intention to extinguish First Nations interests in order to give unburdened title to settlers, and the Crown did extinguish such rights to all the lands of the colony. The plaintiffs' claims for First Nations rights are accordingly dismissed (Reasons for Judgement 1991:ix).

So shocking was this ruling that one person involved in the case likened it to a sniper hiding on a roof (see, Pinder 1991). That such a ruling could emerge at the same time that the government was formalizing its commitment to enter into treaty negotiations is illustrative of the divergent paradigms that comprised this policy field beginning in the 1990s. That these two extremes existed was hardly surprising, but that they were being articulated concurrently by what are perhaps the two most influential institutions in BC is not without significance. This moment perhaps best embodies the reconfiguration that had begun to take place in the 1990s with respect to the BC land question – a reconfiguration that unequivocally embodied the dialectic of validation and constraint.

CHAPTER 4 – THE CONTEMPORARY PERIOD

4.1 - Introduction

The provincial government's denial of the BC land question had become both legally and, increasingly, politically untenable; the challenge was that of identifying an alternative that would not turn out even worse for the government. The Province would have to define a process that was distinctly *not* legal, but that would enable it to advance its objectives as an alternative to litigation. The answer was found in a process of negotiations – defined as “political”, “voluntary”, and “open to all First Nations” – designed with the ostensible support of “the Indians of British Columbia.”¹⁵² The emergence of the treaty process was precipitated by the recommendations of the Native Affairs Advisory Council (NAAC) that had been established by Premier Vander Zalm in 1989. Reporting initially in August 1990, the NAAC recommended BC join Canada in negotiations with the Nisga'a¹⁵³ and that it begin negotiations with First Nations more generally. Vander Zalm, in turn, established the BC Claims Task Force, jointly with the federal government and three First Nation representatives. The Task Force set out to establish the details of how negotiations were to be conducted. Reporting in June 1991, the Task Force made nineteen recommendations, all of which were ostensibly supported by each of the parties.¹⁵⁴ As part of its recommendations, it also set out a six stage process for negotiations.¹⁵⁵ However, in as much as these stages have often been recited

¹⁵² These are all references taken from the BC Claims Task Force Report, the basis of the treaty process, issued on June 24, 1991.

¹⁵³ BC had been an observer of these bilateral negotiations since their inception in the mid-1970s.

¹⁵⁴ A Government of Canada document entitled *Building a New Relationship with First Nations in BC: Canada's Response to the Report of the BC Claims Task Force* (1991) indicates that Canada “accepts all 19 of its recommendations...”, but it is worth noting that Canada did not formally ratify its position in this regard until 1995.

¹⁵⁵ An outline of the six stages appears in Appendix 7.

as a basis for describing the contemporary treaty process, they do not in and of themselves tell us very much about the context that led to the establishment of this process.

On July 10, 1990, one month prior to the BC government's public announcement about claims negotiations in BC, a New Democratic Party (NDP) opposition member was addressing the Legislature in a debate about Aboriginal issues with the Social Credit government of the day. With only one exception, the Social Credit party had formed back-to-back governments in BC since 1956. Since 1972-1975, however, when the NDP held office for one term, these two parties had battled each other in successive elections.¹⁵⁶ In 1990, NDP MPP Gordon Hanson used the prevailing attention that First Nation issues were receiving on the national stage, due in part to the defeated Meech Lake Accord¹⁵⁷ (and emerging Oka Crisis¹⁵⁸), to goad the waning Social Credit government on issues that it had difficulty addressing within its own platform:

... [Elijah Harper] has been a focus and a lightning-rod of attention on the status of Aboriginal people in this country and their relationship with the broader society and its governments... Within British Columbia, where there are no treaties, no compensation and no extinguishment of title, we know what the social consequences have been as a result of the colonial subjugation of the Aboriginal people of British Columbia... We know there's work to be done. But the policy of the New Democratic Party is to recognize Aboriginal title, to recognize that it has not been extinguished, that British common law and the case law of Canada over and over indicate that Aboriginal title has not been extinguished and that Aboriginal people have an inherent right to self-government. We believe that the province has a role to play at the bargaining table.¹⁵⁹

¹⁵⁶ The margin of victory between the Social Credit party and NDP had never been greater than ten percent in provincial elections since 1975, and was often much narrower.

¹⁵⁷ The Meech Lake Accord refers to a set of failed *Constitutional* amendments negotiated between a Conservative federal government and the provincial Premiers during the period 1987-90.

¹⁵⁸ The mayor of Oka, Jean Ouellette, announced in 1989 that an area of land would be cleared to expand a members-only golf club. Sixty luxury condominiums were also planned to be built in this area. However, none of these plans were made in consultation with the Mohawks. On July 11, 1990, the mayor asked the Sûreté du Québec (SQ) to intervene.

¹⁵⁹ Gordon Hanson (NDP), Hansard, Official Report of the Debates of the [BC] Legislative Assembly, July 10, 1990, Morning Sitting.

By recognizing Aboriginal title and asserting a role for the provincial government in negotiations, the NDP was not only expressing a wider sentiment that was emerging in some segments of the province, but it was describing its position in contrast to that of the sitting government.

The lynchpin in this context was the trial that was going on in the Supreme Court of BC where the Gitksan and Wet'suwet'en were attempting to establish ownership and jurisdiction over their territory in north-central BC in the case known as *Delgamuukw*. It was widely expected that the Gitksan and Wet'suwet'en would succeed in advancing their claim in significant respects, but the Social Credit government was opposed to some elements of their case and Jack Weisgerber, then Minister of Native Affairs, used this in an effort to challenge the NDP position:

*At the recent, and longstanding, Supreme Court trial, Chief Delgam Uukw stated that the cost of settling the Gitksan Wet'suwet'en land claim - which covers an area the size of New Brunswick and contains about 15,000 people, both Indian and non-Indian - would bankrupt the governments of British Columbia and Canada. It's important, therefore, that we understand a couple of things, and this goes back to my earlier remarks to the first member for Victoria. What does Aboriginal title mean? When you recognize Aboriginal title, what are you recognizing? What are you asking the people of British Columbia to accept? You're saying that if you, the NDP, were government, you would recognize Aboriginal title. I say to you that you don't know what Aboriginal title means, because you don't have a definition of it...*¹⁶⁰

The form and content of Aboriginal rights is an issue that has often been used to challenge First Nation assertions of those rights since their recognition was first affirmed within the *Constitution* in 1982. The need to define such rights has been the subject of competing visions and the hallmark of litigation ever since. Differences in their

¹⁶⁰ Jack Weisgerber (Social Credit), Hansard, Official Report of the Debates of the [BC] Legislative Assembly, July 10, 1990, Morning Sitting.

perspectives are demonstrated by the words of Mr. Davis, another Social Credit government member later in the same exchange:

I think the NDP, if it gets right back to basic philosophy, are all crossed up on this one. ... The native population of this province is less than 3 percent. Do they really believe, really think, that a very large part of this province can be turned over to 3 percent of the population? ... Let's be logical about this. Let's have a bottom line. Let's know what we're talking about. ... I know that outside the lower mainland area there are many people who feel this whole question is out of hand. They just don't know what they can invest in next or what they can do next, because almost anything they are inclined to do may involve some land or the development of a resource. There's a cloud over land and a cloud over the development of resources because of the native land claims issue. It is an issue, and we have to deal with it. But I think we have to deal with it in proportion to not only acres and dollars but also the population of other Canadians, all of whom have the same rights as our native people must have.¹⁶¹

As this excerpt suggests, the quest for a “bottom line” is often a veiled call for the imposition of constraints on the potential meaning of Aboriginal rights and title. That is, if Aboriginal rights are not fully defined and articulated, critics have argued, the potential is that they could be all encompassing – thereby introducing an element of fear into the potential that Aboriginal rights and title might embody. In a social context, this desire for constraint is expressed in calls for *equality*;¹⁶² in the politicized context of the BC land question, it is expressed as a need for *certainty*.

The concept of certainty operates to obscure more than it reveals about First Nation claims, but it is telling as a policy objective. On the one hand, it represents a shared desire to set out the legal and jurisdictional responsibilities of federal, provincial and First Nation governments. On the other hand, it represents a government interest in *releasing* – or *extinguishing* – all Aboriginal rights and title not accounted for in a treaty.

¹⁶¹ Mr. Davis (Social Credit), Hansard, Official Report of the Debates of the [BC] Legislative Assembly, July 10, 1990, Morning Sitting

¹⁶² Calls for equality were and continue to represent a powerful tool that is used by right-of-centre groups to oppose the recognition of special rights for First Nation groups and other visible, cultural and/or ethnic minorities. See, also, Chapter Two where this concept is explored in relation to my interview with Elmer.

For the most part, however, the concept of certainty has been used in an economic context to express an industry-based desire for unencumbered access to land and resources in BC – a concept that had become increasingly prominent in the post-Thatcher¹⁶³ era of the neo-liberal state. Because of the close link between resource exploitation and provincial revenues, the provincial government became a strong advocate for certainty as it related to treaty negotiations in BC. While certainty is not itself a concept that First Nations reject, its close association with the concept of extinguishment continues to make it problematic. Framed as a policy objective, however, certainty is a fiction. The desire for certainty in any context – legal, political, economic – is an impossibility. That is why we have judges, politicians, and a marketplace. To introduce certainty as a policy objective that must necessarily be met in the finalization of treaties establishes a threshold that is both undesirable and unachievable.

4.2 – The Emergence of the BC Treaty Process

The policy shift that occurred in the early 1990s, while informed by a range of circumstances, did not take place without a very clear reckoning on the part of the provincial government. While the BC government had come under increasing pressure to reverse its policy of denial as it related to First Nation claims, it would not have joined the federal government in negotiations with the Nisga'a in 1989, nor would it have agreed to negotiate treaties more generally, had it not been for a significant reason to do so. In short, the uncertainties associated with not settling land claims had finally outstripped the political expediency of denying that they had ever existed. Whatever else

¹⁶³ This period is characterized by the election of Margaret Thatcher in the United Kingdom in 1979. This is discussed further in a later footnote.

was happening in the province, however, BC would never have come to the table had it not identified a legal obligation to do so.¹⁶⁴ Having recognized this obligation, the BC government was faced with managing the consequences of engagement. From a policy standpoint, the issue was one of managing risk. The patriation of the *Constitution* in 1982 had formalized the validation of First Nation rights and title that had been foreshadowed by *Calder* in 1973, and this had spurred some First Nation groups to advance their interests through political means and in the courts. As has already been described, the relative success of First Nations in garnering political attention (if not results) through the 1980s, was coupled with incremental advancements in the courts culminating in the Supreme Court of Canada's *Sparrow* decision in 1990.

Although the writing had been on the wall, and this was reflected in the early moves of the Vander Zalm government in the late 1980s that signaled a need to revisit the policy of denial, this long-standing policy position was not about to be overturned without significant provincial hedging. Indeed, the provincial government of the day sought to define a policy response that not only removed the land question from the purview of the courts, but that retained a significant measure of control for the Province. Coupled with this, particularly since the White Paper fiasco, both the federal and provincial governments had been seeking ways to *get out of the business* of Indian administration (see, Weaver 1981). After all, the basic tenets of self-government were not inconsistent with the general objectives of a neo-liberal state (e.g., autonomy, self-sufficiency, etc.). The result was to be the BC treaty process – a process that would have the uncharacteristic endorsement of both a socially conservative government such as that

¹⁶⁴ This would have included a litigation risk assessment based on the legal consequences of failing to do so.

of Vander Zalm's, as well as the more socially progressive NDP government of Mike Harcourt that would follow.¹⁶⁵

That the election of a new provincial government in 1991 did not lead to an overhaul of a process that was borne of a government with policy objectives that were in ostensible conflict with those of the NPD is indicative of at least two possibilities: that the process was so *good* that it transcended political partisanship; or that the imperative of retaining control over this policy field was so great that it overrode the new government's desire to distinguish itself from its predecessor. The government's ability to retain control over the definition of this particular policy field remains one of the most enduring factors to characterize Indigenous-state relations writ large. Even after fifteen years of treaty negotiations, the virtual absence of alternative discourses about the land question signals – not without some irony – the relative success of the treaty process as a policy whose objective included retaining control over the definition of the land question. From the standpoint of governments for whom Aboriginal issues can represent an unwelcome and even risky policy field (Abele et al. 2005:99), the treaty process has been an unprecedented success to the extent that it has circumscribed the land question in terms that remain largely under the control of federal and provincial policy makers. It is not an uncommon refrain to hear First Nation leaders speak about “growing old” at the negotiation table.¹⁶⁶ While it is their intention to reflect the frustration of being engaged in long, drawn-out government processes that appear never to come to an end, it also affirms the *success* that governments have had in trotting out a seemingly endless

¹⁶⁵ Of course, it should not be lost that the treaty process was ultimately also supported under the provincial Liberal regime that followed two successive NDP governments (i.e., 2001-present).

¹⁶⁶ For example, Joseph Gosnell, past president of the Nisga'a Tribal Council, was quoted as saying this in his speech to the BC Legislature (December 2, 1998).

“succession”¹⁶⁷ of programs and initiatives to ensure that First Nation leaders are sufficiently preoccupied with the government’s agenda, rather than pursuing their own.¹⁶⁸ After 15 years of the treaty process, one would be hard pressed to suggest that it represented anything different.¹⁶⁹

4.2.1 – The Task Force Recommendations

The terms of reference for the BC Claims Task Force, the substantive elements of which are reproduced in verbatim below, set out the following responsibilities with respect to its mandate:

- The task force shall define the scope of negotiations, the organization and process of negotiations including the time frames for negotiations; the need for and value of interim measures and public education.
- The task force may consult with individuals and groups that can provide information and advice required for the preparation of this report.
- The costs of the task force will be shared equally by the three parties, being the two governments and the BC. Indians.
- The task force shall complete its work within six months of being appointed.
- Upon receipt of the report of the task force, the parties will forthwith take such steps as are necessary to seek approval of its contents.¹⁷⁰

Limited as they were, the nineteen recommendations that ensued as the substance of the Task Force Report garnered support from each of the parties that was involved. The recommendations themselves can be characterized as focusing on five elements, namely,

¹⁶⁷ See, Abele et al. (2005).

¹⁶⁸ It is worth noting that intended focus of this comment is on the unspoken policy imperatives of governments rather than a critique of First Nation leaders. The position of First Nation leaders in this regard is a more complex one that is not adequately accounted for in a superficial critique (see, e.g., Dyck 1991, especially pp. 119-138).

¹⁶⁹ See, also, my interview with Karl (Chapter Two).

¹⁷⁰ Task Force Report (1991), p. 26.

defining a new relationship, establishing a treaty commission, structuring a process, funding, and public education.¹⁷¹ In addition to the recommendations themselves, the Report established a broad context for their interpretation, including an unprecedented “Historical Background” section focusing on the period beginning just before contact with Europeans and culminating in the establishment of the Task Force itself. This symbolically potent characterization speaks not only to the high expectations that the Task Force members had with respect to the process that they were setting out but, implicitly, signaled the end of *history*, something that was particularly apparent in my interview with Quentin.¹⁷² Simply put, this characterization of the treaty process established an absolute break between historical government policies (e.g., of denial) and those that were embodied in the Task Force Report (e.g., recognition). The symbolism of this break is emblematic of perceptions at the time, and has had a profound role in shaping the discursive context of this policy field.

In examining the nineteen Task Force recommendations, however, one finds the objectives to be quite modest. Indeed, with the exception of the first two recommendations, their focus is almost entirely administrative. Recommendations one and two represent the conceptual foundation of this process and encompass nine pages of the Report, while the balance of the recommendations only take up another thirteen pages of text.¹⁷³ Clearly, the Task Force members set out recommendations one and two as a foundation for the process. Recommendation one reads as follows:

1. The First Nations, Canada, and British Columbia establish a new relationship based on mutual trust, respect, and understanding—through political negotiations.

¹⁷¹ The nineteen recommendations are reproduced in Appendix 6.

¹⁷² See Chapter Two.

¹⁷³ The Task Force Report is a total of twenty-nine pages cover to cover, twenty-two of which relate to the recommendations.

This recommendation was the embodiment of the symbolic shift that occurred in the early 1990s. Not only did it establish political negotiations as a new benchmark in BC – in contrast with political invisibility – but, more profoundly, it signaled the reversal of the historical experience of First Nations as set out in the “Historical Background”.¹⁷⁴ The objectives of the drafters no doubt reflected a desire to address matters of contention – including a legacy of mistrust and misunderstanding – but it is how this recommendation was interpreted by governments that led to a fundamental disjuncture for First Nations. In essence, governments have used reference to “political” negotiations as a means of rejecting the inclusion of a First Nation’s legal status as a basis for negotiations (e.g., constitutionally). Ed John, one of the First Nation’s drafters of the Report, subsequently complained about governments’ unwillingness to engage in negotiations based on a recognition of a respective First Nation’s Aboriginal rights:

*...they tell us to leave our Aboriginal rights at the door when we come to the negotiating table, but they insist on asserting their Crown sovereignty when they’re sitting at the table.*¹⁷⁵

This comment points to the double-standard that continually reproduced itself in the context of negotiations; First Nations were to come to the table bereft of any rights or recognition, while governments were at liberty to assert the very powers that ought to have been the subject of negotiations. This not only represented a very literal interpretation of the first recommendation – one suggesting that “political” negotiations

¹⁷⁴ This recommendation is found at the end of the introduction that contains the section entitled “Historical Background.”

¹⁷⁵ Ed John, speaking at the UBC Political Science Students’ Association conference entitled “The Aboriginal Land Question: Building New Partnerships through Modern-day Treaty Negotiations,” March 4, 2000.

represented a mutually exclusive category that operated to the exclusion of other considerations – but was also in conflict with the actual direction of the Task Force:

First Nations have been forceful in their demands for the peaceful political resolution of the land question. The public and the courts have made it clear that the matters in contention are properly resolved politically, not by confrontation or violence, and not by resorting to the legal process. Whatever the issues may be, it is crystal clear that any new relationship must be achieved through voluntary negotiations, fairly conducted, in which the First Nations, Canada, and British Columbia are equal participants.¹⁷⁶

Rather than establish a process that recognized the rights of First Nations alongside those of governments, Canada and BC sought to constrain the meaning that First Nation rights would have by defining them as the *subject* of negotiations, rather than as the basis for their starting point. The meaning of political negotiations had been co-opted by governments to limit rather than expand the content of negotiations. This strict interpretation casts political negotiations as a category that is at odds with legal or other means of reaching a resolution. Symbolically, this characterization effaced the Aboriginal rights and title recognized in the legal sphere, and superimposed a benevolent construction of government as the rationale for negotiations in the first place.¹⁷⁷ Not only did this fit particularly well within popular characterizations of Canada as a nation-state that is well-intentioned and benevolent,¹⁷⁸ this “denuding”¹⁷⁹ of Aboriginal rights and title positioned these negotiations within existing government mandates, rather than as an aspect of the larger political, economic, and legal context. Hence, while the policy context of the treaty process was one that symbolically purported to validate (rather than

¹⁷⁶ BC Claims Task Force Report (1991), page 8.

¹⁷⁷ This is consistent with the paternalism that characterizes First Nation – government relations generally.

¹⁷⁸ One of my respondents, Karl, characterized this as the most despicable aspect of the treaty process (see Chapter Two).

¹⁷⁹ This concept was used by the Supreme Court of Canada in its decision in *Haida Nation v. British Columbia* (2004) to describe the impact of proceeding with development unabated until such time that Aboriginal title is proved in a respective area.

deny) First Nation claims, it did so by circumscribing the meaning and content that such claims would have in a final settlement.

This hollow recognition of Aboriginal rights and title permeated all aspects of the treaty process and had a direct bearing on the implementation of the second substantive recommendation of the Task Force:

2. Each of the parties be at liberty to introduce any issue at the negotiation table which it views as significant to the new relationship.

The unequal status of the parties institutionalized in the particular interpretation of the first recommendation affected the standing of the parties with respect to the introduction of issues at the treaty table outlined in the second recommendation. From the outset of negotiations, governments identified issues and established parameters without consulting First Nations. For example, in May 1995 the provincial NDP government issued a press release asserting that:

- The existing tax exemption for Aboriginal people will be phased out;
- ...the total area of land held by First Nations will be proportional to their population;
- The province will maintain parks and protected areas for the use and benefit of all British Columbians;
- All terms and conditions of provincial leases and licences will be met; and
- The Criminal Code will apply equally to all British Columbians.¹⁸⁰

The unilateral assertion of these conditions led the First Nations Summit and other First Nation organizations to cry foul.¹⁸¹ Not only were some of these issues very contentious for First Nations, but the act of laying them out publicly with no due regard to their differing interests suggested that the provincial government was more interested in

¹⁸⁰ Ministry of Aboriginal Affairs (Province of British Columbia), May 26, 2005.

¹⁸¹ Personal interview with David, February 13, 1998.

placating the public and industry than working out issues with First Nations themselves.¹⁸² Moreover, the provincial government had gone on record asserting that “private property is not on the table,”¹⁸³ thereby unilaterally limiting the scope of issues that First Nations could presumably raise for negotiation.

At the same time, First Nations were not able to prescribe the same kinds of limits, nor were they at liberty to introduce any issue. Aboriginal rights and title had been recognized in the *Constitution* in 1982 and, yet, this was an issue barred from negotiations. Similarly, compensation based on past and present infringements, discussions of interim measures in the early stages of negotiation, and land protection measures where there were shortages of Crown land were all rejected despite First Nation petitions to the contrary.¹⁸⁴ Perhaps the most significant issue relating to the governments’ unwillingness to heed a full range of First Nation interests related to the consideration of alternatives to extinguishment, often referenced by way of the term “release” in the modern-day context.

In a statement that was framed with the intent of providing “guidance” (p. 9), the Task Force Report addressed the certainty / extinguishment dilemma head-on:

In the past, blanket extinguishment of First Nations’ rights, title, and privileges was used to achieve certainty. The task force rejects that approach. Section 35 of the Constitution Act, 1982 gives express recognition and affirmation to Aboriginal and treaty rights. First Nations should not be required to abandon fundamental constitutional rights simply to achieve certainty for others. Certainty can be achieved without extinguishment. The parties must strive to achieve certainty through treaties which state precisely each party’s rights, duties, and jurisdiction. The negotiations will inevitably alter rights and jurisdictions. Those

¹⁸² This was a concern expressed in several of my personal interviews with representatives of First Nation organizations.

¹⁸³ Treaty Update, Ministry of Aboriginal Affairs (undated).

¹⁸⁴ See, for example, Assembly of First Nations resolution #18/2002 entitled “Treaty Negotiation Positions of Canada and British Columbia in the British Columbia Treaty Process.”

Aboriginal rights not specifically dealt with in a treaty should not be considered extinguished or impaired.¹⁸⁵

Nevertheless, contemporary treaties that have emerged from this process contain blanket extinguishment provisions reframed euphemistically in the form of release provisions.

For example, the Nisga'a Final Agreement (2000)¹⁸⁶ reads:

RELEASE

26. If, despite this Agreement and the settlement legislation, the Nisga'a Nation has an aboriginal right, including aboriginal title, in Canada, that is other than, or different in attributes or geographical extent from, the Nisga'a section 35 rights as set out in this Agreement, the Nisga'a Nation releases that aboriginal right to Canada to the extent that the aboriginal right is other than, or different in attributes or geographical extent from, the Nisga'a section 35 rights as set out in this Agreement.

27. The Nisga'a Nation releases Canada, British Columbia and all other persons from all claims, demands, actions, or proceedings, of whatever kind, and whether known or unknown, that the Nisga'a Nation ever had, now has or may have in the future, relating to or arising from any act, or omission, before the effective date that may have affected or infringed any aboriginal rights, including aboriginal title, in Canada of the Nisga'a Nation.

Although the words used to describe extinguishment have changed, the meaning remains quite clear. The following excerpt by Hurley (1999), relating to the Nisga'a Final Agreement is instructive:

The highly problematic "extinguishment" language of cession and surrender used in previous land claim agreements was not reiterated in the Final Agreement. According to some, essentially the same result flows from the "modified rights" approach in Chapter 2 general provisions referred to above dealing with exhaustive definition of section 35 rights and "release." This issue remains a pressing one for First Nations for which extinguishment or its equivalent ought not to be a pre-condition for treaty conclusion. The opposing view holds that the language is necessary because treaties must produce certainty and ensure finality.

In this respect, it should be noted that reports to the federal government have addressed the extinguishment issue. In 1995, both the federal fact finder

¹⁸⁵ BC Claims Task Force Report (1991), page 11.

¹⁸⁶ While still relevant, the Nisga'a Final Agreement did not formally emerge as a part of the treaty process.

mandated to explore alternative treaty models and the Royal Commission on Aboriginal Peoples suggested that certainty might be achieved without extinguishment, with the latter recommending that the policy be abandoned in favour of one viewing modern treaties as instruments of co-existence. The then Minister of Indian Affairs said that he would use these reports and other proposals in giving further consideration to the extinguishment issue. In April 1999, the United Nations Human Rights Committee recommended to the federal government “that the practice of extinguishing inherent Aboriginal rights be abandoned as incompatible with article 1 of the [International Covenant on Civil and Political Rights].” To date, no comprehensive new policy has been released, leaving a contentious issue for Aboriginal groups unresolved.¹⁸⁷

This release feature continues to operate as the basis of treaties being negotiated in BC and has only become more robust in the most recent settlements. While the First Nations Summit has attempted to seek support from governments on alternative models – ones that would likely have the same on-the-ground result, but without implicit or explicit extinguishment – none has been willing to engage on this basis.¹⁸⁸ While it was incumbent upon all parties, regardless of how distasteful to First Nations, to consider such provisions based on the commitment expressed in recommendation two, the same has not held true for First Nations attempting to advance issues of their own.

Apart from what the recommendations say, however, the Task Force Report was also significant for what it failed to say. Paramount in this respect was the absence of timelines with respect to negotiations. Given the extensive administrative orientation of the Task Force recommendations, this omission was glaring and had profound consequences; ones that disproportionately affected First Nations rather than the provincial or federal governments. Among the single greatest challenges faced by many First Nations was the potential non-resolution of a protracted negotiation. Negotiations have the potential to go on for decades and all the while a respective First Nation is

¹⁸⁷ See, Hurley (1999) (online).

¹⁸⁸ For example, the First Nations Summit has advanced a model based on the *non-assertion* of Aboriginal rights. Other discussions are ongoing within the context of a Common Table.

accruing a debt. This was the figurative *gun to the head* that many First Nations experienced as they found governments unwilling to move beyond particular policy mandates.¹⁸⁹ Although First Nations receive twenty percent of their treaty process funding in the form of a grant, eighty percent comes by way of a loan that must be paid back once a treaty is settled or negotiations fail. Treaty funding has come to represent a significant source of revenue and employment in many First Nation communities. As a result, many First Nations have accrued a debt of several millions of dollars that, upon reaching the latter stages of negotiations, has made it functionally difficult to walk away from a negotiation (if, for example, the substance of a settlement is considered unacceptable).¹⁹⁰ This is a situation that has worked against the interests of First Nations, while at the same time bolstering governments' ability to force a settlement.¹⁹¹

This situation was amplified by two further factors. First, in some cases, due to the small size of some First Nations and the corresponding per capita ceiling on settlements that many allege guide the value of treaty settlements,¹⁹² the loans accrued during negotiations have the potential to outstrip the value of a respective settlement. That is, the actual cash value of a settlement may be lower than the cost of having negotiated it. Second, some concerns were raised about the ability of federal / provincial officials to apply fiscal pressure on some First Nations in order to garner settlements,

¹⁸⁹ This is a controversial issue for First Nations and, while there are many different perspectives on how debts could be handled, none of the First Nation representatives that I interviewed were able to respond definitively to this issue. For example, one respondent suggested that it would simply be "a political nightmare for the governments to start recalling those loans" (Oona, October 8, 1998). Another respondent indicated that if a treaty were not reached, that the First Nation would "walk away from the loan bar none" (Harold, September 24, 1998).

¹⁹⁰ Personal interview with Oona, October 8, 1998.

¹⁹¹ In July of 2008, a delegation of BC leaders successfully moved a resolution at the Annual General Assembly of the Assembly of First Nations calling on the federal and provincial governments to forgive the debt of First Nations in the treaty process that had accrued to over \$400 million.

¹⁹² This is a commonly held view among First Nations and is tacitly acknowledged by government officials. See, for example, transcripts from the conference "Treaty Negotiations: What Works, What Doesn't – A Negotiators' Dialogue" (November 22, 2002), conference transcript pp. 25-52.

even though the BCTC was established, in part, to safeguard against this.¹⁹³ Loan funding is provided to First Nations on an annual basis and it is possible that the funding levels could be influenced behind the scenes. In this way, governments have in some cases been able to manipulate funding to influence outcomes in negotiations.¹⁹⁴ Both of these factors would have had the potential to seriously distort the negotiating position of First Nations engaged in this process.

There were other critical gaps in the recommendations, two of which related to the failure to define both the terms *First Nation* and *treaty* as a part of issuing this report. What appears, at first, to be a generous interpretation of what constitutes a First Nation, ultimately, has had a significant impact on the shape and content of the process. The term First Nation is not formally defined in a definitions section of the Task Force Report. Rather, the Report makes only the following oblique reference to its meaning: “The term ‘First Nation’ may refer to an organization of Aboriginal people under the traditional government, the tribal council, the band or some combination of these systems” (p. 19). The failure to provide concrete parameters for the definition of a First Nation lowers the bar of what can be achieved as a part of this process. From a policy standpoint, the issue is akin to the assertion that everyone is *equal* as a basis for denying valid differences. While the number of claims accepted for negotiation at the front end is greater as a result of the minimal definition, the potential outcomes at the back end of the process are correspondingly more limited.

This was effectively a trade off of historical reality for political expediency. Rather than engaging First Nations on the basis that they were *nations* with Aboriginal

¹⁹³ Personal interview with Diego, January 13, 1998.

¹⁹⁴ Confidential correspondence.

rights, this minimal definition made it far easier for governments to conceive of these negotiations as involving bands, communities or some other more limited entity than would otherwise be suggested by the term *treaty*. Bands are, of course, an important dynamic in how negotiations might be conceptualized,¹⁹⁵ but what this in many cases failed to encompass was the full meaning of nationhood that finds its basis historically in the numbered treaties, as well as in an international context. From a policy standpoint, the implications of this conceptualization were immense.¹⁹⁶ To fully appreciate the implications of this omission one must look to the corresponding failure to define the meaning of the term *treaty*.

4.2.2 - Treaties

Although references to treaties are made throughout this process, internationally, treaties have been defined as agreements between states or international entities (see, Schulte-Tenckhoff 1998). However, by having set the entrance requirements for this process very low (i.e., vis-à-vis the minimal definition of a First Nation), the government effectively ensured that the meaning of a treaty in this context would not correspond to its international definition. The consequences of these minimized definitions were highlighted in a unique and yet symptomatic claim made by a single First Nation individual who purported to constitute a First Nation under the parameters of the BC treaty process.¹⁹⁷ While it is not my intention to either deny or validate the legitimacy of such a claim, the overriding point is that such a process is at odds with the historical

¹⁹⁵ A band is, in effect, an administrative unit created as a part of the *Indian Act* that correlates most closely with a conception of a modern-day First Nation community.

¹⁹⁶ For example, this failing enabled the passing of the Nisga'a treaty despite the protestations of the Gitanyow (see, Sterritt et al. 1998).

¹⁹⁷ "Native Indian Chief: One-person band has big plans," *Vancouver Sun*, October 4, 1995: A1.

validity of most claims when the policy guiding the process is so vague as to fail to distinguish individuals from collectivities or, indeed, nations.

For the most part, policy discussions focused on treaties have been conceived with little reference to the histories that underscore the need for a resolution in the first place or the aspirations that a particular First Nation would be advancing. Indeed, governments have been engaged in the treaty process based on fixed mandates that have never been made public (McKee 1996). Correspondingly, the negotiation and interpretation of treaties has been governed by what Schulte-Tenckhoff (1998) refers to as a “paradigm of domestication.” This paradigm is grounded in *ex post facto* reasoning that projects into the past the current configuration of relations and the pre-eminence of the state system, thereby failing to address the colonial nature of the state in former European settler colonies (Schulte-Tenckhoff 1998:243). The problem with this, argues Schulte-Tenckhoff, is that primitivist assumptions about First Nation cultures in jurisprudence fail to place indigenous treaty discourses on an equal footing with those of the state (1998:244). In her critique of Chief Justice Allan McEachern’s 1991 ruling in *Delgamuukw*, Culhane (1998) explores the interconnections of law, history, culture, and power as a basis for answering the question: how did the Crown acquire its rights to the land? In so doing, she describes the relationship between colonizer and colonized as a “hierarchical set of binary oppositions in which one member of the pair is always symbolically superior to the other” (Culhane 1998:81).¹⁹⁸ In historical terms this manifests in a perception that treaties are about “provisions” rather than the regulation of

¹⁹⁸ On this basis, Culhane provides a tongue-in-cheek characterization of the more “evolved” status of Euro-Canadian property law (as compared to that of First Nations) in its sanctioning of “individually owning land, building fences around it and kicking your family off it, and burning down your house on a whim” (1998:81).

relations between nations, with the consequence that disputes over treaties are defined as disputes over the interpretation of terms rather than their objectives vis-à-vis a relationship (Schulte-Tenckhoff 1998:243-4). In the contemporary context this establishes modern-day treaty negotiations as a mechanism to incorporate First Nation interests into existing state structures (to the extent that they can be accommodated), rather than an affirmation of First Nation peoples' rights and title independent of these structures (see, Borrows 1999; Venne 1999; Schulte-Tenckhoff 1998; Asch and Zlotkin 1997; Légare 1995).

Schulte-Tenckhoff (1998) makes a further observation that is significant in relation to the political nature of treaty making in Canada. She draws a distinction between state practice and the doctrine of international law that would conceivably apply to the making of treaties between nations. In so doing, Schulte-Tenckhoff highlights the slippage from strictly legal considerations as they apply to treaties to ones that are grounded in "political policy" (1998:247). This slippage, in a most concrete form, leads to the paradigm of domestication that characterizes contemporary treaty making in Canada. Even the most recent substantive attempts to update the federal comprehensive claims policy continue to be couched in terms that are narrow and prescriptive. Prior to the patriation of the *Constitution*, the historical intent of the Crown had the potential to extinguish or modify existing Aboriginal and/or treaty rights. But after 1982, any form of extinguishment by legislation had been prohibited. This seemingly significant change has not, however, led the Crown to substantively reform its legislation, regulations, or policies. In 1995, Canada released its historic policy guide on Aboriginal self-government, and shortly thereafter, the Federal Treaty Negotiation Office issued a

statement explaining how this policy would provide the basis for self-government negotiations in the BC treaty process.¹⁹⁹ Contrary to how it is sometimes characterized, Canada's Inherent Right Policy (1995) is not founded on the basis of recognition but, rather, seeks to define and, indeed, limit the scope of inherent rights. For example, it states that:

Aboriginal governments and institutions exercising the inherent right of self-government will operate within the framework of the Canadian Constitution (p. 2).

...

The inherent right of self-government does not include a right of sovereignty in the international law sense, and will not result in sovereign independent Aboriginal nation states (Pp. 2-3).

These excerpts demonstrate the extent to which the "inherency" of the rights at issue are undermined, rather than recognized, by this policy. The recognition of First Nation rights is severely curtailed given that they can only be contemplated within the dominant legal framework of the *Constitution* and that the "right of sovereignty" is eliminated even as a starting point for negotiation.

Furthermore, the Inherent Right Policy, while informed by Section 35(1) of the *Constitution*, devotes significant attention to issues of harmonization with federal and provincial laws. While this could be justified on a basis of practicality, without commensurate legal recognition, such framing has the potential to seriously undermine the starting point of any negotiation. For example:

...Aboriginal jurisdictions and authorities should... work in harmony with jurisdictions that are exercised by other governments. It is in the interest of both Aboriginal and non-Aboriginal governments to develop co-operative arrangements that will ensure the harmonious relationship of laws which is indispensable to the proper functioning of the federation (p. 2).

¹⁹⁹ *Treaty News: Special Edition on Aboriginal Self-Government*, October 1995, Vol. 2 No. 3.

...

There are a number of subject matters where there are no compelling reasons for Aboriginal governments or institutions to exercise law-making authority. These subject matters cannot be characterized as either integral to Aboriginal cultures, or internal to Aboriginal groups... In these areas, it is essential that the federal government retain its law-making authority (p. 5).

...

As a right which is exercised within the framework of the Canadian Constitution, the inherent right will not lead to the automatic exclusion of federal and provincial laws, many of which will continue to apply to Aboriginal peoples or will co-exist alongside validly enacted Aboriginal laws (p. 8).

With respect to fiscal issues, the Inherent Right Policy is quite explicit about the constraints of federal fiscal capacity. Not only does it unselfconsciously invoke the concept of “affordability,” but it seeks to do so in a context that is suggestive of an inverse relationship between own source revenue and government transfers:

All participants in self-government negotiations must recognize that self-government arrangements will have to be affordable and consistent with the overall social and economic policies and priorities of governments... In this regard, the fiscal and budgetary capacity of the federal, provincial, territorial and Aboriginal governments or institutions will be a primary determinant of the financing of self-government (p. 11).

...

In this climate of scarce resources it will be particularly important for governments to work together to harmonize funding and program and service delivery arrangements, thereby ensuring the most efficient and effective use of those resources. The Government believes that, wherever feasible, Aboriginal governments and institutions should develop their own sources of revenue in order to reduce reliance, over time, on transfers from other governments (p. 12).

These excerpts are indicative of the limiting scope of the federal government’s Inherent Right Policy and federal policy more generally. This policy refocuses the inherent right to self-government on to “matters that are internal to Aboriginal communities” and away from its underpinnings in Aboriginal title. Governance is limited to internal affairs and to those very small portions of land, be they reserves or treaty areas, over which First

Nations are to have any jurisdiction. These limitations are perpetuated in current federal treaty mandates that severely hamper the ability of First Nations to make decisions regarding a wide range of issues. Furthermore, such mandates entrench the notion that First Nations, while being prevented from fully managing, accessing, and benefiting from resources within their territories, must somehow strive to achieve self-sufficient governments, institutions and communities. Cultural rights are emasculated, teased away from their relationship to the land and constrained by the interests of the federal government before any negotiation is ever contemplated.

4.3 – Concluding Comments

Ultimately, in having established a process within these parameters, the final gap – and perhaps the most egregious – relates to the absence of an alternative if negotiations were to fail. While some would argue that the courts provide such an alternative, there are sound reasons to take issue with this characterization. In the first place, the courts have always operated as a venue to hear claims.²⁰⁰ While some of these cases in fact helped to force the establishment of the treaty process, the fact that the treaty process was established as an alternative to the courts suggests that the courts are not in and of themselves an entirely satisfactory venue for the resolution of these kinds of claims. Secondly, and more focused on the reality that has surrounded the issue of claims, access to the courts has been inextricably tied to access to funding to support a case; justice may be blind, but it is *not* free. With the exception of a handful of First Nations that have access to revenue independent of government, the vast majority are dependent on fiscal

²⁰⁰ This is a generalization that is not intended to erase the fact that between 1928-1951 First Nations were in fact prohibited from advancing their claims via the courts (see Chapter Three).

transfers from the federal government. These transfers are largely dedicated, and subject to annual reporting.²⁰¹ A First Nation that opts to withdraw from the treaty process in order to pursue litigation would not only lose its treaty funding, but would now be in a position where – in addition to funding the costs of bringing forward a case – it would have to begin repaying its loan funding.²⁰² Under these circumstances, it is necessary to re-consider the presumption that the courts in fact provide a viable alternative to the treaty process in the event that negotiations fail.

The Task Force recommendations came at a time of tremendous legal and political upheaval in the province. The nineteen recommendations that had emerged could not help but reflect the turmoil that surrounded the drafters in what was a period of significant provincial crisis. The recommendations, while dramatic in contrast to the policy of denial that had preceded them, did not represent a radical break from the past, but rather, signaled a new era of engagement based on an approach that emphasized process, but without the checks and balances to ensure that the parties had recourse in the event that negotiations failed. Whether inadvertently or by design, the turmoil of the late 1980s and early 1990s led the drafters of the Task Force Report to propose a model that was deeply institutional, drawn out over several lengthy stages with no definitive end in sight and, while opening many doors, it did not necessarily lead the participants through any of them. The Task Force had effectively established a menu of issues, a series of

²⁰¹ It is worthwhile noting that the Auditor General of Canada has highlighted the disproportionate accounting burden that bands are under, each one having to submit at least 168 individual reports to the federal government annually (Auditor General 2002).

²⁰² In its most recent Annual Report, the BCTC addresses the challenge of loan funding:
Unless treaties come into effect, or the loans are in default, loans made to First Nations to allow them to participate in treaty negotiations come due 12 years from the date of the first loan advance. The first treaty loans would have become due in August 2006. When the 12-year deadline was set there was an expectation treaties would be completed within that time frame. That has not been the case (Annual Report 2007:39).

steps, and a commitment to funding – the outcomes of which, while referred to as “treaties,” remained largely undefined and would be negotiated without a specified timeframe. Moreover, were negotiations to fail – regardless of the reason – the Task Force had outlined no alternatives and, more importantly, had allowed governments to establish a fall back position for First Nations that was arguably more detrimental than their starting point. Given these challenges – most of which continue to affect the present day – one cannot help but ask why these challenges have not been addressed. In the following chapter I turn to a set of wider issues relating to the discursive context of this policy field. This includes an examination of major narratives in the media, and the deployment of the idea of *race* as a basis for defining similarity / difference.

CHAPTER 5 – MEDIA NARRATIVES

5.1 - Introduction

From an ethnographic perspective, mass media represent a dynamic site where subjectivities are constructed and identities are contested (Spitulnik 1993:296). As noted in Chapter One, while the meanings attached to any issue are never fixed, our ontological sense of the media emphasizes the meaning an issue has in the present, rather than the meaning that it has over time. In contrast with this conception, anthropology has the potential to contribute to a richer, more situated understanding of media by focusing not only on what stories appear in the media, but by linking these to an awareness of the larger context within which meaning is made (Holstein and Gubrium 1995) and discourse constructed (Spitulnik 1993). This is particularly significant given that propositions about how an issue needs to be addressed are not simply the product of objective criteria that can be unproblematically applied to a given situation. On the contrary, as Gusfield (1981:8) has demonstrated, there is a pattern to how issues emerge as “public problems,” and all parties do not have an equal ability to influence the public in this regard. Media play a tremendous role in shaping the structure of public *problems*, and a focus on media within this context establishes an important starting point for an anthropology of the media.

There are several aspects to this examination. Drawing upon Anderson, my focus is on the Vancouver *Sun* viewed as a “cultural product” (1991:33) as opposed to a conduit to a more essential *truth* or *reality* relating to First Nation peoples or issues. A story that appears in the *Sun* is not merely a (re)presentation of something that happened somewhere else, the story is itself something that happens. This has become increasingly

the case as mass media have become more pervasive and peoples' awareness of, and contact with the physical world is mediated by information and communication technologies. Moreover, a news story is informed by the context of both its production and consumption, which is to say that it is not without contingencies, be they cultural, economic, technological, social, or otherwise. In this sense, my reading of the *Sun* is for the most part ethnographic. I do not attempt to appeal to a more essential truth in order to critique the *Sun* in its coverage of First Nation issues – the *Sun* is the reality that I explore.

A newspaper, like other mass media, is, among other things, a technology of race, gender, and class that (re)produces discourses that justify unequal social relations (Vargas 2000:261). As a quasi-public space where social relations are constituted, newspapers, like the Vancouver *Sun*, play a significant role in constructing public identities (Morrison 1996), and (re)producing systems of inequality. Embedded within this analysis is the notion that news texts are a primary site for the circulation of meanings that often reproduce social and economic relationships (Carey 1988). As such, a focus purely on stories related to the BC land question would not fully capture the constructed nature of a First Nation identity and, therefore, my examination of the *Sun*'s coverage in this context includes a focus on all stories pertaining to First Nation peoples in the period 1995-99.²⁰³ I ask: how was the public identity of First Nation peoples constructed by the Vancouver *Sun* during the period 1995-99, and what kinds of narrative techniques were used to support this construction? My emphasis is on two primary facets relating to this construction:

²⁰³ Unless otherwise specified.

- The identification of major narratives that appeared to cut across / inform a broad set of stories relating to First Nation peoples; and
- The mobilization of the idea of *race* as an explanatory element in constructions of similarity / difference as a basis for making sense of issues pertaining to First Nation peoples

Hence, while I am interested in how the BC land question was represented by the *Vancouver Sun*, I am also interested in how other stories focusing upon First Nation issues might have informed these representations.

This research is critical of the role that mass media played in its representation of the BC land question during the period 1995-99. It is critical of the narrow range of views that the media has tended to represent – as reflected in its heavy reliance on certain enduring narratives relating to First Nation peoples – and, arising from this, its complicity as a source of racialized news texts pertaining to First Nation issues. Commercial news media have played a significant role in the construction and representation of First Nation issues. News media have come to represent one of the major spaces wherein citizens allegedly engage in free and open public debate, thereby embodying an important democratic function for the effective operation of the public sphere. Curran (1996) describes three aspects of media that he suggests are used to underscore its democratic role: (1) media as public watchdog; (2) media as source of public information; and (3) media as public representative. These three aspects of media, Curran suggests, need to be re-evaluated given the changes that have characterized the operation of media over the last century (1996:81-2). It is the assumption that a public sphere exists (see, Habermas 1962/1989) that presupposes the effective operation of liberal democratic society, and it is the perception that news media provide a forum for public information and expression that has bolstered this assumption (Dahlgren 1995).

News media have sometimes been characterized as our *window to the world*: quite literally, a window (perhaps envisaged as a television) through which we have access to a wide range of issues (Altheide 1996). The problem with this metaphor is that it implies that news media provide a means of transporting information from one place to another without affecting what we see, hear, or read. That is, like a clear pane of glass, this metaphor suggests that commercial news media are transparent. Given the commercial nature of mass media, we need to consider more critically whether news media in fact fulfill this transparent role. While some news media / journalists have played a very important role in uncovering and publicizing information in the public's interest,²⁰⁴ for the most part, the realities of the market place have engendered a very different model for the production and dissemination of information. The production of news is subject to a variety of constraints, many of which are unrelated to the objective of conveying information in an impartial or comprehensive manner. The development of newsroom routines, a heavy reliance on regular news sources, and strict deadlines have all operated to constrain the information that ultimately reaches its audience (Schudson 1991). Additionally, the emergence of particular narrative techniques to give the impression of objectivity have operated to buttress the media's watch dog function and in many ways have further constrained the information that media represent (Magder 1997:342). For example, journalists often report on elections in terms of campaign strategies rather than engaging in a more analytical examination of issues. While news is made to appear impartial within the context of the news format, this particular construction masks the reality that some groups have been able to naturalize / universalize their interests through their domination over a wide range of means used for cultural production. While news is

²⁰⁴ Defined as a general interest that is free of personal, professional, or partisan considerations.

not supposed to be seen as entertainment, it must compete for an audience with entertainment in mind, as is captured in the neologism of *infotainment*. Finally, news media have adopted a very narrow approach to press freedom, one that emphasizes independence from the state without comparable attention to the influences of the private sector (Curran 1996:85-6).

We can see here links to the representative role of media, a role that finds its source in the metaphor of a mirror. It is the perception that media are a reflection of the people / society who consume it. However, this metaphor implies that media caters to the context in which it appears. While there is of course some truth to this perception, it occludes any discussion with respect to the representation of diversity in media – the concept of *diversity* is mistakenly interpreted as mass appeal.²⁰⁵ Because news media operate in an economic market place where success is measured by how much revenue can be generated, the overriding objective of all commercial news outlets is to make ever-increasing profits. It is worthwhile noting that many commercial news media are provided at little or no direct cost to the consumer. For example, community papers, radio, and basic television are typically free. This is because most commercial news media derive their profits by selling audiences to advertisers. Similarly, most sources of news on the Internet are also provided at no charge given the lucrative new markets that have been created for advertisers.²⁰⁶ Strange as this seems, *audiences* are the primary product that commercial news media create, not news or entertainment. The larger the

²⁰⁵ I am reminded of recent comments made by CBC executives pertaining to changes in the format of CBC Radio Two. This station, which had previously focused primarily on playing classical music, was recently changed to include a broader range of popular (i.e., commercial) music. This was characterized as a change that would make CBC Radio 2 more *representative* by appealing to a wider audience when, in fact, what this meant was that Radio 2 was to become more like every other radio station.

²⁰⁶ Although the cost and upkeep of a computer along with fees paid to Internet service providers are not negligible.

audience that a media outlet can attract (including Internet sites), the more it can charge advertisers for its product. Hence, representativeness (i.e., in respect to an array of views and interests) is only a significant objective in news production to the extent that it leads to larger audiences.

Benedict Anderson (1991) alludes to this issue in his conception of “imagined communities.” Although his emphasis is on exploring nationalism, his insights serve to buttress the media’s role in distinguishing one imagined community from another. In as much as a newspaper is a cultural product (Anderson 1991:33), it is the recognition that a newspaper, for example, is a product of one culture and not another. Broadly speaking, the Vancouver *Sun* is the product of a particular cultural milieu, one that embodies a particular social, historical, economic and political outlook. To the extent that we can imagine the communities that it may represent,²⁰⁷ we also need to recognize that there exist upwards of ten Western-based newspapers that have been produced by, and that cater to, a primarily First Nation audience.²⁰⁸ Given this, we must ask: in whose interest is it to characterize the views of the Vancouver *Sun* as the views of the public more generally?

While Magder (1997:349) suggests that media commercialization is in fact a greater concern with respect to the public’s interest than the concentration of media ownership, media concentration cannot be ignored. The concentration of media ownership both in Canada and globally has reached alarming proportions. Writing in

²⁰⁷ For example, based on its content, I would suggest that the target audience of the Vancouver *Sun* is English-speaking, middle-class, urban / professional, educated British Columbians.

²⁰⁸ These include: *Windspeaker*; *Coqualeetza News*; *First Nations Drum*; *Ha-Shilth-Sa*; *Kahtou News*; *Raven’s Eye*; *Secwepemc News*; the *Talking Stick Newsletter*; *The Native Voice*; and *Western Native News*. There also exist a number of smaller circulation papers that focus on specific communities and / or issues (e.g. *Ucwalmicw*).

1997, James Winter notes that of Canada's 105 daily papers, 60 were owned by the now notorious Conrad Black, former owner of the Hollinger / Southam chains (1996:175).²⁰⁹ While direct links between ownership and content are usually concealed, in some cases they nevertheless become apparent. For example, former Hollinger President David Radler has been quoted as saying "if editors disagree with us, they should disagree with us when they are no longer in our employ."²¹⁰ The larger issue, however, relates to the limited interests that are represented by the shrinking array of individuals and institutions that have come to control many aspects of cultural production – including the Internet (Curran 2003). Magder (1997) describes the strategy of synergy that is to some extent behind the rush to consolidate media production. He suggests that:

By owning companies in every aspect of the cultural market place – from film and television production, through cable systems and specialty and pay-per-view channels, book and magazine publishing, sound recording, and video games, to theme parks – a corporation... can maximize the returns on any project it undertakes (Magder 1997:351).

He suggests that commercialization and media concentration have led to a monopoly over the production of cultural goods that, in turn, has narrowed the range of cultural materials that enter the public realm (Magder 1997).

The issues examined in this chapter contribute to a broader understanding of not only the discursive context of indigenous-state relations in BC during the period 1995-99, but the role that anthropology can play in examining such issues. This chapter begins by describing the approach that I used to track the Vancouver *Sun*'s coverage of First Nation

²⁰⁹ It is worth noting that media ownership has only further consolidated since 1997, marked most poignantly in Canada by the purchase of Southam Inc. by CanWest Global in 2000, and by the merger of two American media giants, Time-Warner and America On Line (AOL), in the same year.

²¹⁰ Quoted in Peter Newman's "The Inexorable Spread of the Black Empire," *Maclean's*, February 3, 1992: 68.

issues. It then describes four major narratives that appeared in the *Sun* that helped to inform a more general understanding of First Nation issues, and concludes by examining the idea of *race* (and the process of racialization) as a concept that was deployed in relation to the emergence of the Nisga'a treaty negotiations over this five year period. Linkages are made to key issues and the constructed nature of this discursive field as a basis for a subsequent examination of the legal, political, and economic contexts of the BC land question in Chapter Six.

5.2 – Tracking Media

Tracking media can be a laborious and time consuming activity. Media outlets include a wide range of radio, television and print media, as well as the more recent emergence of the Internet²¹¹ as a source of news and news-like information. There are truly an infinite number of media outlets that could be tracked. At the same time, there is a growing body of work pointing to the concentration of media ownership both nationally and globally that suggests that, while the number of media outlets has increased over the past several decades, the range of views and issues that they disseminate has in fact diminished (Winter 2002; Hackett 1998; Herman and Chomsky 1988). While the Internet does to some extent provide an antidote to this concentration of ownership, it too has rapidly become another medium of consumption (Curran 2003) and suffers from a series of limitations, including challenges that emerge in managing and verifying information based on the sheer volume that is available (Selwyn 2004). In short, tracking news media

²¹¹ Remarkable as it seems, the Internet was just in its inception at the time that this research commenced in 1994-95. A few years earlier (e.g., 1991-92), and most people would not have known what the Internet was.

is also about making choices about which source(s) will be tracked and which will be set aside.

To this end, I have narrowed my focus on news media to the *Vancouver Sun*, one of two²¹² Vancouver dailies.²¹³ A number of reasons led me to this focus. In the first place, the *Vancouver Sun* was simply the primary source for news and information relating to the issues that I was examining at the time that I was carrying out my fieldwork. This was corroborated in countless discussions and debates that I was party to, as well as the interviews that I carried out for this research. More generally, however, print media lends itself well to this kind of research because it is produced at regular intervals and, unlike radio and television news that must be recorded, print media can be stored and managed independent of when it is produced. Moreover, print news media tends to contain more information than its radio and television counterparts, and is more consistent in respect to how it is formatted. The clipping files that I accumulated contain all articles published by the *Vancouver Sun* pertaining to indigenous issues between early-1995 and the end of 1999. These clippings were supplemented by irregular clippings from a variety of other print media (e.g., community papers), and the monitoring of other forms of news media (e.g., television and radio), as well as the Internet.²¹⁴ In mid-1996, I also began to collect regular clippings from the *Globe and Mail*.²¹⁵ I have also accumulated dozens of other stories on audio and video cassette.

²¹² Both of Vancouver's daily papers are now owned by CanWest Global.

²¹³ The *Vancouver Sun* defines major metropolitan dailies as papers with a daily average circulation of 100,000 or more (November 10, 2001:A2). The *Vancouver Sun* has a daily circulation of over 200,000, while the *Vancouver Province* has a circulation of approximately 170,000.

²¹⁴ An important point relating to using the Internet for research is that electronic files can generally be stored and searched much more readily than other formats. To this end, I also subscribed to several email lists and other forums and used this information on a supplementary basis.

²¹⁵ I am indebted to Lori Barkley who assisted me in gathering clippings from the *Globe and Mail*.

From the total of seven document boxes that house my print media clippings (organized by source and chronologically by year and month),²¹⁶ I have input information from over six hundred and fifty articles into an electronic database.²¹⁷ Each data record includes the date, source, page, author, headline and bi-line for each article, as well as a variety of subjective information including a description of its focus, a summary of the article itself, and a list of keywords. Articles were selected on the basis of several criteria including the focus and a subjective assessment of its relevance to the issues with which I was concerned. Although I have striven to include in this database the widest possible range of views represented in the *Vancouver Sun*, some articles were more significant than others, and it is these that provide the focus of my research. My analysis of news stories is necessarily based upon a qualitative and selective reading of particular articles, and while these may not be definitive of all news coverage in the *Sun* or otherwise, they constitute a significant aspect of my discursive focus on the BC land question and, as such, make an important contribution to the ethnographic orientation of my research.

5.3 - Major Narratives in the *Vancouver Sun*

A focus on the narrative composition of the *Vancouver Sun*'s coverage of First Nation issues is based on an appreciation that words and text appear in a context, and that it is useful to have an understanding of this context as a basis for "decoding" the media (see, Altheide 1996). There are in fact a wide range of factors that will inform a person's reading of a text – in this case conceived as a newspaper – including the placement of a

²¹⁶ I estimate that I have collected a total of 5000-6000 clippings from all print media sources combined.

²¹⁷ CLARIS (for Windows), FileMaker Pro, version 2.1.

story and its use of visuals, but also the particular narratives that inform a given context within which stories about a certain subject appear. This is to say that regular consumers of media will necessarily develop an understanding of an issue based not only on an individual story, but also the discursive context in which it appears. Because different people will understand the same issue in different ways based on a potentially infinite number of variables, an ethnographic approach to media is based not on examining how one or another person might interpret a particular story or issue, but by examining the media's coverage of an issue from the standpoint of what this coverage says. A starting point for this kind of examination begins with a focus on the kinds of stories that appear in the media about a particular issue.

For example, I began by asking: what topics / issues are identified in stories purporting to be about First Nation peoples? Certainly, during 1995-99, many stories were about the BC land question, including the Nisga'a treaty negotiations, the treaty process, and other incidents relating to First Nation lands, resources, and governments. However, given that these stories would not appear in isolation from other stories relating to First Nation peoples, I was also interested in how other stories would inform a readers' understanding of First Nation issues writ large. As such, an ethnography of media involves an immersion of sorts in media (in the case the Vancouver *Sun*) and the development of an understanding of the various storylines that appear with respect to an issue regardless of how they are generated, shaped or impacted by other (external) circumstances. In addition to an awareness of the range of topics that arise, a focus on how issues are framed (e.g., as a *problem*), the themes that emerge as a part of a given topic (e.g., that the public should be concerned), and the particular words and discourse

used to describe the topic are also important (e.g., *race*). In isolation from one another, it is not possible to develop an informed appreciation of the meaning that stories have relative to the broader discursive context in which they appear. This is just like recognizing that one can't determine *what people think* based on interviewing one person. There are of course many insights that can also be gathered from just one story (or one person for that matter), but the strength of ethnography relates to the depth of understanding that can arise from one's immersion in a particular context.

In addition to becoming attuned to the deployment of *race* as an important concept in stories relating to First Nation peoples (explored in the following sub-section), I was able to identify four narratives that appeared to represent the *Sun's* narrative baseline in its coverage of First Nation issues as follows:

- (1) First Nation peoples are a homogenous group;
- (2) The expectations of First Nation peoples are unreasonable;
- (3) The resolution of land settlements are too costly; and
- (4) First Nation peoples cannot take care of themselves.

Each of these narratives provides a basis with which to make sense of the topics / issues that I examined in the *Sun's* coverage during the period 1995-99. Each of them is examined in turn below.

5.3.1 - First Nation Peoples are a Homogenous Group

This narrative has its roots in Columbus' enduring blunder of 1492. Thinking that he had reached the East Indies, Columbus referred to all inhabitants of the Americas as *Indians*.

The term stands for all of the populations of the so-called New World in disregard of

their difference (Goldie 1989:5). It is a perception closely tied to the racialized characterization of First Nation peoples discussed in the next section. First Nation peoples are Other. From the perspective of the settler society, how First Nation peoples differ amongst themselves is beside the point. Despite this, there are broad distinctions between First Nation peoples not only across Canada, but within BC itself. There are, for example, six unique language families in BC, spoken by more than a dozen distinct nations, which are composed of some two-hundred Indian Bands, dispersed across almost seven hundred distinct reserves. Given this linguistic, ethnic, political, and geographic diversity, it only stands to reason that there are social distinctions as well.

That the political aspirations of First Nation peoples differ is a point that should hardly need to be made. Nevertheless, the prevailing representation of First Nation issues in the *Vancouver Sun* was one of homogeneity: that First Nation peoples were relatively indistinguishable and ought to speak with one voice. The corollary being that, because First Nation peoples did not speak with a single voice, their movement was fractured. Tactically, this perception has represented a significant element in the political marginalization of First Nation peoples' concerns across this policy field. The discursive characterization of First Nation peoples as fractured is deemed relevant because it appears in a context that suggests that they *ought* to be homogenous (or unified). In this way, not only was the representativeness of First Nation groups and leaders consistently undermined, but it allowed governments to pick and choose which groups they would deal with – rather than having to engage a range of groups all of whom would be deemed

legitimate – based on a perception that none were fully representative.²¹⁸ Hence, the paradoxical representation of First Nation peoples as both fractured and homogenous has served the interests of governments in a manner that many critics have alleged is a tactic of *divide and conquer*.²¹⁹

This was reflected in the *Vancouver Sun*'s coverage of First Nation issues that focused almost exclusively on only a small number of First Nation political organizations. For example, the First Nations Summit was highly over-represented in the *Vancouver Sun* as compared to other First Nation organizations. Although my dataset does not allow me to make accurate estimates with respect to the volume of articles pertaining to the First Nations Summit,²²⁰ there was undoubtedly a wide gap between the number of articles featuring the Summit as compared to BC's other major First Nation political organization: the Union of BC Indian Chiefs (UBCIC).²²¹ I would suggest, for example, that the First Nations Summit was over-represented by a factor of at least four to one as compared to the UBCIC, and almost certainly much higher.

Coverage in the *Vancouver Sun* was significant in the reverse sense: in terms of invisibility. While I have already suggested that First Nation issues were over-represented in the *Vancouver Sun*, the disparities in respect to what was covered led me to the conclusion that First Nation peoples continued to be marginalized within this same

²¹⁸ This was most obvious in the political marginalization of the Union of BC Indian Chiefs, in contrast with the emergence of the First Nations Summit.

²¹⁹ This paradox is mirrored in the characterization of First Nation claims as being representative of a tiny minority of the BC population, while simultaneously representing a enormous threat (e.g., economically, socially, legally, etc.).

²²⁰ I have excluded a large number of generic articles pertaining to the activities of the Summit from my dataset.

²²¹ My interest in the articulation of alternative voices in the *Vancouver Sun* allows me to draw some conclusions about the volume of articles pertaining to groups like the UBCIC, the United Native Nations (UNN), and Native Youth Movement (NYM).

context. The Vancouver *Sun* acknowledged in one article that the First Nations Summit was the most “moderate” First Nation organization in BC,²²² but, having acknowledged this, it made almost no attempts to represent the views of other First Nation organizations in an effort to achieve more balance. This reinforced the perception of homogeneity (politically and otherwise) that would, in turn, have implications when, once or twice per year, the Vancouver *Sun* did present the views of an organization like the UBCIC. This contributed to a perception of *splintering* rather than the legitimate recognition that different groups of people wanted different things. This over-emphasis on a few First Nation organizations, and the absence of consistent coverage with respect to many others, limited the scope of debate that appeared in the *Sun* and contributed to one of the enduring mischaracterizations relating to First Nation peoples: that of homogeneity.

5.3.2 - The Expectations of First Nation Peoples are Unreasonable

Taken out of context, First Nation land / resource claims can appear to be grandiose. The popular perception that First Nation peoples were conquered, or that they have been assimilated, or that they are deprived, or that Canadian / colonial governments have more than paid their debt to First Nations, are all factors that stand in opposition to the recognition that First Nation claims may be legitimate. These perceptions provide a backdrop for the Vancouver *Sun*'s characterization of claims as either excessive or imprudent. This was particularly evident in the number of alarmist headlines that appeared on its front pages between 1995 and 1999. The more outrageous First Nation claims were made to appear, the less inclined people would be to take such claims

²²² Vancouver *Sun*, September 25, 1995:A1.

seriously, let alone support them. To this end, the Vancouver *Sun*'s emphasis on apparently outrageous settlements and/or demands inadvertently served to reinforce the status quo – the non-resolution of the BC land question.

The Vancouver *Sun* published an array of headlines / stories that misrepresented a range of First Nation issues. From dire warnings about huge impending settlements, to the assertion of obviously ill-conceived or absurd claims, the Vancouver *Sun* contributed to an aura of unreality around the BC land question. For example, the Vancouver *Sun* published the headline “Nisga'a want a \$2-billion settlement”²²³ before much was known about the progress of treaty negotiations. While the headline may have been factually correct, the information was presented in a way that was intended to trigger a sense of concern in the reader. Any figure in the “billions” would likely warrant some kind of explanation, but by framing it as something the Nisga'a “want” the figure is made to appear frivolous and arbitrary – anybody could be said to “want” \$2-billion. Similarly, the headline “Treaty negotiations with Indians will cost \$1.2b over 40 years...” followed a series of articles focused on the salaries of government officials,²²⁴ and told the reader that this was the cost of “negotiating [the] settlements, not the settlements themselves.”²²⁵ Where, again, the prospect of paying \$1.2 billion for almost anything appears excessive, the fact that this is a cost borne over 40 years (i.e., \$30 million per year) is likely to be lost on the reader – one is left wondering the utility of a forty-year projection. Contributing to this sense of excess were periodic articles that presented issues from the perspective of the absurd. For example, the Vancouver *Sun* published front-page

²²³ Vancouver *Sun*, February 15, 1995:A1.

²²⁴ See, for example, Vancouver *Sun*, January 11, 1996:B1.

²²⁵ Vancouver *Sun*, February 27, 1996:B1.

headlines indicating that “BC Indians claim 111% of the province,”²²⁶ and “One-person band has big plans.”²²⁷ These headlines contributed to the perception that the BC land question had no valid basis, and that claims by First Nation groups were unreasonable. Each may have been factually correct, but the characterization represents a deliberate attempt to garner attention based on a purposefully confounding (and negative) portrayal of what First Nations were seeking.

On February 2, 1998, the *Vancouver Sun* published a headline proclaiming that “B.C. Indian Chiefs lay claim to entire province, resources.” This headline outraged several First Nation organizations, and prompted the leaders of the First Nations Summit to meet with the *Sun*’s editorial board to discuss the implications of their misrepresentation.²²⁸ Although the *Sun* did print a subsequent statement by the First Nations Summit to address their misrepresentation,²²⁹ the *Sun* nevertheless continued to play on this theme by publishing an equally alarmist cartoon suggesting that First Nations were claiming “every tree, rock and fish” the very next day.²³⁰ There is no indication that the *Sun*, or any other media outlet, is discouraged when groups respond in a negative way to materials that are published. On the contrary, the controversy that this provokes tends to bolster attention, and hence, may be an inducement to sales.

The late-Chief Joe Mathias, a Task Group member of the First Nations Summit for many years, took part in an extended interview with the Global Television Network to address the controversy that the *Vancouver Sun*’s so-called “every tree, rock, and fish”

²²⁶ *Vancouver Sun*, [Date Unknown], 1995:A1.

²²⁷ *Vancouver Sun*, October 4, 1995:A1.

²²⁸ Personal interview with David, February 13, 1998.

²²⁹ *Vancouver Sun*, February 3, 1998:A16.

²³⁰ *Vancouver Sun*, February 4, 1998:A14.

debate had prompted.²³¹ Global opted to run only a few seconds of the interview, and then incorporated the “every tree, rock, and fish” theme so as to polarize the views expressed by Mathias with the sentiments published by the *Sun*. The net result was the reproduction of what had already transpired in the *Sun*, this time on television. In response to the futility of this scenario, a First Nation representative commented that:

*... we can't possibly ever level the playing field as far as the media goes. It's just not realistic. We take opportunities when we see them to comment and try to balance it as best we can, like when the [every tree, rock, and fish] story appeared last Monday in the Vancouver Sun. That was so inflammatory to us, and we take the stance of writing the letter to the editor and seeking and receiving a meeting with the Vancouver Sun editorial board. That helped, but you can't do that every single time. We send out press releases and comment on things..., maybe we don't do it enough, but you come to realize who's going to change and who's not.*²³²

The fact that this representative felt that the First Nations Summit’s intervention “helped” speaks to the extent to which the discursive context of the BC land question was characterized by a level of disempowerment on the part of First Nation organizations whereby, even for the First Nations Summit, which is relatively powerful, any visibility is better than none. The meaning that First Nation claims have in this context are ones that are largely externally driven. This is consistent with Gusfield’s (1981) observation that not all groups have the same ability to influence the public. While the First Nations Summit had disproportionate access to the media relative to many other First Nation organizations, its members were nevertheless at the mercy of the media to the extent that their access could inform both the form and content of media coverage. The media’s characterization of First Nation expectations in this respect reinforced a perception that

²³¹ I was able to review a video tape of the original interview.

²³² Personal interview with David, February 13, 1998.

the status quo (i.e., no settlements) might be preferable to negotiated settlements and, in this way, embodied the validation and constraint dialectic.

5.3.3 - The Resolution of Land Settlements are too Costly

The BC land question was not new, and so it comes as little surprise that there were a plethora of discourses competing for dominance over the definition of this issue.

Correspondingly, it was also not surprising that the BC land question came to be framed in largely economic terms. Phrases like fiscal restraint and cost-cutting have become the accepted dogma of mainstream political discourse and these concepts have come to inform almost every issue in the public domain. From this perspective, groups who opposed a negotiated resolution of the land question attempted to construct treaty settlements as a threat to the economic viability of the province on the whole. Although not all of the arguments were economic in origin, their preponderance led one to draw an economic conclusion. This is significant because economic arguments were constructed to appear value-neutral, and hence, equally applicable to all parties – a point drawn out in some of my interviews.²³³

The Vancouver *Sun*'s coverage of the Nisga'a treaty negotiations, and treaty negotiations in general, placed considerable emphasis on the high cost, and hence, non-affordability of treaty settlements. The *Sun* published at least twenty-six articles focusing on the high cost of land / resource settlements during the period 1995-99. In addition to the article proclaiming that the "Nisga'a want a \$2-billion settlement,"²³⁴ the *Sun* ran

²³³ This is examined in the next chapter.

²³⁴ Vancouver *Sun*, February 15, 1995:A1.

headlines stating that “Forest firms stand to lose loads of logs with treaty,”²³⁵ and that “Nisga'a treaty costs [have] tripled....”²³⁶ One article, published March 12, 1998, took a particularly novel tack in defining an economic concern related to land / resource settlements. Its headline and bi-line state: “Police prepare for aftermath of native compensation deal: Fort St. John RCMP say a big influx of cash can also bring problems in its wake.”²³⁷ The article went on to suggest that the RCMP were “planning for the worst, but hoping for best” in the wake of a \$147 million comprehensive claim settlement with the Blueberry River and Doig Bands. It alleged that, along with alcohol abuse, “assaults, fraud, and robberies” could be likely – although, by whom was not specified. Most interesting, however, was the recognition expressed in the latter part of the story that this was “hypothetical,” that police don’t even know “whether there would be any cash to members.”

This article signalled at least three different things to its readers, all of which relied upon a particular set of assumptions about First Nation peoples and the prospect of land claim settlements. First, it reinforced a sense of apprehension about what might follow from land claim settlements. For example, reference was made to the “aftermath” of a “compensation deal” in the headline.²³⁸ In this way, this article re-affirmed the tutelary relationship that continued to characterize perceptions of First Nation peoples. It did so by constructing the Blueberry River and Doig bands and their members as passive in respect to both the negotiation and receipt of a settlement, as well as the outcomes that

²³⁵ *Vancouver Sun*, February 4, 1996:C5-6.

²³⁶ *Vancouver Sun*, February 11, 1999:A3.

²³⁷ *Vancouver Sun*, March 12, 1998:A3.

²³⁸ Although this particular settlement does not originate from the treaty process, the reading of this article is inextricably linked to characterizations of land claim settlements more generally.

a settlement would produce. No reference was made to any member of either of these bands; they were not the subject of this article, but rather, its object.

Second, this article signalled to the reader that First Nation peoples were irresponsible by implying that no planning or thought had been given to the prospect of a settlement by the Blueberry River and Doig Bands. Significantly, the settlement is constructed as a windfall – like winning a lottery – the presumption is that members of these First Nation communities did nothing to precipitate the resolution of this claim.²³⁹ Indeed, as noted above, the article made no reference to the Blueberry River and Doig Bands at all, except by way of the RCMP's commentary. That the RCMP might have contacted the Blueberry River and Doig Band offices, or failing this, that the Vancouver *Sun* might have chosen to do so, was not presented as a possibility. As a consequence, this characterization of a land claim settlement contributed to a sense of fear about the BC land question, reproducing the Othering that is implicit in the RCMP's speculation about what might have happened and precluding the possibility of finding out.

Third, and perhaps most significant, this article signalled to the reader that it may be in everyone's best interest to avoid negotiating settlements at all. The fact that this \$147 million settlement represented a victory for the Blueberry River and Doig Bands did not even enter into this storyline. On the contrary, the victory was defined as a defeat even before it occurred. Moreover, the juxtaposition of the \$147 million settlement with the prospect of a wild and destructive party trivialized the struggle that preceded the

²³⁹ In fact, it could be argued that this kind of characterization also serves to further the perception of a benevolent Canadian government; perhaps one imagines the bands receiving a phone call from Ottawa where it is announced that they are receiving \$147 million – there are no negotiations. From this one-sided benevolent characterization, it is not inconceivable to see how some groups are able to suggest that the process of negotiations should be halted and all distinctions between *Indians* and other Canadians eliminated as the basis for calling for a resolution.

awarding of the settlement, reducing it to cash windfall with no connection to the past or the assertion of valid / legitimate arguments on the part of the Bands. This type of construction effaces the origins of the land question, redefining its significance only in contemporary terms. Then, by demonstrating the impropriety of settling claims at all, the reader is left with a sense that there are few reasons to support settling the BC land question in the first place.

Finally, it is worthwhile looking at how this story was able to convey these messages without appearing unduly biased. In the first place, this story draws upon several well-established narratives. This included the narrative of fiscal / economic responsibility and restraint noted above, but also other narratives focused more closely on First Nation peoples themselves. For example, the absence of any First Nation voices in this article supported the perception that First Nation peoples are lost or deprived and, therefore, that no good will come from such settlements. There are also undertones of difference and separation, reinforced by the idea of *race*, that inhibit one's desire to imagine this scenario from the perspective of the Blueberry River or Doig Bands. The perception that was presented by the *Vancouver Sun* did not question the narrative of the RCMP. Rather, as readers, we were placed in the position of spectators: on tour, following the gaze²⁴⁰ of the *Vancouver Sun*, which led us to the RCMP – not an unlikely collocation of terms in discourse that purports to be about First Nations. Although a journalist does not figure in this story directly,²⁴¹ the RCMP's narrative was presented as if to support something that was already known. We learn nothing about how or why the Blueberry River and Doig Bands won this settlement, but rather, are called upon to

²⁴⁰ See, Foucault's (1977) characterization of the panopticon.

²⁴¹ The *Vancouver Sun* attributes this story to the "Canadian Press with the *Vancouver Sun*," rather than naming one or more journalists.

imagine the devastation that will follow. In this respect, this story also corresponds to issues raised in a fourth narrative.

5.3.4 - First Nation Peoples Can't Take Care of Themselves²⁴²

The goal of Indian Agents and missionaries alike has been to *lift* the ignoble savage from her/his depraved slot,²⁴³ and to convert them into good brown White subjects.²⁴⁴ Where Indians have formerly been defined as savages in need of European civilization, the long hand of paternalism continued to extend to First Nations through the 1990s, but in another guise. The thinly veiled discourse of contemporary paternalism relies upon a modified nomenclature, employing terms such as capacity building²⁴⁵ and certainty.²⁴⁶ It also relies upon the tacit understanding that Indians don't really want to let go of the omnipotent *father* in Ottawa.²⁴⁷ These assumptions are sometimes reinforced by what appears to be a resistance on the part of status Indians to give up their place under the *Indian Act* with little or no attention to the complexities underscoring this situation.

In 1969 and in 2002 respectively, the federal government proposed sweeping changes to the *Indian Act*, and in both cases First Nations resisted.²⁴⁸ While little attention has been paid to the complexities that underscore First Nation peoples' rejection

²⁴² It has been suggested to me that this narrative is in fact about the inferiority of First Nation cultures. While I do not disagree, I have chosen to maintain the current characterization of this narrative out of a desire to avoid reproducing discourses of inferiority and superiority, even from a critical standpoint.

²⁴³ See, Trouillot (1991).

²⁴⁴ See, Dumont (1996).

²⁴⁵ See, BCTC Annual Report (2007).

²⁴⁶ See, Woolford (2004).

²⁴⁷ Although this theme is apparent in several different contexts, one of the most interesting appeared in the Vancouver *Sun*'s coverage of a past Minister of Indian Affairs, Ron Irwin, departure from public life. In the article Irwin is described in strongly patriarchal terms, with the headline "Irwin adopts family-first policy in retiring from politics" (April 7, 1997:A6).

²⁴⁸ Reference here is to the White Paper policy and the *First Nations Governance Act*.

of these changes, the *Sun* continued to reinforce the perception that life under the *Indian Act* was cushy. The *Sun* routinely published Letters to the Editor calling for a stop to the *privileges* that First Nation peoples allegedly receive from governments. For example, one contributor identified him/herself as a “white Canadian born into a family of ten children and raised without a mother” expressing the feeling that “it’s time we told Indians to become true Canadians and stop yelling abuse.”²⁴⁹ Another contributor was “relieved” to hear that “social and economic relief to First Nations will end” and wondered how soon they could expect “fair compensation for improvements to the land?”²⁵⁰ Finally, another stated that “I would like my children to have free university education, subsidized housing, pay no income tax... and other privileges currently enjoyed by First Nations people.”²⁵¹

Given the misleading coverage that these issues routinely received, and the lack of corresponding coverage that would help to explore the context in which questions about the *Indian Act* emerged, it is not surprising that such attitudes were prevalent.²⁵² Challenging such perceptions is difficult in a context that continues to reinforce the very misperceptions that lead to these understandings.²⁵³ While the *Sun* did publish the odd article that broke out of this mould, it was hardly enough to challenge the otherwise continuous stream of narratives suggesting that First Nation peoples *can’t take care of*

²⁴⁹ Vancouver *Sun*, January 12, 1998:A11.

²⁵⁰ Vancouver *Sun*, February 5, 1998:A18.

²⁵¹ Vancouver *Sun*, April 28, 1999:A14.

²⁵² Indeed, these excerpts reflect many of the same comments / concerns that were expressed in my interview with Elmer (see Chapter Two).

²⁵³ As reflected in the “every tree, rock, and fish” debate described above.

themselves.²⁵⁴ For example, articles alleging a misappropriation of funds were very common in the *Sun*. A host of headlines were published to this effect, including:

- Indians 'mishandled' fishing funds²⁵⁵
- Indian bands face \$500 million in debts²⁵⁶
- Natives' financial affairs require more scrutiny²⁵⁷
- Feds too loose with money for Indians, poll finds²⁵⁸
- Billions of federal dollars given to Indians 'wasted,' MP claims²⁵⁹
- Debt load cripples about 150 Indian bands in Canada²⁶⁰

Articles like this were the norm rather than the exception, and some of them were founded on misleading information. For example, one article had the headline “One in five Indian groups has 'financial woes'.”²⁶¹ The information in this article is based on a source defined as “government figures never seen before by the public” that fails to describe the basis upon which “financial woes” are defined. While thirty-four of BC’s 214 bands are assigned to this category, “weak management” is the only basis that is provided for this assignation. More significantly however, whether or not these articles blamed First Nations for these transgressions was not as important as the conclusion that they suggest: that First Nation peoples can’t take care of themselves. This was a narrative that was also played out in the context of First Nations as a racialized subject. Although it is clear that none of the narratives explored in this section were exclusive to

²⁵⁴ Indeed, Herman and Chomsky (1988) argue that it is precisely because the odd article challenges the normative assumptions of the media that North American media are presumed to be liberal and progressive – setting the parameters of debate.

²⁵⁵ *Vancouver Sun*, November 23, 1995:A1.

²⁵⁶ *Vancouver Sun*, April 16, 1996:A1.

²⁵⁷ *Vancouver Sun*, January 7, 1997:A10.

²⁵⁸ *Vancouver Sun*, June 21, 1997:A7.

²⁵⁹ *Vancouver Sun*, October 7, 1997:A4.

²⁶⁰ *Vancouver Sun*, November 21, 1998:A20.

²⁶¹ *Vancouver Sun*, December 21, 1995:A1.

the Vancouver *Sun* and its coverage of First Nation issues (and the BC land question in particular), the *Sun*'s reliance upon these narratives marks an important linkage between mass media and the discursive context of indigenous-state relations as a policy field.

5.4 – Racialized News Texts

Racialization refers to the process whereby the idea of *race* is relied upon to define and give meaning to a particular population, its characteristics and actions (Miles 1988:246). Although *race* has little or no explanatory value in itself (Valdez and Valdez 1998:379),²⁶² the idea of *race* can inform the public's understanding of a group of people and/or issue. Where the notion that humankind is composed of different *races* has existed for thousands of years (Bernal 1997), the meanings attributed to the idea of *race* have varied extensively. As a consequence, a range of different characteristics have been deemed to be both biological in origin and socially meaningful at one time or another (e.g., physical characteristics, intelligence, personality traits, etc.). For example, recent suggestions by some media outlets that Canada's "visible minorities" – a politically correct euphemism for *race* – are in fact the "new majority," speak to the contested terrain of identity politics in the contemporary era.²⁶³

Given the variation in meanings ascribed to what have been perceived as different racial categories, there is no reason to believe that contemporary attempts to either affirm

²⁶² Although seemingly redundant, the idea of *race* has explanatory value only in respect to the social consequences of racism.

²⁶³ See, for example, *National Post*, April 3, 2008, "Visible minorities the new majority", by Graeme Hamilton: A1.

or deny racial difference are motivated any differently.²⁶⁴ Van Horne stresses that *race* remains a significant concept in contemporary society, despite scientific knowledge to the contrary, because of its social value which reinforces “the safety, security and comfort of the familiar in the face of the anxiety, insecurity and discomfort of the unfamiliar” (1997:8). Hence, while *race* does not have a fixed meaning, the idea of *race* plays a fundamental role in structuring and representing the social world in ways that are deemed by some to be socially meaningful. Where the idea of *race* invokes difference through what are perceived as innate, biologically-based human characteristics, the selection of particular human features for racial signification is necessarily a social and historical process. As Omi and Winant point out, based on their focus in the United States, “the categories employed to differentiate among human groups along racial lines reveal themselves, upon serious examination, to be at best imprecise, and at worst completely arbitrary (1994:55).” While the specific meanings attached to the idea of *race* may vary over time and space, the fact that these meanings are imprecise or even arbitrary do not.

The idea of *race* informs many aspects of First Nation peoples’ public identities. Whether invoked explicitly or implicitly, the idea of *race* conditions the public’s understandings of First Nation peoples and issues. The idea of *race* is in many respects a latent feature in many discourses purporting to be about First Nation peoples. In this way, references to *race* need not be explicit in order for the process of racialization to occur. Rather, racialization arises as much from the context of a discourse or narrative as it does from the text itself. The Othering of First Nation peoples typically relies upon a racialized context in order to distinguish *us* from *them* and, therefore, need not make

²⁶⁴ For example, Wilson and Herrnstein (1986), Rushton (1992), and Herrnstein and Murray (1994) have all attempted to re-invigorate the meanings tied to *race* through their emphasis on the scientific validity of innate biological differences.

reference to *race* per se. *Race* needs merely to be signified (i.e., in a text or context).

Signification can occur on a variety of levels, and can be triggered through any number of textual cues, including those purporting to be politically correct. Once *race* is signified (in this case, typically, through the imposition of difference), the idea of *race* is invoked to inscribe a text with particular meanings.²⁶⁵

While the concept of racialization does not presume a particular attitude towards First Nation peoples (i.e., racism), it does implicate a particular reading of a text and, in this way, contributes to a broader discursive context where issues are constructed and meaning is derived. This text typically relies upon a set of assumptions that suggest that being First Nations necessarily means a number of things. In this way, a story about a drunken mother who neglects her children appears to make more sense when we learn that she is First Nation, or conversely, we would be surprised to learn that Jimmy Pattison²⁶⁶ is First Nation. Often, simply identifying someone as First Nation in a particular context is sufficient for the process of racialization to occur. In other cases, a text may rely upon additional narrative cues to provide a more particular reading of a situation or issue. The idea of *race* and the process of racialization are explored in this chapter in the context of the Vancouver *Sun's* coverage of First Nation issues as a basis with which to link the discursive context of the BC land question with the media's portrayal of First Nation issues writ large.

²⁶⁵ This may or may not occur consciously.

²⁶⁶ Pattison is a popular Vancouver-based entrepreneur who is owner of the third largest privately held company in Canada and countless major businesses, including several radio and television stations.

5.4.1 – Racialization as a Process of Othering

Commercial news media play a significant role in constructing public identities and (re)producing systems of inequality. This is to say that news media can have a profound impact on how an issue is perceived or understood, and this in turn has implications for how an issue is dealt with, or whether it is dealt with at all (see, Gusfield 1981). Herman and Chomsky (1988) argue that mass media act not only as a gatekeeper of information, but that mass media have become hegemonic in this respect. They argue that media exercise control over the selection of (newsworthy) topics, the distribution of concern, the emphasis on subject matter, the framing of issues, the filtering of information, and the bounding of debate (Herman and Chomsky 1988). While their analysis is indicative of a very particular viewpoint with respect to the function of commercial news media in American society – what they call a “propaganda function” (Herman and Chomsky 1988:xi) – their analysis need not be construed so restrictively in respect to the examination of the issue at hand.

The Vancouver *Sun* is implicated not only in the representation of news, but in its production as well. In this way the Vancouver *Sun* not only presents the news, it also creates it. In the fall of 1999, the *Sun* ran a headline proclaiming that “Special rights for natives threaten our otherwise civil society.”²⁶⁷ Not only did this headline implicate First Nations as the *only* threat to civil society, it did so without situating the concept of “special rights” within an historical context. The concept of special rights for First Nation peoples is not a new one, and was first introduced by the Hawthorn Report in the

²⁶⁷ Vancouver *Sun*, October 5, 1999:A13.

language of “citizens-plus”²⁶⁸ in the mid-1960s. The language of citizens plus was later transformed into *rights-plus*, and then with the emerging corpus of First Nation rights litigation in the 1970s, was reconceived in terms of *special rights* at the federal policy level. Hence, while the concept of special rights may still be worthy of legal and political debate – particularly given the so-called “empty box” created by the *Constitution* (Culhane 1998:101) – the *Sun*’s representation of this concept re-cast this issue as one that is new, threatening, and a concern to us all. Moreover, this headline contained a series of cues that contributed to a racialized understanding of First Nation issues. For example, the pairing of the words “native” and “threaten” was not an uncommon combination and was tied to an established narrative that suggests that the achievements of First Nation peoples would necessarily come at the expense of other British Columbians. While this narrative was prevalent across a range discursive settings – including in some of my interviews – it was also readily apparent in the media. For example, the combination was evident in the following headlines and/or bi-lines from the Vancouver *Sun* during the 1998-1999 period:

- The First Nations want a freeze on development of BC lands they are claiming. That would threaten the economy, however, agreement on how development can proceed is a priority;²⁶⁹
- Herb George tells a gathering in Kamloops that Indian land claims do not threaten a breakup of Canada and urges Canadians to become involved in managing the change that will result from the Delgamuukw decision;²⁷⁰
- Native Indian chiefs threaten court action and other unspecified actions unless their claims are fast-tracked;²⁷¹

²⁶⁸ Alan Cairns, one of the contributors to the Hawthorn Report, re-introduced this concept in his book *Citizens Plus: Aboriginal Peoples and the Canadian State* (2000).

²⁶⁹ Vancouver *Sun*, March 2, 1998:A10.

²⁷⁰ Vancouver *Sun*, March 27, 1998:B8.

²⁷¹ Vancouver *Sun*, April 1, 1999:A8.

- Couple see their dream threatened by land claims;²⁷²
- Timber rights for Haida a threat to forest values;²⁷³ and
- A social critic and former MLA finds the treaty worked out among federal, provincial and First Nations leaders poses a threat to some of the democratic norms our society highly prizes. It continues a mistake made with Canada's original dealings with the Indian peoples.²⁷⁴

The perception that the achievements of First Nation peoples necessarily came at the expense of other British Columbians²⁷⁵ was most evident in the way that BC's natural resources were sometimes characterized as a form of common property when juxtaposed to First Nation aspirations; a construct that was notably absent when it came to the representation of the exploitation of these same resources by large corporations. For example, Elmer made the following comment about accessing timber resources:

If there is a resource it should be available equally to everyone, to all British Columbian's, and all Canadians who want to come to British Columbia and go into the forest and do whatever you do in the forest. There should not be, with wildlife allocations going first to Indian bands and then if there is any left over it's there for the rest of us. It may seem like small points, but I'm talking here about rights-plus.²⁷⁶

Similarly, special rights for First Nations were deemed to have profoundly negative implications for other British Columbians, while rights granted to transnational corporations under free-trade agreements received only limited attention by mass media.²⁷⁷ Defined as such, these special rights threatened nothing less than "civil society;" and it is unmistakably "our" civil society, and not "theirs." Here again, we see the process of Othering; the imposition of an absolute break between *us* and *them*, one

²⁷² Vancouver Sun, April 15, 1998:A3.

²⁷³ Vancouver Sun, November 17, 1999:A1.

²⁷⁴ Vancouver Sun, April 2, 1999:A13.

²⁷⁵ This narrative was explored in the previous section.

²⁷⁶ Personal interview with Elmer, August 13, 1998.

²⁷⁷ This point was made in a Letter to the Editor published by the Vancouver Sun (October 22, 1998:A22).

that has its basis in a racialized conception of First Nation peoples. And finally, we came to understand that not only did we have to deny *them* special rights to preserve what we had, but that we were completely legitimate in exercising the power to do so.

These cues telling us that “natives” are not us relied upon a racialized understanding of First Nation issues. Such an understanding has a long history in the narratives of colonization and settlement, and a reliance on these narratives reinforces the narratives from which they emerge. The use of the term native in this context contributed to the ambiguity that surrounded the land question more generally. Where the term *Indian* has been defined as politically incorrect in many contexts,²⁷⁸ and the term *Aboriginal* lacks specificity,²⁷⁹ the term native effaces the particularity of a specific identity or situation. While the term native appears benign in its popular form, its usage reinforces the Otherness of First Nation peoples in the present day context; it answers the question who? without implicating the ancillary questions of how? why? or what?

5.4.2 – Racialized News Texts in the Vancouver Sun

Race is, of course, not the only means of defining difference. Where gender, class, sexual orientation, and ethnicity are other common concepts used to suggest difference, in the case of the Vancouver *Sun*'s coverage of First Nation issues, *race* was the most prevalent means of doing so. However, the racialization of First Nation peoples in the Vancouver *Sun*'s coverage of First Nation issues was not based just upon narrative cues and euphemisms, but rather, involved a pattern that appeared to coincide with particular

²⁷⁸ The major exception pertains to federal policy under s. 91(24) of the *British North America Act*.

²⁷⁹ Cairns points out that the term *Aboriginal* is often used incorrectly in that the section 35 of the *Constitution* defines “Aboriginal peoples” as Indian, Inuit, and Métis (2000:69).

events that were being reported on in the media. During the period 1995-99 the Vancouver *Sun* published sixty articles that made explicit reference to the idea of *race* in stories pertaining to First Nation peoples. In particular, it needs to be observed that references to *race* vis-à-vis First Nation peoples rarely made reference to skin colour or other physical features. Rather, references to *race* remained purposefully vague relying upon the loaded connotations that *race* has in a more general setting.

An examination of the distribution of articles making specific references to *race* in the Vancouver *Sun*'s coverage of First Nation issues across the period 1995-99 provides interesting results.²⁸⁰ Specifically, using the keyword *race*,²⁸¹ and cross-referencing this with the temporal distribution of articles that appeared in the *Sun* produced the following results:

Table 5.1 – Distribution of articles published by the Vancouver *Sun* pertaining to First Nation issues that referenced *race* (1995-99).

Year	Number of Articles	Distribution
1995*	4	Feb. / May / June / Oct.
1996	16	Feb.-July
1997	0	NA
1998	16	Jan.** / July-Dec.
1999	24	Jan.-Feb. / April-July / Oct.-Dec.

* Data for the year 1995 may be incomplete.

** Represents the publication of a single Letter to the Editor in January, 1998.

²⁸⁰ It is important to note that although the dataset that I have created is not quantitatively representative of the Vancouver *Sun*'s coverage of First Nation issues on the whole, qualitative consideration was given to every article that has appeared in the *Sun* between 1995-99, and therefore, some general conclusions can be drawn.

²⁸¹ This includes all variations of the word *race* (e.g., races, racial, racist, etc.), but not any euphemisms.

What this table shows is that, from the total of sixty articles published by the Vancouver *Sun* pertaining to First Nation issues that made explicit reference to *race* during the period 1995-99, the distribution of articles were clustered in the periods after August 1996 and after June 1998. With the exception of one Letter to the Editor published in January 1998, the Vancouver *Sun* made no reference to *race* in their coverage of First Nation issues for a period of nearly two years. While this gap would appear odd given the otherwise steady distribution of articles referencing *race*, what this suggests is that explicit references to *race* emerged not as a part of a regular routine, but that they were prompted by an external set of circumstances.

Although reference to *race* would have to be tracked for a longer period than I am able to do here, it is my belief that the key question is not why the *Sun* made almost no references to *race* in the two year period August 1996 – June 1998, but rather, what prompted the *Sun* to make references to *race* in the period leading up to the first half of 1996, and in the latter half of 1998? While there could be any number of explanations for this, it appears that explicit references to *race* in the Vancouver *Sun*'s coverage of First Nation issues coincided with the progress of the Nisga'a treaty negotiations, and more specifically, with the release of the Nisga'a Agreement-in-Principle in February 1996 and the Nisga'a Final Agreement in August 1998. There were in fact a series of steps that preceded the release of each of these documents, as well as steps that followed. In the case of the Nisga'a Agreement-in-Principle, the release of this document was preceded by an escalation of media coverage culminating in the Vancouver *Sun*'s front page pronouncement: "Nisga'a deal initialled into history," published on February 16, 1996. The Vancouver *Sun* had published more than thirty articles about the Nisga'a treaty in the

one-month period preceding the release of the Agreement-in-Principle, and their coverage in the month that followed maintained a similar intensity. The Agreement-in-Principle was signed on March 22, 1996, at which point coverage began to dwindle.

Although a Select Standing Committee had been formed by the provincial government to travel across the province to gather input from groups and individuals about the Nisga'a treaty negotiations,²⁸² the next milestone did not emerge until the Nisga'a Final Agreement was initialled in July and August, 1998.²⁸³ The initialling of this agreement was followed by a drawn-out ratification process by each of the three governments. Nisga'a ratification took place through a vote held in November 1998. This was followed, provincially, by a vote in the Legislature in April 1999, and then, at the federal level, by a vote in Parliament in December 1999. The final document was then sent to the Senate, and received Royal Assent from the Governor General on April 13, 2000. The Nisga'a Final Agreement came into force on May 11, 2000. It should be noted that each of these events was characterized by intense political acrimony, and that each one was the subject of extensive media coverage.

The main point, however, is that the Vancouver *Sun's* coverage of the Nisga'a treaty negotiations, highlighted by the release of the Agreement-in-Principle and Final Agreement, in fact coincided with the emergence of explicit references to *race* in the periods outlined above. That is, there was a sharp increase in the Vancouver *Sun's* coverage of the Nisga'a treaty negotiations in the period immediately preceding the release of the Agreement-in-Principle, followed by a relative lull through to the release of

²⁸² This committee, chaired by Ian Waddell, heard 560 oral presentations and received 232 written submissions, beginning in the fall of 1996. The committee tabled its recommendations in July 1997.

²⁸³ The initialling of the Nisga'a Final Agreement took place twice, first on July 16, 1998, and then formally in the Nass Valley on August 4, 1998.

the Final Agreement. However, unlike the release of the Agreement-in-Principle, the release of the Final Agreement was followed by a series of punctuating events that culminated in its coming into force in May 2000. This corresponds quite closely with the Vancouver *Sun*'s pattern of coverage and their emphasis upon *race* shown in the table above. Moreover, this is consistent with my assertion that news texts rely upon a racialized construction of First Nation peoples, for direct references to *race* would have little meaning were it not for the tacit understanding that First Nation issues involved an already racialized subject. The fact that explicit references to *race* emerge in certain contexts – for example, when there is a heightened focus on a controversial issue – also supports the contention that this is a racialized policy field, whether or not explicit references to *race* do or do not appear to emerge.

5.4.3 – The Impact of Racialized News Texts

The irony is that these racialized discourses originated almost entirely from within the narratives of European colonialism and settlement, and therefore contained no basis to form another point of view.²⁸⁴ First Nation speakers have only occasionally employed the idea of *race* in this policy field, typically as respondents. Although references to blood quantum (a euphemism for *race*) are common in some First Nation contexts,²⁸⁵ arguably, they arise in large part as a consequence of what are essentially blood quantum

²⁸⁴ I suggest that this is ironic because it is First Nation peoples that have suffered the consequences of racism, and yet it is currently non-First Nation peoples that allege that *race* is being used as an inappropriate basis for land / resource claim settlements.

²⁸⁵ See, for example, Alfred (1999; *especially* pp. 84-88).

requirements in the *Indian Act*,²⁸⁶ as well as from the American context where references to *race* and *blood* are more prevalent.²⁸⁷ More to the point, the idea of *race* in this context was introduced by those who were opposed to the recognition of special rights vis-à-vis First Nation peoples. For example, First Nation commercial fisheries have been vehemently opposed by a few high profile politicians, as well as a number of outspoken non-First Nation commercial fishers. Phil Eidsvik, founder and spokesperson of the BC Fisheries Survival Coalition, spearheaded a movement opposed to a so-called *race-based* fishery under the Nisga'a treaty. He was quoted by the *Vancouver Sun* calling for "equality, not native apartheid... apartheid is the best way to describe treaties that will forever divide Canadians along racial lines."²⁸⁸ This kind of rhetoric was not confined to extremists like Eidsvik, but was also employed by the likes of Gordon Campbell in his position as leader of the provincial opposition.²⁸⁹

It was, of course, difficult to measure the impacts of such statements on the public's understanding of these issues. In some cases, as with overly simplistic comparisons to apartheid in South Africa, the *Vancouver Sun*'s editorial staff published readers' letters challenging such statements.²⁹⁰ Ironically, the *Vancouver Sun*'s editorial staff saw itself as being under no such obligation in respect to the materials they published. On March 22, 1996, the *Vancouver Sun* ran a story with the headline "Nisga'a

²⁸⁶ Ever since Bill C-31 was passed in 1985, status Indians have been registered under Section 6 of the *Indian Act*. This section is broken down into two sub-sections 6(1) and 6(2). If an individual can prove he/she has two parents entitled to Indian status, he/she would be registered under Section 6(1) of this Act. If, however, an individual is deemed to have only one Indian parent, he/she would be registered under Section 6(2) of this Act. Those individuals registered under Section 6(2) must marry a status Indian in order to pass the status on. The imposition of this distinction creates a basis upon which blood quantum has become a factor in determining who is *Indian*.

²⁸⁷ See, for example, Cornet (2008).

²⁸⁸ *Vancouver Sun*, May 7, 1996:B1.

²⁸⁹ *Vancouver Sun*, February 13, 1996:A1.

²⁹⁰ *Vancouver Sun*, April 11, 1996:A19.

self-rule proposal racist, BC Reformer says” with the bi-line “Keith Martin compares the pact to South African apartheid, saying it creates different laws for different people.”²⁹¹ The next day, the Vancouver *Sun* ran an editorial criticizing Martin for making these statements. The headline stated “Reform rhetoric: Nisga'a treaty, South African apartheid comparison unjustified, inflammatory.”²⁹² Then, only four days later, the Vancouver *Sun* ran an equally inflammatory Opinion with the headline “Natives will be isolated in homelands” and a bi-line stating that “Future generations will be trapped halfway between past and present.”²⁹³ Such racist characterizations rely upon an evolutionary conception of indigenous peoples and cultures, casting traditional systems as backward and archaic, while simultaneously suggesting that First Nations must *catch-up* with more *advanced* European cultures.

These types of inconsistencies conform with the observation made by van Dijk (1988) that liberal press tend to be more heterogeneous and contradictory than their conservative counterparts. To look to the Vancouver *Sun* for a clear or consistent message in respect to the resolution of the BC land question would be unrealistic. However, neither can we presume that this represents balance in reporting. On the contrary, the Vancouver *Sun*'s (re)presentation of First Nation issues reproduced many of the social inequities that First Nation peoples experience more widely. For example, the Vancouver *Sun* constructed First Nation peoples as authorities on the BC land question only occasionally. More often, the knowledge and experience of a First Nation person was secondary to someone else's observation or opinion, or, indeed, First Nation peoples' knowledge and experiences were discounted altogether. This was evidenced in the low

²⁹¹ Vancouver *Sun*, March 22, 1996:A1.

²⁹² Vancouver *Sun*, March 23, 1996:A20.

²⁹³ Vancouver *Sun*, March 27, 1996:A17.

number of First Nation peoples referred to by name in the *Vancouver Sun*'s coverage of First Nation issues,²⁹⁴ and the even smaller proportion who were quoted directly.²⁹⁵

This was also the case in respect to the many polls that the *Vancouver Sun* chose to publish pertaining to First Nation issues during this period. These have ranged from polls conducted by trucking companies,²⁹⁶ the BC Fisheries Survival Coalition,²⁹⁷ Angus Reid,²⁹⁸ and the Federal Government.²⁹⁹ The *Vancouver Sun* published the results of at least fourteen polls purporting to be about First Nation issues during the period 1995-99. The issue of polling is significant in that it tends to pit the views of an ostensible majority against those of First Nation peoples themselves. In particular, polls are presented as if to offer an unbiased view of the democratic wishes of the public. This perception is highly problematic for its tendency to conflate one particular construction of the democratic will with justice in the resolution of a particular issue. The fact that many of these polls were conducted without any indication of their representativeness is for the most part beside the point. Polling is conducted as if to be democratic, while it marginalizes First Nation voices by reinforcing the fact that they are, among other things, a numeric minority.³⁰⁰

In at least one article, the *Vancouver Sun* suggested that not only should First Nation peoples not be heard, but that they should be silenced. In reporting on the results

²⁹⁴ For example, in my *Vancouver Sun* dataset, I found that only seven First Nation persons were referred to more than three times during the period 1995-99. They were: Joseph Gosnell, Joe Mathias, Ed John, Phil Fontaine, Stewart Phillip, Herb George, and Miles Richardson.

²⁹⁵ I estimate that only three First Nation persons have been quoted more than two times by the *Vancouver Sun* during the period 1995-99. They are: Joseph Gosnell, Joe Mathias, and Ed John.

²⁹⁶ *Vancouver Sun*, April 28, 1999:B7.

²⁹⁷ *Vancouver Sun*, February 15, 1999:A3.

²⁹⁸ *Vancouver Sun*, June 6, 1998:A1.

²⁹⁹ *Vancouver Sun*, March 4, 1997:B4.

³⁰⁰ The *Vancouver Sun* has published numerous articles emphasizing the small proportion of First Nation peoples in BC relative to the remainder of the population. See, for example:

- June 9, 1995:A3
- February 20, 1996:A15
- February 28, 1998:A23.

of a particular land claim, Jack Weisgerber, in his former capacity as the leader of the BC Reform Party, was quoted as saying that it was “absolutely ludicrous” that the testimony of three elders changed the government’s mind with respect to a land claim.³⁰¹ The bi-line read: “The BC reform leader assails federal officials for accepting the memory of tribal elders near Fort St. James.” These assertions would border on the absurd were it not for the racialized subtext that belies perceptions of First Nation peoples, and reflect a significant power imbalance that was prevalent in the media at the time. One could scarcely imagine another context wherein the testimony of three individuals – any three individuals – could be so easily discounted. Given the media’s power in legitimizing particular views and issues, the lack of attention paid to First Nation voices and knowledge was itself a means of delegitimizing what First Nation peoples had to say.³⁰²

The consequences of such coverage was two-pronged: on the one hand, references to *race* emerged as a means of raising the stakes in defining or opposing a potential approach to a respective problem. *Race* was introduced in a conspicuous and controversial manner, attracting a disproportionate amount of attention, thereby limiting the attention given to other aspects of an issue. On the other hand, the racialization of First Nation issues was tied to a strategy of undermining their validity as a unique category of examination. The denial of *race* as a meaningful basis for distinguishing First Nation peoples from other British Columbians served to deny difference altogether. To suggest that people should not be distinguished according to their *race* did nothing to challenge racist assumptions. On the contrary, it served to reaffirm that *race* was a meaningful social category, but that *it should not be used in this case*. Hence, First

³⁰¹ Vancouver *Sun*, April 4, 1996:B6.

³⁰² One could ask, for example, on what basis Weisgerber is in a position to dispute the testimony of these three elders?

Nation peoples continued to be defined as different according to their *race*, but were prevented from articulating their difference based on the imposition of *race* as the only means of justifying it. The invocation of *race* as an explanatory determinant in First Nation claims has operated to occlude the possibility of seeing the First Nation peoples in any other way. This is consonant with Edward Said's observations in *Orientalism*:

Along with all other peoples variously described as backwards, degenerate, uncivilized, and retarded, the Orientals were viewed in a framework constructed out of biological determinism and moral-political admonishment... Orientals were rarely seen or looked at; they were seen through, analyzed not as citizens, or even people, but as problems to be solved or confined or – as the colonial powers openly coveted their territory – taken over. The point is that the very designation of something as Oriental involved an already pronounced evaluative judgement (Said 1978:207).

5.5 - Conclusions

It is a mistake to underestimate the role of mass media in contemporary society. Commercial news media have become the primary source of information for the public at large, and appearing in media has become the single most potent form of public validation.³⁰³ The obvious corollary to this conclusion is that exclusion from mass media has the reverse implication: a lack of significance. Few issues have received the volume of coverage attributed to First Nation land / resource claims, and yet, the form and content of this coverage does not speak to the empowerment of First Nation peoples. On the contrary, during this period, the media's representation of the BC land question did not challenge the status quo, but rather, continued to construct First Nation peoples and

³⁰³ Governments, corporations, non-governmental organizations (NGOs), and most other organizations with a public persona expend an inordinate amount of energy and resources tracking media in an effort to influence their own representations.

issues in a manner consistent with the enduring narratives of colonialism and settlement. Even more importantly, the media's coverage with respect to this policy field remained firmly planted within parameters that had been set by governments as a part of establishing the treaty process.

Looking to the macro perspective, it is clear that the form and content of the Vancouver *Sun*'s coverage and representation of the Nisga'a treaty negotiations in particular, and First Nation land / resource issues more generally, left much to be desired. The Vancouver *Sun*'s coverage of the negotiations leading up to the Nisga'a Final Agreement tended to reproduce, rather than challenge, many of the historical narratives that informed the public's assumptions about First Nations. The idea of *race* continued to figure prominently in the representation of First Nation issues, and the perception that First Nation peoples could not take care of themselves was regularly reinforced by the *Sun*. Moreover, First Nation peoples themselves remained on the sidelines of this policy field in the media. On this basis, we can conclude that, while issues pertaining to First Nation peoples did in some respects dominate coverage in the media, First Nation peoples themselves remained on the margins of this coverage.

Access to the public sphere – conceived here vis-à-vis news media – was been systemically denied to First Nation peoples by a set of institutional and discursive practices that did not recognize or adequately value perspectives that fell outside of the narrow range of socially and culturally acceptable meanings that had already been ascribed to First Nation peoples. This is to say that some First Nation issues may have appeared very regularly in the media, but that it was how First Nation issues were constructed and represented that was indicative of their disempowerment. Nor was this

issue limited to media in Canada or BC. Abel (1997) found comparable evidence in her analysis of television news coverage in New Zealand, and Cowlshaw (1995) made a similar observation in her examination of reactions to the *Mabo*³⁰⁴ decision in Australia.

However, while I argue that media play a significant role in structuring and disseminating discourses about First Nation issues, this should not be taken to mean that media are monolithic in their hold over their audiences. Consumers of media are not passive in respect to what they see, hear or read. However, while meanings derived from media vary according to the subject positions of its consumers, there are particular readings of the media's text or message that will be more likely than others. This arises in large part through the conditioning of audiences to particular formats, styles, and even personalities, but is also tied to the narrative traditions that a particular story relies upon to make sense of an issue. Like the "founding myth" of White British Columbians (Bateman 1997), the source of these discourses are located in the narratives of *race*, *contact*, conquest, colonization, and the "myth of the frontier" (Furniss 1999). These narratives rarely need to be drawn on explicitly but, rather, form a part of popular consciousness and are triggered by discourses that make sense in respect to a particular subject matter and in a particular social and historical context.

³⁰⁴ *Mabo v. Queensland* (1992), 107 A.L.R. 1.

CHAPTER 6: INTERSECTING NARRATIVES

6.1 – Introduction

Interactions between indigenous peoples and the state are today not typically characterized as colonial in orientation. The media's focus on such interactions is for the most part ahistorical, and the policy focus of governments emphasizes what will be rather than why things are as they are. Arguably, however, while new terms have emerged in the attempt to more accurately characterize the present day setting, and post-colonial literature has attempted to theorize these circumstances (e.g., Paley 2002), the objectives of settler states as compared to their colonial predecessors are not unconnected. Indeed, in my view, an element of clarity emerges when land disputes in BC and other parts of Canada are stripped of their particularities and re-cast in historical terms based on interactions between settler states and the original inhabitants. This is to say that there are many contingencies that can inform one's account of a land dispute depending on the systems of meaning-making that are at one's disposal. If all that one has access to is information suggesting that a particular land dispute is illegal or that a third-party holds the legal deed to a piece of land the challenge is all the greater.

The treaty process introduced another means of making sense of the BC land question, and the tacit recognition of this was a central factor that cut across the entirety of my research. Not only did the treaty process place the land question in full public view – for example, in the media – but it also suggested that some form of resolution was in fact necessary. This tacit admission on the part of the government had enormous symbolic importance for both supporters and detractors of the new process – something that was consistently reaffirmed in my interviews. Not only did the treaty process

provoke a strong response from those unprepared to accept such an admission, it also provided governments with a new opportunity to define the land question in a manner that was consistent with their overarching policy objectives. In this way, the dialectic of validation and constraint emerged discursively as a product of peoples' attempts to reconcile the fact of recognition that was embodied by the treaty process³⁰⁵ with their own perceptions of First Nation peoples and/or issues.³⁰⁶ It is this struggle over the meaning of the BC land question and its purported consequences that is highlighted in this chapter.

Although the treaty process was developed with the participation of First Nations, the Nisga'a treaty had a tremendous impact on the meanings that would be attached to the treaty process. The Nisga'a treaty would come to represent the inherent limits of recognition,³⁰⁷ thereby establishing the treaty process as the prevailing normative order relating to discourse about the land question.³⁰⁸ At their core, these are issues about culture and power; they are issues about how this policy field is constructed and who has the power to do so. It is this understanding that can be usefully advanced to make sense of the BC land question not only at the inception of the treaty process, but also over the decade that followed. The vast majority of claims – and there are hundreds – have no standing independent of a legal process or the political will to resolve them. The BC treaty process purported to give all of these claims standing, but in a manner that was consistent with the recognition that First Nation decision making would continue to take

³⁰⁵ This is not to suggest that recognition is in any way a straight forward matter in this context, but only that the treaty process would not have emerged as a policy option without some basis upon which to recognize the land question as a distinct issue requiring focused attention.

³⁰⁶ Embodied most obviously – but not necessarily – in one's perception of the BC land question.

³⁰⁷ Not the least of which because it too was developed with the participation of First Nations – in this case, the Nisga'a.

³⁰⁸ Drawing on Miller, my use of the term normative “implies much more than normal or typical. It implicates pressure... to behave according to the precepts being described” (2001:16).

place within parameters that would be set largely by governments. Issues of culture and power pervade this process; the challenge is recognizing these elements (manifest discursively) and appropriately drawing them out to understand them better and situate competing constructions of the land question into the future.

6.2 - The Impact of the Nisga'a Treaty Negotiations

Although the Nisga'a treaty negotiations did not form part of the BC Treaty Commission process, the approach taken by the Nisga'a informed how governments would approach negotiations more broadly. Moreover, it was widely recognized that the content of the Nisga'a settlement would impact other settlements that were expected to follow.³⁰⁹ As such, as the first modern-day comprehensive land claim settlement to be negotiated in BC, the outcome of these negotiations would establish a significant precedent with respect to the BC treaty process, one that would shape peoples' thinking on a broad spectrum of issues. Foremost in the public domain were the resource industry sectors – forestry, mining, fisheries, and ranching – that had positioned themselves as key stakeholders with respect to any outcome. This was confirmed in my interview with Quentin where he suggested that some groups were doing this to ensure that they would have access to potential sources of compensation that might arise as a consequence of treaty settlements.

I suspect they're championing, as I said before, certain interests that are proprietary with respect to resource based industries. Because they can see themselves being displaced, perhaps, in some instances, or because they're

³⁰⁹ This was certainly one of the concerns expressed by the Citizens' Voice on Native Claims in advertisements that were placed in major media (e.g., Vancouver *Sun*, July 8, 1997:B3).

*positioning themselves to be properly compensated if there are changes that affect them because of the treaty negotiations.*³¹⁰

As a result, both industry and labour were preparing themselves to focus on the Nisga'a treaty as an aspect of the economy. Thus, the form and content of the Nisga'a negotiations and emerging agreement grew to attract increasing attention in the mid-1990s.

From a policy perspective, the treaty process represented a significant shift in the provincial government's position with respect to the BC land question; a shift that would not have occurred without a thorough calculation of risk (Abele et al. 2005). However, the factors used in this calculation would have differed between a Social Credit versus a New Democratic government. This difference was expressed most overtly in the NDP's approach to the Gitksan and Wet'suwet'en appeal of *Delgamuukw* to the BC Court of Appeal. Contrary to McEachern's findings in 1991, the new NDP government asserted that First Nations did have unextinguished Aboriginal rights and title, but that these had *no proprietary or commercial basis*.³¹¹ This characterization reflected not only the NDP's legal position with respect to rights and title, but also captured an important aspect of the NDP's policy stance in treaty negotiations. In short, the then new provincial government was not prepared to negotiate treaties on a basis that presumed a First Nation's right to access the economy³¹² – this right would have to be negotiated and, as such, would be the subject of a trade-off. It is on this basis, for example, that former

³¹⁰ Personal interview with Quentin, December 15, 1997.

³¹¹ This characterization of Aboriginal rights and title effectively confines their exercise to some kinds of activities and not others. For example, access to fisheries have been distinguished according to whether they are commercial in orientation (i.e., to sell fish) or for subsistence, social or ceremonial purposes (i.e., for personal or community use).

³¹² In this way, the NDP's acknowledgement of unextinguished Aboriginal rights and title did not presume to recognize a First Nation's right to harvest resources for any purposes other than personal or community use. As such, the right to harvest resources for sale would still be subject to negotiation with the appropriate level of government.

Aboriginal Affairs Minister John Cashore was able to unilaterally assert that the tax exemption for Aboriginal people would be “phased out” as a part of treaty settlements³¹³ – this was to be one of the trade-offs relating to accessing the economy.

Issuing its decision in June 1993, the BC Court of Appeal for the most part accepted the new government’s position with respect to *Delgamuukw*, using it strategically to “clean-up” the most problematic aspects of McEachern’s 1991 decision (Culhane 1998:328). As a result, however, the Gitksan and Wet’suwet’en technically lost their appeal. While the Gitksan and Wet’suwet’en immediately appealed to the Supreme Court of Canada, they also agreed to postpone their appeal pending the establishment of the treaty process. This, again, re-affirms the tremendous sense of expectation that had emerged with respect to the establishment of the treaty process. While the Gitksan and Wet’suwet’en had been decimated by the ruling in 1991 (see, e.g., Pinder 1991), they no doubt hoped that a less adversarial NDP government would allow them to negotiate a settlement without risking the possibility of a further upset at the Supreme Court of Canada. It also needs to be borne in mind that the fact that the Gitksan and Wet’suwet’en had opted to negotiate a settlement would only have bolstered the general sense of expectation relating to the treaty process. Hence, beginning in 1993, the situation was one where three distinct discursive streams had emerged to inform this policy field:

1. A legal stream relating to emerging case law with a particular emphasis on *Delgamuukw*;
2. A political stream relating to the treaty process with a particular orientation to the Nisga’a negotiations; and
3. An economic stream relating to the disputed content of Aboriginal rights and title and the various groups that emerged to comment on economic considerations.

³¹³ Ministry of Aboriginal Affairs, May 26, 1995. This issue is also examined in Chapter Four.

While each one of these streams was important in its own right, the most significant impacts emerged in relation to how they were manipulated relative to one another. What becomes particularly telling is how the Nisga'a treaty was used by the Province to buttress its policy stance with respect to the treaty process and shield it against the impacts of litigation through the latter half of the 1990s (and beyond). The Nisga'a treaty became the predominant vehicle for the provincial government to ensure that the treaty process retained legitimacy despite public cynicism and growing First Nation opposition. This dynamic is examined in greater detail in the following three sub-sections.

6.2.1 – The Legal Stream

The jurisprudence relating to Aboriginal rights and title continues to evolve to the present day. Because the *Constitution Act, 1982* did not define Aboriginal rights and title, and because the four constitutional conferences that followed its repatriation failed to provide clarification with respect to the form and content of such rights, the definition of Aboriginal rights and title has been left largely to the courts. The first such case to make it to the Supreme Court of Canada was *Sparrow* (1990). In this case, the Supreme Court affirmed a right to fish for food based on an unextinguished inherent Aboriginal right protected under section 35(1) of the *Constitution*. As one aspect of its decision, the court established a hierarchy of access, defining Aboriginal food harvesting as second only to conservation, followed by (non-Aboriginal) commercial harvesting. Furthermore, the court found that provincial legislation could limit, but not extinguish Aboriginal rights, and then, only if it had given them appropriate priority. This case would have a profound affect on the BC government's approach to not only fishing rights, but all Aboriginal

rights,³¹⁴ and was a fundamental consideration in the Province's assertion that Aboriginal rights had no proprietary or commercial basis.

The *Sparrow* decision buoyed First Nations' sense of optimism with respect to what was now possible given the Supreme Court's recognition. Although *Delgamuukw* was still just at the trial stage in 1990, there is no doubt that government lawyers and policy makers were re-assessing their positions in the wake of this decision. As has already been described, McEachern's decision in 1991 sent shock waves throughout the Aboriginal community, and the Court of Appeal ruling in 1993 did little to allay their concerns. With the BC Treaty Commission just a few months away from opening its doors, the Gitksan and Wet'suwet'en decision to opt for negotiations, while preserving their right to appeal to the Supreme Court of Canada, was an important element in validating the government's policy response despite emergent case law. Negotiations with the Gitksan and Wet'suwet'en, which commenced in March 1994, continued through to February 1996, when the BC government announced that it was suspending negotiations with the Gitksan³¹⁵ citing "fundamental differences."³¹⁶

There were, no doubt, fundamental differences. Within two weeks of walking away from the table with the Gitksan, the Province emerged *victorious*, along with the federal government, in reaching an agreement-in-principle with the Nisga'a.³¹⁷ Jack, a strategist for the Gitksan and Wet'suwet'en, indicated that there was opposition to the government's departure from negotiations on the part of non-Aboriginal people in the

³¹⁴ For example, the Aboriginal Fishing Strategy (AFS) was introduced in response to *Sparrow*. Ironically, it was suspended pending litigation alleging that the AFS contravened the right to equality protected under the *Canadian Charter of Rights and Freedoms*.

³¹⁵ The Wet'suwet'en were on a different track in negotiations.

³¹⁶ John Cashore, Minister of Aboriginal Affairs, quoted in the *Vancouver Sun*, February 2, 1996, A1.

³¹⁷ The Nisga'a Agreement-in-Principle is dated February 15, 1996, a mere thirteen days following the *Vancouver Sun's* report that the Province had left negotiations with the Gitksan.

territory.³¹⁸ Nevertheless, by doing so, the BC government was taking a stand on where negotiations would go, but more importantly, where they would *not* go. Although the prospect of the Gitksan and Wet'suwet'en proceeding to the Supreme Court of Canada would not have been welcomed by any of the parties, this would have been mitigated for the Province by the prospect of a final settlement with the Nisga'a and, therefore, would have represented a calculated risk. Having done so, however, the stakes had been raised and the need for a successful outcome with the Nisga'a had only further increased for the federal and provincial governments.

Negotiations with the Nisga'a, based on the Agreement-in-Principle, continued through 1996 and 1997, while at the same time the Gitksan and Wet'suwet'en appeal of *Delgamuukw* proceeded to the Supreme Court of Canada in June 1997. Many were caught off guard when the decision of the Supreme Court was released on December 11, 1997. Although the upshot of the decision was to order a new trial, the Supreme Court of Canada had in fact emphasized negotiations as the most effective approach to resolving such issues. *Sparrow* had pointed to section 35(1) of the *Constitution* as a "solid base" for negotiations, and this was again re-affirmed by Chief Justice Antonio Lamer in *Delgamuukw*. Hence, we see the courts affirming the direction set by BC in the provincial context and the *Vancouver Sun* characterized the decision as a "vindication for the treaty process."³¹⁹ Asked about the impact of the *Delgamuukw* decision on existing government mandates, one federal negotiator responded in this way:

Fiona: *We wait until there is a new mandate.*

Tonio: *There's no in-between at all? Is there a squeak?*

³¹⁸ Personal interview with Jack, April 22, 1999.

³¹⁹ *Vancouver Sun*, December 12, 1997:A22.

Fiona: *Well, there're two answers to that question, and as informed citizens it's fairly easy to guess where some of the give is going to have to give on this. Until we get new instructions our old instructions stand. And there are, there's a lot of time being spent internally looking at what on earth does all this mean, and how would this affect our mandates, and how are, what sort of changes might we have to make. But until those changes are made and we're re-mandated by Cabinet, it hasn't changed until it's all changed.*

Tonio: *Is this a period of limbo then?*

Fiona: *No, we've got our existing mandates, that's what we're negotiating.*³²⁰

While all of the federal and provincial negotiators that I interviewed acknowledged that this decision would impact negotiations, their “instructions” prevented them from speculating about the nature of such change. From the government’s perspective, *Delgamuukw* threatened the relative sanctity of the treaty process. It represented a potentially never-ending Pandora’s Box of rights and title claims that were clearly inconsistent with the limited objectives of governments that had intended to establish a new normative order under the treaty process. The provincial government, in particular, appeared frozen in its own tracks, not sure how to respond, desperate to re-assert its control over this policy field. The government’s initial strategy – so it appeared – was simply to remain silent. The consequence was tantamount to a gag order – *Delgamuukw* had become the elephant in the room.

While *Delgamuukw* was clearly a victory – a *vindication* – for the Gitksan and Wet’suwet’en, commentaries on the substantive impact of this decision focused on its different elements (e.g., Culhane 1998, Persky 1998). In the media, speculation ensued with a wider than usual cast of commentators being called upon to speak to the potential

³²⁰ Personal interview with Fiona, February 4, 1998.

implications of the decision.³²¹ This was a moment for wide speculation about the land question. The provincial government remained largely silent on the issue until late-February 1998 when Premier Clark resorted to a tactic with a long history in BC; he suggested that the onus was on the federal government to implement *Delgamuukw*.³²² More to the point, however, was the impact that this decision would have on negotiations with the Nisga'a – would the Nisga'a seek to re-open the terms of their Agreement-in-Principle given the new benchmark that had been established in the legal setting? This question became the lynchpin upon which all other negotiations would rest. If the Nisga'a opted to re-open their negotiations, this would signal to the governments the need to seek new mandates with respect to all negotiations. On the other hand, if the Nisga'a accepted their Agreement-in-Principle as essentially unaffected by *Delgamuukw*, then governments would be able to use this as the basis for minimizing the impacts of the decision.

On December 19, 1997, Joseph Gosnell, President of the Nisga'a Tribal Council, signaled that the Nisga'a would proceed with negotiations based on the Agreement-in-Principle,³²³ and this was solidified on March 9, 1998, in an article that read: “Nisga'a throw Clark a lifeline with renewed offer.”³²⁴ After an opening of three to four months where the legal and policy realms of the BC land question had been blown open by the

³²¹ For example, in the *Vancouver Sun*, this included articles quoting the following individuals in the three months following the release of *Delgamuukw*: Frank Cassidy (academic), Phil Eidsvik (BC Fisheries Survival Coalition), Jerry Lampert (BC Business Council), John Shafer (Settlers in Support of Indigenous Sovereignty), Lorne Greenaway (BC Cattlemen's Association), Mike Hunter (Fisheries Council of BC), Stewart Phillip (Union of BC Indian Chiefs), and Michael Asch (academic). Moreover, several Gitksan and Wet'suwet'en commentators were also included in the coverage that followed, as well as other First Nation groups, including the Gitanyow.

³²² “Land-claims ruling places the onus on Ottawa to deal with Natives—Clark,” *Vancouver Sun*, February 27, 1998:A9.

³²³ Feature article by Joseph Gosnell, “Let's get on with the land-claim,” *Vancouver Sun*, December 19, 1997:E2.

³²⁴ *Vancouver Sun*, March 9, 1998:A10.

potential of the *Delgamuukw* decision, the door had now again begun to close. In early January 1998, the federal government had launched “Gathering Strength: Canada’s Aboriginal Action Plan” as the basis for its response to the largely ignored report of the Royal Commission on Aboriginal Peoples that had been released in 1996. In late March 1998, a full page ad appeared in the *Vancouver Sun* reproducing the federal government’s Statement of Reconciliation as the basis of Gathering Strength. This shift on the part of the federal government coincided with a renewed emphasis on the Nisga’a treaty by the provincial government. By mid-April 1998, the focus of media had all but shifted from *Delgamuukw* and the emphasis was once again on the emerging Nisga’a treaty. The opportunity to advance the policy agenda based on *Delgamuukw* had dissipated – the treaty process had re-emerged as the prevailing normative order relating to the BC land question. As many First Nations reportedly left the treaty process in an attempt to pursue strategies in the courts,³²⁵ the political environment for negotiations became more polarized and groups opposed to land / resource based settlements³²⁶ used *Delgamuukw* to generate fear about the potential of settlements.

6.2.2 – The Political Stream

While the inception of the treaty process represented a significant policy shift on the part of the provincial government, it also established a normative framework within which all discussions about the land question would take place. However, not only had the BC land question re-cast the discursive landscape of the land question within an institutional context – one controlled by government – but it had effectively transformed the

³²⁵ The *Vancouver Sun* reported that seven First Nations previously in the treaty process had left to pursue litigation since the *Delgamuukw* ruling (June 27, 1998:A1).

³²⁶ As opposed to cash-only settlements.

discursive terrain from one that was driven largely by First Nations to one that was now dominated by what was characterized by a non-Aboriginal public. It is this shift that characterized an important secondary element to the normative framework that had been established by the treaty process.

The emergence of a non-Aboriginal public as a central feature within this discursive context represents one of the most profound expressions of how this policy field was transformed during the 1990s. This transformation began to take shape most clearly in response to the lobbying of the Union of BC Municipalities (UBCM) that alleged that treaty negotiations were taking place *behind closed doors*.³²⁷ This led governments to establish a number of bodies that became a formal part of the consultation mechanisms that were supposed to inform the negotiators at a respective treaty table. These included Local Advisory Committees (LACs), Regional Advisory Committees (RACs), Treaty Advisory Committees (TACs), and the Treaty Negotiation Advisory Committee (TNAC).³²⁸ Although the specific composition of these bodies varied, their focus was on providing third-party individuals and organizations – most notably municipalities, business and stakeholder groups, and labour – with an opportunity to inform the negotiating setting from a *non*-Aboriginal perspective. Having set this precedent, however, questions about *public* involvement in the treaty process only grew. The result was a growing emphasis on the need for greater public inclusion in the

³²⁷ This was a critique that initially focused on the Nisga'a negotiations that took place largely out of the public's view. However, this critique was simply extended to the treaty process despite the fact that – in this respect in particular – the manner of negotiations in the treaty process differed significantly.

³²⁸ Each of these committees provided a forum for indirect third-party participation in the treaty process. Different committees operated in different contexts, but TNAC was a singular committee comprised of senior level business, labour, municipal government province-wide representation (see Appendix 8 for a list of TNAC member organizations).

process, and one of the most physical manifestations of this was the emergence of so-called *town hall* meetings.

My most enlightening encounter with such a public forum – billed as a “Special Public Information Meeting” – arose early in my research. Hosted by Daphne Jennings, the Reform MP for Mission-Coquitlam in November 1995, the keynote speaker at this event was Mel Smith, a reputed expert on constitutional and Aboriginal affairs.³²⁹ At the meeting, one of a series of which was held across the province (see, Furniss 1999), a packed audience of some five-hundred community members was in attendance, the vast majority of which appeared to be Reform supporters. Smith, in a style that I later became more familiar with, proceeded to leaf through the infamous³³⁰ Reasons for Judgement issued by McEachern in his 1991 ruling on *Delgamuukw*, reciting select passages for their apparent insights. The ensuing effect was both powerful and affirming for the audience as Smith validated what many in attendance already appeared to believe.

While McEachern’s Reasons for Judgement were not formally overturned until 1997, a great deal of scholarly work had emerged since the trial, the lion’s share of which rejected both the basis and content of his findings and recommendations (e.g., Cassidy 1992, Fortune 1993, Mills 1994). In this setting, however, the audience listened and applauded as Smith read from the text. It was clear that Smith’s performance, and the audience’s reception to it, constituted the affirmation of something grounded in more than just facts – this was not an information session as much as it was a performance that was intended to inspire and re-affirm a set of beliefs using a profoundly symbolic repertoire. The use of a

³²⁹ A lawyer by profession, the late Mel Smith was perhaps best known for his strong views opposing the recognition of First Nation rights. His book *Our Home or Native Land?* (1995) reflected much of the ideology embodied in right-of-centre parties with respect to the Land Question.

³³⁰ See, Culhane 1998.

legal text as a basis for Smith's performance embodied a profound symbolism – the volume itself was large and substantial at 400 pages,³³¹ with Smith at a podium set on a low riser, leafing through select sections of the judgement – it was unmistakably redolent of a preacher reciting sections from the Bible. Whether this approach was intentional or not, his performance resonated with the audience in a way that a slide show was unlikely to match.

As a political party premised on the principle of populism, the strategy of the Reform Party included appeals to a particular construction of *fairness* and *equality* that, as was evident in my interview with Elmer,³³² was used as a basis for denying difference.³³³ This feature of the town hall format carried over to many of the other public forums that began to take place beginning in the mid-1990s. Governments' attempts to counter these characterizations largely floundered, in part, due to the populist sentiment that had emerged politically. If British Columbians supported the treaty process, it was in some respects despite the governments' attempts to "sell" it as the *right thing to do* (see, Ponting 2006).³³⁴ While the media's focus also began to take up these issues, comments on the part of several federal and provincial officials suggested that they were struggling to maintain control over the meanings that they were trying to attach to the negotiation of treaties. In response, the federal and provincial governments began to host their own public meetings. In addition, the various treaty tables across the province were called upon to hold public negotiation sessions and, where possible, to advertise these in advance to garner a public audience.

³³¹ In what is not typical in decisions of the Supreme Court of BC, the *Reasons for Judgment* in the case of *Delgamuukw* (1991) were published as a distinct text and, reportedly, a copy was issued to every school in BC.

³³² See Chapter Two.

³³³ For example, special rights (see, Cairns 2000).

³³⁴ A number of federal and provincial officials whom I interviewed expressed a deep frustration with the ability of governments to convey information in a manner that would not be met with suspicion. Elmer's comments only reaffirmed this perception (see Chapter Two).

By 1996, public treaty-related events had begun to pop-up with significant frequency. Church groups, universities, student societies, and labour, along with events hosted by the media, and the formal meetings that were actually affiliated with the treaty process, all began to compete for public attention. While some of these were well attended, it wasn't long before many of them were marked by how many people weren't there based on the number of empty chairs that could be counted. Before long, the treaty process had become a major public initiative that much of the public appeared to have limited interest in. While the Nisga'a treaty was for the most part an exception in this regard, it raised the question of why the treaty process had been cast as a *public* issue, and in whose interest it was to have it cast thus? While the UBCM had clearly been one of the parties driving this interest, the establishment of the various advisory committees had for the most part responded to the need for openness and inclusion. Nevertheless, the sense that this ought to be a public issue continued to be propagated, and was one that government officials struggled to accommodate. In one case, the same meeting was described by a provincial official as having had "a really excellent turnout,"³³⁵ while a federal official commenting on the same meeting some weeks early suggested that the turnout had been quite dismal.³³⁶ The fact that their perceptions varied so dramatically was indicative of the challenges that government officials were facing in garnering public input. Sam, a senior official working for the federal government put it this way:

These negotiations that we're doing under the British Columbia treaty process are unprecedented, therefore, in terms of their openness and the ability of the public to both observe what is going on, to get information about what is going on, and through their elected representatives, and their sectoral representatives, to have an influence on what is going on. Curiously, in spite of that, public interest is almost at a level of zero. We had a public forum in downtown Vancouver at the

³³⁵ Personal interview with Mona, February 23, 1998.

³³⁶ Personal interview with Fiona, February 4, 1998.

*height of the political hype around treaty negotiations, in the heart of the largest metropolitan area in the province we got forty members of the public out. The panellists, and the government representatives outnumber the number of the members of the public who were there.*³³⁷

With the prominence of the Nisga'a treaty in mainstream media coverage, beginning in 1995, so too did non-Aboriginal groups and individuals emerge to challenge the form and content of the treaty negotiation process. Groups such as the BC Foundation for Individual Rights and Equality (BC-FIRE) and the Citizens' Voice on Native Claims not only developed their own independent public personas, but played a behind-the-scenes role within the institutionalized forums of this process (e.g., TNAC). Such groups were further bolstered through their affiliation with right-of-centre political parties, such as the Reform Party and the provincial Liberal Party, and acted as a vehicle for a message that was perceived as being unpopular by some,³³⁸ but that was nonetheless advanced by key sectors within the province. These groups garnered significant political, if not public, attention.³³⁹

Although it is difficult to know precisely what impact such groups had on this setting, it was their involvement in other institutional contexts that made them difficult to discount. For example, Diego, an official working for one of the institutions affiliated with the treaty process, commented that:

Many of the people who you'd assume supported the Citizens' Voice already have representatives on the TACs and the RACs, and the TNAC, so Citizens' Voice was arguably trying to go outside of that process.

³³⁷ Personal interview with Sam, December 11, 1997.

³³⁸ One respondent, Ian, who had been involved in a panel debate about the Nisga'a treaty, suggested that his views were unpopular: "...there were six panellists and there were five good guys and then there was me – I was the bad guy." Personal interview, May 4, 1998.

³³⁹ A number of the federal and provincial officials whom I interviewed acknowledged tracking the activities of such organizations and, in one case, had had direct contact.

Similarly, Norman, a government official, commenting on the behind-the-scene role of groups like the BC Cattleman's Association,³⁴⁰ indicated that:

...we'll have private conversations with them, the kind of conversations you have if you're in a meeting and you break for coffee and stand in the corner and talk to a rancher about..., that's why we've gone out of our way to solicit tours of ranches and forest industry operations. For me going on a forest industry operation is a no brainer, but it's important for the negotiators to get out and see what's important to these guys on the ground...

The marginalization of First Nation dissent, coupled with the varied avenues that had been opened up for non-Aboriginal dissent, further informed this policy field.

Ultimately, it led to a referendum.

Tied to the challenges that government officials faced with respect to the public's participation at meetings were the challenges that they alleged emerged as a result of the media's coverage more generally. While some of my respondents suggested that media were complicit with government, several of the officials working for government suggested that the media was in fact biased against them.³⁴¹ Quentin's comments about the media's coverage of treaty issues were among the most positive.³⁴² For others, however, like Karl and Elmer, who did not work for the federal or provincial governments and who came from opposite ends of the political spectrum, media complicity was a troubling issue. Karl expressed it this way:

*We know about media concentration here, there's no plurality of views here, it's really amazing to pick up everything from the Socialist Worker to the Tribune, and anything in-between, and it all supports the Nisga'a deal. So I think that the media performance on this issue has been simply a propaganda campaign.*³⁴³

³⁴⁰ The BC Cattleman's Association was a low profile but highly active lobby behind-the-scenes of the treaty process. Fearing that they could lose access to grazing leases that at times encompassed hundreds of thousands of acres each, the BC Cattleman's Association was lobbying for cash-only settlements.

³⁴¹ Although some of my respondents distinguished different forms and/or sources of media, the Vancouver *Sun* arose as the most common referent in the majority of my interviews.

³⁴² See Chapter Two.

³⁴³ Personal interview with Karl, November 2, 1998.

Compare this with Elmer's characterization of media coverage and there is an interesting convergence that emerges despite their differing ideological perspectives.

...if I were to take fifty clippings out of whatever media and take them all away, from one spectrum to another, take them out of the BC Report, and go to the Sun and the Province, if you want the other end of the spectrum, they are not really dealing with the issues fully.³⁴⁴

This is in large part due to the perspective that they share about the need to constrain First Nations' socio-economic and political autonomy. Coming from a free enterprise perspective, Elmer saw no need for constraint, and this was shared by Karl whose ideological orientation could be more aptly described as sovereigntist. Where they did differ, however, was in their willingness to accord First Nations recognition. Where Elmer's narrative is about erasing boundaries (i.e., zero recognition), Karl's position is one that places First Nations fully alongside other nations, including Canada (i.e., full recognition). At these extremes, it is interesting to see that some commonalities emerge regarding their perspectives on the more mainstream discursive centre.

Another feature of this new policy context was the exclusion of dissenting First Nation voices. In effect, one had to be a part of the process in order to have any voice at all – and this was re-affirmed in several of my interviews with dissenting groups and individuals.³⁴⁵ Similarly, many of the federal and provincial officials that I interviewed revealed an implicit unwillingness to consider the merits of dissent that arose from First Nations outside the process.³⁴⁶ Where many First Nations opted to engage this process when it formally commenced in December 1993, many others chose to oppose it on a range of grounds, including that the Province had no role in nation to nation negotiations.

³⁴⁴ Personal interview with Elmer, August 13, 1998.

³⁴⁵ See Chapter Two for my interview with Karl.

³⁴⁶ Of the federal and provincial officials that I interviewed, Sam was the only one that made any independent reference to First Nation dissent from outside the treaty process.

The split that emerged between First Nations was largely consistent with the split that had long characterized First Nation politics in BC, one that corresponds with historical divisions between Coastal and Interior First Nations (see, Tennant 1990). Among these long held divisions was also that of political affiliation with either the Union of BC Indian Chiefs in the Interior (which opposed the treaty process) or the First Nations Congress *cum* First Nations Summit on the Coast.³⁴⁷ The UBCIC, which had been a foremost voice for First Nations in BC for well over a decade, was quickly relegated to secondary status with the emergence of the First Nations Summit as the voice for First Nations who were engaging the treaty process. And with this, UBCIC opposition to the process was relegated to the margins, rarely receiving political attention or meaningful media coverage.³⁴⁸

The experience of living rurally and working in the resource industries provided an important backdrop for the discursive construction of how treaties could (or could not) resolve the “problem with Native people.”³⁴⁹ The resource industries were the lifeblood of BC’s rural economies. Forestry, mining, fishing, ranching – each of these sectors represented not only a tremendous source of provincial revenue, but had also provided a lucrative economic base for countless rural households. Beyond this, each of these sectors was also characterized by a particular way of life that harked back to romanticized characterizations of “settling the West” and the rough life of the early pioneers (Furniss 1999). While the payoffs had often been lucrative, these industries had experienced a series of challenges, due in large part to an increasingly globalized commodities market that, in

³⁴⁷ Only recently have these organizations come together under the banner of the BC Leadership Council (along with the BC-Assembly of First Nations).

³⁴⁸ The Gitanyow, for example, were strongly opposed to the Nisga’a treaty based on their allegation that it encompassed Gitanyow territory. Their opposition was largely ignored (see, Sterritt et al. 1998).

³⁴⁹ This is a reference taken from my interview with Elmer (see Chapter Two).

turn, had placed the viability of these industries in doubt. The prospect of *lucrative* treaty settlements for First Nations was portrayed in contrast with increased unemployment in these industries, coupled with the complete demise of some resource-dependent communities. This sentiment was captured in my interview with Elmer.

*...I don't think that the [urban] public really fully understands, I think they're attempting to kid themselves. Like all the jobs that exist in the Lower Mainland, they don't exist for no reason, they exist because of what happens out here. Without all these resources most of those jobs are gone, manufacturing, the distribution jobs, the marketing jobs, they're all going right now. It hasn't hit them yet but the folks in these communities, they're three and four months behind on their mortgage payment, all the resource based stuff is in trouble and until it's on your own doorstep, of course, you don't pay much attention.*³⁵⁰

From Elmer's perspective, the folly of treaty making had yet to play itself out. As a resource-based province, the carving away of provincial revenues based on settlements reached with First Nations would have a detrimental affect on all British Columbians. This characterization raises one of the important elements in how treaty settlements have been cast vis-à-vis British Columbians.

A major theme in much of the opposition to the Nisga'a treaty, particularly from the Citizens' Voice on Native Claims, was that settlements should be cash-only (i.e., no land / resources).³⁵¹ The ostensible rationale for this was much the same as that articulated in my interview with Elmer: to carve out lands for First Nations would have a long term impact on provincial revenues. Essentially, a concern with reduced provincial revenues was consistent with a fear of increased taxes. Focusing on revenues provides yet another platform from which to condemn governments for increasing taxes and bolsters the neo-liberal objective of less government. But contrast this with the sale of other provincial assets – was the transfer of lands / resources to First Nations likely to

³⁵⁰ Personal interview with Elmer, August 13, 1998.

³⁵¹ My earliest references to this concept can be located as a plank in the federal Reform Party platform.

impact British Columbians any more than the sale of crown land to a forest company? – the NDP provincial government was eager to challenge the notion that this was a zero-sum game.

The issue of outcomes – win-win or zero-sum – is an important element in making sense of the different discourses that had been brought to bear in this policy field in the latter half of the 1990s. For one, the emergence of the treaty process had coincided with the demise of the right-of-centre Social Credit party which had formed the provincial government for decades. Whatever other impacts this may have had on provincial politics, it certainly left many, particularly rural, British Columbians uneasy about the approach that would be taken politically under an NDP government. Hence, when discussions about the Nisga'a Agreement-in-Principle began to emerge in 1995, the context was quite volatile. The government's primary interest was to retain control over this policy field. Not only was the treaty process still in its infancy, but the prospect of an ongoing legal vacuum with respect to the status of First Nation rights was characterized as hobbling an economic recovery based on access to revenues from the resource sectors. It was in this context, with an emerging treaty with the Nisga'a and political fallout following the 1997 *Delgamuukw* decision that economic issues were brought most strongly to bear on the BC land question.

6.2.3 – The Economic Stream

The resource sectors have long been a powerful lobby in the BC context. Forestry in particular, but fisheries on the coast and up several major river systems, and cattle ranching in the Interior, along with mining, have all left an indelible mark on the political-economic make-up of this province. Globalization, with the development of burgeoning markets to

the East and a corresponding appetite for raw materials, has made BC an economic focal point in international trade with Asia. While it had been a longstanding practice to simply ignore First Nations in BC as long as the issues were contained domestically, First Nation protests had taken on an increasingly international character typified by the canoes that were paddled through New York by the James Bay Cree in opposition to the Great Whale Project of Northern Quebec in the 1970s. Since then, with increasingly sophisticated information and communication technologies that have enabled mass media to gather and circulate images and information ever more quickly, stand-offs such as that at Oka, Quebec, have only made governments more self-conscious about their treatment of Aboriginal issues in Canada.

The ability of First Nations to capture public attention, primarily domestically, but also internationally, created a new impetus for governments to respond to their claims. But rather than focus on these issues as a legal one, or as a matter of domestic politics, the focal point for governments had become economic. It was in this context that a new discourse about the BC land question emerged, a discourse emanating from industry, but one buttressed by institutions such as the Royal Bank of Canada, KPMG³⁵² and the Laurier Institute.³⁵³ In the climate of neo-liberal economic reductionism that culminated in the late 1970s and early 1980s,³⁵⁴ and the corresponding fiscal conservatism that continues to characterize much of contemporary politics, it was little surprise that the land question had

³⁵² KPMG is a Swiss multinational corporation providing financial, auditing, and tax advice to corporations and governments around the world.

³⁵³ The Laurier Institute for the Study of Public Opinion and Policy is a research center at Wilfrid Laurier University which studies issues pertaining to the creation, use and representation of public opinion in policy processes.

³⁵⁴ This period is characterized most poignantly by the election of Margaret Thatcher in the United Kingdom in 1979. Her election, coupled with the election of Ronald Reagan in the United States in 1981 represented the most dramatic manifestation of the new political-economic climate that signaled the full-scale emergence of neo-liberalism as the basis for social and economic policy.

been transformed into an economic formula. Although the federal and provincial governments have never officially admitted it, it was no secret that per capita calculations were being used as the basis for settlement offers.³⁵⁵ Moreover, institutions such as the Royal Bank began to produce their own analyses with respect to the negotiation of settlements, analyses that, while couched in a discourse of affirmation, were fundamentally economic in orientation. In “The Cost of Doing Nothing,” for example, the Royal Bank argued that maintaining the status quo would ultimately cost more than investing in First Nation communities in the present. Although many First Nation organizations hailed the Royal Bank for bringing this issue to the economic fore, the report was clearly calling for a particular kind of solution to this issue.

Ultimately, where the rationale is economic, its proponent has a particular kind of solution in mind. This does not mean that an economic solution is not in the interest of many First Nations, but highlights the fact that economic interests have the potential to displace other interests, particularly where they are social or cultural in origin. Indeed, because social and cultural interests do not translate well into an economic framework,³⁵⁶ rarely are they considered for compensation at all. Although First Nations have a strong interest in achieving and maintaining sustainable economies, only with few exceptions have their primary interests been defined economically.³⁵⁷ This is to say that, while dollars matter, a First Nation’s attachment to a respective traditional territory has in most cases mattered more. Indeed, it is a critical point to recognize that the primary issue for indigenous peoples the world over is not dollars or even land, but rather, the traditional

³⁵⁵ See, for example, Penikett 2006:231.

³⁵⁶ Take, for example, loss of one’s language.

³⁵⁷ Although this too has been changing given the ongoing pervasiveness of this discourse.

territory³⁵⁸ to which a given indigenous group traces its ancestry.³⁵⁹ However, as Nadasdy (2003) has demonstrated in the context of negotiations in the Yukon, government bureaucracies are notoriously ill-equipped to recognize and incorporate these kinds of interests in the settlements that are reached. It is the disproportionate emphasis on economic issues that characterized the government's emergent policy orientation with respect to the treaty process.

Although the government officials that I interviewed identified a range of reasons for negotiating treaties, the single most common rationale was defined economically.³⁶⁰ The particular construction of this discourse was one that characterized economic interests as a neutral common ground that was in everyone's interest. For example, Quentin expressed it this way:

*I think perhaps there is another consideration and that is, given the nature of decisions in the courts (of course this is an interesting time to be talking about that given the recent Delgamuukw decision), and other decisions that have preceded it, we're being directed by our high court to address land claims, to address Aboriginal rights to land and resources. In doing so we will establish a certain certainty if you will, and that is extremely important. It's important so that all Canadians can enjoy investment in this province.*³⁶¹

It is this kind of characterization that suggests that everyone benefits from a strong economy without calling into question either the disproportionate flow of capital to some and not others but, more importantly, that sets aside the issue of what an economic solution does not address. For example, in its endorsement of the Royal Commission on Aboriginal Peoples, the Royal Bank defined its intent by highlighting "the outstanding

³⁵⁸ Traditional territory refers to the intersection of land and knowledge; tradition (or Traditional Ecological Knowledge) being the intellectual and cultural counterpart to a respective indigenous group's attachment to a particular place or territory.

³⁵⁹ This issue has been explored particularly adeptly by both Nadasdy (2003) and Brody (1981).

³⁶⁰ Legal and social / moral issues, in that order, were next in line after economic issues.

³⁶¹ Personal interview with Quentin, December 15, 1997.

benefits Canadians and Corporate Canada, in particular, can realize through implementation of the *practical* recommendations of the November 1996 Report on the Royal Commission on Aboriginal Peoples (emphasis mine).”³⁶² This begs the question: which recommendations are not practical and what does the Royal Bank propose be done with these? While economic considerations can be important, the symbolism of having a First Nation buy-in to this economic framework has largely informed the validation that is characterized by the treaty process, and *practicality* has largely informed the need for constraint.

Economic considerations have, of course, an extensive history in all kinds of Aboriginal land / resource settlements. The Hudson’s Bay Company, for example, has a long history in Canada that has informed how pre-Confederation Canada was originally defined in economic terms.³⁶³ The discursive twist that sets the 1995-99 period apart from other contexts related to the way in which the economics of a settlement were so carefully tuned to resonate with the mainstream. In a Summary Report prepared in 1995,³⁶⁴ Ken Coates addressed a decidedly non-First Nation audience in concluding that negotiations would “liberate both indigenous and non-indigenous peoples from contentious and difficult debates about the past” (p. 10). Although he goes on to reference colonialism, along with a series of other issues, ultimately, he conflates the treaty process with “the desire to set aside existing difficulties and to embrace a shared vision of the future” (p. 10). What is not acknowledged by Coates, and by many others who point to the future rather than the past in

³⁶² This statement by the Royal Bank can be found online at: http://www.rbcroyalbank.com/RBC:R5Nzxo71A8YAFrAmC04/Aboriginal/r_comm.html (downloaded November 30, 2008).

³⁶³ In 1670, the Hudson’s Bay Company was granted de facto ownership over 3.9 million square kilometers of land in North America.

³⁶⁴ *Social and Economic Impacts of Aboriginal Land Claims Settlements: A Case Study Analysis* prepared for the Ministry of Aboriginal Affairs (BC) and Federal Treaty Negotiation Office, December 1995. Prepared by Ken S. Coates, based on a report by ARA Consulting Group, Inc.

describing settlements, is that the prospect of setting “existing difficulties aside” has long been in the predominant interest of some and not others. The challenges that First Nations faced in the 1990s were inextricably linked to specific policies that were unilaterally applied to First Nations in previous decades. Severing this link diminishes the bargaining position of First Nations relative to their federal and provincial counterparts and highlights some kinds of issues at the expense of others. Focusing on “non-indigenous scepticism and uncertainty,” Coates addresses British Columbians head-on in an effort to build reassurance: “British Columbians need not think that they are alone in facing the changes and uncertainty surrounding treaty settlements” (p. 10). The irony is that, from this perspective, settlements need to build favour with British Columbians rather than provide restitution to First Nations – a point examined in the previous section. Similar constructions are found in more recent analyses as well. In his book “Reconciliation,” Tony Penikett³⁶⁵ suggests that the audience that required appeasement in the Yukon treaty context was the “working-class, white male” (2006:264). He goes on to say that this segment of the population “wanted assurance that, after the treaty, he [sic] would still have his job, his cabin by the lake, and a chance to hunt a moose” (Penikett 2006:264). This gross oversimplification renders invisible the tremendous sense of entitlement that is consistently relegated to some and denied others.

In 1996, KPMG issued a report³⁶⁶ focused on the economic impacts of treaty settlements in BC. In it, KPMG predicted that BC could expect “three dollars worth of total financial benefit for every dollar of provincial financial cost” (1996:1). Although some challenged these findings,³⁶⁷ reports such as these bolstered the economic incentives that

³⁶⁵ A former Premier of the Yukon (NDP) and BC Deputy Minister involved in the treaty process.

³⁶⁶ *Benefits and Costs of Treaty Settlements in BC – A Financial and Economic Perspective*, prepared for the Ministry of Aboriginal Affairs, Victoria, BC, January 17, 1996.

³⁶⁷ Vaughn Palmer, *Vancouver Sun*, January 31, 1996:A8.

were being trotted out by governments for the benefit of British Columbians. While the prospect of economic benefits had become a focal point in the discursive construction of treaty settlements, several non-Aboriginal groups continued to challenge the Nisga'a treaty (and the treaty process by association) on other grounds. The most vocal of these was the Citizens' Voice on Native Claims. This group sought to directly challenge governments' own characterizations of the Nisga'a treaty and treaty process more generally on what were largely symbolic grounds. The Citizens' Voice emerged with the specific aim of refuting the government's authority in respect to the settlement of claims, calling not for an abandonment of the process, but rather, echoing the Reform Party's call for a referendum and cash-only settlements.

From a symbolic standpoint, the chosen name of this organization was itself an interesting attempt at subversion. It reflected an overt attempt to challenge the government's own stand as representing the best interests of British Columbians in negotiations. The Citizens' Voice on Native Claims claimed – in name at least – to speak on behalf of citizens themselves, thereby playing on discourses that had suggested that one couldn't trust government – a theme that was prevalent in several of my interviews.³⁶⁸ The fact that the Citizens' Voice on Native Claims was a registered company with only a small roster of public officials, but an unknown number of anonymous supports, speaks to the symbolic tactics that were being played out in this context. Ian, a prominent lawyer and business person outspoken in his public opposition to the Nisga'a treaty, suggested that some level of anonymity was necessary:

³⁶⁸ This theme was most prominent in my personal interviews with Elmer (August 13, 1998) and Ian (May 4, 1998).

*People are afraid everywhere to speak up on this. They are concerned, if they're business people, that their businesses will be hurt by it, they're afraid they will be called racist. It has been extraordinarily difficult.*³⁶⁹

Whatever objectives the Citizens' Voice on Native Claims may have had, its origins were anything but civic in nature. Major advertising campaigns appeared in the provincial dailies challenging the government and calling on British Columbians to oppose the Nisga'a treaty. One such ad played on recent debates relating to Quebec separation as the basis for challenging the Nisga'a treaty.³⁷⁰ This full-page ad read: "The Nisga'a blueprint for BC: It's no way to build national unity."³⁷¹

At the same time, federal and provincial negotiators were not only working to finalize the Nisga'a treaty, but many more were engaged in negotiations with other First Nations across the province. The government's response was to launch a series of campaigns to promote the Nisga'a treaty using television advertisements, radio announcements and promotional materials in print media featuring national celebrities, such as David Suzuki, to promote the need for a treaty and, implicitly, to buttress the need for settlements more generally. These emotionally laden appeals to British Columbians attempted to evoke principles of fairness and equality, all the while suggesting that such settlements would be good for *all* British Columbians. This construction continued to be the subject of controversy (see, Ponting 2006). While the provincial government relied primarily on economic arguments to win favour with the public, groups opposed to the treaty relied upon symbolic characterizations of how the

³⁶⁹ Personal interview with Ian, May 4, 1998.

³⁷⁰ In October 1995, a referendum was held in Quebec to decide whether it should secede from Canada. It was defeated by an extremely small margin of 50.58% "No" to 49.42% "Yes". This result, among other things, re-emphasized calls for national unity in some quarters.

³⁷¹ Vancouver *Sun*, December 11, 1997.

treaty might impact British Columbians. For example, Ian conveyed his sense of how much land would be transferred under the Nisga'a treaty in this way:

*There will be blocks of land if the Nisga'a agreement is followed which will be substantially bigger than the Nisga'a block, and I point out that the Gitksan are claiming 22,500 square miles. Not the 1,930 square kilometres that is supposed to be given to the Nisga'a. In any event, are we going to have sixty or more enclaves dotted around BC, some of them big enough so to take an hour to drive across them?*³⁷²

Ian's reference to driving relies upon a sense of entitlement to lands and resources that permeates mainstream attitudes in BC. Embedded in this construction is not only the idea that some land settlements might be large – “an hour to drive across them” – but that these may no longer be accessible (i.e., by *car*). The emergence of economic considerations as a central element in the symbolic construction of the Nisga'a treaty continues to have profound consequences for both what issues are up for discussion in the treaty process and how they are characterized.

6.3 – Conclusions

The birth of the treaty process represented not only a concerted attempt to advance an effective policy response to the BC land question, but an equally significant effort to transform the symbolic basis upon which this policy field was grounded. The emergence of this process must be analyzed not only for what changed in terms of policy, but also how the symbolic landscape was affected. Most profoundly, and distinct from its substantive elements, this process established a normative framework to distinguish the actions of contemporary settler governments from those that preceded its inception. In this way, contemporary governments have been able to disassociate themselves from the

³⁷² Personal interview with Ian, May 4, 1998.

historical legacy of colonialism which, in turn, realigns the temporal orientation of emergent discourses towards the future rather than the past. This represents a dramatic discursive shift, given the historical basis of most First Nation grievances, and would not be so problematic were it not for the fact that a focus on the future privileges the interests of government, while negating the experiences of First Nations. One First Nation respondent expressed his concern like this:

...there's no pressure on government for them to change their mandate or their way of dealing with us..., what they say in the forums and the conferences, they say to us 'we've got the best thing for you and you should just become involved, this is the best place for you, this is the best thing going,' and they say 'if you want to consider litigation you better consider these other important things, number one, litigation takes a long time and you've got to be committed to it and we don't think you want to do that, we don't really believe that you can, number two, it's going to cost a lot of money and we know you don't have it, number three, the burden of proof is on you and the evidence that is going to be required to satisfy the test is beyond you and we know that because we've taken your history away from you,' they come right out and say that to us.³⁷³

History plays an important role for First Nations. In fact, the rigid separation between past and future – bisected by the present – represents a Western conception of time that does not translate meaningfully into many other cultural settings. It is only as a result of the tremendous dominance that the West has achieved globally that many of these conceptions are perceived as commonplace. It is also a convenient fiction that allows governments and Canadian citizens more broadly to disassociate themselves from the settler colonialism that characterizes Canadian history. Freeman (2002) explores this separation by tracing her own ancestry as a Euro-Canadian citizen. In so doing, she highlights many of the assumptions that enable Canadians to rationalize their present-day residency with little or no thought to the indigenous inhabitants whose civilizations were decimated as a part of facilitating settler colonialism.

³⁷³ Personal interview with Jack, April 22, 1999.

As a result, the discursive context for many of the discussions that one would expect to take place as a part of the treaty process are in fact culturally constrained by dominant assumptions about the temporal orientation of the treaty negotiations.³⁷⁴ This particular orientation to treaty negotiations has manifested itself in many ways, but has had its most profound affect on the discursive boundaries that were established as a part of talking about the treaty process. In as much as the symbolism of establishing a treaty process in BC resonated with First Nations in the province, questions about its viability and breadth remain prominent. With only two treaties under its belt after some fifteen years of negotiations (in addition to the Nisga'a treaty), it is difficult to understand why more attention hasn't shifted towards improving this process on the basis of achieving results. The evidence examined in this research leads me to identify three factors relating to the Nisga'a treaty negotiations that help to explain government intransigence with respect to this policy field:

1. The Nisga'a treaty established political negotiations – rather than litigation – as the most valid basis to address the BC land question. This, in turn, led to the establishment of a prevailing normative order that continues to inform all attempts to address questions about the status of First Nations land / resource ownership in BC;
2. The Nisga'a treaty affirmed the government's policy response as vested in the treaty process by providing tangible evidence that the negotiation of modern-day treaty settlements in BC was a possibility. This has, in turn, inhibited the exploration of other policy options in this policy field; and
3. The Nisga'a treaty enabled the federal and provincial governments to define the meaning of First Nation claims in a manner consistent with their overarching policy objectives. To this end, the meaning of First Nation claims was defined economically and this continues to be an important interest vis-à-vis the provincial government.

³⁷⁴ This issue came up again and again in treaty negotiations that I was involved in where federal and provincial representatives couldn't understand why First Nation representatives wanted to talk about what had occurred in the past as a prelude to talking about potential remedies.

These three factors continue to have a bearing in the present day. While much of this research has been carried out in the context of the 1990s, what is perhaps most disturbing is the fact that so little has changed in the meantime.

CHAPTER 7: CONCLUDING COMMENTS IN THE *PRESENT* TENSE

7.1 - Introduction

The treaty process has been on the brink of collapse for so long that it has become a cliché even to point this out. Nevertheless, the fact that this process is deemed fragile is indicative of the nature of this policy field. As with the *Indian Act*, no one is particularly pleased with it and, yet, we see no real attempts to fix it – or dispense with it altogether.³⁷⁵ Many have proffered solutions, but few have ever been implemented. Earlier in 2008, Mike Harcourt, former NDP Premier of BC and, more recently, a past commissioner of the BC Treaty Commission, suggested that the treaty process was “bogged down” because First Nations were being unrealistic³⁷⁶ – a narrative that continues to have bearing in how First Nation objectives are characterized. In the present context, whether actions will be taken to address shortcomings in this process and, if so, which ones, is possibly more dependent on the potential that some First Nations (and their supporters) signal as their intent to disrupt the upcoming Winter Olympic Games in Vancouver-Whistler in 2010 than on any other single factor. Recent attempts to address these issues at a *Common Table* may in fact represent the culmination of a proactive attempt to head this potential off. In as far as novel approaches may be necessary, however, another set of *super*-negotiations hardly appears to meet this test.³⁷⁷

³⁷⁵ The elimination of the *Indian Act* would necessarily require the implementation of an alternative legislative framework to address the gap that this would create as a result of the division of powers under the *BNA Act*. This would presumably be addressed under section 35 of the *Constitution Act, 1982*.

³⁷⁶ “Harcourt fingers the flaw in treaty process: ‘People need to get real.’” (V. Palmer) *Vancouver Sun*, April 5, 2008.

³⁷⁷ The *Common Table* represents a group of sixty-four First Nations in the treaty process who have called for an expedited resolution of a number of issues including recognition and certainty, the constitutional status of land, governance and co-management, fiscal relations, and fisheries. A report on the progress of discussions was produced by the BC Treaty Commission during the summer 2008. No outcomes are imminent at the time of writing this.

7.2 – Some Final Considerations

Arguably, a First Nation should be no worse off for having attempted to negotiate a settlement of its claim. In principle, this ought to include its standing not only financially, but legally and politically as well. However, without recourse to the courts, a First Nation that finds itself at the back-end of a failed process would have little hope of garnering further political attention.³⁷⁸ In recognition of the fact that the process has taken longer than expected to reach settlements, in 2007, the BCTC recommended that, in addition to the original twelve year window that was granted to First Nations before they had to begin paying back their loans, an extension of up to five years was to be granted to any First Nations requesting one (Annual Report 2007:39). However, not only does this not address the underlying problem with loan funding, it will lead to an inevitable increase in the debt load accrued by First Nations.³⁷⁹

The Task Force recommendations came at a time of tremendous legal and political upheaval in the province. As has already been described, not only had Chief Justice McEachern rendered his devastating decision in *Delgamuukw* three months prior, but the Premier of the Province had been forced to step down in April 1991, and a provincial election was looming for the Fall. The nineteen recommendations that emerged from the Task Force could not have helped but reflect the turmoil that surrounded the drafters in what was a period of significant provincial upheaval. The recommendations, while significant in contrast to the policy of denial that had preceded them, did not represent a radical break from the past. Rather, they signaled a new era of engagement based on an approach that emphasized process, but without the checks and

³⁷⁸ Personal interview with Nancy, November 19, 1999.

³⁷⁹ The BCTC reported that, as of 2007, a debt of \$318 million had accrued for First Nations engaged in the treaty process (Annual Report 2007:39).

balances necessary to ensure that the parties had recourse in the event that negotiations failed. Given the challenges with the existing process outlined in this thesis – most of which continue to the present day – it may be time to re-visit the Task Force Report for updating.

According to the Supreme Court of Canada in *Delgamuukw* (1997) “what subsection 35(1) [of the *Constitution*] does is provide a constitutional framework through which the fact that Aboriginals lived on the land in distinctive societies, with their own practices, traditions and cultures, is acknowledged and reconciled with the sovereignty of the Crown” (in Persky 1998). Canadian courts instruct us how to achieve the constitutional objectives of recognition and affirmation by reconciling Aboriginal rights with Crown sovereignty, and further instruct that this can be achieved through consultation, accommodation and, ideally, through negotiation. However, Aboriginal title is merely a *burden* on Crown title; infringement can be justified and compensation may be a component of this justification (Penikett 2006:94). Thus, the governments, which seek primarily to remove this burden on Crown title, have developed constrictive policies to address Aboriginal rights as they are defined by the courts. Government-driven consultation processes are cumbersome, time-sensitive and are usually triggered only when land based resource activities are imminent.³⁸⁰ The recognition and affirmation of First Nation peoples and cultures has been reconstituted within a narrow policy framework, and justifying the existing process has become an objective, rather than the outcome. Moreover, reconciliation has been transformed into a process intended to contain Aboriginal rights and title within the legislative and policy framework of the

³⁸⁰ While the BC government has a consultation policy, it is based on a checklist that only kicks in when a developer has identified a resource to be developed. The federal government still does not have a finalized consultation policy.

government, thereby carrying out a process that Schulte-Tenckhoff (1998) has referred to as “domestication,” and what I have characterized more generally as constraint.

Without a more effective basis from which treaties can be negotiated, the BC treaty process has come to represent what Borrows (1999) described as another stage in the evolution of (neo)colonialism. The treaty process has become a means of getting First Nation leaders to the negotiating table and keeping them there, potentially forever. Both cultural differences and differences relating to political and economic power between the parties at the negotiation table have never been explicitly acknowledged. Moreover, governments have insisted that treaties be forward-looking,³⁸¹ a convenient fiction that continues to be re-invoked as a means of removing the process of treaty making from the legal sphere, eclipsing any discussion about how and why we have arrived at the present context.³⁸²

This situation is related to the theory of *frozen rights* used in the legal sphere. It is a theory that artificially distinguishes between pre- and post-*contact* cultures, whereby all developments in a First Nation context since contact are deemed to be the result of European influence (Culhane 1998:76). In this way, temporal distinctions are used to construct authentic First Nation cultures only in the past and, more importantly, serve to de-legitimize First Nation claims in the present. This theory has become an explicit part of the treaty-making process and has resulted in the conceptualization of treaties in terms not unlike a business contract. Regardless of how circumstances may change in the future, the rights and obligations negotiated in the modern-day context will continue to

³⁸¹ See, Day and Sadik (2002).

³⁸² For example, the First Nations Summit indicated that it has been unsuccessful in getting the issue of compensation for the past exploitation of resources on First Nation lands on the treaty table despite the provincial government’s willingness to do so in the case of third parties.

apply as they were literally conceived at the time the treaty was signed.³⁸³ This concept of frozen rights-cum-treaties has already led to significant problems for the James Bay Cree when their treaty³⁸⁴ failed to anticipate the extraction of timber through provincial crown leases and, therefore, did not provide them with treaty rights in this regard.³⁸⁵

While there appears to be a fairly broad consensus in favour of the principle of treaty making,³⁸⁶ there is little evidence of public or political interest in dealing with the needs and concerns as articulated by First Nation peoples themselves. Still, it is misleading to suggest that there is in fact a basis from which to build a consensus around this issue. Arguably, the issue of treaties has been appropriated by governments as a means to manage the (non)resolution of the BC land question. Governments have historically been very concerned with appearances in relation to their policies geared towards First Nation peoples. This feature of Canadian Indian policy did not change during the 1990s, and it has not changed today. On the contrary, federal and provincial governments are still very concerned with managing the images of First Nation peoples, as well as their own image. Hence, it comes as little surprise to find the Vancouver Airport filled with an array of elaborate First Nation art given that images in airports are among the first things that international visitors encounter upon their arrival to a foreign country. This is also true as it relates to the upcoming 2010 Winter Olympic Games and efforts that have emerged to present some First Nations as a central and engaged party to

³⁸³ The only exception is if all three parties to the treaty agree to an amendment — an unlikely eventuality where changing circumstances lead to the disproportionate accrual of a benefit or liability.

³⁸⁴ The *James Bay and Northern Quebec Agreement* negotiated in 1975.

³⁸⁵ Video: *The Disappearing Forests of Eeyou Astchee*, (1997) Grand Council of the Cree, Nutaaq Media Inc.

³⁸⁶ By this I do not intend to suggest that there is broad support for treaties, only that resistance to treaties tends to focus on the content of the treaty, not the principle of treaties per se.

the games.³⁸⁷ No doubt, these images will be used to offset the First Nation protests that are also likely to occur.

Beyond image management, however, lies the more complex task of dealing with the specific demands of an increasingly vocal and sophisticated First Nation elite. Gone are the days when a band of Indian leaders would travel from the Nass Valley by boat to the provincial legislature, only to be turned away by the premier of the province.³⁸⁸ With today's emphasis on treaties that seek to incorporate First Nations into the body politic of the nation, rather than recognize them on their own terms, First Nation leaders are flown down, given the red-carpet treatment, and escorted into the provincial legislature by the premier himself, all before the frenzied gaze of an international media.³⁸⁹ How do we reconcile these images with the poverty that continues to face a majority of First Nation peoples in Canada? In 2004, the federal government released findings that identified 92 out of the 100 economically worst-off communities in Canada as being First Nation, while only 1 out of the 100 best-off communities made it on to this more desirable list³⁹⁰ – these are statistics that provide little support for the perception that meaningful progress is being made.

Seen from the vantage point of *denial*, the treaty process may indeed have heralded a significant symbolic re-orientation on the part of the provincial government, but the substantive elements of this shift had yet to be played out. It was the presumption

³⁸⁷ Indeed, some First Nation groups were recently authorized to use the trademark Olympic rings on some of their merchandise.

³⁸⁸ As was the case when the Nisga'a Land Committee attempted to have its concerns heard at the turn of the last century.

³⁸⁹ As was the case when several prominent Nisga'a leaders were invited to address the Legislature in the latter 1990s.

³⁹⁰ Indian and Northern Affairs Canada (Strategic Research and Analysis Directorate), *Community Well-Being Index* (2004).

that, with the symbolism of validation, so too would engagement with First Nations lead to new and substantive outcomes. But this has not occurred. Where the early and mid-1990s represented a period of significant transition for the federal and provincial governments, as well as First Nations, as each sought to establish the necessary institutional and human resource capacity to engage in tripartite negotiations, these activities were incidental to the outcomes of engagement. This is to say that, in as much as the establishment of a process to negotiate treaties provided a framework to deal with the land question, only the results can affirm the value of the initiative – and the results are clearly lacking.

Given that symbolic action may at times represent a policy end in itself (see, Abele et al. 2005:106), it is worthwhile considering the potential that the treaty process was in fact only intended as a symbolic measure. “Symbolism in Aboriginal policy is not something you do instead of other activities; it is, instead, integral to ongoing relationships in political life” (Abele et al 2005:106). While this characterization of the treaty process may appear cynical, the fact is that First Nations have collectively accrued over \$400 million in debt based on this process and governments have been unwilling to address the implications arising from this scenario. One is therefore compelled to seek some explanation for a process that is so costly and lengthy, but appears to have had minimal substantive results. One such explanation is that treaties represent a peripheral byproduct for a process whose primary objective is to ensure that First Nations pursue the land question on terms that governments would control. Seen from this perspective, the treaty process has been a success. While disenchantment about the process continues to mount (e.g., the emergence of a Common Table), no doubt, new *solutions* that are

proffered will entail further engagement in another succession of related, but inconclusive, initiatives.

This thesis has advanced a perspective suggesting that the ultimate failure of this process is tied to a unique dialectic that has underscored indigenous-state relations in Canada since at least the patriation of the *Constitution* in 1982. This dialectic finds expression within the context of the treaty process in the dual objectives of validation and constraint. I have sought to highlight the many different contexts in which this dialectic is expressed. It is one that emerges within the context of individual narratives, as well as in media coverage. It is one, I have argued, that is embodied within the discursive context of this entire policy field. It is, effectively, a dialectic of ambivalence – a willingness to recognize First Nations, but only to do so in specific respects (e.g., economically). As such, the era of denial that marks the period prior to the treaty process is still evident in the present context – albeit in a modified form. While the federal government has escaped much of this scrutiny, arguably, the same holds true in both contexts. Whether it is as a result of its Inherent Rights Policy, or any number of other policy directives that inform its mandate at a treaty table, the federal government represents just as much of an impediment to an effective treaty process as does the Province – some would say more. The issue, however, is not one of blaming either of these parties or, indeed, looking to First Nations to assess their own failings, it is one of getting on with a solution. Recognizing that there are no simple solutions (although there are some basic problems: for example, funding), it seems that one avenue that might lead to a greater degree of reconciliation could include re-visiting the Task Force Report. It is time to re-visit this document, to re-assess the recommendations, and revise those that

have clearly been deficient. While the treaty process possesses minimal momentum, its breadth and duration have lent it some inertia – inertia that might be put to good use within the context of a process of renewal. If there is to be anything prescriptive arising from this research, it is this that I would pose as a recommendation.

7.3 – Some Final Reflections on Anthropology

One aspect of anthropology that serves to underscore its unique status as a discipline in the social sciences relates to its frequent use of a comparative methodology. The idea that I, as a social scientist, can enter into another community to study it without bringing myself – my past, my thinking, my body – into it is a tremendous fiction indeed. While anthropology has, in the past, often taken for granted the situatedness of the anthropologist in the field, as if they could be represented as a “detached observer” (see, Rosaldo 1993), the unacknowledged invocation of *difference*³⁹¹ often operated as the basis for an examination of the Other. For example, Abu-Lughod referred to anthropology as the “study of man [sic]” built upon an historically constructed divide between West and non-West (1991:139); where the West was conceived as a “project” rather than a “place” (Glissant, as quoted in Trouillot 1991:32). More recently, anthropologists have approached their subjects reflexively, thereby acknowledging that there is always more than one basis for comparison – there is never just an Other. This provides a form of antidote to the artificial construct of detachment as a basis for ethnography. As Okely points out, long-term immersion in fieldwork requires all of an

³⁹¹ My point is that a presumption of difference always operates as a basis for comparison (i.e., self / Other) – whether or not the *self* is acknowledged.

anthropologist's resources – intellectual, physical, emotional, political and intuitive (1992:8) – and it becomes difficult to objectify oneself in such a context.

This research has sought to make a contribution to the anthropological understanding of the BC land question at a time when discourse about this issue was more fluid and the potential outcomes appeared more variable. While this is not the place to make policy prescriptions (save the one offered above), it is the understanding that this research has attempted to bring to this policy field that I hope represents a contribution to the various policy outcomes that have still to play out. No doubt – and I say it again – much has yet to happen before 2010. Indeed, this may be the catalyst that is necessary to re-visit the BC Claims Task Force Report. The repetition of failure is far too costly for First Nations. Too much energy, too much time, and too much money has been expended by First Nations to no end. It is incumbent upon governments to respond to this failing in a manner that is not based on politics, ideology, or even economics – it is a duty owed to First Nations. And in as much as it is a duty to First Nations, it is not a duty to the public at large. One thing that this research has shown is that the public is but a commodity that can be constructed and used instrumentally in a process that is as complex as treaties. Everyone claims to enjoy public support in one manner or another, and polls are used by those in positions of power to make claims that have only a limited footing in reality. Indeed, in 2002, a referendum on treaties did take place. The meaning of this referendum has been in disrepute ever since, but if it has had any value at all, it is that it should allow us to set the issue of public opinion aside and get on with resolving the issues. As an anthropologist, but also as someone working in this policy field, I look forward to the

opportunity of seeing this issue resolved, if not in the next few years, at least in my lifetime.

BIBLIOGRAPHY

- Abel, Sue. 1997. *Shaping the News: Waitangi Day on Television*. Auckland: Auckland University Press.
- Abele, Frances, Russell LaPointe, and Michael Prince. 2005. "Symbolism, Surfacing, Succession, and Substance: Martin's Aboriginal Policy Style." Pp. 99-120 in G. Bruce Doern (ed.), *How Ottawa Spends, 2005-2006: Managing the Minority*. Montreal and Kingston: McGill-Queen's University Press.
- Abu-Lughod, Lila. 1991. "Writing Against Culture." Pp. 137-62 in Richard Fox (ed.), *Recapturing Anthropology: Working in the Present*. Santa Fe: School of American Research Press.
- Alfred, Taiaiake. 1999. *Peace, Power, Righteousness: an indigenous manifesto*. Don Mills: Oxford University Press.
- Altheide, David L. 1996. *Qualitative Media Analysis*. Thousand Oaks, California: Sage Publications.
- Amit, Vered. 2000. "Introduction: constructing the field." Pp. 1-18 in Vered Amit (ed.), *Constructing the Field: Ethnographic Fieldwork in the Contemporary World*. New York: Routledge.
- Amodu Tijani v. Southern Nigeria* [1921] 2 A.C. 399 (p.c.) at 403.
- Anderson, Benedict. 1991. *Imagined Communities*. London and New York: Verso.
- Anderson, Robert B. 1997. "Corporate / Indigenous Partnerships in Economic Development: The First Nations in Canada." *World Development*, Vol. 25, No. 9:1483-1500.
- Arce, Alberto and Norman Long (eds.). 2000. *Anthropology, Development and Modernities: Exploring discourses, counter-tendencies and violence*. New York: Routledge.
- Asch, Michael and Norman Zlotkin. 1997. *Affirming Aboriginal Title: A New Basis for Comprehensive Claims Negotiations*. Pp. 208-229 in M. Asch (ed.), *Aboriginal and Treaty Rights in Canada: Essays on Law, Equality, and Respect for Difference*. Vancouver: UBC Press.
- Asch, Michael. 1984. *Home and Native Land: Aboriginal Rights and the Canadian Constitution*. Toronto: Methuen.
- Auditor General of Canada (Report of). 2002. "Chapter 1: Streamlining First Nations Reporting to Federal Organizations." *Report of the Auditor General of Canada to the*

House of Commons. Ottawa: Minister of Public Works and Government Services Canada.

Bateman, Rebecca. 1997. "Comparative Thoughts on the Politics of Aboriginal Assimilation." *BC Studies*, No. 114:59-83.

Bauman, Zygmunt. 1976. *Socialism: The Active Utopia*. New York: Holmes and Meier.

BC Claims Task Force. 1991. *The Report of the British Columbia Claims Task Force*. Provincial Government Document (Unpublished).

BC Studies. 1992. Special Issue No. 95, Autumn 1992.

BC Studies. 1998/1999. "The Nisga'a Treaty." No. 120, Winter 1998/1999.

BC Treaty Commission. 2004. *Treaty Commission Annual Report 2004: Consider ...a new relationship*. Vancouver: BCTC.

BC Treaty Commission. 2007. *Treaty Commission Annual Report 2007*. Vancouver: BCTC.

Berger, Thomas. 1977. *Northern Frontier, Northern Homeland: the Report of the Mackenzie Valley Pipeline Inquiry*. Ottawa: Supply and Services Canada (two volumes).

Berkhofer, Robert F. Jr. 1978. *The White Man's Indian*. New York: Vintage Books.

Bernal, Martin. 1997. "Race in History." Pp. 75-92 in Winston Van Horne (ed.), *Global Convulsions: Race, Ethnicity, and Nationalism at the End of the Twentieth Century*. Albany: SUNY Press.

Borrows, John. 1999. *Domesticating Doctrines: Aboriginal and Treaty Rights, and the Response to the Royal Commission on Aboriginal Peoples*. Unpublished.

Brody, Hugh. 1981. *Maps and Dreams*. Vancouver/Toronto: Douglas & McIntyre.

Cairns, Alan C. 2000. *Citizen Plus: Aboriginal Peoples and the Canadian State*. Vancouver: UBC Press.

Calder v. Attorney General of BC [1973] 34 D.L.R. (3d) 145 (S.C.C.).

Calhoun, Craig (ed.). 1992. *Habermas and the Public Sphere*. Cambridge: The MIT Press.

Caputo, Virginia. 2000. "At 'home' and 'away': reconfiguring the field for late twentieth-century anthropology." Pp. 19-31 in Vered Amit (ed.), *Constructing the Field: Ethnographic Fieldwork in the Contemporary World*. New York: Routledge.

- Cardinal, Harold. 1969. *The Unjust Society: The Tragedy of Canada's Indians*. Edmonton: Hurtig.
- Carey, J. W. (ed.). 1988. *Media, Myths, and Narratives: Television and the Press*. Beverly Hills: Sage.
- Carstens, Peter. 1991. *The Queen's People: A Study of Hegemony, Coercion, and Accommodation among the Okanagan of Canada*. Toronto: University of Toronto Press.
- Cassidy, Frank (ed.). 1992. *Aboriginal Title in British Columbia: Delgamuukw v. The Queen*. Lantzville: Oolichan Books and The Institute for Research on Public Policy.
- Chartier, Clem. 1985. "Aboriginal Rights and Land Issues: The Métis Perspective." Pp. 54-61 in Menno Boldt and J. Anthony Long (eds.), *The Quest for Justice: Aboriginal Peoples and Aboriginal Rights*, Toronto: University of Toronto Press.
- Chartrand, Paul L. A. H. 1999. *Building the Momentum: A Conference on Implementing the Recommendations of the Royal Commission on Aboriginal Peoples (Speaking Notes for an Opening Address)*. (Unpublished).
- Chomsky, Noam. 1993. *Year 501: The Conquest Continues*. Montreal: Black Rose Books.
- Clark, Bruce. 1990. *Native Liberty, Crown Sovereignty: The Existing Aboriginal Right of Self-Government in Canada*. Montreal and Kingston: McGill-Queen's University Press.
- Coates, Ken S. 1995. *Social and Economic Impacts of Aboriginal Land Claims Settlements: A Case Study Analysis*. Prepared for the Ministry of Aboriginal Affairs (BC) and Federal Treaty Negotiation Office (December 1995). ARA Consulting Group, Inc.
- Cole, Douglas and Ira Chaikin. 1990. *An Iron Hand Upon the People: The Law Against the Potlatch on the Northwest Coast*. Seattle: University of Washington Press.
- Comeau, Pauline and Aldo Santin. 1990. *The First Canadians: A Profile of Canada's Native People Today*. Toronto: James Lorimer & Company.
- Cornet, Wendy. 2008. *Policy Implications of Federal, Tribal and First Nation Blood Quantum Requirements in the U.S.A. & Canada*. Ottawa: Assembly of First Nations (unpublished).
- Cowlishaw, Gillian. 1995. "Did the Earth Move for You? The Anti-Mabo Debate." *The Australian Journal of Anthropology*, 6, 1 & 2: 43-63.

- Culhane Speck, Dara. 1998. *The Pleasure of the Crown: Anthropology, Law and First Nations*. Burnaby, BC: Talonbooks.
- Cunningham, S. and G. Turner. (eds.). 1993. *The Media in Australia: industries, texts, audiences*. Sydney: Allen & Unwin.
- Curran, James. 1996. "Mass Media and Democracy Revisited." Pp. 81-119 in J. Curran and M. Gurevitch (eds.), *Mass Media and Society*. United States: Arnold.
- Curran, James. 2003. "Global Journalism: A Case Study of the Internet." Pp. 227-241 in Nick Couldry and James Curran (eds.), *Contesting Media Power: Alternative Media in a Networked World*. United States: Rowman & Littlefield Publishers, Inc.
- Dahlgren, Peter. 1995. *Television and the Public Sphere*. Thousand Oaks: Sage Publications.
- Day, Richard and Tonio Sadik. 2002. "The BC Land Question, Liberal Multiculturalism, and the Spectre of Aboriginal Nationhood." *BC Studies*, No. 134 (Summer): 5-34.
- Delgamuukw v. British Columbia* (1991), 79 D.L.R. (4th) 185 (B.C.S.C.).
- Delgamuukw v. British Columbia*, [1997] 3 S.C.R. 1010.
- Deloria, Vine Jr. 1969. *Custer Died for Your Sins: An Indian Manifesto*. New York: Macmillan.
- Drake-Terry, Joanne. 1989. *The Same as Yesterday: The Lillooet Chronicle the Theft of Their Lands and Resources*. Lillooet: Lillooet Tribal Council.
- Dumont, Marilyn. 1996. *A Really Good Brown Girl*. London, Ontario: Brick.
- Dyck, Noel (ed.). 1985. *Indigenous Peoples and the Nation-State: Fourth World Politics in Canada, Australia and Norway*. Newfoundland: Memorial University of Newfoundland.
- Dyck, Noel. 1991. *What Is The Indian 'Problem': Tutelage and Resistance in Canadian Indian Administration*. St. John's: Memorial University of Newfoundland.
- Dyck, Noel and James B. Waldram (eds.). 1993. *Anthropology, Public Policy and Native Peoples in Canada*. Montreal & Kingston: McGill-Queen's University Press.
- Dyck, Noel. 2000. "Home field advantage? Exploring the social construction of children's sport." Pp. 32-53 in Vered Amit (ed.), *Constructing the Field: Ethnographic Fieldwork in the Contemporary World*. New York: Routledge.

- Dyck, Noel. 2006. "Canadian Anthropology and the Ethnography of 'Indian Administration.'" Pp. 78-92 in Julia Harrison and Regna Darnell (eds.), *Historicizing Canadian Anthropology*. Vancouver: UBC Press.
- Feit, Harvey. 1985. "Legitimation and Autonomy in James Bay Cree Responses to Hydro-Electric Development." Pp. 27-66 in Noel Dyck (ed.), *Indigenous People and the Nation-State: Fourth World Politics in Canada, Australia and Norway*. St. John's: Memorial University of Newfoundland.
- Fisher, Robin. 1992a. *Contact and Conflict*. Vancouver: UBC Press.
- Fisher, Robin. 1992b. "Judging History: Reflections on the Reasons for Judgement in *Delgamuukw v. B.C.*" *BC Studies*, Special Issues, No. 95, Autumn 1992: 43-54.
- Fiske, Jo-Anne and Evelyn George. 2006. *Seeking alternatives to Bill C-31: from cultural trauma to cultural revitalization through customary law*. Ottawa: Status of Women Canada.
- Flanagan, Thomas. 2000. *First Nations? Second Thoughts*. Montreal and Kingston: McGill-Queen's University Press.
- Fleras, Augie and Jean Leonard Elliott. 1992. *The Nations Within: Aboriginal-State Relations in Canada, the United States, and New Zealand*. Toronto: Oxford University Press.
- Fortune, Joel. 1993. "Construing *Delgamuukw*: Legal Arguments, Historical Argumentation, and the Philosophy of History." *University of Toronto, Faculty of Law Review*, 51(1): 80-117.
- Foucault, Michel. 1977. *Discipline and Punish: The Birth of the Prison*. New York: Vintage Books.
- Francis, Daniel. 1992. *The Imaginary Indian: The Image of the Indian in Canadian Culture*. Vancouver: Arsenal Pulp Press.
- Fraser, Nancy. 1992. "Rethinking the Public Sphere: A Contribution to the Critique of Actually Existing Democracy." In C. Calhoun (ed.), *Habermas and the Public Sphere*. Cambridge: The MIT Press.
- Freeman, Victoria. 2002. *Distant Relations: How My Ancestors Colonized North America*. Toronto: McClelland & Stewart Ltd.
- Furniss, Elizabeth. 1999. *The Burden of History: colonialism and the frontier myth in a rural Canadian community*. Vancouver: UBC Press.

- Ginsburg, Faye. 2005. "Media Anthropology: An Introduction." Pp. 17-25 in Eric W. Rothenbuhler and Mihai Coman (eds.), *Media Anthropology*. Thousand Oaks: Sage.
- Gledhill, John. 1994. *Power and Its Disguises: Anthropology, Culture, and Society*. London: Pluto Press.
- Goldie, Terry. 1989. *Fear and Temptation: The Image of the Indigene in Canada, Australia and New Zealand Literature*. Montreal and Kingston: McGill-Queen's University Press.
- Government of Canada. 1991. *Building a New Relationship with First Nations in BC: Canada's Response to the Report of the BC Claims Task Force*. Ottawa: Department of Indian Affairs.
- Gramsci, Antonio. 1971. *Selections from the Prison Notebooks*. New York: International Publishers.
- Grand Council of the Cree. 1997. *The Disappearing Forests of Eeyou Astchee*. Quebec: Nutaaq Media Inc. (video).
- Guerin v. The Queen* (1984), 13 D.L.R. (4th) 321 (S.C.C.).
- Gusfield, J.R. 1981. *The Culture of Public Problems*. Chicago: University of Chicago Press.
- Habermas, Jurgen. 1962/1989. *The Structural Transformation of the Public Sphere: An Inquiry into a Category of Bourgeois Society*. Cambridge: The MIT Press.
- Habermas, Jurgen. 1987. *The Theory of Communicative Action*. Boston: Beacon Press.
- Hackett, Robert A. and Yuezhi Zhao. 1998. *Sustaining Democracy? Journalism and the Politics of Objectivity*. Toronto: Garamond Press Ltd.
- Haida Nation v. British Columbia (Minister of Forests)*, [2004] 3 S.C.R. 511, 2004 SCC 73.
- Hamlet of Baker Lake et al v. Minister of Indian Affairs and Northern development et al* [1980] 5 WWR 193, 50 CCC (2d) 377 (FCTD).
- Harries-Jones, Peter. 1985. "From Cultural translator to Advocate – Changing Circles of Interpretation." Pp. 224-48 in Robert Paine (ed.), *Advocacy and Anthropology*. St. John's: Memorial University of Newfoundland.
- Haig-Brown, Celia. 1988. *Resistance and Renewal: Surviving the Indian Residential School*. Vancouver: Tillacum Library.

- Hartley, J. 1992. *The Politics of Pictures*. London: Routledge.
- Hawthorn [Report], Harry B. 1966-67. *A Survey of the Contemporary Indians of Canada: Economic, Political, Educational Needs and Policies* [2 volumes]. Ottawa: Queen's Printer.
- Hegel, G. W. F. 1821 [1967]. *Philosophy of Right*, translated by T.M. Knox. London: Oxford University Press.
- Helin, Calvin. 2006. *Dances with Dependency: Indigenous Success Through Self-Reliance*. Vancouver: Orca Spirit Publishing.
- Herman, Howard S. and Noam Chomsky. 1988. *Manufacturing Consent: The Political Economy of the Mass Media*. New York: Pantheon.
- Herrnstein, Richard J. and Charles Murray. 1994. *The Bell Curve: Intelligence, and Class Structure in American Life*. New York: Free Press.
- Holstein, James A. and Jaber F. Gubrium. 1995. *The Active Interview*. Thousand Oaks: Sage.
- Hurley, Mary C. 1999. *The Nisga'a Final Agreement*. Ottawa: Library of Parliament. Online at: <http://www.parl.gc.ca/information/library/PRBpubs/prb992-e.htm> (downloaded November 20, 2008).
- Indian-Eskimo Association. [Date Unknown]. *Native Rights in Canada*. Toronto: Indian-Eskimo Association of Canada.
- KPMG. 1996. *Benefits and Costs of Treaty Settlements in BC – A Financial and Economic Perspective*. Prepared for the Ministry of Aboriginal Affairs, Victoria, BC (January 17, 1996).
- Kunin, Roslyn (ed.). 1998. *Prospering Together: The Economic Impact of the Aboriginal Title Settlements in BC*. Vancouver: Laurier Institute.
- Latour, Bruno. 1993. *We Have Never Been Modern*. Cambridge, Mass.: Harvard University Press.
- Légare, Evelyn I. 1995. "Canadian Multiculturalism and Aboriginal People: Negotiating a Place in the Nation." *Identities*, Vol. 1(4): 347-366.
- Lippert, Owen. 1995. *Change and Choice: A Policy Vision for British Columbia*. Vancouver: The Fraser Institute.

Lister, Ruth. 1998. "Citizen in Action: citizenship and community development in a Northern Ireland context. *Community Development Journal*, vol. 33, no. 3 July 1998: 226-235.

Mabo v. Queensland (1992), 107 A.L.R. 1.

Mackey, Eva. 1997. "The cultural politics of populism: Celebrating Canadian national identity." Pp. 136-64 in Chris Shore and Susan Wright (eds.) *Anthropology of Policy: Critical perspectives on governance and power*. New York: Routledge.

Madger, Ted. 1997. "Public Discourse and the Structures of Communication." Pp. 338-358 in W. Clement (ed.) *Understanding Canada: Building on the New Canadian Political Economy*. Montreal and Kingston: McGill-Queen's Press.

Mandell, Louise. 1987. "Native Culture on Trial." Pp. 358-65 in J. Martin and M. Mahoney (eds.), *Equality and Judicial Neutrality*. Toronto: Carswell.

Manuel, George and Michael Posluns. 1974. *The Fourth World: An Indian Reality*. Ontario: Collier Macmillan Canada.

McKee, Christopher. 1996. *Treaty Talks in British Columbia: Negotiating a Mutually Beneficial Future*. Vancouver: University of British Columbia Press.

McKee, Christopher. 2000. *Treaty Talks in British Columbia: Negotiating a Mutually Beneficial Future*. 2nd ed. Vancouver: University of British Columbia Press.

McNeil, Kent. 1996. "Aboriginal Governments and the Canadian Charter Of Rights and Freedoms." *Osgoode Hall Law Journal*, Vol. 34, No. 1: 61-99.

Miles, Robert. 1988. *Dictionary of Race and Ethnic Relations* (2nd Edition). London: Routledge.

Miles, Robert and Rudy Torres. 1996. "Does 'Race' Matter? Transatlantic Perspectives on Racism after 'Race Relations'." Pp. 24-46 in V. Amit-Talia and C. Knowles (eds.), *Re-Situating Identities: The Politics of Race, Ethnicity and Culture*. Peterborough: Broadview Press.

Miller, Daniel. 2001. *The Dialectics of Shopping*. Chicago: University of Chicago Press.

Miller, Gale. 1994. "Towards Ethnographies of Institutional Discourse: Proposal and Suggestions." *Journal of Contemporary Ethnography*, 23; 280-306.

Mills, Antonia. 1994. *Eagle Down is Our Law*. Vancouver: UBC Press.

Molloy, Tom. 2000. *The World is Our Witness: The Historic Journey of the Nisga'a into Canada*. Calgary: Fifth House.

- Morrison, Val. 1996. "Mediating Identity: Kashtin, the Media, and the Oka Crisis." Pp. 115-136 in V. Amit-Talai and C. Knowles (eds.), *Re-Situating Identities: The Politics of Race, Ethnicity, and Culture*. Peterborough: Broadview Press.
- Mulrennan, Monica and Colin Scott. 2005. "Co-management - An Attainable Partnership? Two Cases from James Bay, Northern Quebec and Torres Strait, Northern Queensland." *Anthropologica*, Vol. 47, No. 2: 197-214.
- Nadasdy, Paul. 2003. *Hunters and Bureaucrats: Power, Knowledge, and First Nations-State Relations in the Southwest Yukon*. Vancouver: UBC Press.
- Native Affairs Advisory Council (Final Report of the). 1991. BC Government (April 1991).
- Nesbitt-Larkin, Paul. 2001. *Politics, Society, and the Media: Canadian Perspectives*. Peterborough: Broadview Press.
- Newman, Peter. 1992. "The Inexorable Spread of the Black Empire." *Maclean's Magazine* (February 3, 1992).
- Okely, Judith. 1992. "Anthropology and Autobiography: Participatory experience and embodied knowledge." Pp. 1-28 in Judith Okely and Helen Callaway (eds.), *Anthropology and Autobiography*. London and New York: Routledge.
- Omi, Michael and Howard Winant. 1994. *Racial Formation in the United States: From the 1960s to the 1990s*. New York: Routledge.
- Opekokew, Delia. 1987. *The Political and Legal Inequities Among Aboriginal Peoples in Canada*. Kingston: Institute of Intergovernmental Relations.
- Paine, Robert (ed.). 1985. *Advocacy and Anthropology*. St. John's: Memorial University of Newfoundland.
- Paine, Robert. 1981. "When Saying is Doing." Pp. 9-23 in R. Paine (ed.), *Politically Speaking: Cross-Cultural Studies of Rhetoric*. St. John's: Memorial University of Newfoundland.
- Paley, Julia. 2002. "Toward an Anthropology of Democracy." *Annual Review of Anthropology*, 31:469-96.
- Penikett, Tony. 2006. *Reconciliation: First Nations Treaty Making in British Columbia*. Vancouver: Douglas & McIntyre.
- Persky, Stan. 1998. *Delgamuukw: The Supreme Court of Canada Decision on Aboriginal Title*. Vancouver: Greystone Books.

- Pinder, Leslie Hall. 1991. *The Carriers of No: After the Land Claims Trial*. Vancouver: Lazara Press.
- Ponting, J. Rick. 2006. *The Nisga'a Treaty: Polling Dynamics and Political Communication in Comparative Context*. Peterborough: Broadview Press.
- Raunet, Daniel. 1984. *Without Surrender Without Consent: A History of the Nishga Land Claims*. Vancouver: Douglas & McIntyre.
- Regina v. Sparrow* [1990] 1 S.C.R. 1075.
- Regina v. White and Bob* (1964), 50 D.L.R. (2d) 613 (B.C.C.A.), affirmed (1965) 52 D.L.R. (2d) 481n (S.C.C.),
- Reinhold, Susan. 1994. *Local Conflict and Ideological Struggle: "Positive Images" and Section 28*. University of Sussex: unpublished Ph.D. thesis.
- Rice, James J. and Michael J. Prince. 2000. *Changing Politics of Canadian Social Policy*. Toronto: University of Toronto Press.
- Rosaldo, Renato. 1993. *Culture and Truth: The Remaking of Social Analysis*. Boston: Beacon Press.
- Roth, Christopher F. 2002. "Without Treaty, without Conquest: Indigenous Sovereignty in Post-Delgamuukw British Columbia." *Wicazo Sa Review* 17 (2): 143-165.
- Rothenbuhler, Eric W. and Mihai Coman (eds.). 2005. *Media Anthropology*. Thousand Oaks: Sage.
- Rushton, J. Philippe. 1992. "Contributions to the History of Psychology: Evolutionary Biology and Heritable Traits." *Psychological Reports* 71:811-821.
- Said, Edward. 1978. *Orientalism*. New York: Vintage Books.
- Salisbury, Richard F. 1986. *A Homeland for the Cree: Regional Development in James Bay 1971-1981*. Kinston and Montreal: McGill-Queen's University Press.
- Sanders, Douglas. 1985. "The Indian Lobby and the Canadian Constitution." Pp. 151-89 in Noel Dyck (ed.), *Indigenous People and the Nation-State: Fourth World Politics in Canada, Australia and Norway*. St. John's: Memorial University of Newfoundland.
- Sansom, Basil. 1985. "Canons of Anthropology?" Pp. 3-12 in Robert Paine (ed.), *Advocacy and Anthropology*. St. John's: Memorial University of Newfoundland.

Schudson, Michael. 1991. "The Sociology of News Production Revisited." Pp. 141-159 in J. Curran and M. Gurevitch (eds.), *Mass Media and Society*. United States: Edward Arnold.

Schulte-Tenckhoff, Isabelle. 1998. "Reassessing the Paradigm of Domestication: The Problematic of Indigenous Treaties." *Review of Constitutional Studies*, vol. IV, No. 2: 239-289.

Scott, Colin. 2004. "Conflicting Discourses of Property, Governance and Development in the Indigenous North." Pp. NA in Mario Blaser, Harvey Feit, and Glenn McRae (eds.) *In the Way of Development: Indigenous Peoples, Life projects, and Globalization*. Canada: IDRC.

Selwyn, Neil. 2004. "Reconsidering Political and Popular Understandings of the Digital Divide." *New Media & Society*, Vol. 6(3): 341-362.

Sewid-Smith, Daisy. 1979. *Prosecution or Persecution*. Cape Mudge: Nu-Yum-Balees Society.

Shore, Chris and Susan Wright (eds.). 1997. *Anthropology of Policy: Critical perspectives on governance and power*. New York: Routledge.

Smith, Melvin H. 1995. *Our Home or Native Land? What Governments' Aboriginal Policy is Doing to Canada*. Victoria: Crown Western.

Spitulnik, Debra. 1993. "Anthropology and Mass Media." *Annual Review of Anthropology* 22: 293-315.

St. Catherine's Milling and Lumber Co. v. The Queen (1888), 14 App. Cas. 46.

Sterritt, Neil, Susan Marsden, Robert Galois, Peter Grant, and Richard Overstall. 1998. *Tribal Boundaries in the Nass Watershed*. Vancouver: UBC Press.

Task Force Report. 1991. *The Report of the British Columbia Claims Task Force*. BC: Government of BC.

Tennant, Paul. 1990. *Aboriginal People and Politics: The Indian Land Question in British Columbia, 1849-1989*. Vancouver: UBC Press.

Titley, E. Brian. 1986. *A Narrow Vision: Duncan Campbell Scott and the Administration of Indian Affairs in Canada*. Vancouver: University of British Columbia Press.

Trouillot, Michel-Rolph. 1991. "Anthropology and the Savage Slot." Pp. 17-24 in R. Fox (ed.) *Recapturing Anthropology: Working in the Present*. Santa Fe: School of American Research Advanced Seminar Series.

- Valdez, Norberto and Janice Valdez. 1998. "The Pot that Called the Kettle White: Changing Racial Identities and US Social Construction of Race." *Identities*, Vol. 5(3):379-413.
- van Dijk, T. 1988. *News Analysis*. Hillsdale, NJ: Lawrence Earlbaum.
- Van Horne, Winston (ed.). 1997. *Global Convulsions: Race, Ethnicity, and Nationalism at the End of the Twentieth Century*. Albany: SUNY Press.
- Vargas, Lucila. 2000. "Genderizing Latino News: An Analysis of a Local Newspaper's Coverage of Latino Current Affairs." *Critical Studies in Media Communication* Vol. 17, No. 3:261-293.
- Venne, Sharon H. 1999. *Treaty-Making and its Potential Conflict Resolution between Indigenous Nations and the Canadian State*. Prepared for the Law Commission of Canada for presentation at the joint Indigenous Bar Association & Canadian Bar Association Conference on the Royal Commission on Aboriginal Peoples (unpublished).
- Vincent, Joan. 1990. *Anthropology and Politics: Visions, Traditions, and Trends*. Tucson: University of Arizona Press.
- Wa, Gisday and Delgam Uukw. 1992. *The Spirit of the Land: Statements of the Gitksan and Wet'suwet'en Hereditary Chiefs in the Supreme Court of British Columbia 1987-1990*. Gabriola: Reflections.
- Wallman, Sandra. 1982. "Appendix on the Survey: Fieldwork strategy." Pp. 190-207 in Sandra Wallman and Associates *Living in South London*. Hants: Gower Publishing.
- Weaver, Sally. 1981. *Making Canadian Indian Policy: The Hidden Agenda 1968-70*. Toronto: University of Toronto Press.
- Weaver, Sally. 1993. "The Hawthorn Report: Its Use in the Making of Canadian Indian Policy." Pp. 75-97 in Noel Dyck and James B. Waldram (eds.), *Anthropology, Public Policy and Native Peoples in Canada*. Montreal and Kingston: McGill-Queen's University Press.
- White Paper [The]. 1969. *Statement of the Government of Canada on Indian Policy 1969*. Ottawa: Queen's Printer (DIAND).
- Wilson, James Q. and Richard J. Herrnstein. 1986. *Crime and Human Nature*. New York: Simon and Schuster.
- Winter, James. 1996. *Democracy's Oxygen: How Corporations Control the News*. Montreal: Black Rose Books.
- Winter, James. 2002. *Media Think*. Montreal: Black Rose Books.

Woolford, Andrew. 2004. "Negotiating Affirmative Repair: Symbolic Violence in the British Columbia Treaty Process." *Canadian Journal of Sociology*, Vol. 29. No. 1 (Winter): 111-144.

Yurkowski, Rachel. 2000. "We Are All Here to Stay; Addressing Aboriginal Title Claims after *Delgamuukw v. British Columbia*." *Victoria University Wellington Law Review* 31 (3): 471-496.

APPENDICES

**Appendix 1:
Sample Interview Schedule**

1. Introduction and brief outline of research.
2. Review and signing of Consent Form.
 - a. Do you wish to have this interview material remain confidential or would you prefer to have your views identified in my research?
 - b. Do you consent to an audio recording of this interview? (if so, record "on")
3. Formal interview questions.
 - a. What role does [name of organization] have in land claims negotiations in B.C.?
 - b. What position does [name of organization] take in regard to the negotiation of land claims in B.C.?
 - c. What is your role as a representative of [name of organization]? What (professional) experiences do you bring to this position?
 - d. Does [name of organization] have a mandate, and if so, how effective has it been in fulfilling this mandate?
 - e. What is the single most pressing issues facing [name of organization] in regard to the negotiation of land claims?
 - f. Are there any issues that [name of organization] does or does not want on the negotiation table? Which ones and why?
 - g. What improvements, as far as [name of organization] is concerned, could be made to the land claims negotiation process?
 - h. What, in the eyes of [name of organization], would constitute a just settlement of Aboriginal land grievances? How likely is it that this will take place?
4. Interview wrap-up.
 - a. Are there any other questions that you think I should ask?
 - b. Would you like a copy of this interview? If so, would you be willing to comment on it?
 - c. Do you want to be notified when my research is completed?

- d. Is there someone that you feel is important for me to talk to? If so, who? How can I contact them?
 - e. If I found it necessary, could I contact you again?
 - f. Do you have any questions or comments before we conclude this interview?
5. Closing remarks and thanks (record "off" if applicable).

Appendix 2:
List of Potential Respondents (by institution)

Interviews will be conducted with individuals who are involved in BC's treaty negotiation process. This includes representatives from:

- the Ministry of Aboriginal Affairs;
- the Department of Indian Affairs;
- the BC Treaty Commission; and
- the First Nations Summit.

It could also include representatives from:

- specific First Nations;
- various levels of government;
- Treaty Advisory Committees; and
- Regional Advisory Committees.

Further contacts may be made with:

- members of the news media;
- representatives of special and public interest groups;
- public relations or liaison persons from industry and other private organizations;
- and
- professionals working in the area of Aboriginal claims.

Other sources may be brought to bear through my interviews.

**Appendix 3:
Research Proposal Form (January 27, 1997)**

Conceived within a political anthropological framework, this research employs a social constructionist approach to explore discourses relating to British Columbia's Aboriginal treaty process. Relying upon an ethnographically-based methodology, this study will map the various discourses which relate to Aboriginal land claims.

Through personal interviews with representatives of groups and organizations which have a bearing on the negotiation of modern-day treaties in this province, as well as a qualitative analysis of popular media and official documents, this research represents an important step in providing a framework with which to critically examine this process.

Interviews will be semi-structured, consisting of eight broad questions which address the relationship between the group or institution which a subject represents and issues relating to the negotiation of land claims in British Columbia (see Appendix A). Interviews will take place at a location of the subject's choosing (e.g. their place of work), agreed upon prior to the interview itself. Initial contact will be made with subjects either through prior introduction, or over the phone or by mail (see Appendix E).

Respondents will be asked to read and sign a consent form at the beginning of each interview, and to initial as regards confidentiality and cassette recording of the interview (Appendix C). The investigator will review the consent form with each subject, making it clear that participation is voluntary throughout, and ensuring that they have no outstanding questions.

As regards confidentiality, because this research does not attempt to solicit information from subjects which is either personal or private - that is, interviews focus on the relationship between institutions and the treaty process, not individuals - it will be made clear that information is to remain public unless otherwise specified (see Appendix C). Subjects requesting confidentiality will be given positive assurance that their name will not be used or implied, nor will any institutional affiliation be made which could allow others to identify who the speaker is. In addition, all subjects will be given the opportunity to review a written transcript of their interview prior to it being used, and to request changes or complete withdrawal. Further, in concluding an interview, subjects will be asked to indicate whether they wish to be notified upon completion of this research in order to access a final copy. Any subject who requests complete confidentiality will not become a formal part of the final research document, but will still have the opportunity to provide feedback on their interview in the manner described above. Interviews are expected to be completed within an hour, and contact names will be provided in the event that a subject wishes to further inquire about this research, or the process through which it is being carried out.

**Appendix 4:
Request for Participation Form -
Soliciting Subjects for Interviews by Mail / Phone**

(A) - Draft letter to potential respondents:

Dear Mr/Ms [name of individual], [institutional affiliation]

As a doctoral student in the Department of Sociology and Anthropology, Simon Fraser University, I am carrying out research pertaining to Aboriginal land claims in British Columbia.

One aspect of this research involves interviewing representatives from groups and organizations who are either directly or indirectly involved in the current treaty process.

Interviews are usually completed within an hour, and were you available for an interview, could be carried out at a location of your choice.

The interview itself consists of eight broad questions which centre around the role which [name of respective institution] has regarding the treaty process.

If you have an hour to take part in this interview, or if you have any questions regarding this research, please contact me through one of the means listed below.

Your time in this matter is appreciated.

Sincerely,

[original signed]

Tonio Sadik
Department of Sociology and Anthropology
Simon Fraser University
Burnaby, British Columbia V5A 1S6
Phone: (604) 465-1892
Email: tsadik@sfu.ca

(B) - Draft phone conversation with potential respondents:

[Opening greeting]

My name is Tonio Sadik. I am a doctoral student in the Department of Sociology and Anthropology, Simon Fraser University, carrying out research pertaining to Aboriginal land claims in British Columbia.

One aspect of my research involves interviewing representatives from groups and organizations who are either directly or indirectly involved in the current treaty process.

Interviews are usually completed within an hour, and were you available for an interview, it could be carried out at a location of your choice.

The interview itself consists of eight broad questions which centre around the role which [name of respective institution] has regarding the treaty process.

Would you have an hour some time in the near future to take part in this interview?

- Provide opportunity for questions.
- Provide contact and/or follow-up information.

[Closing greeting]

**Appendix 5:
Informed Consent Form**

Research Title: Aboriginal Land Claims in British Columbia

Investigator: Tonio Sadik (Simon Fraser University)

This consent form, a copy of which has been given to you, is only one part of the process of informed consent. It should give you the basic idea of what the research is about and what your participation will involve. If you would like more detail about something mentioned here, or information not included here, you should feel free to ask. Please take the time to read this carefully and to understand any accompanying information.

Outline of this research:

This research is being carried out as one of the requirements for obtaining a Ph.D. in the Department of Sociology and Anthropology at Simon Fraser University.

The purpose of this research is to determine how Aboriginal land claims are talked about in British Columbia. By carrying out personal interviews with representatives from the various institutions and organizations involved in land claims, as well as by examining official documents and media reports, this research seeks to identify some of the common themes relating to this topic.

You are free to answer only those questions which you feel are appropriate, and you may terminate this interview at any time.

Confidentiality:

The information gathered in this interview will be considered public information unless you specify that it should remain confidential, or that some part of it should remain confidential.

If you ask that all or a part of the information you provide should remain confidential, the investigator will ensure that this information does not appear in any part of this research, or that it will only be used in such a way as to ensure that no link can be made between any reader and the person making the comment. If you have any specific concerns about confidentiality, be sure to raise them with the investigator.

Your signature on this form indicates that you have understood to your satisfaction the information regarding participation in this research project and that you agree to participate as a subject. In no way does this waive your legal rights nor release the investigator(s), sponsors, or involved institutions from their legal and professional responsibilities. You are free to withdraw from the study at any time. Your continued participation should be as informed as your initial consent, so you should feel free to ask for clarification of new information throughout your participation. If you have further questions concerning matters related to this research, please contact:

Tonio Sadik
Department of Sociology and Anthropology
Simon Fraser University
Burnaby, British Columbia
V5A 1S6
Phone: (604) 465-1892

If you have any questions concerning your rights as a participant in this research, please contact:

Dr. Ellen Gee, Chair
Department of Sociology and Anthropology
Simon Fraser University
Burnaby, British Columbia
V5A 1S6
Phone: (604) 291-3146

Participant's name Participant's signature Date

Investigator's name Investigator's signature Date

Please initial here if you consent to being tape recorded -

A copy of this consent form has been given to you to keep for your records and reference.

**Appendix 6:
Recommendations of the BC Claims Task Force (June 28, 1991)**

The Task Force recommends that:

1. The First Nations, Canada, and British Columbia establish a new relationship based on mutual trust, respect, and understanding—through political negotiations.
2. Each of the parties be at liberty to introduce any issue at the negotiation table which it views as significant to the new relationship.
3. A British Columbia Treaty Commission be established by agreement among the First Nations, Canada, and British Columbia to facilitate the process of negotiations.
4. The Commission consist of a full-time chairperson and four commissioners — of whom two are appointed by the First Nations, and one each by the federal and provincial governments.
5. A six-stage process be followed in negotiating treaties.
6. The treaty negotiation process be open to all First Nations in British Columbia
7. The organization of First Nations for the negotiations is a decision to be made by each First Nation.
8. First Nations resolve issues related to overlapping traditional territories among themselves.
9. Federal and provincial governments start negotiations as soon as First Nations are ready.
10. Non-First Nations interests be represented at the negotiating table by the federal and provincial governments.
11. The First Nation, Canadian, and British Columbian negotiating teams be sufficiently funded to meet the requirements of the negotiations.
12. The commission be responsible for allocating funds to the First Nations.
13. The parties develop ratification procedures which are confirmed in the Framework Agreement and in the Agreement in Principle.
14. The commission provide advice and assistance in dispute resolution as agreed by the parties.
15. The parties select skilled negotiators and provide them with a clear mandate, and training as required.

16. The parties negotiate interim measures agreements before or during the treaty negotiations when an interest is being affected which could undermine the process.
17. Canada, British Columbia, and the First Nations jointly undertake public education and information programs.
18. The parties in each negotiation jointly undertake a public information program.
19. British Columbia, Canada, and the First Nations request the First Nations Education Secretariat, and various educational organizations in British Columbia, to prepare resource materials for use in the schools and by the public.

Appendix 7:

The Six Stages of the BC Treaty Process

(from the *Report of the British Columbia Claims Task Force, June 28, 1991*)

Stage 1: Submission of Statement of Intent to negotiate a treaty

The negotiation process will begin when a First Nation sends a Statement of Intent to negotiate a treaty to the commission. The commission will forward the Statement of Intent to the federal and provincial governments and acknowledge its receipt to the First Nation.

The Statement of Intent need only be a short and succinct document. Its preparation does not need to be supported by extensive research and consultations. Its purpose is to indicate the intention of the First Nation to enter into treaty negotiations. It will also provide basic information to enable the commission and the federal and provincial governments to begin preparations for the negotiations.

The Statement of Intent should identify the following:

- The First Nation;
- The general geographic area of the First Nation's traditional territory;
- A formal contact for communication.

The First Nation may choose to submit a preliminary list of issues which it believes will be important to the negotiations.

At the time the First Nation files its Statement of Intent, it should also file with the commission any requirement it has for funding. The commission will meet with the First Nation to consider its funding needs.

Alternatively, First Nations who have already filed submissions under the current federal comprehensive claims policy may send these to the commission and indicate that they intend to rely on them as their Statement of Intent.

Stage 2: Preparation for negotiations

When the commission receives the Statement of Intent, it will give written notice to the three parties, convening a meeting within 45 days. At this meeting, the parties will formally commit themselves to negotiate a treaty.

This meeting will provide the parties and the commission with an opportunity to exchange information, consider the criteria to be used to determine the parties' readiness to negotiate, discuss background studies any of the parties intends to carry out in preparation for the negotiations, and identify in a general way issues to be negotiated. In

consultation with the commission, the parties will also set a date for the first Framework Agreement negotiating meeting.

Prior to the date of the first Framework Agreement negotiation meeting, the commission will communicate with the parties to ascertain their readiness to begin negotiations, based upon criteria agreed to by the parties. The commission has the responsibility of assessing whether or not the parties are sufficiently ready to begin negotiating. The parties are expected to cooperate with the commission in this assessment. The commission must ensure that there is no delay of the process, but also ensure that negotiations do not begin until all the parties are adequately prepared. If the parties are ready, the commission will confirm the start date for the negotiation of the Framework Agreement. If one or more of the parties are not ready, the commission will ask them to set a new date.

The following criteria for readiness are suggested:

- A First Nation is “ready” when it has identified subject matters to be negotiated, it has consulted its communities, established an organization sufficient to support the negotiations, and adopted a ratification procedure. A First Nation should also have identified and begun to address any overlapping territorial issues with neighbouring First Nations. It is not a requirement that overlap issues be resolved prior to negotiations.
- The federal and provincial governments are “ready” when each has identified the subject matters it wishes to include in negotiations, has established a mechanism for consultation with non-aboriginal interests, has researched the background of the communities, people, and interests likely to be affected by the negotiations, and has adopted a ratification procedure.
- Each of the parties must confirm to the commission that it has appointed negotiators and has given them a comprehensive and clear mandate, and has sufficient resources to carry out the negotiations.

Parties are encouraged to meet with the commission at any time, but particularly during this stage, to discuss matters which will expedite the process.

Stage 3: Negotiation of Framework Agreement

A Framework Agreement is a negotiated agenda which:

- Identifies the subjects for and objectives of the negotiations; and
- Establishes a timetable and any special procedural arrangements for the negotiations.

This will enable the commission and the parties to evaluate the progress of negotiations. In addition, it will enable the parties to confirm, modify or expand their negotiators’ mandates.

Identification of the parties' ratification, and implementation procedures must be considered in the course of the Framework Agreement negotiations. The parties should adopt a dispute resolution procedure and undertake a program of public information, for use during the entire period of negotiations.

Appendix 5 contains a list of items included in Framework Agreements negotiated to date.

While interim measures agreements can be raised at any time, the parties should consider the need for them prior to concluding the Framework Agreement.

Stage 4: Negotiation of Agreement in Principle

During this stage the parties reach the major agreements which will form the basis of the treaty. The Agreement in Principle is the product of a thorough and detailed examination of the issues on the agenda, as set out in the Framework Agreement. It should contain the salient points of the agreement between the parties. The parties must again confirm the process for ratification and establish a mechanism to develop an implementation plan.

The ratification process of the Agreement in Principle provides the parties with the opportunity to:

- Review the emerging agreement and approve, reject or seek amendment of its provisions;
- Provide their negotiators with a mandate to conclude a treaty.

Stage 5: Negotiation to finalize a treaty

The treaty will formally embody the principles which underpin the new relationship and the agreements reached in the Agreement in Principle. It will also provide the implementation plan by which the parties will give effect to the agreements. A separate working group may be required to prepare for implementation, including such matters as the timing and funding of implementation and the responsibilities of each party.

The resolution of technical and legal issues in the settlement of the terms of the treaty should not be used as an opportunity to re-open issues already settled. A balance must be maintained between the need to deal with substantive amendments and the undermining of the Agreement in Principle.

On the completion of negotiations the treaty will be formally ratified and signed.

Stage 6: Implementation of the treaty

While the task of the negotiators is now complete, the work of establishing the new relationship continues. Implementing legislation or authorities may be required by each

of the parties. The implementation of the treaty will require continuing goodwill, commitment and efforts on the part of all the parties.

Appendix 8:
Treaty Negotiation Advisory Committee (TNAC)

Member Organizations:

1. BC Agricultural Council
2. BC Cattlemen's Association
3. BC Chamber of Commerce
4. BC Federation of Labour
5. BC Fishing Resort Association
6. BC Government Employees' Union
7. BC Real Estate Association
8. BC Shellfish Growers
9. BC Trappers Association
10. BC Utilities Advisory Council
11. BC Wildlife Federation
12. BC & Yukon Chamber Mines
13. Business Council of BC
14. Canadian Association of Petroleum Producers
15. Canadian Parks and Wilderness Society
16. Cariboo Lumber Manufacturing Association
17. Commercial Fishing Industry Council
18. Communication, Energy and Paperworkers Union of Canada
19. Co-operative Fishermen's Guild
20. Council of Forest Industries
21. Environmental Network
22. Fisheries Council of BC
23. Guide Outfitters Association of BC
24. IWA BC
25. Mining Association of BC
26. Outdoor Recreation Council
27. Sport Fishing Institute
28. Steelhead Society BC
29. Truck Loggers Association of BC

30. Union of BC Municipalities
31. United Fisherman and Allied Workers Union
32. United Steel Workers