

## Unstable Properties

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Map of BC First Nations | Cartographer: Eric Leinberger. Reprinted from Wendy Wickwire, *At the Bridge: James Teit and an Anthropology of Belonging* (Vancouver and Toronto: UBC Press, 2019)

# Introduction

## PAPER CLAIMS

This book is a historical-geographic interrogation of Crown claims to Indigenous lands in what is currently called British Columbia. When European explorers first arrived in the Pacific Northwest of North America, it was already inhabited by people who had been there for thousands of years. When the new arrivals determined that they would assert sovereignty over the land, resolving to colonize and bring new settlers to it, they attempted to inscribe a new history onto its landscape. They rewrote the story of the place, absent its depth of history. Theirs was a narrative reborn and a narrative of rebirth – a land of second chances, as all colonies promise to be, for their settlers.

Erasure is part of the newcomers' story, but conquest is not. Although it purports to be otherwise, it is an inherently violent story. While BC was initially viewed as a theatre of competing European claims to sovereignty, by the middle of the nineteenth century, traders and colonial officials had begun to write its story as a new polity in a new place. Starting with the Hudson's Bay Company's mandate to bring settlers to Vancouver Island in the 1850s and gaining momentum in 1871 when BC joined the Dominion of Canada, it is a story about the anticipation and development of a settler-political community in the Northwest. It is essential to approach this story as the mythology that it is if we want to understand why BC is entangled in the politics of Aboriginal title and want to imagine a better way forward. This book attempts to explain how this selective narrative emerged and grew roots before it became upended.

European settlers pushed Indigenous people to the margins of the invention of BC, literally and discursively. The deep Indigenous history in

this part of the world was not the beginning of the story of BC. Neither did the story begin with a tale of shared endeavour between Indigenous and settler communities. There had been some strong trading relationships early on, but when Europeans transitioned from traders to settlers, they did not seek permission to occupy other peoples' lands. Early colonial officials negotiated a few agreements on questionable terms under questionable circumstances, but the vast majority of the territory claimed by the Crown was taken up by colonial officials and settlers without negotiation of any kind with the Indigenous people already occupying, stewarding, and governing the land. There was no pretense of a legal basis for the assertion of territorial control by settler governments. Britain's North American claim in 1763 had reserved "for the Use of the said Indians ... all the Lands and Territories lying to the Westward of the Sources of the Rivers which fall into the Sea from the West and North West" (not that the British had reached BC yet) ("Royal Proclamation of 1763" 1911, 216). By its own terms, Britain's colonial agents needed to negotiate treaties. By and large, these negotiations did not happen.

Settler colonialism in BC has been an effort to unmake Indigenous polities and land use and to remake colonial territory. Although almost no settler politician wants to acknowledge it, this effort has ultimately been incomplete and unsuccessful. Control of the land, as territory, lies at the heart of colonialism. But territory is something that has to be made and constantly remade. Territory is a process, of which an essential component is narratives about belonging and about the logic and morality of the territorial claim. To succeed, settler colonialism needs to destroy any sign of the permanence of Indigenous polities – not just their occupation of the land but also their identity and collectivity. It needs to deterritorialize and unmake them, to unmake the logic of their geographies. It needs to sever Indigenous people from their land, to unsettle them so that attachment to the new territory is the only logical possibility for their survival. In this way, the state aspires to gain their compliance and to eliminate the threat of political instability (Wolfe 2006; Lunstrum 2009).

Settler corporations and governments attempted to achieve severance and erasure through policies of displacement, exclusion, cultural suppression, and familial separation and through institutions of law, land tenure, and governance pasted onto a space that they treated as *terra nullius*, a blank

slate free of its history. They saw BC as a polity invented at the moment of their arrival, which they constructed in the image of a British colony, extracting natural resources for trade with the world while domesticating the land with agriculture, industry, and private property. Local officials asserted that Aboriginal title to land did not exist in the territory, never having been affirmed under British common law, under imperial law, or in the Royal Proclamation of 1763. None of these assertions were true.

Settlers and their governments did not succeed in their invention of “British Columbia” as they had planned. The question of Aboriginal title has acted as a centripetal force, bringing Indigenous people to the centre of BC politics again and again while disrupting the narrative of *terra nullius*. This centripetal force is not naturally occurring; it is the result of Indigenous peoples stepping into the legal vacuum and continuing to assert their own sovereignties and legal traditions over their land and communities. They have continued to tell their own stories.

For many of the Indigenous peoples who live in the place that settlers call BC, narratives of territory and its governance are not about dominion *over* land; rather, they centre belonging and interdependence *with* land. As Russell Tiljoe of the Gitdumden Clan, Office of the Wet’suwet’en, shared at a 2012 hearing of the Joint Review Panel for the Enbridge Northern Gateway Project regarding a possible pipeline through northern BC,

Since the beginning of time, after our Creator put our ancestors, the Wet’suwet’en people, on this land, they became the caretakers of the land. Each generation took their turn as caretakers in looking after our territories.

Each clan has their own territory to look after. It is our tribal law that we look after our territories. Today we are the caretakers of our territories. After our time the children will take over as caretakers, then the grandchildren.

We and our ancestors have been born here since the Creator put us here, now we are here. Our children, grandchildren and great-grandchildren will be here; we are not going anywhere. (NEB 2012b, paras 5539–41)

Tiljoe expressed a sense of being bound by and to the land that is echoed in the growing literature on Indigenous epistemology and ontology by

Indigenous scholars. This scholarship articulates, for example, how animals and plants are teachers (Kimmerer 2013) and how the land itself is a teacher – how we learn “both *from* the land and *with* the land” (L.B. Simpson 2017, 150). It challenges the distinction between human and nonhuman and critiques the desire of settler colonialism to manage the nonhuman (TallBear 2015). And it argues for understanding the nonhuman world as “kin” to whom we are profoundly connected and for understanding environmental governance as strongly rooted in reciprocal responsibility and relationality (Todd 2017, 2018). It specifically grounds epistemology and ontology in land, often in particular places, where land and the non-human world participate in the production of thought and knowledge. Mohawk and Anishinaabe scholar Vanessa Watts (2013, 21) has called this “Place-Thought” because “place and thought ... never could or can be separated,” and she cautions against applying epistemology or ontology from one place in another. Running through these philosophies are iterations of Indigenous law, which comprises the codes and practices that maintain these reciprocal relationships. Like Western law, it serves to govern, but the philosophy, articulations, and practices of Western law are markedly different from those of Indigenous law.

In March 2012, a couple of months after Tiljoe’s presentation, Diane Brown of the Skidegate Band Council, Council of the Haida Nation, shared a Haida story with the Joint Review Panel at Skidegate, explaining that when the Haida first came to live on Haida Gwaii, they came out of the air and then disappeared; then they came out of clay and disappeared again; finally, they came out of the ocean. She said that thousands of years ago, “our highest being put us here in the beginning of time, this time” (NEB 2012c, para 20467). The Haida connection to the land and the ocean, as she explained, is so powerful that they understand themselves as emerging from it, as literally *of* it. They believe that they live specifically where they are located because of this bond. Haida Gwaii and its surrounding waters are theirs to care for, and the people belong to the water, as much as the other way around.

The stories of colonists about their attachment to BC are significantly different in terms of their origins and characteristics from the stories of Indigenous peoples about their attachment to the land. When colonists tried to paper over Indigenous polities, they believed that their law and

property regimes were replacing nothing of consequence. Accordingly, a veneer of aspirational geographies in lands where they had never set foot was deemed sufficient to exercise sovereignty. However, because what they stretched their laws to cover was so rich and deeply rooted, their misunderstanding of what became “the land question” and then the issue of “Aboriginal title” was the beginning of the unwriting of their story. Indigenous polities and territories were not erased; instead, Aboriginal title has fundamentally shaped BC’s development throughout its history. It lies at the heart of all land use, ideas of land, and governance. For our purposes, the story of the incomplete, unsuccessful invention of BC is the story of the politics of Aboriginal title.

From the beginning, settler-colonial governments in BC were confronted with the absurdity of their actions in unmistakable terms by Indigenous peoples. For example, the Supreme Court of Canada’s decision in *Calder et al. v Attorney-General of British Columbia* (1973, 319), which recognized the existence of Aboriginal title in BC, recounts the Nisga’a attempt to question the basis of the Crown’s claim in 1888:

The Nishga answer to government assertions of absolute ownership of the land within their boundaries was made as early as 1888 before the first Royal Commission to visit the Nass Valley. Their spokesman said:

David Mackay – What we don’t like about the Government is their saying this: “We will give you this much land.” How can they give it when it is our own? We cannot understand it. They have never bought it from us or our forefathers. They have never fought and conquered our people and taken the land in that way, and yet they say now that they will give us so much land – our own land. These chiefs do not talk foolishly, they know the land is their own; our forefathers for generations and generations past had their land here all around us; chiefs have had their own hunting grounds, their salmon streams, and places where they got their berries; it has always been so. It is not only during the last four or five years that we have seen the land; we have always seen and owned it; it is no new thing, it has been ours for generations. If we had only seen it for twenty years and claimed it as our own, it would have been foolish, but it has been ours for thousands of years. If any strange person came here and saw the land for twenty years and claimed it, he



would be foolish. We have always got our living from the land; we are not like white people who live in towns and have their stores and other business, getting their living in that way, but we have always depended on the land for our food and clothes; we get our salmon, berries, and furs from the land.

Such absurdity was the product of a particular history. Peter Russell (2017) has argued that Canada was initially founded through the interrelationship between Indigenous peoples, the English, and the French. Britain's colonization was, he suggests, always "incomplete." The British Empire's political conquest of New France rested on the terms of surrender, which set out provisions for the protection of the French language and Catholicism, including the church's oversight of schools and hospitals. The alliances of the French and British Empires with Indigenous nations led eventually to postwar treaty relationships, starting with the Royal Proclamation of 1763 and the Treaty of Niagara of 1764. Russell (2017, 5) terms the latter "Canada's first Confederation" because "it set out the terms on which Britain and many Indian nations agreed to share the country and have peaceful relations. Crucial to that agreement was respect for the Indian nations' political independence and ownership of their lands and waters."

John Borrows has gone further to argue that the Treaty of Niagara and the Royal Proclamation are two parts of the same treaty and that Indigenous peoples were actively involved in the development of the Proclamation as well. It is due to Indigenous nations' diplomatic pressure that this treaty includes gestures toward recognition of Indigenous lands and their right to continue to inhabit and govern them without interference, as well as the British commitment to protect these rights, which had also been established in the Articles of Capitulation of Montreal in 1760. However, the British inserted the language of "dominion" and "sovereignty" into the Proclamation and embedded Indigenous land within the Crown claim, contrary to Indigenous leaders' understanding. The Treaty of Niagara was the result of a gathering of 2,000 chiefs and representatives of more than twenty-four nations, and it was in part a correction or clarification of the Proclamation, as it affirmed the "Covenant Chain of Friendship, a multination alliance in which no member gave up their sovereignty." The superintendent of Indian affairs at the time, William Johnson, who presented the terms of

the agreement at Niagara, later confirmed that Indigenous people had not been brought under British law and that efforts to do so had only ever produced problems (Borrows 1997b, 161).

However, at the time of Confederation in 1867, Indigenous peoples were no longer regarded as a constitutive political community by the colonial government. The *British North America Act* of 1867 struck balances between the federal government and the provinces, between francophones and anglophones, and between Catholics and Protestants. Its authors did not consult or include Indigenous peoples, who had already been reduced to “subjects of the Crown” without any consensual legal basis. Regardless of the Royal Proclamation and treaty commitments (which were Canadian law), within ten years of Confederation, the newly founded Canadian government had cemented the second-class and depoliticized status of Indigenous people in the *Indian Act* of 1876.

The incompleteness of the Constitution produced a more complicated story for provinces that joined Canada after Confederation, such as BC, whose leaders did not participate in these initial relationships and negotiations. There have been disputes over the extent to which these provinces are subject to prior treaties, in content and in principle, including whether or not the Royal Proclamation should be understood to incorporate the territory now claimed as BC. While politicians of the settler state, both federal and provincial, squabbled over this portion of the federation’s origin story in an attempt to fill in the aspirational map of the nation, Indigenous polities and their leaders continued to tell their own stories in their own places.

### **Settler Colonialism: Wrestling with Time and Space**

There are many differences between Indigenous and settler communities in terms of their understandings of land, law, and governance. The differences are so fundamental that the conceptualizations are themselves nested in differing frameworks of time and space. Whereas Indigenous governance is entwined with the cyclical nature of time and with a grounded, experiential, and relational sense of space, settler-colonial governance is anchored in linear, scientific time and futuristic thinking, and its organization of space is oriented around the survey and the grid (see Cronon 1983; Lefebvre 1991; Scott 1998; Blomley 2003; Berardi 2012; Rifkin 2017; and Cohen

2018). The colonial state actively drew power from these abstractions, which poorly represented Indigenous temporalities and spatialities and which disadvantaged Indigenous claims in settler-colonial legal contexts, often reducing everything Indigenous to the past tense – irrelevant and extinct (Thom 2014; Borrows 2016a; Rifkin 2017; Wickwire 2019). Importantly, Indigenous spatialities include mappings, concepts of property, and territorial claims, but settler-colonial governments and courts chose not to recognize them.

Settler colonialism in BC was and remains, like much settler colonialism elsewhere, highly future-oriented. This focus did not mean merely that colonists looked to the future or had ambitions of rewriting the entire landscape – although that is true. Rather, the futuristic thinking here is also ontological: political entities like states emerge from themselves; they are not products of history. In this place, the future is unfettered by and unaccountable to the past. It is believed that anything is possible, that the future can be invented as one wishes. Moreover, the promise of the future is what is meaningful or gratifying, not the present or the past. This is a mindset that fetishizes the future, resembling futurist movements in literature and art that profess love of and faith in the power of engineering.

Such futurist framings seek to neutralize the past and its legacy in the present in order to erase responsibility. In BC, this approach fed an argument that Aboriginal rights were not taken away but were surrendered or abandoned by First Nations themselves. Chief Joe Mathias and Gary Yabsley noted in 1991 that many critics of the then-proposed BC treaty process implied that Indigenous peoples had forfeited rights to the land because they had done nothing to protect them over the preceding century. However, the issue was not disinterest on the part of Indigenous people. Rather, such criticism was enabled by the active suppression of Indigenous peoples' access to legal and political institutions by provincial and federal legislatures, including prohibitions on raising money or retaining a lawyer to prosecute claims to land, holding religious ceremonies and potlaches, accessing government funds, acquiring land, and exercising voting rights (Mathias and Yabsley 1991). To erase the past and enable the future, settler governments sought to deny the politics of the present.

Broadly speaking, Indigenous understandings of the place of the future within the larger frame of time may be described in terms of futurity. In

contrast to futurism, futurity invokes the time to come and speaks to how the present arrangement is a product not only of what has been but also of what it anticipates. Indigenous futurity is set in a sense of time that contains multiple temporalities and, as Sakihitowin Awasis (2020, 834) has noted for Anishnaabe time, is “situated in direct relationship with the land” (see also Rifkin 2017). A settler futurity is thus problematic, as it continues to imagine the world as settlers see it and leaves racist practices and institutions unchallenged, ensuring their perpetuation (Hodes 2017). Eve Tuck and Rubén Gaztambide-Fernández (2013, 85) have called instead for “a framework invested in Indigenous futurity and not in settler futurity,” both to counter assimilation or exclusion and to allow for Indigenous material and social space that is separate and protected from settler interference.

In its desire to rewrite a landscape that it does not control or know, settler colonialism projects anticipatory geographies and a futurist sovereignty. Legal geographer Nicholas Blomley (2003) has identified the discursive and representational instruments – the frontier, the survey, and the grid – that are deployed in such projections, arguing that they constitute a geography of violence that underlies modern property regimes. They were used to facilitate the dispossession of Indigenous people and to clear the land figuratively and literally for European settlers. In this undertaking, settler-colonial governments were wrestling with space and the competing sovereignties that they sought to control without acknowledgment. The nonhuman environment that they were trying to manage also eluded their control. The application of scientific concepts to the “irreducible complexities of nature” increased the discursive violence, as did efforts to make nature “legible” through law (Blomley 2007, 1840; Rossiter 2008b). Violence, then, is not (only) something that law restrains and prevents but (also) something that it exercises. In the case of settler colonialism and its anticipatory geographies, this violence includes property law, especially the implementation and protection of private property (Blomley 2003).

In the early twenty-first century, futurist thinking may be found in what has been termed the “post-political,” a framing of time and space that erases the politics of history and replaces them with a singular future shaped by the individualistic, market-oriented logics of neoliberalism (see R. Wilson 2000). Just as the decision in *Calder* (1973) opened new possibilities for the acknowledgment of Aboriginal title, these logics began their

ascent in BC politics. Beginning with Social Credit premiers Bill Bennett (1975–86) and Bill Vander Zalm (1986–91), governments introduced policies that cut social services and devolved control of many areas of economic development to shared arrangements with the private sector. Cindi Katz’s (2001b, 720–21) use of “topography” (see also Katz 2001a) to critically describe the socio-material landscapes produced by powerful, place-spanning systems offers a helpful metaphor for analyzing the effects of the domination and exploitation contained within an ever-globalizing neoliberal capitalism:

Topographies are thoroughly material. They encompass the processes that produce landscapes as much as they do the landscapes themselves, making clear the social nature of nature and the material grounds of social life. Their production also simultaneously turns on, reveals, and specifies the intricate relations among discrete places. Thus, topography offers a methodology for critically scrutinizing the material effects produced in multiple locations by the processes associated with such abstractions as globalization, global economic restructuring, and uneven development. They can provide literal and figurative grounds for developing a critique of the social and political-economic relations sedimented into space and for examining the range of social practices through which place is produced.

Katz focuses on topographies of global capitalism and their implication in reworking processes of social reproduction; the critical possibilities in this approach extend easily to related considerations of colonialism. Indeed, the topographies of neoliberalism that were renewed and intensified under Premier Gordon Campbell’s BC Liberals (2000–11) can be described as “fantastic,” with capitalist imaginations shaping policy around land claims in keeping with the futurist thinking of settler colonialism. Campbell’s “fantastic topographies” envisioned the province and its resource spaces situated squarely within the circuits of international capital and outside the currents of colonial history and geography. Indigenous peoples across BC rejected such ahistorical fantasies and continued to articulate Indigenous futurity on their terms through the presentation of “countertopographies” (Katz 2001b, 720–21) centred on Indigenous law and sovereignty (Rossiter and Wood 2005).

### **Framing the Politics of Aboriginal Title**

The decision in *Calder* (1973) overturned *St Catherines Milling and Lumber Co v The Queen* (1888), a decision that had narrowly framed “Indian title” as a right whose existence was at the pleasure of the sovereign. In its place, *Calder* recognized the existence of Aboriginal title in BC as a pre-contact right regarding land ownership, although the justices disagreed about whether it had been extinguished. What Aboriginal title meant, however, was even less clear, and in the years since then, the courts have made various efforts to determine what it is and what it means, even establishing a set of criteria for claimants to meet. The question has been further complicated by its timing, which put Aboriginal title on a collision course with the neoliberal topographies developing in the province in the same period. The purpose of this book is not to advance or assess the different arguments for the existence and content of Aboriginal title in common law, international law, or under the *Constitution Act, 1982*, which many legal scholars have ably done (see the works cited in this book by John Borrows, Brian Slattery, Kent McNeil, and Gordon Christie, among others). Rather than contributing to the interrogation of Aboriginal title, we begin with an interrogation of the Crown’s claim in BC.

In BC, the Crown is not the sovereign it purports to be; “the Crown” is a land claim. The Crown’s initial claim to BC rests on the foundation of a simple declaration: the assertion of sovereignty invents itself. This declaration is sometimes described as based on the Doctrine of Discovery, where Europeans recognized each other’s authority to claim land newly “discovered,” or based on *terra nullius*, the belief that land governed by Indigenous people was in fact governed by no one. Under Canadian and international law today, these claims would have no legal or moral basis.

Recognition of Aboriginal title is a necessary first step to ground BC in an ethical political order. Aboriginal title, however, is itself an invention of colonial and Canadian law to address the challenge of pre-existing Indigenous polities. Aboriginal title is not an Indigenous conceptualization of territory or property, nor is it even a stable concept. “Title” has been made strategically malleable by the courts, particularly in the way that it severs property and sovereignty. This situation has been complicated in recent decades where, in a context of neoliberal normative thinking about private property, public property is also seen as *terra nullius*, land belonging

to and governed by no one and thus attractive to fold into the anticipatory geographies of settler capital (Blomley 2020). Even in this context, the occasional return of private lands to “the commons” still overlooks that “the commons” belong to Indigenous peoples (Coulthard 2014, 12). Throughout this book, when we use the phrase “Aboriginal title,” we are always mindful of the multiplicity and instability of its meaning, and we take up this issue at some length in later chapters.

The frameworks that have guided our research and analysis come largely from Indigenous thinkers, as well as from others who have unpacked and critiqued the workings of settler colonialism and its political geographies. Details of many of their arguments will be found throughout this book, but some brief summaries of how these scholars have reframed many key elements of the debate around Aboriginal title and sovereignty are worth noting here. Anishnaabe legal scholar John Borrows has critiqued Canadian law’s approach to Aboriginal law and Indigenous law, exposing how the court is embedded in settler-colonial epistemologies (Borrows 1997a, 1999b, 2001). Focusing on constitutionalism and treaties, he has argued that Indigenous legal traditions in all their complexities should be taken seriously as generative of legal and governance institutions (Borrows 1996, 1997b; Borrows and Coyle 2017). Noting that “Aboriginal systems of law can and do operate, with or without the reception of their principles in Canadian courtrooms,” Borrows (1996, 663) has imagined possible paths to a different future by theorizing how the two legal traditions might speak to one another, both in legal curriculum and in court (see Borrows 1997a, 2016b).

Inupiat/Inuvialuit legal scholar Gordon Christie (2002, 2003) has challenged, along with Kent McNeil (1993), the limited enforcement of the legal protection of Aboriginal rights, particularly Section 35 of the *Constitution Act, 1982*, and exposed the assumptions of *terra nullius* that continue to inform court interpretations of Aboriginal title (see also Asch and Macklem 1991; Asch 2002; Borrows 2015; and McNeil 2016). The legal scholar Val Napoleon, who is of the Saúlteau First Nation and was adopted into the Gitksan Nation, has done extensive work on Indigenous legal traditions, including how stories construct, represent, and serve as teachers of law (Napoleon and Friedland 2016). She has argued for the necessity of Indigenous law being brought to bear on discussions of Aboriginal rights

and title and has worked to open academic spaces for communities to document their traditions.

Literary scholars – including Jace Weaver (Weaver, Warrior, and Womack 2006) who is Cherokee; Robert Warrior of the Osage Nation; Craig Womack (1999), who is Creek and Cherokee; and Thomas King (1990), whose father was Cherokee – have articulated how Indigenous literary traditions are both the products and the producers of their own epistemology, as well as an element of Indigenous sovereignty. Goenpul theorist Aileen Moreton-Robinson (2015) has explored the relationships between whiteness, property, and governance in the Australian context, exposing how racist disadvantage and dispossession work through legal and political institutions that do not present as race-based. Through their alleged neutrality, these institutions foreclose the possibility of addressing the history of Indigenous peoples’ dispossession and the erasure of their sovereignty. Governance theorist Taiaiake Alfred (1999, 2005) of Kahnawá:ke in the Mohawk Nation has sought to recentre Indigenous legal and governance traditions in order to enable a resurgence of Indigenous sovereignty on its own terms. Anthropologist Audra Simpson, also of Kahnawá:ke in the Mohawk Nation, has advanced thinking on the nature of sovereignty and on the possibilities for reimagining Mohawk self-governance within settler-colonial cartographies. Refusing to see the status quo as a finished product, she argues for a new relationship between sovereignty and territory based on Indigenous beliefs and practices. She identifies a “cartography of refusal” in Indigenous peoples’ assertion and practice of sovereignty, pointing out “the fundamentally interrupted and interruptive capacity of that life within settler society. Their political consciousness and actions upend the perception that colonization, elimination, and settlement are situations of the past” (A. Simpson 2014, 33).

On a broader epistemological front, Māori scholar Linda Tuhiwai Smith (2002) has explained how violently “research” has intervened in Indigenous lives, and she thus disputes its claim to any pure pursuit of objective truth. She connects all academic knowledge production to its political and ideological environments and proposes instead new theories of knowledge and research practices toward a decolonization of the academy, including creating space for Indigenous scholars and epistemologies. Smith’s arguments – along with work by scholars such as Eve Tuck, who is Unangax



and an enrolled member of the Aleut community of St. Paul Island, Alaska, and Rubén Gaztambide-Fernández (Tuck and Gaztambide-Fernández 2013) – have encouraged us to incorporate the above research and perspectives into our own work as settler scholars, as we discuss below.

A few Western thinkers whose work has not focused on settler colonialism have also shaped our “big picture” thinking in conjunction with the authors and ideas noted above: Friedrich Nietzsche and Michel Foucault on questions of history and morality, James C. Scott on the nature of the modern state and the character of its knowledge, and Henri Lefebvre and Doreen Massey on the production of space under capitalism. From Nietzsche (1989), we draw on the concept of “the will to power,” a base human impulse engaged by individuals and collectives in ordering and disciplining the flux and chaos of the world to make it intelligible and inhabitable. It is an idea that provides a relational (and, therefore, historically and geographically situated) framing of the political, as it is produced through confrontation with multiple others’ wills to power (Aydin 2007, 30). It is also fundamentally geographical, organizing and dominating reality through “a process of territorialization, deterritorialization, and reterritorialization” (Shapiro 2008, 10). And, in framing “our entire instinctive life as the development and ramification of one basic form of the will – namely, of the will to power” (Nietzsche 1989, 48), the idea assists us in identifying the situated production of morality. In these terms, it is not difficult to see the extension of colonial power in BC as an example of a situated will to power. Crucially, this will to power must always be understood as actively in struggle with the will to power of First Nations, as well as with several other systems of organization and ways of inhabiting the land. Equally crucially, settler-colonial governments’ apparent efforts at Reconciliation have been no less a will to power.

Building from Nietzsche’s nonessentialist philosophy, we also agree with Michel Foucault on the nature of history on several fronts. By approaching history as not strictly linear or a chronology of cause and effect, we can appreciate the difficulty of identifying specific turning points and realize that even watershed moments are easier to see when the moment has passed and its ripple effects are more obvious. Further, Foucault’s investigations into the ordering work done by dominant discourses and associated moralities, techniques, and technologies inspire us as we

approach central concepts such as Aboriginal title and real property. We are interested in highlighting the “common ground” that makes such concepts comprehensible within particular discursive communities and interested in “breaking up the ordered surfaces” and tracing them as historical-geographically produced and maintained subjects (Foucault 2002, xvi–xvii).

As the story at hand often deals with the discourses, techniques, and technologies that have been used in ordering the territory claimed by the Crown, James C. Scott’s (1998) arguments regarding the limitations of the kind of knowledge that the state can produce for itself also resonate. To govern, the state produces particular knowledge – quantifiable, generalizable, able to fit a cadastral grid – of the people and land over which it claims sovereignty in an effort to make these subjects legible. In doing so, simplification and rationalization smooth the messiness of real places and transform them into abstract spaces. Even with the best of intentions, the modern state can produce only this kind of detached, nonintimate knowledge. It cannot know things that are illegible to it, and anything that does not strengthen its authority is illegible.

Although Scott’s overwhelming focus is on the actions of states, his understanding of the ordering of knowledge resonates with theories regarding how space is understood, represented, and imagined under capitalism. The modern state favours space that is abstracted so that it may be planned, managed, exchanged, and transformed. Lefebvre (1991) and Massey (1984) each offer relational ideas about spatial production that capture the dynamic yet unequal interplay of dominant representations, practices, resistances, and reimaginings. The multiple geographies that we trace in this book help to constitute each other in complex ways, thereby exhibiting the dialectical character highlighted in Lefebvre’s ideas about the production of urban space under capitalism and Massey’s related work on relational spaces.

The history of the politics of Aboriginal title in BC and the production of attendant spaces is commonly seen through the optics of intention. However, a focus on intent and desire may distract from the actual historical record, which is more complex and nuanced than everyday politics can accommodate or communicate. Emphasizing individual or collective good intentions avoids a critique of the role of key political institutions, such as

law and treaties, or even a consideration of the inherent instability of the idea of property and property rights. Only when we move away from what Nietzsche identifies as the false morality of intention and toward the reality of contested wills to power and outcomes can we see clearly the struggle to stabilize reality around a particular vision and the always incomplete nature of these efforts.

Indigenous peoples have responded to settler-colonial governance and to imposed geographies in BC in multiple ways – each having in common a desire to reorder the world in order to make it familiar and sensible to them. For many years, a political path combining petition, negotiation, and protest was the main option (Blomley 1996), as amendments to the *Indian Act* in 1927 blocked the path to the courts. When it again became possible to pursue legal channels in 1951 with another amendment to the *Indian Act* and then possible in 1972 to sue the government without first gaining its permission, the courts became an effective vehicle for moving the settler state some way toward recognition of Indigenous rights. Since the Supreme Court of Canada's ruling in *Haida Nation v British Columbia (Minister of Forests)* (2004), the legal path has become the option that has seen the greatest success. In all cases, pluralism, resistance, and refusal mark Indigenous response. It has embodied multiple forms of resistance and proactive strategies, including protest, courts, refusal, and negotiation – not in isolation but also not working in concert – that affect and inform each other and the progress (or lack thereof) on issues.

The history of the politics of Aboriginal title and settler-political geographies should not be reduced to an analysis of individualized competitions over land and resources. Rather, this history needs to be considered as fundamental to constructing the relationship between Indigenous peoples and the state. Despite their particular aspects, contests over land and resources are linked and embedded in broader questions of citizenship. Our methodological approach to a project of such geographical, temporal, and theoretical scope was necessarily multifaceted, but we focused at every step on a deep contextualization of BC political history in terms of the material and discursive realities of its territoriality. As noted above, this approach involved the need to listen to and learn from Indigenous scholars, leaders, and activists whose knowledge and experience are situated in their lifetimes and are the product of generations of resilience, adaptation, and

reinvention. This undertaking in turn led us to sources that include published scholarship in many fields but also speeches, campaign materials, and records of other activities, some of which are reported in news media – sometimes fairly, sometimes superficially, sometimes embedded in racism – and some of which are accessible through a more personal look into memoir, biography, and self-reported history. Overall, we have adopted a multi- and interdisciplinary approach, treating material and discursive realities as co-constituting one another. Our aim has been to illustrate the scope of the subject without losing sight of the specificity of particular individuals and situations and the multiscale interrelationships of government, economy, and politics in which they are embedded.

We recognize Canadian nation building as imperialism and colonialism, and thus we approach the building of state apparatuses as inherently part of this project even when it is not directly related to Indigenous peoples. It always concerns their land. In the same vein, we understand imperial and colonial geographies as intentional, not accidental, projects and see settler governments as knowing actors whose agents make choices to displace, exclude, exploit, oppress, and even exterminate. This frames how we approach “neutral” government documents, as well as more obviously partisan political statements. It also frames how we approach the complex role of the law in adjudicating the violences of which it is itself an institutional manifestation, as we explore in [Chapter 4](#). Thus, we draw upon a large and diverse conceptual toolbox, derived from both Indigenous and non-Indigenous traditions, in order to map the socio-material landscapes of colonialism in BC in a way that conveys all the complexity captured in Katz’s (2001b, 720–21) “topographies.” We consulted primary newspaper coverage of events back to the nineteenth century, court cases, and Hansard transcripts from the Legislative Assembly of British Columbia and the House of Commons; we attended and scoured the transcripts of review panel hearings attended by Indigenous and non-Indigenous residents; and we collected and analyzed government documents, statistical data tabulations, and reports. We reviewed secondary sources from many disciplines – namely history, geography, law, anthropology, political science, and economics – and consulted key biographies. We read sources for their content and for the discourses that they deployed and constructed, always noting the purpose(s) and author of the source. We sifted Indigenous from

non-Indigenous voices, sources, and responses but also paid careful attention to exchanges and interactions between them. We focused our examination of these materials on multiple scales of economic and political change in the province, considering how these scales intersect at local, municipal, regional, and national levels. Always alert to land and its representation in discourses, legal structures, and systems of ownership and usage, this is a fundamentally geographic project concerning how political space is created and sustained – and how it can come undone.

The narrative of the book is structured around key decisions of the Supreme Court of Canada. *Calder* (1973), *Delgamuukw v British Columbia* (1997), *Haida Nation* (2004), and *Tsilhqot'in Nation v British Columbia* (2014) were all watershed moments that changed the political environment for the BC government and even at times compelled it to change course. *Calder* marked the end of a nearly two-century period of the gradual construction of a settler state based on institutional denial of Indigenous territorial sovereignty – a project that appeared to have solidified in the period after the Second World War. Following *Calder*, settler governments at both the federal and provincial levels made uneven efforts to address the reality of Indigenous polities and unceded territory in BC. Whereas the federal government developed a pan-Canadian land claims policy, the provincial government in BC refused the very premise of Aboriginal title until 1990. Indigenous actions and further court decisions that built upon *Calder* bumped up against these uneven approaches to produce intense political churn around the province's territorial claim and its attempts to maintain the narrative of development. The *Delgamuukw* decision in 1997 served as another turning point, with the court affirming and extending the key findings of *Calder*. This ruling helped to strengthen Indigenous activism and expressions of sovereignty and at the same time further solidified settler-political opposition. The *Haida Nation* decision in 2004 consolidated and expanded the Crown's duty to consult and accommodate Indigenous peoples before developing unceded territory. This finding marked a turn to an era of heightened Indigenous refusal to engage with settler politics and claims to territorial sovereignty, combined with First Nations' continued strategic use of the courts. Government and industry could no longer ignore Aboriginal title. The *Tsilhqot'in Nation* decision in 2014 took the further step of making a specific title determination, but the

ways that this ruling implicated territorial sovereignty and self-governance remained disputed and unsettled, highlighting the entanglements of sovereignty, governance, territory, and property in BC in the early twenty-first century.

Although we emphasize the importance of the court's efforts, we do not see its rulings as moments of direct cause and effect. The decisions themselves are products of long and complicated struggles, with reversals of earlier decisions occurring along the way; the court's deliberations and conclusions (to say nothing of dissenting opinions) are multifaceted, nuanced, and marked by both evolution and internal tensions and contradictions. The consequences of the decisions within and beyond the court may be slow to play out and may manifest in unexpected ways, as the interpretation of the court is often challenged by governments and scholars. Nevertheless, we see these decisions as steps in a process of the court moving steadily in the direction of recognizing and adding substance to Aboriginal title. For BC, every step in this direction necessitated adapting to new realities, even if governments and communities were reluctant to acknowledge them. Finally, the emphasis on the court decisions also highlights their limitations and the way that they sometimes produced more questions than clarity, further complicating the politics of Aboriginal title.

One element that we weave into the narrative is biographical. We focus at times on the lives and careers of figures such as the Nisga'a politician Frank Calder and Premiers W.A.C. Bennett and Gordon Campbell, among others. With this approach, our intention is not to elevate the singular importance of particular individuals nor the importance of men, although these leaders did have significant impacts. We are not even certain that "leaders" is always the most accurate term; it may be more fruitful to view them as conduits or superconductors. Their lives help to crystallize the chaotic swirl and complexities of navigating multiple parties, agendas, strategies, and relationships to land – in Nietzschean terms, multiple wills to power – and how these moved across scales. There are published biographies of Calder, Bennett, and Campbell, which were helpful. For Calder, we also sought out details from newspaper coverage of his career, the rare interviews that he gave, speeches delivered by him and others at the time of awards and other public recognition, and obituaries published at the time of his death. A significant wrinkle is that media reports regularly

contain inaccuracies. For example, the *Canada NewsWire* report at the time of his death lists Calder as the first Indigenous person elected to the Canadian Parliament (“Nisga'a Nation Mourns the Passing of Frank Calder, Chief of Chiefs” 2006). Calder was never a member of Parliament. (The first Indigenous member of the House of Commons was Leonard Marchand, the Liberal representative of the Kamloops-Cariboo electoral district in BC, in 1968.) We attempted to cross-reference all dates and events in order to ensure the greatest accuracy and the most comprehensive picture, but there are still gaps.

We must note that the narrative presented in the following chapters is not exhaustive in addressing the experience and position of every First Nation in BC. Throughout, we strive to recognize and highlight the specificity and diversity of Indigenous communities, their internal and external politics, their organizations, and their geographies. We also take care to address the political geographies of settler colonialism across the breadth of the province, as far as possible. As political change is driven by multiple communities and from many sites, in this book, which concerns a large territory and a diverse population, we try to present a full range of regions, actors, situations, and pressures that have borne down on BC to produce its fraught political geography. We know that we have only partly succeeded. In part, this result is a practical matter concerning the limitations of space and time; in part, however, it is also epistemological. Although we have done our best to provide a comprehensive account, in keeping with our approach to history, we avoid the construction of a singular grand narrative. Rather, our aim is to provide a narrative of multiple and relational geographies that opens new readings of BC's history and the possibilities for a more just future.

The term “unstable properties” in the book's title refers to the precarity of and tensions in BC's political and legal geographies. The title also intentionally draws on the metaphorical association with chemical properties under change and stress. In chemistry, unstable properties are components of elements that will cause them to undergo a chemical, structural change. This alteration results in decomposition or thermonuclear instability. Under pressure and change, things come undone, sometimes with intense centrifugal force. We find this to be an apt metaphor for BC, where political and civil property regimes are equally unstable. Despite a long history of

efforts to impose a dominant and undisputed singularity, the province's property regimes encompass multiple understandings of sovereignty, governance, territory, and property that have refused to "blend," and their "natural inclination," therefore, is to pull apart, move in different directions, and generate instability in the entire system.

To emphasize the extreme instability of BC's political geography is not to suggest that it is unique. One of the points that we hope BC's particular story will illustrate is that Western ideas of political geography based on exclusive sovereignty and private property are inherently unstable, especially in the case of settler colonialism. Even in western European nations where we might not apply "settler colonialism," there are still populations who have been pushed off their land, who have been dispossessed, or who have had their commons privatized (Thompson 1975). In BC, much of the current political situation arises from the absence of treaties. However, the presence of treaties in other parts of Canada or in other settler colonies does not eliminate this inherent instability.

The goal of this book is first to expose the project of BC and its territorialization as an imagined "radical contemporaneity," where all social groups are believed to be contained within a singular space/polity, and then to contrast this project with the reality of multiple polities/geographies, where history is inescapable. We hope that this story will explain and justify an urgent need to sketch possibilities for Reconciliation that entail a complete reimagination of the province.

We write from the position of the non-Indigenous people we are and seek only to speak for the ways that we would like to see relations between Indigenous and non-Indigenous peoples addressed. Our stance is rooted in a deeply held conviction that the country's federal and provincial governments have a legal and, indeed, moral obligation to address the historical and legal realities of territorial sovereignty in BC and to negotiate in good faith with Indigenous peoples. We call ourselves and the non-Indigenous communities that we discuss "settlers." This term captures for our purposes the fact that we are or are descended from people who arrived in Canada after there were already political communities in place. Others use "newcomers" (e.g., Axtell 2001). As broad terms, of course, neither captures the experiences of people who arrived via a range of forced migrations (Pabst 2006). Here, our use of "settlers" connects ourselves explicitly to the settler



colonialism that founded the nation-state of which we are now citizens. We take this state of affairs not as a given or as a singularly good or bad thing but as something that we need to unpack.

After we began writing about the politics of Aboriginal title in BC many years ago, the use of the term “Native people” was largely replaced by “Aboriginal people” and then by “Indigenous people.” We use the latter term throughout this book to refer to all people who were here long before traders, invaders, and settlers arrived. “Indigenous” has become the word most commonly preferred by Indigenous people themselves (although there is diversity of preference), and it is the most geographic word, meaning “of this place.” The term “Aboriginal,” with its reference instead to time (“from the origins”), also has good connotations. These two terms also have a legal usage, which is relevant here. Indigenous law refers to the law of Indigenous peoples themselves, whereas Aboriginal law refers to Canadian law that deals with Indigenous people and communities. Due in part to the centrality of law to our discussion, we align our use of “Indigenous” with this formulation. The issue of language has arisen frequently around title, with “Indian title” shifting to “Aboriginal title” in settler legal terms over the course of the twentieth century. And, of course, Aboriginal title itself is a construction of Canadian politics and law and is not necessarily an equivalent to Indigenous title, even concerning the same land. The term “Aboriginal title” certainly should not be assumed to reflect Indigenous understandings of any aspect of political geography, including land use, property, and territory.

There are many instances when we specifically use the term “First Nations” to refer to political communities and to recognize them as polities. We do not use the term “Indian,” except with reference to its historical use (e.g., “Indian title” in [Chapter 1](#)), although we recognize that others do and that some Indigenous people and organizations continue to use the term, perhaps most notably the Union of British Columbia Indian Chiefs. Our goal in our language choices for this book is to show appropriate deference and respect, to be mindful of the context of deep colonial racism and violence from which some terms emerged, and to apply words as specifically as we can in each instance. When discussing specific nations, we use their proper names.

This is primarily a book for settlers. We have tried to listen to and learn from Indigenous peoples, locally and around the world, but we do

not represent or in any way speak for them here. This book likely offers little that is new to them. By and large, Indigenous people already know the true history of BC; it is settlers who do not know their own story as it actually happened nor understand its significance in the present day, including the ways that their own lives remain entangled in its historical geography.

The stories that we tell are the stories that we remember, and they produce the people we are and the actions that we justify. The *Calls to Action* of the Truth and Reconciliation Commission of Canada (TRC 2015b) emphasize a right to know and to tell the truth about Canadian history in all its violence and injustice, particularly the history and legacy of residential schools. The 79th call states that part of a “reconciliation framework” includes a need to “integrate Indigenous history, heritage values, and memory practices into Canada’s national heritage and history” and to recognize “the contributions of Aboriginal peoples to Canada’s history.” This directive does not mean that we should collapse all stories into one; but we must stop telling a story that pretends to start from the middle and that fetishizes a future that sheds its past.

### **Reconciliation and the Production of Academic Knowledge**

The knowledge that we produce in universities does not transcend the material and ideological world in which we reside. Geographic knowledges are never neutral. When we consider the sources and data on which our work relies, we can see how easy it is to generate knowledge within state frameworks of power – knowledge that legitimates the state’s authority, territory, and sovereignty and that positions the data produced as merely “facts” (Harvey 2001) – when these aspects of the state are precisely the matters that are at issue in BC. Our home discipline of geography has a particular obligation to address settler colonialism and to challenge the naturalizing power of the colonial state. Its material practices of mapping, surveying, recording, and representing once served imperial and colonial projects by generating ideas about climate and culture that aided the justifying discourses of race and racism (A. Godlewska and Smith 1994). From these discourses followed a “tradition of racism, ethnocentrism and condescending paternalism” (Harvey 1974, 24), traces of which can still be found in geography scholarship, especially textbooks.

Geographic knowledge was a specific instrument in the physical and political displacement of Indigenous peoples in BC. Pasting an abstracted cartography of state property and power over the grounded, experiential knowledge of Indigenous people was an effort to “order nature” in areas that the state actually knew very little about (Rossiter 2008b). Officials made an implicit connection between managing nature and managing political space, both of which deployed geographic knowledges produced by and for the state. Recognizing dispossession as consisting of structures and processes rather than as a single event (Wolfe 2006), we argue that the state justified its territorial claim and political legitimacy through the application of science and technology to make the land productive and the province prosperous. The apparent economic success and responsible conduct have justified state ownership and management (and surveillance) and have actually “made” BC, given that its success and conduct have invented the state in practice and rendered its “abstract claims to Crown territory” more substantive (Rossiter 2008b, 228). This history, combined with the deployment of the survey and the grid (Blomley 2003) to provide the spatial architecture of a property regime, has contributed to the production of the province as an abstract space where geography – literally the writing of the earth – determines the governed.

Geographic knowledges can also be a powerful tool in political struggles for justice. It is in this vein that Reconciliation is a framework of this book. We take Reconciliation to be an academic ethos, as well as a social, political, and legal ethos. “Unsettling settler futurity” (Hodes 2017, 133) means doing work within the academy that interrogates what kind of knowledge we produce and whom it serves. Mapping is not a neutral activity; it can be harnessed to express perspectives, names, relationships, and territorial claims that unsettle state power. Geographers can consider past silences and power imbalances when they decide whose perspectives are centred, whose stories are told. They can decolonize the sources that they privilege and can pluralize the ways that they measure time and space. They can contribute meaningfully to new policy concerning property, territory, and governance regimes.

There are many deep and valid criticisms of “Reconciliation” as a superficial set of gestures without material benefit to Indigenous peoples and without commitment to Indigenous self-governance and sovereignty.

We understand Reconciliation as a substantive thing, not as assimilation with a prettier name (Borrows 2001). Although restitution and reparation are called for, these efforts do not comprise Reconciliation if they are not sufficient for and accompanied by the restoration and recognition of Indigenous self-governance and land (Alfred 2005). Critically, the Royal Commission on Aboriginal Peoples (RCAP 1996) advocated the restoration of “justice.” The Truth and Reconciliation Commission also noted in an interim report that RCAP commissioners believed that “fundamental change will only occur if the Canadian government and Canadians understand that *Aboriginal people are nations*” (cited in Stanton 2017, 23) and that their claims of sovereignty are legitimate (Asch 2002). If Canadians are “treaty people” (Dubois 2014), we should not accept the absence of treaties, and we should understand the agreements that we have as contracts between two nations; “treaties should not require the modification of either society to ‘fit’ within the framework of the other” (Borrows 2001, 634).

Even the court’s use of the idea of “reconciliation” does not yet measure up to the nation-to-nation relationship implied by our shared history, particularly the existence of treaties (Stanton 2017). Although the court regularly speaks of reconciling Aboriginal title with the Crown’s assertion of sovereignty, this undertaking entails fitting Aboriginal title within Crown sovereignty, and court decisions have made it clear that almost any serious Crown interest can trump Aboriginal title. In his decision in *Tsilhqot’in Nation* (2007, para 589), Justice David Vickers of the BC Supreme Court noted that the Supreme Court of Canada’s decision in *Delgamuukw* (1997) refers “to the ‘assertion of sovereignty,’ to ‘sovereignty’ and to the ‘conclusive establishment of sovereignty’” by the Crown. In its decision, the court considered the distinctions between them at length to determine the moment of “the conclusive establishment” of Crown sovereignty (e.g., arrival of explorer, conclusion of treaty, Royal Proclamation, and so on), but it never considered the legitimacy of asserting such a claim at all. It resolved the issue by severing sovereignty and property rights on the grounds that one could assert sovereignty without having property rights, sovereignty being just a “right to rule a certain territory to the exclusion of other international entities” (Slattery 1999, 38, quoted in *Tsilhqot’in Nation* 2007, para 591), a severance that has also been used to find against Indigenous claims.

The arguments put before the court by governments have always taken Crown sovereignty as a given, and the court has accepted them. This inherently throttles any possibility of substantive Reconciliation. As Borrows (2001, 647) has argued, “The Crown’s tautological assumption of underlying title limits Aboriginal choice in a most profound way because it has been interpreted to require the reconciliation of Aboriginal title with the assertion of Crown sovereignty, and therefore, Crown use of the land.” To the general public, the lack of serious political discussion of substantive Reconciliation through shared sovereignty produces what we might call a morality of ignorance or even a morality of resignation. Even with the awareness of historical injustices, the status quo seems immovable, and the only Canada that the public can imagine is one sustained by a settler futurity.

This book presents historical geographies. The plural is central to our intent. We start from the position that the ideological-material spaces of what today is called British Columbia are the specific products of a particular constellation of people, power, and place. The invention of the polity and territory of BC occurred and continues to unfold in and to coexist with multiple Indigenous ideological-material spaces. In writing about these historical geographies, then, we are attempting to destabilize a dominant spatial narrative and its attendant territorialized polity. We do not aim to do so by describing BC and Indigenous geographies as merely different and separate but by insisting that the historical geographies that make up BC have not been shaped simply by the acts of settlers and their governments but by struggles between settler and Indigenous productions of space.

We begin and end this work believing and exposing these historical truths. We acknowledge Indigenous law, Aboriginal sovereignty rights and title, and the violence of settler colonialism. We employ the academic tools of history and political legal geography to open a path toward decolonization of our collective knowledge within the academy and beyond. We commit to playing our part, however small, in producing knowledge that supports Reconciliation and an Indigenous futurity in a more just society.

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