

To Share, Not Surrender

*Indigenous and Settler Visions of Treaty
Making in the Colonies of Vancouver Island
and British Columbia*

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and Hamar Foster



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Introduction

IT ALL BEGAN SIMPLY ENOUGH. Four of us, who had done historical research on the colonial history of Vancouver Island on the west coast of Canada, met in fall 2015 to discuss the possibility of a one-day symposium on the policies of James Douglas concerning First Nations and land. In recent years, volumes of research had been completed by scholars in the form of confidential reports prepared for different land-title court challenges. One of these researchers expressed the concern that if this research was not made public, First Nations and governments would continually have to hire “experts” to do the same research over again every time a land-title case went to court. The symposium was planned as a first step in making this grey literature publicly available; it would be followed by a peer-reviewed publication of the presentations.¹ However, an unexpected chain of events changed the plans and the book.

The Conference

At the first meeting, we decided to invite both the Songhees First Nation and the University of Victoria to cohost the event. Songhees Chief Robert Sam immediately agreed and suggested that the event take place at their beautiful new Wellness Centre on Reserve 1-A. Serendipitously, the proposed conference dates coincided with the annual meeting of the Working Age Members of the Temex’w Treaty Association, composed of five Vancouver Island Treaty First Nations, the Songhees, T’Sou-ke, Beecher Bay, Malahat, and Nanoose First Nations. They decided to register en masse for the conference, instantly providing 140 registrants. To make this a truly collaborative effort, five new members were added to the organizing committee. The committee set out to encourage participation by the general public, who responded by filling the remaining 160 spots, yielding a total of 300 attendees, greatly exceeding all previous estimates. The topic and locale of the conference clearly appealed to the Victoria

“settler” population, who were eager to be part of an event devoted to a better understanding of settler–First Nations history in the region and, consequently, participate in the truth and reconciliation process.

The expanded committee quickly came up with new ideas for the conference, including a tour for attendees of Songhees Territory, adoption of First Nations meeting protocols, and the recruitment of two Elders to produce versions of the treaties in their own languages. First Nations communities were encouraged to submit presentations on their views of Indigenous land, colonization, and James Douglas. The conference lost its originating impetus – white academics sharing their versions of history – to become a dialogic engagement of different views of history. In the process, it gained a much wider scope and appeal for both First Nations and settler audiences and produced a different kind of knowledge.

The “First Nations, Land, and James Douglas: Indigenous and Treaty Rights in the Colonies of Vancouver Island and British Columbia, 1849–1864” conference, which took place on February 24–26, 2017, was an historic, unprecedented event for Victoria. Three hundred people, half-settler, half-Indigenous, gathered for a weekend to learn from and share with one another the history of this region. The conference was opened by Robert Sam, Chief of the Songhees; Jamie Cassels, president of the University of Victoria; and the Songhees dancers. The keynote speech was given by WŚÁNEĆ Elder STOLŒĒĻ John Elliott, Sr. The formal presentations were rich, but much of the success of the event came from lively discussions among conference-goers, which happened at meal-times, coffee breaks, and open-mic sessions after each presentation. Between sessions, attendees were encouraged to move to different tables and start conversations.

The first event of the conference was a land-sea tour of Songhees Territory, featuring a visit to TI’ches (Chatham and Discovery Islands), where Songhees Elder Sethlema (Joan Morris) told stories of her early childhood on the islands, which had been a sanctuary for her people during the devastating smallpox epidemic of 1862. The land tour included excursions to archaeological sites in Beacon Hill Park and culturally modified trees at the base of Mount Douglas, known to the WŚÁNEĆ people as PKOLS. As part of the opening ceremonies, four “witnesses” were appointed and charged with the responsibility of summing up the conference as part of the closing ceremony on Sunday afternoon. The evening concluded with a keynote address by STOLŒĒĻ John Elliott, Sr., titled “Sacred Teachings.” Fittingly, he addressed the audience alternately in SENŒOTEN and English, explaining the close spiritual and linguistic connections between

WSÁNEĆ origin or Creator stories and the SENĆOTEN names for natural features such as mountains, islands, and trees.

The second day of the conference began with a formal presentation of the translations of the Vancouver Island (Douglas) Treaties into SENĆOTEN and Lekwungen to the Royal BC Museum by STOLČEĽ, John Elliot and Dr. Elmer George (Esquimalt). This dramatic moment – a moment when, for the first time, the Vancouver Island Treaties were available in local languages – was followed by performances in dance, song, and words of the Kwakiutl view of the treaties by the Chiefs and Elders of Fort Rupert, whose ancestors also made a treaty with James Douglas.

Throughout the day, the question periods provided the audience with an opportunity to probe the presenters, and it soon became clear that there was a diversity of views within the settler population. No surprise, then, that equally diverse views were expressed by Indigenous members of the audience, including a moment when an audience member of the Kwakiutl Indian band told the audience that the presenters from her community did not represent all members of the band and that deep divisions existed within the Kwakiutl community at Fort Rupert. Tension was also created by a brash young member of the audience who expressed his opinion that the scholarly presentations were boring and irrelevant, a view with which other audience members disagreed.

Sunday was a relaxed day. Attendees comfortably table-hopped between sessions, met new people, and initiated new conversations. It was also time for the four witnesses – one settler representative and three First Nations spokespeople – to have their say. Their takes on the conference were of course different, but all were positive. Three of the witnesses prepared summaries of their reflections, which are included in this volume.

By the end of the conference, it was clear that the publications, while still meeting academic standards, would also have to honour the conference participants' widely expressed desire to extend their learning experience beyond the three-day meeting. This book is therefore only one of three legacies of the conference. The second is a permanent website maintained by the University of Victoria. It includes video summaries of the presentations plus an array of resources about the conference topics.² The third will be a multimedia blending of text and video, oral and written summaries, and our combined learning on UBC Press's innovative web platform RavenSpace.³ The success of this conference and an earlier one on pre-Confederation treaties hosted by the Snuneymuxw First Nation and Vancouver Island University in 2012 are persuasive arguments for having more such events

and moving them off the usual campus setting and onto First Nations locales. In sum, the conference and this book are bellwethers of change.

The Context

Treaties, whether through their presence or absence, are central to any discussion of Indigenous land and British colonialism. In the case of British Columbia, the “treaties” are the fourteen agreements concluded between various Indigenous groups on Vancouver Island and James Douglas, land agent for the Hudson’s Bay Company from 1849 to 1858 and governor of the Colony of Vancouver Island from 1851 to 1864 and the Colony of British Columbia from 1858 to 1864. No treaties were concluded on the mainland Colony of British Columbia.

The Vancouver Island Treaties have endured long periods of governmental and scholarly neglect. The written texts preserved in Victoria were edited and published in 1875 as the first seven pages of a long compendium of documents titled *Papers Connected to the Indian Land Question*. They were presented as conveyances, not as treaties.⁴ Subsequently, they virtually disappeared from public view.⁵ When the Canadian government published the texts of all the “Indian” treaties and land surrenders on file in Ottawa in 1891, the Vancouver Island Treaties were not included. (Nor did they appear in a third volume published in 1912.)⁶ Aside from the occasional consideration in unpublished academic work, the treaty making of 1850–54 languished in relative obscurity for more than a century until two men charged with violating British Columbia’s Game Act defended themselves successfully by invoking the hunting provisions of the 1854 Nanaimo treaty in a court of law. Upheld by the Supreme Court of Canada in 1965, the ruling in *R v Bob and White* affirmed the status of the negotiations of 1850–54 as treaties.⁷

Subsequent scholarship – historical, legal, and otherwise – has wrestled with fundamental questions regarding the meaning and significance of the treaties, and the essays in this volume bear witness to the ongoing efforts of scholars to do so. One recurring problem is context. It is clear, for example, that the Vancouver Island Treaties do not fit neatly into the long trajectory of alliance formation and treaty making between Indigenous peoples and colonizing powers that began in the late sixteenth century on the Atlantic coast of the continent and that culminated in the so-called Numbered Treaties in the Plains and Subarctic regions of what is now Canada in the late nineteenth and early twentieth centuries. These “historical treaties” – so labelled to distinguish them from the results of modern land claims and

other agreements that have emerged since the 1970s – had their roots in local solemnized agreements worked out between Indigenous communities and the European fishers, whalers, and fur traders who frequented the coast seasonally in the late sixteenth century. In the seventeenth century, a persistent European presence at strategic points, such as Quebec, led to the formation of enduring alliances between Indigenous nations and colonizing agents. The intercultural diplomacy of the era focused on relationships (routinely expressed through the metaphor of kinship) and was shaped strongly by Indigenous political rhetoric, rituals, and protocols. European preferences – such as formal written records bearing the signatures of principals – crept in only gradually. Trade relations, territorial access, mutual defence, military cooperation, and even religious exchange were all negotiated in this way; the surrender of land, however, was not the principal object of treaty making for nearly two centuries. (The gradual dispossession of Indigenous peoples commenced nonetheless, but by other means.⁸)

Only in the last half of the eighteenth century did British officials – as a matter of imperial policy in the context of military struggle with, first, France and then the American breakaway republic – begin to regularize to some degree the practice of formal negotiations regarding land with the aim of maintaining alliances with Indigenous powers who had repeatedly objected to, and opposed forcefully, the methods and outcomes of white settler encroachment. By 1850, British territorial treaty making in Upper Canada (now Ontario) had evolved into a bureaucratized process, and although the practices of face-to-face negotiations still bore testimony to the long history of nation-to-nation “peace and friendship” treaty making, the written texts had evolved to foreground the colonial state’s preoccupation with land surrender. They emphasized “cessions” of extensive tracts of land (well in advance of actual settlement or exploitation), the assignation of reserves, the recognition of hunting and fishing rights, and the payment of annuities to members of “bands” whose leaders were signatories to a given treaty – all characteristics that would feature in treaty making for years to come. Two major Upper Canada treaties of 1850, negotiated with Anishinaabe nations around Lakes Huron and Superior, were emblematic of the gradual evolution of the form and practice of treaty making over more than two centuries on the eastern half of the continent.⁹ The written texts of Douglas’s treaties of the very same year are, however, markedly different; they are, as Neil Vallance underlines in his essay in this volume, *hors catégorie*. A central purpose running through the wide-ranging essays presented here is to illuminate, in all their

complexity, the various contexts of the Vancouver Island Treaties and, thus, to help modern readers understand them on their own terms.

The chapters in this book contribute to a larger international discussion of the “great land rush,” to use John Weaver’s phrase, and the displacement of Indigenous populations from traditional territories from the Arctic to Australia. In some cases, as in parts of Vancouver Island, treaties were the instrument by which that dispossession occurred and were legitimized in the laws and discourse of the colonizers. In other places, such as the Mainland, treaties were rejected in favour of other strategies. Violence, forced removal, and even genocide were the strategies of choice in some colonial spaces. But in British Columbia, the colonizers’ technology of dispossession was what Mary Louise Pratt has called the “anti-conquest” and John Sutton Lutz calls “peaceable subordination”: in other words, British law, or rather a flawed conception of British law.¹⁰

The essays that follow look at the idea of treaties from both Indigenous and British colonial viewpoints and offer a rethinking of what makes “treaties” the formative, primal texts for colonial states. “Britain’s empire,” says John Weaver, “accorded indigenous peoples legal interests in land. British recognition of entitlements originated from secular ideas of humanism ... that venerated the rule of law.”¹¹ As we learn, James Douglas in representing the Empire was inconsistent in his “veneration” of Indigenous title to land, but when he did, he encountered a sophisticated Indigenous legal network of property rights.

In her edited collection on treaties, Saliha Belmessous says we assume at our peril that Indigenous peoples did not understand the idea of land ownership or land laws. Belmessous argues that Indigenous societies each had a long-established set of Indigenous land laws and that colonialism is the on-the-ground interaction of European and Indigenous land laws. There is, she says, a surprising amount of overlap in the two; both recognize, for example, conquest and treat it as a legitimate means of acquiring ownership.¹²

At different times, First Nations, Canadian courts, and governments have relied on the literal words in particular treaties to define ownership, clarify rights and responsibilities, and award compensation – but to what extent are treaties stable and credible texts? To what extent do the words capture the agreements? Do they capture a meeting of minds and a shared understanding of a colonial future? Or are they better read as colonial impositions, fantasies, and wish lists disingenuously imposed on Indigenous peoples? The stability and reliability of treaty texts are central questions across the colonial world, but they have even more import in British Columbia because, as these essays show, the “texts of the treaties” were sent and arrived from London six months after the “actual oral treaties” were finalized between Douglas and the first

nine Indigenous groups he treated with. The *x*'s next to the printed names of the Indigenous participants and the signatures of the European witnesses were attached to pages with a blank where the text was later added.

To understand what the oral and written treaties meant to the participants at the time requires a dive into the “situational” – the particular thinking of the 1840s and 1850s and the specific personalities involved in their creation. It also requires knowing the “global” context. European understandings of “treaties” as instruments of international law and of Indigenous people as legal entities who could be parties to agreements concerning land need to be placed alongside Indigenous conceptions of land ownership, their laws and customary practices of sharing, and their understanding of Europeans as legal beings in their world.

The situational was also embedded in settler ideas of race. The essays here directly and indirectly explore European ideas of the humanity of Indigenous peoples. Indigenous rights of land ownership are at the centre of the debate settlers were having among themselves between a stadial theory of race (in which Indigenous groups could potentially achieve the European ideal) and a biological theory (in which qualities such as intelligence and empathy were innate, immutable, and lacking in Indigenous populations). Stadial thinkers such as Douglas saw treaties as a way to protect and anticipate the day when Indigenous people would achieve a higher state of being and struggled against other settlers who rejected their improvability and, therefore, the need for land and treaties.¹³

While we can never lose sight of the focus – the dispossession of Indigenous land – the pivot on which this turned in this place and time was James Douglas. He makes a fascinating study because he was, for six years, the governor of two adjacent colonies at the same time. In one colony he initiated treaty making and in the other he ignored it.

The Essays

The overarching goal of the book is to shed light on the origins of the continuing struggle of First Nations and settlers to identify and implement an equitable sharing of the land we cohabit. The essays demonstrate that the problem arose from a fundamental absence of will on the part of the Hudson's Bay Company, James Douglas, and settlers to comprehend and accommodate First Nations traditional relationships with land. The role of James Douglas is crucial because the Hudson's Bay Company, the British Colonial Office, and newly arrived settlers all looked to him to ensure that First Nations did not stand in the way of land development; First Nations,

in turn, looked to him to ensure that the growing settler population would not destroy their all-important relationships with the land.¹⁴

The volume is divided into four sections. **Part 1** delves into the wider colonial, settler, and Indigenous context of the period. **Part 2** focuses on First Nations perspectives on treaty formation, while **Part 3** drills down to the contentious issue of why the treaty process was short-lived. **Part 4** carries the story onto the mainland Colony of British Columbia, where, from 1858 until Douglas's retirement in 1864, the creation of Indian reserves replaced treaties as the site of contestation over the control of land. A treaty timeline (see [pages vii–xi](#)) and two maps ([Figures I.1 and I.2](#)) are provided to help situate historical events and locations.



FIGURE I.1 Hudson's Bay Company forts and First Nations–language groups in the Pacific Northwest in the mid-nineteenth century. | Map by Ken Josephson.

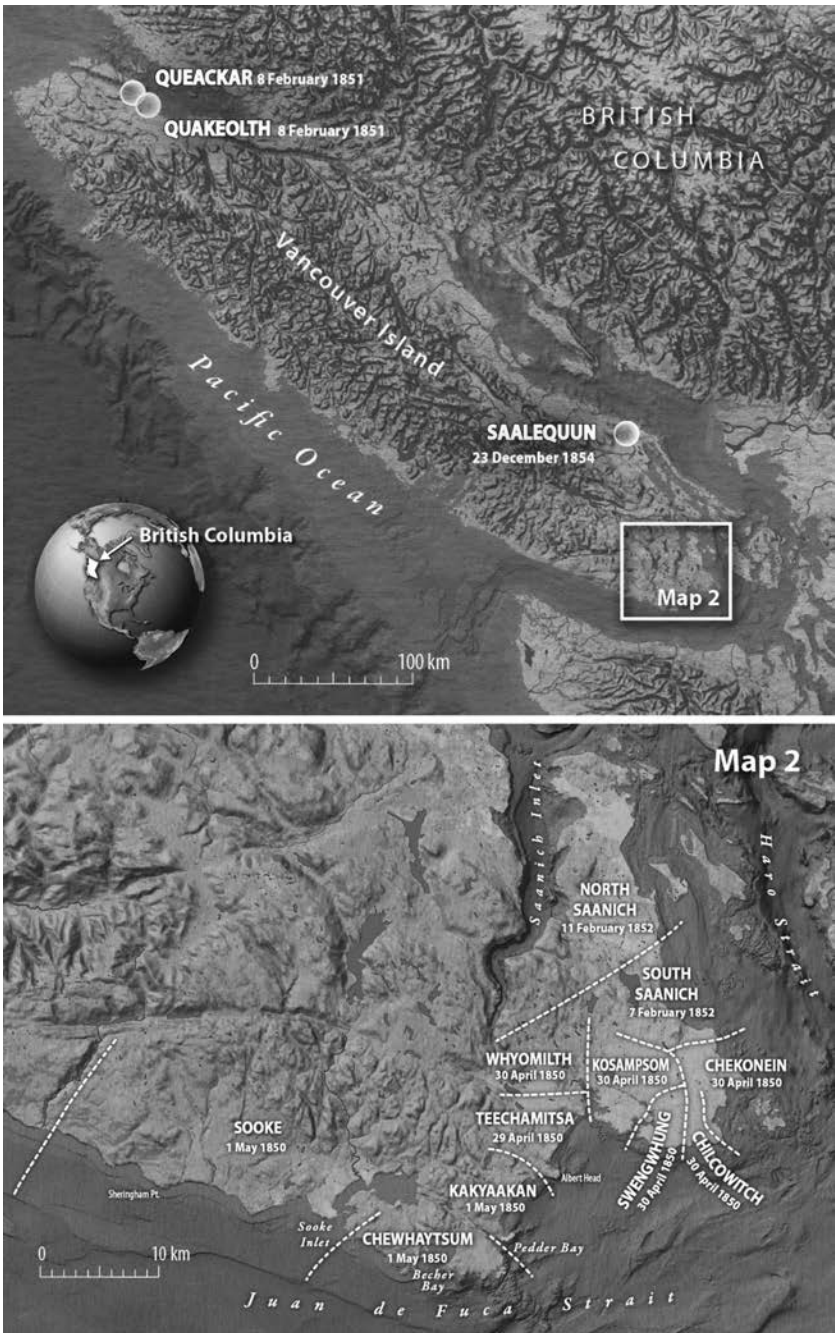


FIGURE I.2 Approximate location of the land described in each of the written versions of the Vancouver Island Treaties, 1850–54. | Map by Ken Josephson.

The three chapters in [Part 1](#), by Adele Perry, Laura Spitz, and Hamar Foster, explore First Nations and colonial understandings of Indigenous land rights. Perry and Spitz provide the broader geographical context in which ideas about Indigenous lands developed in the decades leading up to the agreements between Douglas and First Nations on Vancouver Island. They are followed by Foster's account of British imperial views as to Aboriginal title to land.

Perry delves into the early geographic and family influences that shaped Douglas's attitudes towards Indigenous lands. Of the various colonial locations through which Douglas passed and remained tied to, Perry focuses on two: the Caribbean (especially Guyana) and the historical Northwest (especially Red River). Douglas's complicated connections to Indigenous peoples were imbedded in the historical context within which they occurred and were made meaningful by the imperial world he travelled through and remained linked to in multiple ways. Douglas also retained strong family ties, and Perry addresses the complexities of connecting his relationship with his Creole mother and Cree wife to his policies towards First Nations and land in the Colonies of Vancouver Island and British Columbia.

Spitz takes a more theoretical approach in her discussion of colonialism, law, and the social construction of humanity on Vancouver Island between 1849 and 1864. Although James Douglas is sometimes valorized for having recognized Aboriginal title in unceded land, the underlying assumption that Indigenous people were in fact "human" does not reveal a robust and nuanced view of humanity, nor was it especially progressive except in contrast to the discriminatory views of others. Rather, it was fundamentally liberal in the sense that it recognized that Indigenous people could be (legal) persons capable of holding and exercising rights in property. Moreover, it was consistent with early nineteenth-century European norms. But this conception would likely not have resonated with, nor made sense in the context of, Coast Salish legal traditions and Coast Salish understandings of themselves and their material, spiritual, and natural environment(s). Being human was not so much a status to which legal rights attached as a largely relational way of being in the Coast Salish world, and even then, it was potentially transitional or temporary and invariably subordinate to more powerful nonhuman forces.

By way of contrast, Foster tackles the imperial law of Aboriginal title as it existed at the time of the Vancouver Island Treaties, asking what exactly was the relevant, non-Indigenous law of Aboriginal title in the

1850s, when the Vancouver Island, or Douglas, Treaties were drawn up. The question sounds simple, but the answer is complex. Using the Supreme Court of Canada's 1973 decision in the *Calder* case as an important clue to interpreting the history of Aboriginal title law in British Columbia, Foster explains the role that the doctrine of sovereign immunity played in this history and how it permitted popular but erroneous understandings of Indigenous rights to flourish. Still, a law of Aboriginal title was generated by common-law courts in the nineteenth century, albeit indirectly. Traces of it may be found in imperial legislation; in criminal cases from the Indian Territories (of which Vancouver Island was a part until 1849); in legal opinions by government lawyers as well as lawyers acting for First Nations; and in superior court decisions in other jurisdictions. To paraphrase Sir Henry Maine's *Early Law and Custom*, the law of Aboriginal title was secreted in the interstices of cases involving land disputes between settlers. Its contours have only been developed fully in the last forty years or so, but its basic elements are much, much older.

Part 2 opens with Neil Vallance's chapter, which argues for a fundamental distinction between what he calls the "Douglas Forms" – the short, written quitclaims that up until now have been regarded as authoritative – and the "Vancouver Island Treaties." The latter are what was orally agreed to at the meetings between 1850 and 1854, and Vallance argues, they were, in general, agreements to share the land. The devil, of course, is in the details, some of which may be forever irretrievable. But breaking with scholarly tradition to date, Vallance begins with what are, to the best of our knowledge, all the documented records of First Nations understanding of these proceedings. He then proceeds to make comparisons with the almost equally scanty colonial record.

The SENĆOTEN and Lekwungen versions of the treaties are introduced by Vallance, who explores the issue of communication at the Vancouver Island treaty meetings and the bilingual nature of the treaties. Emchayik, Robert Dennis, Sr., and Kevin Neary's chapter provides a much-needed outline of a contemporary First Nations laws concerning land and treaties. The chapter demonstrates how these laws informed relations with early settlers, as illustrated by the story of William Banfield's residence on the west coast of Vancouver Island in the mid-nineteenth century. In particular, Neary examines an 1859 agreement entered into by Banfield with the Huu-ay-aht, which purported to be an outright transfer to him of a small island in Barkley Sound; under Huu-ay-aht law, however,

the agreement was merely a temporary assignment of rights to use and occupy the land.

In [Part 3](#), Graham Brazier and John Sutton Lutz look at the roles of the various colonial actors in the treaty-making process on Vancouver Island. In Brazier's view, although Douglas had sympathy with the Indigenous peoples of the new colony and was concerned for their well-being, his fur trade background hindered his ability to embrace the notion of Aboriginal title – which meant that he only “went through the motions” of treaty making. Brazier focuses on the years between the founding of Fort Victoria in 1843 and the establishment of the Colony of Vancouver Island six years later, arguing that the lack of consideration devoted to Indigenous land issues in this period suggests that the treaties were the result of a land policy that was an “afterthought.” He concludes that there was no strong driving force behind the treaty-making process Douglas undertook in April–May 1850, and when it proved to be “troublesome,” Douglas decided that, on the whole, treaties were not worth the effort unless they were intended to deal with specific issues.

John Sutton Lutz takes a different view. In his essay, he harkens back to a suggestion made by the first scholar to examine what was then called “Indian” policy in British Columbia, George Edgar Shankel. In 1945, Shankel noted that the Vancouver Island House of Assembly had “objected to the voting of money to extinguish [Indian] land title when they had no control of funds from the sale of land.” However, the “House viewed with approval the extinguishment of title from the proceeds of land sales but refused money from general revenue.”¹⁵ Lutz goes well beyond Shankel in making a strong case that Douglas was not alone in wanting treaties – so, too, did newspapers, settlers, First Nations, the Colonial Office, the Vancouver Island Legislative Assembly, and his successor as governor, Arthur Kennedy. Why, then, did treaty making appear to end in 1854? Because, Lutz argues, the colony's archaic constitution pitted the governor and assembly against each other on important fiscal matters and because, after 1859, the HBC and the imperial government were unable to agree on the compensation owed to the company on returning the colony's title to Britain. So, even though all the relevant actors wanted treaties of some kind, it was not a lack of funds but a financial impasse that paralyzed and, in the end, terminated the treaty process.

[Part 4](#) shifts the focus from the Vancouver Island Treaties to Indigenous title and reserve creation in the Colony of British Columbia after 1858. Sarah Pike proposes a new approach to understanding Douglas's reserve

policy on the Mainland. Her chapter examines what may be called the BC unsurveyed land system, a set of rules Douglas devised to meet settlers' insistent demands for land while preserving – or, at least, intending to preserve – Indigenous interests in land and balancing the colony's needs with the Colonial Office's directions. The BC unsurveyed land system's focal point was the right of pre-emption, a practice adopted from the United States that allowed British subjects to acquire unsurveyed land without paying for it prior to occupying it. Yet through the BC unsurveyed land system, Douglas also sought to preserve for Indigenous people the lands they had occupied before settlers came by precluding an "Indian reserve or settlement" from lands available for pre-emption.

The essay by Keith Thor Carlson invites a different perspective on James Douglas and his "Indian" land policies. Carlson uses a major gathering hosted by Douglas just before he retired in 1864 as a way to introduce his thoughtful analysis of what an earlier scholar has called the Douglas "system,"¹⁶ one that was both committed to the emerging liberal and Christian order but that also saw an important place in that order for the colony's Indigenous population. With all its faults, he concludes, the system was nonetheless "something that Indigenous people then regarded as workable and that in hindsight was greatly preferable to what replaced it following Douglas's retirement." In essence, Carlson argues that Douglas's vision of a settler colonialism was not predicated on assumptions of Indigenous peoples' racial inferiority; this vision caused significant anxiety in the settler community, which increasingly regarded Douglas as too sympathetic to the needs and interests of Indigenous inhabitants. Douglas had, after all, seen at close hand what had happened in Oregon, and Carlson argues that Douglas – enjoying extraordinary executive and legislative power and confident that he had the Colonial Office's backing – believed he could foster a colonial society in which (unlike Washington, Oregon, and California) not only warfare but also marginalization and displacement could be avoided. For him, the threat to this project was the prejudice and greed of settlers more than the liberal economic order he believed in and was appointed to establish. Indeed, as a man whose mother was a "free coloured woman" and whose wife's mother was Cree, the threat posed by this prejudice, especially to his children, was both personal and palpable.

Taken together, three major themes recur throughout this volume. One is the desire of European explorers, traders, and colonists to lay claim to

the land, to obtain exclusive possession. This obsession is forcefully described by Thomas King in his book, *The Inconvenient Indian*:

The issue that came ashore with the French and the English and the Spanish, the issue that was the *raison d'être* for each of the colonies, the issue that has made its way from coast to coast to coast and is with us today, the issue that has never changed, never varied, never faltered in its resolve is the issue of land.¹⁷

A second thread is the spirit of *cel'ən'en*, defined in the Lekwungen language as “Our culture, the way of our people.”¹⁸ In the SENĆOTEN language, the word is written as “C'ELA'NEN,” but the meaning is the same. In 1987 Saanich Elder Gabriel Bartleman described the relationship between C'ELA'NEN and land: “We have what they call a C'ELA'NEN, and the word C'ELA'NEN does not allow any other foreign agreements. There's no way we can sell a C'ELA'NEN or trade it off, it is a way of life.”¹⁹ First Nations had no intention of handing over their way of life, or their land, to the newcomers.

The worldviews of Indigenous peoples and newcomers were clearly at odds with respect to land, and yet they all faced the enormous challenge of coexisting on the same land. The final thread follows the career of James Douglas as he tried to fulfill his responsibility to dispossess First Nations of all land potentially required for colonization while protecting them from the worst excesses of land-hungry settlers. Every contribution to this book demonstrates his pervasive influence on efforts to resolve the conflict from 1849 to 1864, through treaty making along the inner coast of Vancouver Island and then through reserve formation on the Mainland. He did not succeed then, and the tension remains unresolved now. The current project is an attempt to understand why, to untangle the threads, and to move the urgent task of reconciliation in Canada forward.

Notes

- 1 The problem of grey literature and reinventing the wheel was identified some time ago, at the outset of the BC treaty process: see Hamar Foster and Alan Grove, “Looking behind the Masks: A Land Claims Discussion Paper for Researchers, Lawyers and Their Employers,” *UBC Law Review* 27 (1993): 213–55, esp. 235–37.
- 2 “Vancouver Island Treaties,” n.d., <https://hcmc.uvic.ca/songheesconference>.
- 3 RavenSpace, <http://ravenspacepublishing.org/>.

- 4 British Columbia, *Papers Connected to the Indian Land Question* (Victoria: R. Wolfenden, 1875), 5–11.
- 5 The exception was heated but short-lived debates in the *Victoria Daily Colonist*. See Neil Vallance, “Sharing the Land: The Formation of the Vancouver Island (or ‘Douglas’) Treaties of 1850–54 in Historical, Legal, and Comparative Context” (PhD diss., University of Victoria, 2015), 244–50, 250–53.
- 6 Canada, *Indian Treaties and Surrenders from 1680 to 1890*, 2 vols. (Ottawa: Brown Chamberlain, 1891), and *Indian Treaties and Surrenders from No. 281 to No. 483* (Ottawa: C.H. Parmelee, 1912).
- 7 Vallance, “Sharing the Land,” 274–79.
- 8 Allan Greer, *Property and Dispossession: Natives, Empires and Land in Early Modern North America*, Studies in North American Indian History (Cambridge: Cambridge University Press, 2018).
- 9 The best historical overview of early Canadian treaty making is J.R. Miller, *Compact, Contract, Covenant: Aboriginal Treaty-Making in Canada* (Toronto: University of Toronto Press, 2009).
- 10 Mary Louise Pratt, *Imperial Eyes: Travel Writing and Transculturation* (London: Routledge, 1992), 7; and John Sutton Lutz, *Makúk: A New History of Aboriginal-White Relations* (Vancouver: UBC Press, 2008), 24–25.
- 11 John Weaver, *The Great Land Rush and the Making of the Modern World, 1650–1900* (Montreal/Kingston: McGill-Queen’s University Press, 2003), 134.
- 12 Saliha Belmessous, *Native Claims: Indigenous Law against Empire, 1500–1920* (Oxford: Oxford University Press, 2012), 4–5.
- 13 Scholars today debate whether we should understand this settler conflict from a humanist point of view, which rejects the idea of race in favour of a continuity of humanism, or from a posthumanist perspective, which rejects thinking of humans as essentially different from animals and separated from nature. See, for example, Alan Lester, “Humanism, Race and Colonial Frontier,” *Transactions of the Institute of British Geographers* 37, 1 (2012): 132–48.
- 14 The ongoing attempts by Douglas to juggle these priorities is discussed in Neil Vallance’s chapter in [Part 2](#) of this volume. The scholarly consensus is that, for all his faults, Douglas was much better than what came after him. As Marianne Ignace and Ronald E. Ignace state, his “‘pro-Indian’ attitude in the negotiation of treaties and subsequent intent to establish ‘Douglas Reserves’ has been hailed as well intended, [but] the downfall of British Columbia Aboriginal peoples was Douglas’s neglect to codify his intents in the form of laws that protected Aboriginal title”: see *Secwépemc People, Land, and Laws* (Montreal/Kingston: McGill-Queen’s University Press, 2017), 438. A recent and outspoken critic of this consensus is Tom Swanky, who asserts that Douglas “seems a murderer, a thief, an outlaw, a usurper, a liar, a profane violator of sacred customs, prone to abuse of authority and a keen practitioner of amoral virtues”: see *The True Story of Canada’s “War” of Extermination on the Pacific* (Burnaby, BC: Dragon Heart Enterprises, 2012), 24. Swanky regards historians who have anything good to say about Douglas’s Indian policy as “apologists and collaborators in genocide” and suggests they are “criminally negligent” (11, 219).
- 15 George Edgar Shankel, “The Development of Indian Policy in British Columbia” (PhD diss., University of Washington, 1945), 45.
- 16 Paul Tennant, *Aboriginal Peoples and Politics: The Indian Land Question in British Columbia, 1849–1989* (Vancouver: UBC Press, 1990).

- 17 Thomas King, *The Inconvenient Indian: A Curious Account of Native People in North America* (Toronto: Doubleday Canada, 2012), 217.
- 18 Songhees Nation, *Songhees: Gai? ata?ey? šqal'o'wen/Songhees: To Work with Good Mind, Good Feelings* (Victoria: Songhees Nation, 2013), 8.
- 19 *Saanichton Marina Ltd v Louis Claxton et al., and Louis Claxton et al v Saanichton Marina Ltd and Her Majesty the Queen in right of the Province of Columbia*, Actions nos. 85/2872 and 85/2873, trial transcript for September 2, 1987, at 29–30.

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