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Land Is Life: Indigenous Relationships to Territory and Navigating Settler Colonial Property Regimes in Canada

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Abstract: Respectful and reciprocal relationships with land are at the heart of many Indigenous cultures and societies. Land is also at the core of settler colonialism. Indigenous peoples have not only been dispossessed of land for settler occupation and resource extraction, but the transformation of land into property has created myriad challenges to ongoing struggles of land repatriation and renewal. We introduce several perspectives on land rooted in diverse Indigenous worldviews and contrast them with settler colonial perspectives rooted in Eurocentric worldviews. We then examine several examples in Canada where Indigenous nations attempt to reconnect with their homelands, protect them, and/or engage with them for economic development. We look at land relationships rooted in historical treaties, contemporary comprehensive claims/self-government agreements, the Indian Act, and the defence of unceded territories. The Indigenous communities we look at include the Six Nations of the Grand River, the Nisga'a Lisims Government, the Westbank First Nation, and the Wet'suwet'en. We contend that a complex configuration of settler colonial institutions challenges long-term efforts for Indigenous land reclamation, protection, and sustainable development, however, Indigenous nations remain steadfast in asserting their self-determination in diverse relational ways inside and outside of settler state systems.

Keywords: Indigenous lands; self-determination; private property; settler colonialism

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1. Introduction

According to a Haudenosaunee creation story, Sky Woman fell from a hole in the sky. On her descent, Sky Woman fell through the clouds and air towards the water below. During her descent, birds could see this falling creature and saw that she could not fly. They came to her and helped to lower her slowly to the waters beneath her. The birds told Turtle that she must need a place to land, as she possessed no water legs. Turtle rose up, breaking through the surface so that Sky Woman could land on Turtle's back. Once landed, Sky Woman and Turtle began to form the earth, and the land becoming an extension of their bodies [1] (p. 21).

Indigenous peoples have inhabited Turtle Island (North America) for thousands of years, and their relationships with their homelands and waters are foundational to their cultures and worldviews. A critical aspect of many creation/origin stories is an understanding of Indigenous peoples' place within their homelands, including responsibilities to live with respect and to enact reciprocity. In a speech to the British Columbian (a province in Western Canada) legislature, Nisga'a leader, Joseph Gosnell, stated, "From time immemorial, our oral literature, passed down from generation to generation, records the story of the way the Nisga'a people were placed on Earth, entrusted with the care and protection of our land" [2] (p. 6). According to the Nisga'a, "Ours is a world of teeming inlets, dense forests, and sleeping volcanoes. It is a land that is as much a part of us as our own *flesh and blood*" [3]. While Indigenous origin stories vary from place to place, there is an undeniable connection with the land and obligations to all creation. Susan Hill writes, "the Great Law reminds the

Haudenosaunee that future generations come from the earth. People are instructed to walk carefully on the ground as the 'coming faces'—the children yet unborn—are just below the ground's surface" [4] (p. 37).

From a Syilx perspective, Jeannette Armstrong describes the concept of tmix^{w} as an understanding of the land as a life force: "Each life form is a single strand of the life force of that place and requires others of that place to have existed and to continue to exist. In that way tmix^{w} captures the dynamics of the myriad relationships that make that place what it is" [5] (p. 97). She adds, "The Syilx social matrix reveals knowledge that whole-system regeneration is grounded in an ethic for which the fundamental requirement is non-destructive land use" [5] (p. 97). This understanding of people living as an inseparable part of the land plays a vital role in Syilx sustainable self-determination and is not uncommon across many Indigenous worldviews. It is an embodied teaching that compels many Indigenous people to defend their territories. Freda Huson, a longtime Unist'ot'en spokesperson, flips the narrative on the term, 'critical infrastructure,' which has been used by the state to criminalise land defenders. For Huson and many Wet'suwet'en people, their critical infrastructure is their homelands and waters, including all the lifeforms that they are trying to protect [6] (p. 215).

Land is also central to the settler colonial project. Patrick Wolfe famously wrote, "Territoriality is settler colonialism's specific, irreducible element" [7] (p. 388). This was evident with extensive treaty making during the early days of contact, conflict, and colonisation and remains so today. Lowman and Barker write, "Land is at the root of any issue or conflict you could care to name involving Indigenous and Settler peoples in Canada. The land is what sustains Indigenous communities and identities. The land is what Settler people need in order to have a home and economic stability" [8] (p. 48). Zapotec scholar Isabel Altamirano-Jiménez writes, "Settler colonialism . . . focuses on claiming land and on creating permanent settlements that replicate the social, political, economic, legal, and cultural structures of settlers' homeland over the new territories and the colonized" [9] (p. 107). While the history of settler colonialism in Canada is complicated, we argue that at the heart of many conflicts, there are key differences in worldviews with respect to land. While many Indigenous peoples traditionally understand the land as a relative (i.e., Mother Earth) with agency and worthy of respect, settlers tend to think of land as a commodity to be bought, sold, and exploited. Industrial development has altered landscapes and ushered in climate change that is wreaking havoc with increasing severity. If we are to meaningfully respond to the climate crisis and chart a course to a more hopeful future, we must take seriously Indigenous worldviews and knowledge *and* respect Indigenous self-determination.

Indigenous peoples' experiences with settler colonialism also vary spatially and temporally. John Cabot began mapping what is now known as Labrador and Newfoundland in Atlantic Canada in 1497, while on the west coast, Juan Pérez did not arrive at Haida Gwaii until 1774, nearly three-hundred years later. Māori scholar Linda Tuhiwai Smith writes, "Imperialism frames the indigenous experience. It is part of our story, our version of modernity" [10] (p. 21). Hence, we cannot ignore the impacts of settler colonialism that occurred at different times, in different places, at varying degrees of pace and intensity. While all of our examples are located within Canada, it should be remembered that there is tremendous diversity among the historical experiences of the Indigenous communities. Our goal here is to provide a snapshot of several Indigenous communities' relationships with their lands, and struggles to navigate contemporary settler colonial politics, economics, and land regimes. We wish to highlight three key aspects of the Indigenous-Settler reality on Turtle Island: (1) the Eurocentric conceptions of land as property; (2) the dispossession of Indigenous lands and; (3) the Indigenous nations' efforts to navigate settler colonial institutions in ways that attempt to respect their obligations to the land and their rights of self-determination.

2. Positionality and Methods

The authors are Indigenous scholars living in Canada who are from and/or connected to some of the communities discussed here. Although they do not speak for their communities, they do possess unique perspectives rooted in their traditional teachings and their academic training. While there are commonalities between Indigenous communities, there are also key differences, and this article is written to emphasise diversity rather than generalising a false pan-indigeneity. Indigenous relationships with the land are rooted in place-based epistemologies and are complicated by heterogenous experiences of colonialism. Four different communities were selected based upon their unique contexts historically and currently, as they use diverse methods to navigate settler colonial land regimes. Where possible, a concerted effort was made to centre Indigenous voices from those communities.

3. Land into Property

English philosopher John Locke is perhaps most well known as one of the founding theoretical fathers of liberalism. To Indigenous peoples in the Americas, he is also known as a founding architect of Indigenous land dispossession. Before getting into Locke's theories on property, however, we must go back to Thomas Hobbes, another English philosopher who profoundly influenced European conceptions of liberal individualism and statehood [11] In 1651, Hobbes rather infamously described his hypothetical state of nature as a, "condition which is called Warre; and such a warre, as is of every man against every man" [12] (p. 183). It should be noted that England had endured nearly a decade of civil war beginning in 1642, and while Hobbes did not visit America, the notion of a state of nature would often be incorrectly transposed upon Indigenous lands and peoples on Turtle Island. In Hobbes' perpetually precarious world, man possessed a, "natural Right to everything; even to one anothers body" [12] (pp. 189–190). Nothing was off limits and Hobbes' response to this was the establishment of an all-powerful sovereign. Locke agreed that humankind was self-preserving, but he did not agree that rights extended to the ownership of another person or their property [13] (p. 359). Locke wrote, "God . . . *has given the Earth to the Children of Men*, given it to Mankind in common. But this being supposed, it seems to some a very great difficulty, how anyone should ever come to have a *Property* in anything" [13] (p. 286, *Emphasis* in original). Locke thus introduces his labour-mixing thesis. It begins with the notion that each man has a, "*Property* in his own *Person*. This no body has a Right to but himself. The *Labour* of his Body, and the *Work* of his Hands, we may say, are properly his," and "Whatsoever then he removes out of the State that Nature hath Provided, and left in, he hath mixed his *Labour* with, and joined to it something that is his own, and thereby makes it his *Property*" [13] (pp. 287–288, *Emphasis* in original).

While he was primarily critiquing arbitrary monarchical rule in England, Locke's theories also provided the basis for usurping Indigenous lands in the Americas. He notably distinguished hunting and gathering from agriculture, where the former did not lead to true property ownership and the latter did. In *Two Treatises of Government*, originally published in 1689, Locke wrote about vast, "vacant places in *America*" [13] (p. 293), which contributed to the concept of terra nullius, which continued to justify Indigenous land dispossession for centuries in places like Canada, the United States of America, New Zealand, and Australia [14]. In the Australian settler colonial context, Richard Howitt connects the concept of terra nullius to "discourses of *emptiness*, *occupation*, and *possession*" [15] (p. 817). Locke even suggested that Indigenous peoples had no basis for complaint regarding colonial encroachment, writing, "For he that leaves as much as another can make use of, does as good as take nothing at all" [13] (p. 291). Locke did not believe that settlers were taking anything away from Indigenous peoples, going so far as to write, "he that incloses Land and has a greater plenty of the conviencys of life from ten acres, than he could have from an hundred left to Nature [including Indigenous peoples], may truly be said, to give ninety acres back to Mankind" [13] (p. 294). Not only did Locke believe that individual settlers were not taking anything away from Indigenous peoples, he felt they were giving more back.

4. Stolen Land on Turtle Island

In settler colonial countries like Canada, one often hears people talk about stolen lands, that settler governments have unjustly usurped Indigenous lands. There are long histories of land dispossession, which vary greatly from place to place. There is also a long history of treaty-making on Turtle Island that is varied and complex. Prior to the Royal Proclamation of 1763, the relationships between European settlers and Indigenous peoples have often been characterized by some as mutually beneficial [16,17], where the history of treaty-making was founded on an understanding of mutual recognition of the governing agency of the treaty partners. Treaties were used to secure alliances, denote trading partnerships, and outline rules associated with access to lands and resources. The Royal Proclamation of 1763 is viewed by the settler-colonial state as when the Crown asserted their sovereignty, claiming 'dominion' over North America, and it is around this time that we begin to see the European role in our relationship shift from settler and guest to colonizer.

The majority of the territory in British Columbia (BC)—where three of our examples are located—does not fall under historic treaties or modern comprehensive claims agreements. Treaty 8, which was originally signed in 1899 and covers a substantial portion of northern Alberta, part of northwestern Saskatchewan, and a small part of the Northwest Territories, also includes a significant portion of northeastern BC. Between 1850 and 1854, Hudson's Bay Company Chief Factor James Douglas negotiated 14 treaties with First Nations covering approximately 927 square kilometres on Vancouver Island [18]. This is why you will often hear the term, 'unceded territories' when referring to Indigenous nations' lands and waters in BC. In response to Canadian Prime Minister Pierre Trudeau asking what Aboriginal title meant, James Gosnell famously proclaimed that the Nisg̲a'a owned their lands "lock, stock, and barrel" [3]. The absence of treaties or comprehensive agreements in BC has left Indigenous territories contested. This has led to drawn-out land claims processes, both comprehensive and specific, colloquially referred to as, "the land question" in BC [19]. Ongoing negotiations have not prevented conflict or court cases, however, especially with respect to resource extraction projects.

The usurpation of Indigenous lands and seeming permanence of settler occupation was affirmed by former Canadian Supreme Court Judge Antonio Lamer, when he stated in the 1997 *Delgamuukw* ruling, "Let us face it, we are all here to stay" [20] (p. 3). Unlike late-19th and mid-20th century decolonization movements in the Global South, settlers of European descent would not concede the lands they stole from Indigenous peoples in Canada. Despite the supposed formality of colonial land acquisition elsewhere in Canada, much of the land in BC simply came under the control of the newly formed settler government. A number of factors contributed to this, including several disease epidemics that swept through the territories, wiping out as much as 90% of the local Indigenous populations [21] (p. 39), and the inertia of settler colonialism that began in the east and became more solidified over time. Early treaties on the continent have often been characterised as military alliances or based on "peace and friendship" between relatively powerful partners [22] (p. 136). By the time settlers began to colonize BC, treaties were no longer a necessity, and they simply assumed control. In the following sections, we look at four First Nation communities in BC and Ontario to examine how they have taken diverse approaches to protecting and managing their lands.

5. Contemporary Examples of Indigenous Land Management/Protection

5.1. Sayt-K'ilim-Goot: The 'Common Bowl' of Nisg̲a'a Treaty Settlement Lands

There are over 6000 Nisg̲a'a citizens with a little over half of them living in the villages of Gingolx, Gitwinksihlkw, Laxgalts'ap, and Gitlaxt'aamiks in northwest BC along the Nass River valley out to Portland Inlet [3]. It is estimated that at contact with Europeans in the later 1700s, the Nisg̲a'a numbered 10,000–30,000 living among sixteen villages [23] (p. 148). Settlement in BC did not intensify until the mid-1800s, and the first fish cannery was not built in Nisg̲a'a territory until 1881 [23] (p. 148). When the provincial government

attempted to demarcate Indian reserves from 1881 onward, the Nisga'a people rejected these efforts, even disrupting land survey efforts, claiming they owned all of the Nass River valley [19] (p. 50). Traditionally, the Nisga'a lands were clearly divided among their houses, or *wilp*. According to Trosper, "territories were very well defined, and as with others in the region [northwestern BC], trespass was a capital offense. Titleholders [hereditary chiefs] were responsible for good management of the territories. Inheritance of titles was and is matrilineal" [23] (p. 147). Before the end of the 19th century, the Nisga'a began to feel the pressure of settler encroachment and loss of control of their territories. They would lead the way in BC with their efforts to seek redress for the dispossession of their lands.

In 1883, the Nisga'a Land Committee was formed, and between 1883 and 1927, they sent numerous unsuccessful delegations to Victoria, Ottawa, and even to England to appeal to the King to try and stem the tide of settlers in Nisga'a territory [23] (p. 148). The BC government adopted the doctrine of terra nullius, the notion that even if Indigenous peoples occupied land, it was to be treated as empty and available for colonial settlement [23] (p. 148). In 1927, the federal Indian Act was amended to make it illegal to assist Indigenous peoples with their land claims. In practical terms, this meant that Indigenous peoples could not hire lawyers to help them with their land claims [24] (pp. 111–112). This prohibition would remain in place until 1951. In 1967, the Nisga'a Tribal Council sued the provincial government, and after two appeals, the Supreme Court of Canada (SCC) ruled on the case in 1973. The judges agreed that Aboriginal Title existed, but three ruled that it had been extinguished at the assertion of Crown title, and the final judge dismissed the case on a technicality—that of the Nisga'a failing to seek the Crown's permission to sue [23] (p. 150). Despite this setback, Canada's Prime Minister, Pierre Trudeau, responded, "You have more legal rights than I thought you had" [16] (p. 22). In 1975, Canada launched its comprehensive claims policy, which ushered in a new era of negotiations and the Nisga'a were first in line.

Although the Nisga'a had been negotiating for more than twenty years, when their 'modern treaty' came into effect on May 11, 2000, they regarded it as the end of a 113-year journey [3]. The Nisga'a Final Agreement (and side agreements) included a cash settlement of CAD 196.1 million, self-government provisions, fishing rights, and 2019 square kilometers of land [3]. Notably, this represented approximately eight percent of the traditional Nisga'a territory in their original claim [25] (p. 349). While the treaty was celebrated by many, including the settler governments, some were critical of the process that culminated in the Nisga'a surrendering ninety-two percent of their territories. Trosper also notes that, "many houses [wilp] don't have their territories in the official Nisga'a lands at present" [23] (p. 152). According to the Nisga'a Final Agreement, their lands are fee simple, but held in common, and while individual Nisga'a could own their own lands, they could not sell them to non-Nisga'a [23] (p. 151). This changed in 2012, however, when the Nisga'a Lisims Government passed new legislation, the Nisga'a Landholding Transition Act, that allows titleholders to request a Nisga'a village government to authorize the transfer of lands (limited to 0.2 hectares) to non-Nisga'a citizens [26] (p. 125). The goal of these reforms is to create certainty, access credit, and attract investment for economic development, but there is concern about the social, cultural, environmental, and economic consequences of this move that may open up Nisga'a treaty lands for exploitation from powerful market forces [27–29].

5.2. Six Nations and the Haldimand Tract

The Haudenosaunee Confederacy is one of the longest-lived democracies in the world. The model of relational sovereignty that is shown through this confederacy exemplifies how international relations can support, protect, and maintain balance without compromising the agency of its people. Their creation story explains that the Haudenosaunee come from and are related to the Earth, our Mother. The Kayanerenkó:wa (Great Law of Peace) shows them how they must continue to live in relationship with our Mother, and with one another. "According to our law, the land is not private property that can

be held by any individual. In our worldview, the land is a collective right. It is held in common for the benefit of all" [30]. The relational ethics found within the Great Law extend throughout all the treaties the Haudenosaunee have made, all of which work to maintain or protect Haudenosaunee sovereignty and their land base, especially as they relate to European settlement. Between the 1600s and the 1800s, there is a long history of war and treaty-making involving Haudenosaunee, Anishinaabe, Dutch, French, British, and later, American colonists. This history, especially as it relates to the American Revolutionary War, brought the Mohawks and other Haudenosaunee to settle at Six Nations of the Grand River, located in southern Ontario [4,31]. For their allyship and compensation for the loss of nearly four million acres of land in New York state, Joseph Brant (Thayendanegea) negotiated the Haldimand Accord with the British Crown. It secured approximately 950,000 acres (in what is now the Province of Ontario) for Six Nations people, *"to take possession of and settle upon the Banks of the River, commonly called Ouse or Grand River, running into Lake Erie, allotting to them for that purpose Six Miles deep from each side of the River beginning at Lake Erie and extending in that proportion to the Head of said River, which Them and Their Posterity are to enjoy forever"* [32].

Since then, Six Nations lands have been improperly taken, sold, flooded, leased, or given away by the settler-colonial government [33]. This has resulted in the dispossession of nearly 95 percent of the Haldimand tract lands, and the misappropriation of Six Nations trust money that is estimated to run into the trillions of dollars [33]. The Six Nations have been researching their land claims since the 1970s and have filed 29 specific land claims with the Crown between 1980 and 1995. In January 1995, all of these claims files were closed by the federal government, as Six Nations filed a statement of claim for an accounting of what was taken. Since 1995, Six Nations has seen continued settler development on the lands under specific land claims. This continued development caused the 2006 standoff and land reclamation of Kanostaton (the site of the proposed Douglas Creek estates development), as well as the current land reclamation of 1492 Land Back Lane (the site of the proposed McKenzie Meadows development).

In negotiating the Haldimand tract, it was Joseph Brant's expressed interest that Six Nations people remain 'sovereigns of their soil' [31]. Maintaining sovereignty and protecting the land for future generations has been an ongoing fight for over 200 years for Six Nations. This message was expressed by Deskaheh (Levi General), Cayuga chief and spokesperson of the Six Nations Confederacy Council, in his last speech in 1925: "You would call it Canada. We do not. We call the little ten-miles square we have left the 'Grand River Country.' We have the right to do that. It is ours." [34]. This message has been reiterated for the past 40 years of dealing with Canada's specific claims process and through the 1995 lawsuit that Six Nations are still waiting to litigate. It is this same message that is expressed every time Six Nations people set up blockades to reclaim and protect their lands. Each time they express this message it becomes a part of their ongoing history of resistance on the land. This is what happened with the territory that is known as *Kanonhstaton* (the protected place), and it is happening at 1492 Land Back Lane, as "It is our responsibility to protect the inheritance of our children and we will fulfil this commitment" [35]. In sum, the people of Six Nations have utilised systemic modes of redress, such as the federal specific claims process, as well as the courts, but frustration has led to grassroots 'boots on the ground' actions as well.

5.3. Westbank First Nation

Westbank First Nation (WFN) is comprised of five reserves in the south-central interior of British Columbia totaling approximately 5,340 acres, and it is home to most of its approximately 855 members, as well as approximately 9000 non-member residents [36]. WFN is one of eight current Syilx communities within the Okanagan Nation Alliance, and their people have lived within an area of over 69,000 square kilometers of the Northwest Plateau region of Turtle Island. Prior to European contact the Syilx peoples practised an egalitarian and regenerative conservation ethic within their societies and within the

lands they have lived for thousands of years [5]. This regenerative ethic was seen within each Syilx village, through the maintenance and usage of their land as "a huge seasonal perma-garden" [5]. Armstrong describes this land-use as, "a type of vertical ecological land-use system with vast natural areas for harvest beginning in the spring on the valley floor, in the summer moving up to the mountain foothills, and by fall up to the alpine forest levels. The Syilx then move back in the valley floor for the winter" [5] (p. 97).

Settler-colonialism has altered the Syilx peoples' ability to relate to their lands, severely impacting their social and governing structures. Although their territory remains unceded, joint federal and provincial reserve commissions established small tracts of reserve land separating the Syilx from the land and the resources they relied upon, devastating their self-sufficient economy (an economy based on hunting, fishing, growing, harvesting, crafting, and trade). In the early 1960s, Okanagan Indian Band (OIB) members that lived on the Tsinstikeptum 9 and 10 reserves felt their concerns and interests were not being addressed by the OIB and began a process to separate into their own band. The Westbank First Nation became an independent band on 18 October 1963. Throughout its history, WFN has sought political and economic self-determination through various avenues and decisions regarding land management. During the 1960s the region experienced rapid growth; however, regional economic development did not extend to WFN. Jamie Baxter describes two main factors that created barriers at this time for WFN, including, "unstable federal policy" regarding Indigenous peoples during this decade and uncertainty of economic conditions for WFN land development [26]. While the 1967 Hawthorn Report supported greater Indigenous economic autonomy and self-government, including the leasing and development of reserve lands, Pierre Trudeau's 1969 White Paper assimilation aspirations also created a hostile political environment.

Due in a large part to the economic development aspirations of Chief Ron Derrickson throughout the 1970s, WFN began to model their land use plans in a way that communicated their desire to attract investment [26] (pp. 69–108). Working closely with the Department of Indian Affairs, Derrickson was able to ease concerns surrounding investment uncertainty through developing a more liberalised model of on-reserve property that allowed for the leasing of reserve land. The economic success seen through this model, coupled with WFN's desire for autonomy and self-government, led WFN to transition out from under the Indian Act land management system by developing their own land code under the newly created First Nations Land Management Act (FNLMA) in 2003 [37]. A year later, WFN solidified their nested autonomy through the creation of their constitution and the affirmation of the Westbank First Nation Self-Government Act. Under this self-government framework, the WFN reserve land title remains held by the Crown, but creates a land regime that streamlines the granting and exchange of long-term leaseholds and standardizes their land use plans and zoning laws in a way that is similar to off-reserve communities in order to create greater certainty of use [26]. One of the most striking things about the Westbank example is the 9:1 ratio of non-Westbank to Westbank residents living on reserve land. Certainly, there are legitimate critiques of the FNLMA [29–38], but given the near complete loss of access to traditional livelihoods, WFN has had to create other opportunities to provide income for their community, using existing legislative mechanisms that do not require the surrender of their territories.

5.4. Wet'suwet'en Yintah

Although the Wet'suwet'en have engaged in comprehensive claims negotiations, like almost every other First Nation in BC, they have not concluded an agreement nor ceded any of their 22,000 square kilometers in the Bulkley River valley, in BC's north interior. S. Denise Allen writes, "the *Yinta* (Wet'suwet'en traditional territory) represents a millennia-old . . . system" connecting the Wet'suwet'en hereditary chiefs and their lands and resources [39] (p. 382). She adds, "Wet'suwet'en land tenure is more than simply a form of joint property vested in descent groups. It is a social frame of reference that includes the lands, the waters and the other non-human entities that live on them" [39] (p. 382). According to

the Unist'ot'en, "Wet'suwet'en Hereditary Chiefs are the Title Holders and maintain the authority and jurisdiction to make decisions on unceded lands. The 22,000 square km of Wet'suwet'en Territory is divided into 5 clans and 13 house groups. Each clan within the Wet'suwet'en Nation has full jurisdiction under their law to control access to their territory." [40] The Wet'suwet'en case is sometimes complicated by the fact that there are elected Indian Act governments *and active* traditional hereditary leaders, and they do not always agree on land management or resource extraction issues. Some traditional Wet'suwet'en do not necessarily dispute the legitimacy of the elected chiefs and councils, but do claim that the latter's jurisdiction ends at the reserve boundaries and does not extend into the specific clans' territories.

The Wet'suwet'en have been known for their opposition to various pipelines in recent years, including the defeated Northern Gateway diluted bitumen pipeline proposal and the current Coastal GasLink liquid natural gas pipeline actively being built. While these land defense initiatives have at times been considered 'radical,' the Wet'suwet'en are no strangers to working within colonial systems to protect their lands. Allen writes, "In order to protect their access rights during the period of contact, the Wet'suwet'en legally registered the traditional boundaries of their 35 House territories as individual traplines with the provincial government in the mid-1860s" [39] (p. 382). Like many other First Nation communities in BC, the Wet'suwet'en had to get creative to protect their lands and waters, and like the Nisga'a, they also launched a large Aboriginal Title case in provincial court (along with their neighbours, the Gitxsan) in 1987. The *Delgamuukw* case wound its way through the provincial court system for ten years and eventually came before the Supreme Court of Canada (SCC). Although the SCC did *not* award the Gitxsan and Wet'suwet'en peoples title to their lands in 1997, the court did acknowledge that Aboriginal Title existed, but as a "burden on the Crown underlying title" [41] (p. 95). In doing this, the *Delgamuukw* case affirmed Aboriginal title, but also affirmed Crown title and the settler governments' right to infringe on Aboriginal rights and title. Chief Justice Antonio Lamer wrote that the Crown could justifiably infringe on Indigenous rights and title for, "the development of agriculture, forestry, mining, and hydroelectric power, the general economic development of the interior of British Columbia, protection of the environment or endangered species, the building of infrastructure and the settlement of foreign populations to support those aims . . . " [42] (p. 311). In a way, the SCC paved the way for business as usual and ongoing conflict with Indigenous land defenders.

This positionality as defenders of unceded lands is central to understanding the Wet'suwet'en responses to settler encroachment. Keith Cherry writes that the Wet'suwet'en, "consistently refuse to characterize themselves as 'protestors', using terms like 'land defender' instead, so as to characterize their actions relative to Wet'suwet'en, rather than Canadian, law" [43] (p. 7). Their efforts may seem reactionary to settler corporations, governments, laws, and law enforcement, but Wet'suwet'en simply see themselves as defending their homelands from invaders. At the Unist'ot'en Camp, visitors are reminded, "this is not Canada, this is not British Columbia: this is unceded Wet'suwet'en territory." [44] (p. 52). Dene scholar Glen Coulthard notes that when Indigenous people say 'no' to a project, they are simultaneously saying 'yes' to their own laws, affirming, "a different way of relating to and with the world" [45] (p. 169). Freda Huson, a spokesperson for the Unist'ot'en, explains the Free, Prior and Informed Consent (FPIC) protocol that they use whenever someone new tries to enter their territory: "Who are you, where are you from, how long do you plan to stay if we let you in, do you work for industry or government that is destroying our lands, how will your visit benefit Unist'ot'en, and what kind of skills do you bring. These are the basic questions we ask" [6] (p. 217).

For several years, the Gidimt'en clan has been defending against the incursion of the Coastal GasLink pipeline and Canada's national law enforcement agency, the Royal Canadian Mounted Police (RCMP). In the early winter months of 2020, the RCMP began raiding what became known as the Gidimt'en Checkpoint, and solidarity protests erupted nationwide, including a railway blockade orchestrated by longtime Wet'suwet'en allies,

the Tyendinaga, in southern Ontario. The story became international news and the settler governments were forced to act to head off further disruption. On 29 February 2020, just prior to the first COVID-19 lockdowns, the governments of Canada and British Columbia and the hereditary chiefs of the Wet'suwet'en signed a memorandum of understanding to negotiate, "Wet'suwet'en Aboriginal rights and title throughout the Yintah" [46]. Although they had anticipated to negotiate from six to twelve months, the results of the negotiation have been inconclusive, and the Gidemt'en continue to resist, recently launching a campaign, supported by dozens of musicians and actors, to pressure the Royal Bank of Canada to stop funding the Coastal GasLink pipeline [47].

6. Discussion

While each case is unique regarding the way an Indigenous community relates to the land and in the way it chooses to navigate the various assimilative and settler-colonial structures that it is confronted with, we can see that the decisions and actions taken are genuine attempts at safeguarding territory and asserting self-determination. In conceptualising the relational dynamic between settler-colonialism and indigeneity, J. Kēhaulani Kauanui describes how indigeneity endures the operative logic of elimination through Indigenous peoples' ability to exist, resist, and persist the ongoing settler-colonial project [48]. This dynamic extends to Indigenous land relations and settler-colonial property regimes—where Indigenous peoples continue to exist on the land—carrying out their obligations in new and relatable ways, resisting continued attempts of territorial dispossession, and persisting by taking settler-colonial property regimes and attempting to make them work within their own cultural contexts.

Various methods of attempted land dispossession are documented amongst the diverse cases presented. The logic behind these methods can be traced back to Hobbes' abstraction of humans from nature and Locke's thoughts on individuals and property. While Locke purports that all individuals are created equal and thus have an equal right to ownership, throughout the ongoing history of Canada, the Crown has subjugated Indigenous peoples, rejected Indigenous claims to land ownership by virtue of lacking humanity, while working to eliminate them, both physically and as distinct peoples. In the application of these theories, Indigenous peoples were never meant to be property owners, and this logic continues to serve as the basis for the Crown's legal arguments. Working within this settler-colonial legal framework, Indigenous peoples are experiencing two specific challenges related to: (1) making Indigenous conceptions of land relations legible within settler-colonial individualised property regimes, and; (2) translating these settler-colonial theories and practices of property ownership into our worldviews.

When Indigenous nations try to work through either of these challenges within the 'appropriate' legal avenues or through good faith negotiation with the Crown, results take decades and are often disappointing. Looking at the Nisga'a example, we see a nation that built and argued their title case to the SCC, had three justices agree with them, but had their case thrown out on an administrative technicality. Moreover, in negotiating their land claim, the Nisga'a were forced to cede their title claim for state-defined Aboriginal and self-government rights to gain recognition of a mere eight percent of their original territory. The Wet'suwet'en—along with the Gitxsan—also sued for Aboriginal title before the SCC. Justice Lamer built in a tool for future dispossession of title lands through a broadly reaching economic policy lever that further facilitates settler occupation and natural resource extraction. It has been 25 years since *Delgamuukw*, and the province has yet to sit down and properly address the Wet'suwet'en title. Instead, they continue to exert their unfounded jurisdiction, encouraging industry and granting environmental assessment permits for pipelines, leaving the Wet'suwet'en with essentially two options: become ambivalent and accept the destruction of their territory for a cash payout, or continue to resist construction and be removed at gunpoint by the RCMP, armed with assault rifles. Six Nations have been patient in trying to address their claims within the federal specific claims system and through the courts, but in the 41 years it has taken since those initial

claims were filed, development of Haudenosaunee territory has been rapidly increasing. They, too, face police armed with injunctions and guns when they make a stand to protect Haudenosaunee claims. While making Indigenous conceptions of land legible to the state is challenging, Indigenous peoples persist.

As we consider the vast chasm of difference between the understanding of land as kin and how that fits within colonial property regimes, we turn to Blackfoot scholar Leroy Little Bear's thoughts on "jagged worldviews" [49]. As Little Bear discusses, colonization attempted to destroy Indigenous worldviews through a variety of eliminatory and assimilative methods, and although they failed, we are left to navigate the heritage of colonization and persisting structures of settler-colonialism with what cultural context we have managed to protect and maintain [49]. Indigenous peoples work to make sense of the jagged pieces that they have, to make them work in the cultural context that they have maintained, within systems that do not belong to them. At times, this can look like adapting governing structures and land relations to reflect settler-colonial frameworks in order to maintain a level of autonomy over land management and drive economic development for community benefit. At times it may also look like asserting claims to land through settler-colonial legal avenues in order to have a level of control over how that land is managed, and at times, this looks like outright refusal to allow settler-colonial incursion by blocking access to Indigenous territories and seeking the support of allies. In a speech declaring the Haudenosaunee Confederacy Chiefs Council's moratorium on development of the Haldimand Tract, Cayuga Snipe chief Deyohowe:to (Roger Silversmith) reminds us that, "Without land to grow as a community, more generations of Haudenosaunee children will suffer the harms of colonialism" [30]. Land is central to the continuity of cultures for Indigenous peoples, and we will do what we must to protect it.

7. Conclusions

In 2015, Canada elected Justin Trudeau's Liberal Party to the government, which was arguably less hostile to Indigenous peoples than the previous Conservative government had been for the previous ten years. The previous prime minister actually proclaimed that people around the world loved Canada because it had no history of colonialism [50]. The government of Canada passed their United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) Act (Bill C-15) in June 2021; BC passed their legislation (Bill 41) in 2019; and although Ontario introduced UNDRIP legislation (Bill 76) in 2019, it has been stuck in a standing committee ever since. The declaration introduced the principle of free, prior, and informed consent (FPIC) in articles 10, 11, 19, 28, 29, and 32, with respect to development on Indigenous territories and respect for Indigenous governing bodies [51]. The Unist'ot'en have implemented their own FPIC protocol, the Wet'suwet'en hereditary leaders have more broadly engaged in negotiations with BC and Canada with respect to their territories, and the RCMP still continue to battle peaceful Indigenous land defenders. One might think it ironic that amidst all these efforts at reconciliation, resource extraction continues, despite the lack of free, prior, and informed consent from Indigenous peoples. If one were cynical, one might think that UNDRIP legislation has passed in Canada precisely because settler governments and corporations were confident that these new laws *would not fundamentally alter the status quo* or threaten economic growth.

In a poignant and poetic goodbye to Snauq (an area in Vancouver, Canada now known as False Creek), Coast Salish writer Lee Maracle offered, "Find freedom in the context you inherit . . . " [52]. Lee was saddened that her community had settled a specific claim with the federal government. The deal included CAD 92 million [51] and the surrender of nearly 70 of the original 90 acres [53]. Today, the remaining 10.48 acres is being developed by the Squamish Nation into over 4,000,000 square feet of space, including over 6000 rental homes and 950 affordable homes, promising to be the largest net zero residential development project in Canada [53]. Indigenous peoples in Canada continue to exist, resist, and persist, with jagged worldviews colliding and debates abounding over how best to navigate settler colonialism in the 21st century.

The ecological consequences of irresponsible resource extraction are no longer just a problem for Indigenous peoples. The impacts of climate change are not abstract or hypothetical anymore. In 2021, British Columbians felt the devastating impacts of fires that destroyed forests and homes, including an entire town, heat waves that killed nearly 1000 people in one weekend alone, and an 'atmospheric river' that caused unprecedented flooding that destroyed infrastructure that literally cut off large portions of the province for weeks. One can hope that these events will encourage more people to care about the 'critical infrastructure' of intact ecosystems that demand respect and reciprocity. Many Indigenous people are leading the way for more sustainable ways of relating to Mother Earth, but we must find freedom together in order to bring about real change.

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