

A MEASURED SOVEREIGNTY: THE POLITICS OF NATION-MAKING IN BRITISH COLUMBIA¹

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Abstract / Résumé

In this paper, we argue that the Aboriginal and non-Aboriginal principals to the British Columbia Treaty Process advance radically different positions on the issue of Aboriginal self-determination. We categorize the two emergent positions as Aboriginal rationalism and governmentalist prudentialism—the former bent on inflecting negotiations in the direction of Aboriginal sovereignty, and the latter aiming to confine Aboriginal control to forms of self-governance that integrate First Nations into the circuits of global capital and the retrenchments of the neoliberal state. We consider whether this crucial negotiation impasse can be resolved through the notion of a ‘measured sovereignty’.

Dans cet article, nous démontrons que les responsables en charge de la Procédure du Traité de la Colombie britannique présentent des positions radicalement différentes quant à la question de l'autodétermination, selon qu'ils sont autochtones ou non. Nous plaçons les deux positions émergentes soit dans la catégorie du rationalisme autochtone, soit dans celle du prudentialisme gouvernemental--Le premier étant résolu à faire pencher les négociations vers une souveraineté amérindienne, le second visant à confiner le contrôle autochtone à des formes d'autogouvernance qui intègrent les Premières Nations dans les circuits du capitalisme global et les retranchements de l'état néo-libéral. Nous examinons la possibilité que cette négociation cruciale puisse sortir de cette impasse par le biais d'une "souveraineté mesurée".

I. Introduction

Long ago—from time immemorial—lived a sovereign Aboriginal Peoples on a land mass now called Canada, then known to its inhabitants as Turtle Island. European settlers arrived centuries later, ushering in a 400 year period of colonization that culminated with passage of the *Indian Act* in 1876, an Act that defined what an Indian was, and delegated administrative powers over Indian affairs to non-Indians. Subsequent amendments to the Act further subjugated Aboriginals by outlawing their cultural and religious ceremonies (1884), later making it illegal for anyone to assist Indians on claims of any sort without prior consent of the Superintendent General of Indian Affairs (1927). As time passed and Aboriginals struggled to regain their lands and inherent rights, the Canadian government established the Office of Native Claims (1974), later renamed the Comprehensive Claims Branch, to deal with land claims. The Supreme Court of Canada ruled repeatedly, if somewhat obscurely, in favour of Aboriginal rights and title, and the Canadian Parliament passed bills (e.g., Bill C-31) to amend the *Indian Act*, bringing it into line with the provisions of the *Canadian Charter of Rights and Freedoms* (1982).

In 1991, marking an historic departure from their century-long, unilateral denial of the existence of Aboriginal title, the British Columbia government entered into treaty negotiations with the federal government and the Nisga'a nation to discuss Nisga'a Aboriginal title and inherent right to self-government. The Nisga'a claim was settled in 1998 under the federal government's comprehensive land claims policy; however, this policy allows the federal government to participate in only a limited number of simultaneous land claims negotiations and therefore is inadequate for dealing with the Aboriginal title claims of the many First Nations in B.C., who never signed treaties ceding Aboriginal lands to the colonial government, as many tribes did elsewhere in Canada. In response to the existence of unextinguished Aboriginal title in B.C., the courts have urged that negotiation is the best way to resolve these outstanding claims.

Based on the prodding of the courts and the long-standing discontent of First Nations in B.C. over the land claims issue, the federal and provincial governments and the First Nations of British Columbia established the British Columbia Claims Task Force (1991) to design a process for treaty-making. By the end of that year, the principals adopted the nineteen basic recommendations (or negotiation guidelines) struck by the Claims Task Force. The British Columbia treaty talks began in 1993, launching a tripartite process involving 51 of the Aboriginal nations in B.C. (representing 71% of the bands in the province) sitting at 42 sepa-

rate treaty tables under the general auspices of the First Nations Summit, the federal government, and the provincial government. The process is monitored and facilitated by the British Columbia Treaty Commission (BCTC, established in 1992), consisting of independent commissioners appointed by each of the three principals. As 'keepers of the process' the BCTC issues annual reports and advisory papers.

The talks began amid much fanfare, with considerable optimism that the parties were about to enter a new era of 'reconciliation,' leaving behind bitter memories of government opposition to negotiating treaties in order to resolve land and rights questions. The issues facing the parties were recognized as complex, involving disputes over ownership of lands and resources, compensation, taxation, interim measures in lieu of protracted negotiations, and perhaps, above all, the hushed 'S' word — sovereignty — often euphemized to more palatable terms such as 'self-government' or 'jurisdiction' in the early going at the treaty-tables.

From the Aboriginal standpoint, 'sovereignty' equates with autonomous Aboriginal nations exercising independent governing rights bestowed by the Creator (not non-Aboriginal governments) and safeguarded for the well-being of future generations. For the non-Aboriginal governments, Aboriginal self-determination is limited to forms of governance congruent with non-Aboriginal forms and remains secondary to higher-order echelons of state power (provincial and federal). In these terms, Aboriginal 'self-government' is usually restricted to municipalities, with some concessions to more regional structures.

In fact, the meaning of self-determination (or the extent of Aboriginal governing powers) is constitutionally moot since the *Indian Act* accorded little in the way of formal self-governing powers, and, although Section 35 (1982) of the Canadian Constitution has been interpreted by the federal government to recognize Aboriginal self-governance as an inherent right of Aboriginal peoples, in practice these rights have not been equated with sovereignty. One might suspect, therefore, that the heavy, rather sanctimonious First Nations' emphasis on harmony and reconciliation in the treaty process belies an intention to finesse the dominant hegemony into moving closer toward 'common ground' and 'shared values' that resonate with Aboriginal aspirations for greater self-determination. On the other hand, the non-Aboriginal insistence on limited 'self-government' may be a way of maintaining political control while lightening or escaping fiduciary responsibilities.

Given the level of fatigue and frustration that has engulfed the process over the ten years of its existence — not one full Agreement in Principle has been reached, the participating bands are already \$200 million in debt with the clock ticking toward repayment of loans starting in 2006,

and treaty talks were stalled in 2002 while the then newly-elected right-wing provincial government implemented a referendum for the ostensible purpose of clarifying public expectations for the talks—it seems obvious that the parties are on divergent paths, especially with regard to the vexed issue of self-determination.

It is our contention that the Aboriginal and non-Aboriginal principals to the talks do indeed advance radically different positions—which we categorize as Aboriginal rationalism and governmentalist prudentialism—the former bent on inflecting negotiations in the direction of Aboriginal sovereignty, and the latter aiming to confine Aboriginal control to forms of self-governance that effectively integrate them into the circuits of global capital and the retrenchments of the neoliberal state. The exponents of each approach express qualified interest in the aims of the other, but ultimate differences engender distrust on both sides, which continually subverts any momentum towards consensus that the talks may acquire.

In the following sections of the paper we examine tensions between Aboriginal and governmentalist approaches, as well as the connection between their respective initiatives to the sovereignty issue that hovers over the treaty talks. We consider whether this stalemate may be resolved through the notion of a 'measured sovereignty,' one that would be much less measured than the versions of 'self-government' proposed by provincial and federal bureaucrats, but also one that would be unlikely to trigger 'balkanisation' and undermine the political stability necessary for attracting capital investment in the provincial economy, an outcome that would disadvantage all sides.

Our study is based on observations of the quarterly meetings of the First Nations Summit over the past four years and scores of interviews with local and national Aboriginal leaders, BCTC Commissioners, Members of the Provincial Legislative Assembly and Ministry civil servants, and federal program administrators, as well as attendance at numerous meetings and conferences where the relevant issues were discussed.²

II. Treaty-Making Discourses: Theoretical Interpretations

1-Aboriginal Rationalism

The B.C. Treaty Process is predicated on a series of assumptions about the possibility of rational, 'undistorted' communication. In particular, it is expected that Canada, British Columbia and the First Nations will participate in 'good faith' negotiations in accordance with principles of dialogical fairness. The logic of this approach to treaty-making stems, to some extent, from the history of Aboriginal/non-Aboriginal relations in British Columbia. Until recently, Aboriginal land claims have

been met with a monological response from the non-Aboriginal governments which peremptorily prescribed the land and governance needs of First Nations communities. However, with the formation of the B.C. Claims Task Force in the early 1990s, Aboriginal peoples were at last afforded the opportunity to engage in discussions with non-Aboriginal government officials on the issue of how the 'land question' should be resolved. Through this task force, a multi-staged process was established that brought First Nations and non-Aboriginal governments together in direct negotiations founded on a series of recommendations. Included in these recommendations were communicative principles guiding the parties to negotiate based on mutual trust, respect and understanding and providing the parties the liberty to introduce any topic of importance to them at the treaty tables. As well, the Claims Task Force recommended that the aforementioned B.C. Treaty Commission be established as an independent body to monitor and facilitate 'fair' negotiations. Given this framework, First Nations hoped that they would be able to express the reasonableness of their demands to the non-Aboriginal governments in the process of building treaties that were mutually beneficial for all parties involved. Moreover, through their involvement in the treaty process, many First Nations sought from the non-Aboriginal governments recognition of Aboriginal sovereignty in the form of 'nation-to-nation' negotiations.

These rational presuppositions of the B.C. Treaty Process bear some resemblance to Jürgen Habermas's model of communicative ethics. In his examination of the problems and emancipatory potential of modern society, Habermas identifies two action spheres, 'system' and 'lifeworld.' System refers to the forces of production and impersonal 'steering mechanisms' of money and power ('delinguistified media') pervading late capitalist society, whereas lifeworld demarcates the shared cultural conventions, linguistic norms and communicative exchanges of people in their everyday realms of social interaction. For Habermas, these two spheres ideally operate interdependently;³ however, increasingly the instrumental rationality of the system has encroached upon and colonized the communicative space of the lifeworld. This has resulted in interpersonal exchanges characterized by impersonal motives of power that distort and misrepresent people's needs and normative expectations, and force them to regulate their lives in compliance with system imperatives that exacerbate social disconnection. In other words, everyday interactions are increasingly characterized and interpreted through the instrumental logic of the steering mechanisms of money and power, limiting the communicative potential of individuals to engage in mutual processes of meaning creation.

This process of lifeworld colonization is not inevitable, however. For Habermas, modernization, because of its critical overturning of sacred and closed knowledges, has presented opportunities for a reconfiguration of the lifeworld that allows an expanding potential for communicative agreement. As he sees it, the role of the philosopher in this environment is not to offer a substantive prescription of the form this reconfiguration should take; instead, philosophy is limited to providing the ideal conditions for free and open argumentation through which individuals can collectively arrive at normative decisions. For this reason, Habermas's philosophical project has turned toward articulating the rational, procedural guidelines that are the basis for what he terms the 'ideal speech situation.' This proceduralism requires that all parties be included in fair, uncoerced, and dialogically engaged debate and that all actors participating in this debate possess the relevant background knowledge and linguistic skills to communicate without distortion (Baert, 1998; Thomassen, 1992). Communicative discourse, therefore, is founded on four criteria: statements should adequately portray realities in relation to the objective world ('Truth'); statements should be sincere and authentic expressions of the speaker's intentions and feelings ('Truthfulness'); statements should be appropriate or legitimate in a given situation in relation to shared norms and values ('Understandability'); and, speakers should employ language in a manner that is understandable to the other parties ('Comprehensibility').⁴

The B.C. Treaty Process, as envisioned by proponents of Aboriginal rationalism, is intended to serve as a forum in which Aboriginal and non-Aboriginal representatives can honestly put forward their interests so that the parties can understand each others' needs and seek agreements reflective of their shared norms and values. In this sense, it aspires to meet the criteria of Habermas's 'ideal speech situation' by encouraging the parties to engage in a rational, communicative dialogue concerning their mutual interests. However, criticisms exist with regard to the possibility of approximating the 'ideal speech situation' in actual discursive contexts.

First, many scholars have suggested that rather than providing neutral criteria for communicative interaction, the ideal speech situation imposes a European, liberal rationality on discourse by privileging mutual understanding over assertions of distinctiveness (Aragaki, 1993; Benhabib, 1985 and 1992; Fraser, 1985; Taylor, 1992). Others have gone so far as to suggest that the mode of communication suggested by Habermas is impossible without there being some element of force that imposes the worldview and understandings of one group upon the other (see, for example, Bauman, 1998; Bourdieu, 1991; Derrida, 1992). Derrida,

for one, has argued that any normative agreement requires an act of violence since communication inevitably involves a forced translation of the terms of the other into those of the self. He offers deconstruction as a vehicle for seeking normative relations between self and other without any sense of finality. This means that norms are agreed upon without closure, and deconstruction must be vigilantly employed to expose the power inherent in any norms so they can be refined and reconceptualized to better reflect the 'experience of the impossible' that is justice (Derrida, 1992; Critchley, 2000).

Although the Habermasian model of communicative ethics is criticized for being Eurocentric in its formulation, many First Nations participating in treaty-making uphold the similar model of Aboriginal rationalism as a procedural ideal for treaty negotiations. For these First Nations, the rational discursive practices of the ideal speech situation are not solely the prerogative of individuals in European cultures; indeed, these practices are viewed by many Aboriginal peoples as reflective of the intra and inter-tribal norms that pre-dated European contact. However, leaving aside the question of the historical accuracy of this vision of a pre-contact Aboriginal communicative ethics, two possible motivational frames can be identified that underlie the contemporary currency of Aboriginal rationalism. First, our observations of First Nations Summit meetings suggest that dialogic problems exist amongst First Nations. Based on these observations, one would be hard pressed to argue that there exists an Aboriginal cultural tendency toward communicative ethics. For this reason, it might be posited that First Nations are engaged in a strategic embrace of communicative ethics, using its idealized principles of European reason to secure benefits at the treaty table. Second, rather than embracing communicative ethics in a tactical fashion, it is possible that First Nations see the discursive context of the ideal speech situation as a means for asserting their difference in the face of European universalism. That is, First Nations may be inclined to embrace the neo-enlightenment rationality of a Habermasian model of communicative ethics because they see unfettered discourse of this nature as an opportunity to amplify their ethical claims and, ironically, to employ moral suasion to convince the non-Aboriginal governments of the righteousness of their distinct justice demands.

A second critique of Habermasian proceduralism can be made based on the challenges faced in attempting to apply this approach to an actual discursive context. The example of the B.C. Treaty Process illustrates this difficulty, as the parties have faced several obstacles in attempting to realize the criteria of communicative ethics. First, the criterion of 'Truth' has not been met since all information relevant to treaty-

making has not been admitted into the process. The experiences of many First Nations persons, including women, elders, youth, and non-status Aboriginal persons, have not been sufficiently articulated within this process for it to claim an adequate representation of the objective world of Aboriginal/non-Aboriginal relations.⁵ Second, the criterion of 'Truthfulness' has not been realized since the ideals of 'sincerity' and 'authenticity' have been subordinated to positional and strategic statements designed to shift the opposing party from their stance.⁶ Third, the criterion of 'Understandability' cannot be claimed in the B.C. Treaty Process since the parties lack, for the most part, shared norms and values on the basis of which they can organize their interactions. Indeed, the treaty process suffers from the absence of any clear common purpose, as the parties cannot concur as to whether the treaty process is intended to achieve justice, certainty, reconciliation, improved business relationships, or all of these things.⁷ Finally, the treaty process fails to provide 'Comprehensibility' because First Nations often lack the material capacity to acquire the legal and technical expertise needed for engaging in complex negotiations such as these (see Ratner et. al., 2002).

A crucial barrier to overcoming these communicative challenges in the B.C. Treaty Process results from a lack of clarity with respect to the status of First Nations within the Canadian political mosaic. More concretely, the parties to the negotiations hold different understandings of what the term 'First Nation' means in the context of treaty-making (see Ladner, 2001 for a more general discussion of this problem). Are these 'First Nations' governing bodies appointed under the authority of the Indian Act? Or are they the elected and hereditary leaders of sovereign peoples? The discourse of Aboriginal rationalism assumes the latter, but the non-Aboriginal governments are not prepared to concede the existence of Aboriginal sovereignty as a precondition to dialogical negotiations. Instead, these governments conceptualize sovereignty in the narrower terms of 'self-government' by which they refer to the limited, largely municipal powers they will offer First Nations through treaty settlements. Thus, at the very basis of the treaty process is a seemingly intractable conflict with regard to the pre-negotiation governance powers of First Nations. While First Nations engaged in the B.C. Treaty Process expound the logic of Aboriginal rationalism, the conceptual approach guiding the non-Aboriginal governments is more explicitly directed toward the instrumental goals and interests of neoliberal governance rather than modeled on the communicative ideal.

Confronted with the instrumental presuppositions of the non-Aboriginal governments, First Nations are relinquishing the communicative ideal of Aboriginal rationality. Many First Nations now appear to

embrace an 'Aboriginal pragmatism' that seeks to operate creatively within the predefined limitations of the non-Aboriginal government mandates, proposing quasi-sovereignty models that increase the prospects for Aboriginal economic development without challenging the unmovable positions contained within these mandates. Other First Nations, however, have responded by hardening their positions, refusing to surrender their own presuppositions of Aboriginal sovereignty and autonomy.⁸ This results in a stalemate in negotiations between these First Nations and the non-Aboriginal governments, as neither party is willing to show the flexibility needed to enter a 'rational discourse' for fear of granting an advantage to the other.

2-Governmentalist Prudentialism

Non-Aboriginal government representatives emphasize the utilitarian rewards of treaty-making, presenting treaty settlements as a means for achieving the ends of economic and political 'certainty' in British Columbia and Canada. Certainty, they argue, requires that full and final treaties be signed to clearly articulate the land, resource and governance rights of First Nations, as well as the limits on these rights. In their view, it is only in this manner that British Columbia can overcome the uncertainty that has disturbed the provincial economic climate and deterred potential investors. Thus, the non-Aboriginal governments understand the B.C. Treaty Process as a vehicle for ensuring future economic viability rather than as a reparative dialogue for addressing the past. Based on this logic, they envision treaty-making not as an acknowledgment of First Nation sovereignty, but instead as a way to build First Nations' governance capacity⁹ and to provide economic development opportunities in a manner that secures Aboriginal participation in the regular operation of the provincial economy.

A conceptual model for understanding the non-Aboriginal governments' treaty-making strategy can be found in Michel Foucault's notion of 'governmentality' (1991; see also Gordon, 1991). For Foucault, governmentality refers to the manner in which the rationality of governance is distributed throughout society without the direction of a guiding hand to orchestrate its operation; instead, new 'mentalities' of governance are brought into the daily lives of individuals by experts, professionals, and other persons who are more than simply the agents of the state. Governmentality concerns itself with at least two practices: technologies of discipline and technologies of self. With the former, governmentality creates 'normality' by constructing 'normal' individuals who are controlled rather than coerced. For example, this may be achieved by dispersing therapeutic professionals into communities and having

them guide individuals in transforming their conduct to meet the needs of the moral order. With the latter, governmentality relies on citizens' own self-regulation as they internalize societal controls and play an active role in monitoring their own conduct and being responsible for their activities (Burchell, 1993; Pavlich, 1996). In this way, governmentality can produce useful self-identities that reaffirm the societal standards convenient to ruling.

The term has gained more widespread usage through the efforts of 'Anglo-Foucauldian' and other scholars, who use the term 'neoliberal governmentality' to refer to forms of governance that operate 'at a distance' from or 'beyond' the state (Barry, Osborne, and Rose, 1996; Miller and Rose, 1990 and 1995; Rose, 1993 and 1996). These scholars describe the efforts of the modern state to 'degovernmentalize' itself through the relocation of the regulatory machinery of governance in local contexts. This decentralizing tendency reflects the neo-liberal concern with the cost and inefficiency of over-sized government apparatuses that have failed to provide the regularity of conduct that they were designed to achieve. In particular, welfare state policies are held responsible for increasing government bureaucracy and implementing a paternalistic system of rule. In contrast, neoliberals aim to employ new technologies of rule that encourage autonomous individuals to manage their behavior in relation to the free market. Thus, in Rose's (1993: 285) words, neoliberalism seeks to govern 'through the regulated choices of individual citizens.' In this sense, neoliberal governmentality moves gradually toward employing technologies of self more than technologies of discipline in order to achieve its ends. This of course does not mean that technologies of discipline disappear from the scene; it merely suggests that individual self-regulation is a more practical strategy given the calculated cost-efficient goals of neoliberal regimes.

In our view, the discursive framework now guiding the non-Aboriginal governments in their relationships with Aboriginal persons can be described as a form of 'governmentalist prudentialism' because actions within that framework reflect an attempt to degovernmentalize the administration of 'Indian Affairs' in Canada and to governmentalize the operations of First Nations autonomy in a circumscribed, neoliberal manner. The *Indian Act (1876)*, which regulates the activities of First Nations peoples in their near entirety, is now widely perceived by government officials as an anachronistic piece of legislation that is costly, inefficient, and deters First Nation participation in economic activities. Ideally, the federal government would like to achieve the same sort of 'certainty' that was enabled by the rigid regulatory provisions of the *Indian Act*, without the necessary investment of government resources. A

certainty of this sort requires that First Nations be permitted a limited autonomy in controlling their affairs, but this autonomy needs to be shaped by a market rationality conducive to the normal operation of the Canadian economy. In this new regulatory environment, First Nations are encouraged to shape their 'self-governance,' as opposed to their sovereignty, in a manner suited to the imperatives of the globalizing economy by orienting their communities to compete for capital investment. This requires that First Nations build their local systems of government in a manner that is compatible with non-Aboriginal government systems, rather than creating new systems or maintaining traditional systems of administration that increase the complexity of business operations within the province. This also requires that First Nations governments maintain standards of environmental protection and labour rights that are consistent with, but do not exceed, those currently enforced by non-Aboriginal governments. If First Nations do not follow these standards, the poverty and economic marginalisation long-suffered by their communities will likely continue, but without the promise of support that comes with being 'wards' of the state. Thus, the non-Aboriginal approach to treaty-making in B.C. is characterized by a reliance on the assimilative force of the market to shape First Nations governance and to limit notions of self-determination. However, this strategy is not without its shortcomings. First, although the federal and provincial governments share many common concerns in the B.C. Treaty Process, they are divided on some fundamental issues which could disrupt any unified governmental effort. In particular, the provincial government remains primarily focused on the issue of resource revenues and land tenures since it, according to the terms of the *British North America Act*, possesses dominion over Crown lands in B.C. and, therefore, profits from its jurisdiction over these lands. In contrast, the federal government is more concerned with its legal responsibility to First Nations in Canada, which stems from its fiduciary duty to protect First Nations' interests. Based on this legal relationship with First Nations and the cumbersome bureaucratic requirements of living up to its terms, the federal government has a clearer interest in degovernmentalizing 'Indian' policy through the distribution of land and governance powers, whereas the provincial government is more likely to view these disbursements as a potential threat to its tax revenues and, for now, to desire the preservation of some decisive governmental powers.

A more damning criticism of the strategy of governmentalist prudentialism is that it is unlikely to meet the justice demands of First Nations. For many First Nations, the history of post-contact relations between Aboriginal and non-Aboriginal peoples is one characterized by

paternalistic domination and economic marginalisation. The reparative goals guiding their participation in the B.C. Treaty Process include expectations that their sovereignty will be recognized through the distribution of significant powers of self-determination, as well as the land, resources and cash required for community sustainability. Thus, these First Nations are unlikely to consent to treaty settlements that require them to become responsabilized, economic actors (rather than sovereign nations) in order to receive the benefits of any settlement.

Moreover, even for those First Nations swayed by 'affirmative reparations'¹⁰ offered by the non-Aboriginal governments, the assimilative gambit of economic development is unlikely to transform their communities into responsabilized, economic actors. Despite the discourse of 'capacity-building' that is currently prevalent in treaty negotiations, the probability is that the post-treaty environment will feature both winners and losers in the competitive stakes of market capitalism. Those First Nations that are unable to turn treaty settlements into sustainable community benefits are likely to return to strategies of creating uncertainty in order to make their dissatisfaction known.

3-Dialogical Restrictions/Circumventions

It is plain to see that non-Aboriginal policies of governmentalist prudentialism have made the goals of Aboriginal rationalism untenable in the current context of the B.C. Treaty Process. With the limitations on treaty-making imposed by the non-Aboriginal governments, it would be naïve for any First Nation to assume that the treaty process is working toward a goal of ethical communication and reconciliation. For this reason, *all* of the parties to the B.C. Treaty Process, including First Nations, find it necessary in certain circumstances to resort to tactical interventions in order to gain leverage at the treaty tables. The instrumental nature of these actions has driven the negotiations away from the B.C. Claims Task Force's idealization of the process as a dialogical exploration of common interests. Instead, the parties often seek means by which they can restrict the treaty discussions to topics congruent with their interests, or circumvent particular topics that they find incompatible with their interests. These tactics are employed in relation to all of the major topics of treaty-making (e.g., land, resources, and governance); however, we focus here on the salient issue of Aboriginal self-determination, examining some of the interventions the parties make in attempts to shape treaty negotiations toward pre-defined concepts of Aboriginal self-government and sovereignty.

During the negotiations to establish the B.C. Treaty Process, there was disagreement as to whether powers of self-government would be

on the treaty table. The provincial government was leery of placing self-government on the negotiation agenda, fearing that the powers distributed to First Nations governments would impair the province's ability to manage its lands and resources.¹¹ In contrast, the federal government was more open to the idea of including self-government in treaty negotiations since, at this time, they were seeking a way to create a 'new relationship' with First Nations peoples.¹² To overcome the reluctance of the province, First Nations threatened to withdraw their commitment to treaty-making and return to protest and litigation strategies if self-government was not up for negotiation. In the end, the province relented and self-government was included.

Elsewhere in Canada, Aboriginal self-government is negotiated through bilateral negotiations between First Nations and the federal government, based on the latter's 1995 Inherent Right policy. The presence of the provincial government in the B.C. Treaty Process, therefore, gives British Columbia greater input into self-government arrangements than would typically be the case under the federal policy. The province is seeking to use this position to curtail Aboriginal powers of self-government, limiting them to control over issues of cultural import that do not infringe on the provincial government's ability to manage B.C.'s economy. Indeed, the recently elected B.C. Liberal party has gone so far as to take legal and political action against Aboriginal self-government. When they were the provincial opposition to the NDP, the B.C. Liberals launched a court challenge against the Nisga'a treaty—a treaty signed outside of the B.C. Treaty Process—arguing that this treaty established an unconstitutional third order of government within the province. Once they came to power, the B.C. Liberals dropped their lawsuit against the Nisga'a treaty;¹³ however, they later initiated a referendum on the provincial treaty mandate that included a question on the issue of Aboriginal self-government. This question asked 'Aboriginal self-government should have the characteristics of local government, with powers delegated from Canada and British Columbia. Yes or No.' In this manner, the B.C. Liberals hoped to restrict their negotiation mandate to considerations of Aboriginal self-government limited to the characteristics of municipal governments, a position that First Nations find wholly unacceptable and contrary to their notion of sovereignty. By fortifying this position with the semblance of popular consent, the B.C. Liberals sought to impose their own agenda on self-government negotiations, ensuring that First Nations received only those powers of governance that are of little consequence to the provincial government.

The governmentalist prudentialism of the federal government with regard to self-government is more expansive than that displayed by the

provincial government. For the federal government, Aboriginal self-sufficiency is not a threat (if carried out in an economically rational manner) because it promises to reduce First Nation dependency on federal resources. For this reason, the federal government's aim is to shape forms of Aboriginal self-government in a manner that reduces the cumbersome responsibility they possess toward Aboriginal peoples. In addition, the federal government seeks to define First Nations governments within a Canadian legal framework that makes these governments more compatible with higher levels of state authority. To achieve this goal, the federal government emphasizes notions of 'capacity building' and government 'accountability' in attempts to use the treaty process as a means to ready First Nations governments for the responsibilities of liberal capitalist governance. However, the federal government remains hesitant about accelerating the move toward increased Aboriginal autonomy, and prefers to delay the expense and hassle of final treaty settlements; therefore, governance initiatives appear to be focused on socializing First Nation governments to accept the administrative and economic norms of the existing governmental order, rather than offering any definitive sense of Aboriginal sovereignty. Thus, like the provincial government, the federal government is not engaged in a dialogical process directed toward the creation of self-determination arrangements reflective of both Aboriginal and non-Aboriginal interests; instead, self-government negotiations offer the opportunity to realize practical governance objectives that only partially reflect the interests of First Nations communities.

Based on the reluctance of the non-Aboriginal governments to sincerely engage in governance negotiations that recognize Aboriginal claims to sovereignty, First Nations are often motivated to implement tactics contrary to the logic of their professed Aboriginal rationalism. This entails instrumental actions designed to force non-Aboriginal consideration of governance alternatives that extend beyond the symbolic powers typically offered. The two most basic points of leverage available to First Nations peoples are legal action and political protest. Since both non-Aboriginal governments refuse to engage in negotiations with First Nations who initiate legal actions with regard to Aboriginal title, the former strategy is used less frequently by Aboriginal peoples involved in the treaty process. However, some First Nations have successfully brought forward legal cases relating to issues of the need for consultation over land use planning in traditional territories that have expanded Aboriginal governance powers in the pre-treaty environment,¹⁴ while others, such as the Haida (see below), have opted to defer involvement in the B.C. Treaty Process while they funnel their land claims through the courts. First Nations also assert their powers of self determination and

sovereignty through political actions, such as through the 'exercise of their Aboriginal rights' whereby they cut logs or undertake other economic activities on traditional lands without the permission of the non-Aboriginal governments. It is hoped that displays of Aboriginal political and legal force such as these will convince the non-Aboriginal governments to engage in a rational dialogue directed toward the resolution of treaties and move these governments away from arbitrary mandates that severely restrict Aboriginal powers of governance.

Aside from the activities of the three principles (the First Nations, the province, and Canada), there exists a host of other parties involved in undertaking strategic interventions directed toward influencing the nature of Aboriginal self-determination. These so-called 'third parties' (e.g., forestry companies, mining companies, environmental groups, labour) are provided official input into the treaty-making process through various consultative bodies, such as the Treaty Negotiation Advisory Committee (TNAC) and the various Regional Advisory Committees (RACs), that have been established to open the treaty process to a multitude of voices. However, participants on these committees often find the consultative opportunities provided to them to be minimal, so they pursue unofficial channels of input in order to ensure that their interests are considered. These activities include the lobbying efforts carried out by many in the business and resource sectors of the provincial economy, who work to convince politicians that Aboriginal self-governance arrangements should be designed in a manner that does not further complicate B.C.'s regulatory environment.

III. Redress Options

1-Current Status of Treaty Negotiations

At present, the B.C. Treaty Process is making some semblance of progress, with several tentative Agreements-in-Principle struck at the treaty tables, although key issues of disagreement between the parties have been 'punted' for the time being. This is a slight improvement from the virtual standstill that had resulted, in part, from the calling of a federal election in the fall of 2000 and a provincial election in the spring of 2001. In the lead-up to both of these elections, treaty negotiations were suspended while the non-Aboriginal governments ran their campaigns for re-election. Moreover, the provincial election ended with the opposition B.C. Liberal party ousting the New Democratic Party. Part of the B.C. Liberal election platform was a promise to hold a referendum on the province's treaty negotiation mandate, and soon after the election they froze treaty negotiations for a year in order to design and administer the referendum.

Even before these political interruptions to the treaty process, however, the negotiations were languishing, as the philosophies of Aboriginal rationalism and governmentalist prudentialism had begun to clash. First Nations charged that the non-Aboriginal governments were failing to live up to the recommendations of the B.C. Claims Task Force and were participating in the treaty process in 'bad faith.' The non-Aboriginal governments responded that Aboriginal governments were not yet ready for the governance and economic responsibilities they sought, and that careful research and consultation needed to take place surrounding treaty settlements to ensure that treaties did not cause more problems than they solved. In general, the parties were at odds over several fundamental issues. For example, recommendation 16 of the B.C. Claims Task Force Report (1991) suggests that 'the parties negotiate interim measures agreements before or during the treaty negotiations when an interest is being affected which could undermine the process.' However, the parties could not agree as to what 'interim measures' would entail; for example, would they require a moratorium on economic development in areas claimed by First Nations, or would they simply require co-management and consultation arrangements between non-Aboriginal governments and First Nations surrounding any potential projects? First Nations continue to press for what they consider to be 'real' interim measures, which are agreements that provide First Nations with a significant stake in economic activities on their traditional territories. In contrast, the non-Aboriginal governments argue that First Nation governance capacities are not yet at a stage where they can manage 'real' interim measures, and, therefore, they insist that there first be agreements that help First Nations governments develop improved decision-making processes. To meet this goal, the non-Aboriginal governments have introduced the term 'treaty-related measures' into the language of treaty-making to describe stage-related agreements between First Nations and non-Aboriginal governments that, amongst other things, assist First Nations in studying how they will manage issues of governance affecting economic development, leadership selection, etc., in a post-treaty environment.

Faced with the current impasse in treaty-making, the negotiators for the non-Aboriginal governments have been encouraged to move forward with discussions of interim measures and treaty-related measures. However, in their current form, these arrangements are still a far cry from the 'real' interim measures that First Nations desire and do little to ameliorate the poverty that is prevalent on Aboriginal reserves. As First Nation debt loads rise, and the treaty process crawls to a near halt, Aboriginal leaders search for immediate returns from the treaty-making

process that will improve the quality of life on reserves in the here and now.

This desire to see tangible improvements in First Nations communities and broader stability in B.C.'s economic climate, alongside growing frustration amongst Aboriginal and non-Aboriginal peoples with regard to the slowness of the treaty process, has led the BCTC and the principals to form a tri-partite working group to examine how the treaty process might be improved. Rather than address the different discourses guiding their treaty strategies or the substantial divide between their interpretations of the ultimate goals of treaty-making, however, the parties have focused their attention on making procedural adjustments to the treaty process. The key adjustment they recommend is to permit First Nations and non-Aboriginal governments to pursue 'incremental' treaty-making, a process in which the parties build settlements in a piecemeal fashion, allowing them to implement elements of the treaty prior to final settlement. The stated rationale guiding this new approach is that it will allow the parties to construct a mutually profitable relationship with one another that will have immediate economic and political benefits for Aboriginal and non-Aboriginal communities (Tripartite Working Group, 2002). However, some First Nations observers have described this approach as one of seeking 'incremental certainty,' not treaty-making, and therefore view it as the latest development in the non-Aboriginal strategy of governmentalist prudentialism. For the Aboriginal critics of incremental treaty-making, these procedural adaptations distract the parties from the real barrier to treaty settlement—the rigid negotiation mandates of the provincial and federal governments that prevent them from framing their concerns in the language of sovereignty.

As the province, armed with its dubious referendum results, moves towards solidifying untenable negotiation positions on topics of self-governance, taxation, environmental standards, etc., the parties are likely to become more firmly rooted in an intractable dispute with regard to the substantive goals of treaty-making.¹⁵ For this reason, no amount of tinkering with the procedural apparatus of the B.C. Treaty Process is likely to dramatically alter the course of treaty-making in B.C. Indeed, the prospect of treaty settlements in B.C. appears to be fading rapidly, despite the emergence of a few partial and as yet unratified AIPs.

2-Ascendancy of Prudentialism

Rather than bend to the justice demands of First Nations and the dialogical requirements of Aboriginal rationalism, it appears the discourse of governmentalist prudentialism is becoming more entrenched. Indeed, political-economic transformations at the global level are contributing

to the ascendancy of the governmentalist approach to treaty-making. In this regard, Zygmunt Bauman (1999) delineates a 'political economy of uncertainty.' In this environment dominated by unharnessed forces such as 'recession,' 'fall in market demand,' 'downsizing' and 'globalisation,' individuals are left less 'certain' about the future of their livelihoods. As well, the increased capital mobility accompanying economic globalization brings with it heightened pressure on local regions to create an inviting and secure investment climate (Ross and Trachte, 1990). Unless localities implement capital-placating measures, they face the risk of industries withdrawing investment and transplanting their operations to other, more inviting regions, taking with them the jobs and the livelihoods of local citizens. There is no simple calculus that local representatives can follow to ensure continued investment, and capital at times withdraws for reasons beyond local control; nonetheless, today's politicians and civil servants are expected to manage local and regional economies in a manner that reduces the risk of such calamities.

In the shadow of these global risks, the 'certainty' promised by governmentalist prudentialism has wide appeal. Certainty is said to bring clarity with regard to the jurisdiction and law-making authority of federal, provincial and local governments within B.C., which provides consistency with regard to regulations across all three levels of government, and this is viewed as a necessary starting point for attracting investment. Moreover, business leaders and politicians trumpet certainty as a means for creating existential security for ordinary working people, who will allegedly receive the benefit of stable livelihoods once the era of governmentalist prudentialism is ushered in. However, certainty for the latter may be nothing more than a false hope since the certainty of the global economic elite is often dependent on the uncertainty experienced by subaltern groups in local contexts (Bauman, 1999). Indeed, it is ideal for global capital if localities become disciplined by the forces of uncertainty (O'Malley, 2000); that is, that they come to fear the loss of investment and, in response, comply with the needs of investors who seek maximum flexibility in their operations—a flexibility that often means anything but stability and security for workers.

This hegemony of governmentalist prudentialism extends beyond B.C.'s treaty-making process and influences Aboriginal policy decisions across Canada. One key example of the spread of this discourse is the now dormant *First Nations Governance Act* that was introduced in the federal Legislature in June of 2002.¹⁶ According to the federal government, this *Act* 'represents a fundamental shift from the colonial approach of the Indian Act' (Indian Affairs Minister Robert Nault, cited in Babbage, 2002) and was considered an interim step toward self-government. The

political goal of the Act was, through 'extensive' consultation with First Nations individuals,¹⁷ to strengthen Aboriginal governments and to improve the economic and political health of their communities. The Act would have required First Nations to develop codes for how they select their leaders, spend government funds, and administer their governments. The Act was designed to address four areas of Aboriginal governance: legal standing and capacity; elections and leadership selection, powers and authorities, and financial and operational accountability. With respect to the legal standing and capacity of First Nations governments, the Act provided First Nations bands with the legal standing, rights, powers and privileges of a natural person. This would have allowed the band to enter into contracts and agreements, to acquire and dispose of property, to raise, invest and borrow money, and to sue and be sued. The elections and leadership portion of the act required that First Nation bands devise codified processes of leadership selection, whether based upon election or custom. The powers and authorities component of the Act was intended to strengthen the ability of First Nations bands to establish and enforce bylaws. Finally, the financial and operational accountability goals of the Act were intended to create relations of accountability and transparency between First Nations governments and band members.¹⁸ The Act also would have brought First Nations governance under the authority of the *Canadian Human Rights Act*, a move applauded by some First Nations women's organizations and other groups critical of alleged corruption in First Nations governments. These changes, and others proposed through *The First Nations Governance Act*, were said to be a necessary adjustment to the *Indian Act*, now acknowledged by federal administrators as placing severe restrictions on First Nations governments and limiting their ability to effectively govern their populations.¹⁹

Yet despite their dislike for the *Indian Act*, many First Nations leaders did not embrace the attempt to reformulate governance provisions.²⁰ The national body representing First Nations in Canada, the Assembly of First Nations (AFN), criticized the Department of Indian Affairs and Northern Development (DIAND) for building their new legislation on the colonial edifice of the *Indian Act*.²¹ They argued that the federal government should have instead moved more definitively toward fulfilling its Inherent Right policy by negotiating self-government arrangements with First nations in a more efficient manner.²² For the AFN, the *First Nations Governance Act* represented a subtle ploy by non-Aboriginal governments to release themselves from some of the burden of their fiduciary duty to Aboriginal peoples without necessitating recognition of Aboriginal sovereignty. Although the *First Nations Governance Act* did not replace the self-government negotiations promised through the federal

Inherent Right policy, First Nations feared that the Act would be used as a preparatory tool to narrow down First Nations governance powers below the level of Aboriginal sovereignty, equating Aboriginal communities with municipalities rather than recognizing them as nations.

The *First Nations Governance Act* therefore offered benefits but also carried risks for Aboriginal governments. Indeed, it is this dual character of the Act that made it appear to some an ideal tool of governmentalist prudentialism. By promising to give First Nations greater opportunities for economic development, the Act provided a potential means for establishing clearer political and economic standards on reserves, which ideally would have improved the governability of First Nations by ensuring that transparent codes were in place and accessible to investors, government officials, and others who have business in these regions. In this sense, the increased autonomy available to First Nations would have come at the price of establishing systems of self-regulation that met the certainty needs of neoliberal globalisation. While this autonomy could arguably be perceived as a basis on which First Nations could have reconstructed their traditional sovereignty, it is more likely that such autonomy would be strategically contained, and that the assimilative force of competitive neoliberalism would compel First Nations to manage their communities in a manner that marginalizes any unique demands or aspirations that threaten to disrupt the investment climate. Thus, the *First Nations Governance Act*, like the self-government negotiations conducted through the B.C. Treaty Process, appears to have been directed toward establishing only a 'measured' sovereignty that incorporates circumscribed powers of Aboriginal self-governance into the normal functioning of an emerging neoliberal political economy. For First Nations, this would have provided only a simulacrum of genuine political autonomy, and would have suppressed any political and economic aspirations they might have that are incongruous with the neoliberal model. Although this Act has for the moment disappeared, it would be naïve to think that it will not reappear in a new guise, especially considering the resources the government invested in its development and their ideological commitment to neoliberal reform of First Nations governance.

3-Aboriginal Counter-Strategies

While some B.C. First Nations embrace the logic of governmentalist prudentialism, accepting the promise of economic development in exchange for political cooperation, others reject it in its entirety, or engage with it only in limited fashion.²³ These more skeptical groups attempt to devise strategies that force the non-Aboriginal governments to concede broader powers of Aboriginal self-determination that may include sov-

ereignty. These strategies occur both within the confines of the B.C. Treaty Process and through coalitions built at the national and international levels. For the most part, they are directed toward creating economic 'uncertainty' in order to undermine the strategy of governmentalist prudentialism that is aimed principally at developing relations of governance and political jurisdiction in order to provide a secure Canadian investment climate.

One strategy that First Nations are currently undertaking involves legal challenges. Buoyed by the Supreme Court decision in *Delgamuukw*, which affirmed that Aboriginal title to the land does not exist on the basis of a declaration of the Crown, but instead accrues to First Nations on the basis of their historic occupancy of a region (Slade and Pearlman, 1998; Slatterly, 2000), First Nations are turning to the courts to further clarify their Aboriginal title, and to ensure that they are properly consulted regarding resource development activities taking place on their traditional territories. For example, in March 2002, the Haida won an important decision against the B.C. government and a forestry corporation (Weyerhaeuser) that obliges these parties to consult with the Haida not only on proven title but also on claimed title (Gibson, 2002). This legal victory was followed by the Haida launching a larger suit against the B.C. government for Aboriginal title to all of Haida Gwaii (the Queen Charlotte Islands) in the hope of building on the Supreme Court's decision in *Delgamuukw* (Gibson, 2002; Inwood, 2002). The success of the Haida also inspired the Tsawwassen First Nation to launch a court case of their own, suing B.C. Ferries and the Vancouver Port Authority for the nuisance effect the two ports have had on the Tsawwassen Reserve (Fournier, 2002; Tsawwassen First Nation, 2002).

A second strategy involves direct action challenges to provincial and national political and economic stability. These challenges can take the form of blockades on roads crucial to resource transportation (however, First Nations have not used this strategy in a coordinated manner since the initiation of the B.C. Treaty Process), the 'exercise of Aboriginal rights' through the cutting of trees on Aboriginal traditional territories (e.g., the Westbank First Nation engaged in logging activities within its traditional territory which resulted in the non-Aboriginal governments signing an interim measures agreement), public protests designed to raise awareness of Aboriginal discontent (e.g., recent protests in front of the provincial legislature with regard to the treaty referendum), international efforts to make investors and other key figures aware of Canada's failure to live up to United Nations principles of Aboriginal governance (a strategy more often employed by the AFN at the national level than by individual bands), and the mobilization of discourses of genocide and

ethnocide to describe the past crimes of Canada and B.C. against First Nations peoples (e.g., this language is used to describe Canada's residential schools and the destructive impact these institutions had on Aboriginal communities).

A third strategy involves attempts to create divisions between Canada and B.C. by playing the parties off of one another. For example, the First Nations Summit considered the option of pursuing bilateral negotiations with the federal government in response to the referendum conducted by the B.C. Liberals. The exploration of this change in strategy reflects a possible convergence between First Nations involved in the treaty-making process and those who have refused to participate in treaty-making, in particular, those First Nations belonging to the Union of British Columbia Indian Chiefs (UBCIC). The UBCIC has long held the position that the province should not be involved in treaty negotiations; that instead, these negotiations should be nation-to-nation, involving only the federal government and Aboriginal tribal groupings. In this sense, the UBCIC has long held a sovereigntist stance with respect to treaty-making and has steadfastly refused to engage in negotiations where their political autonomy is not acknowledged. Gradually, some of the First Nations involved in treaty-making are coming to realize that acknowledgment of their sovereignty is unlikely to occur through the B.C. Treaty Process, so they are beginning to appreciate the merits of the bilateral model long advocated by the UBCIC.

IV. Conclusion

The pattern of government initiatives and Aboriginal counteractions attests to the growing rift between the now *non*-negotiating parties, rendering 'reconciliation' a distant and perhaps unattainable objective and suggesting that it is not an end to which the parties are mutually committed. The dubious referendum initiative, doubtless undertaken to put the brakes on Aboriginal title and inherent rights, stands as an egregious example of 'bad faith' in the manner in which it oversimplified treaty issues, ignored constitutionality and overrode the responsibilities of the federal Crown. On the federal side, the *First Nations Governance Act* was purportedly launched to transfer responsibility for governance codes, by-laws and fiscal management from the federal government to bands as an interim step to self-government. Reflecting their fears of invasive policy initiatives, however, Aboriginal leaders complained about a lack of consultation, probable restriction of self-government to the powers stipulated in the bill, downloading of government responsibilities without providing new resources, backdoor Amendments to the 1982 *Constitution Act* that would curtail inherent rights and spur assimilation,

and generally misdirected efforts toward updating an antiquated *Indian Act* instead of advancing treaty negotiations toward the full realization of Aboriginal governance. The prudentialism of the *First Nations Governance Act*, therefore, was seen by many of the chiefs as an intricate trap, sanctioning local practices of autonomy while converting Aboriginals, more deeply, into legal subjects of the Crown. Against all of these unfavourable signs and developments, Aboriginals are mobilizing 'War Councils' and resuming court challenges and blockades, further widening the chasm of distrust between the negotiating parties, and leaving behind the communicative precepts of Aboriginal rationalism.

Our supposition is that much of the acrimony in the negotiations is attributable to the converse underlying fears of Aboriginal sovereignty and neo-colonialist appropriation. From the Aboriginal point of view, governmentalist prudentialism is the Trojan Horse of assimilation. From the non-Aboriginal point of view, Aboriginal rationalism is the Trojan Horse of sovereignty and consequent balkanisation.²⁴ If unfettered Aboriginal self-determination is unacceptable to the provincial and federal governments, and if municipalisation or other trivialisations of self-government is unacceptable to Aboriginals, what alternative remains that can earn the trust of all parties?

In this regard, Bradford Morse (1991:7) has observed that,

Indian tribes in the USA have been defined as 'domestic dependent nations' with internal sovereignty by the U.S. Supreme Court for over 150 years. This has not promoted secession there, and...is unlikely to do so in Canada.

Kiera Ladner (2001:30) also notes that 'Canada has a long history of dealing with Aboriginal people as nations,' and urges that Aboriginal peoples be accepted as full partners in Confederation, with a legally recognized relationship to the Crown. More recently, Stephen Cornell (2002), co-director of the Harvard Project on American Indian Economic Development and current advisor to the Assembly of First Nations in Canada,²⁵ has documented the beneficial effects of a 'domestic nations' framework for Aboriginal communities in the U.S.. Sovereignty (or 'jurisdiction' — i.e., genuine decision-making power) is shown to be a necessary condition of sustained development on American Indian reserve lands. That and effective governing institutions that match contemporary Indigenous cultures, plus strategic long-term planning, add up to 'nation-building,' a process that Cornell sees under way in the British Columbia treaty talks. Forgiving his underestimation of the resistances to sovereignty both within and without Aboriginal communities in B.C., Cornell's argument is that resistances wither and even turn to support when the economic rewards of sovereignty become transparent and re-

sult in spin-off benefits to non-Indians. There are, of course, recognized dangers in the 'nations-within-nations' framework: fragmentation of state, lack of governmental capacity in the smaller dependent nations, sovereign entities that are more prone to corruption and human rights abuses, and ethno-political groupings within fixed borders that only reinforce the nepotistic reserve structures previously imposed by the Indian Act. These risks, however, may be preferable to government attempts to reduce self-government to a 'form of delegated authority with municipal-like powers' (Kulchyski, 1995:66). The choice is often not so stark since, when governments seek to valorize aspects of Indigenous governance that complement their own administrative goals, the exercise of incorporation can have unintended consequences. As O'Malley observes (1996:316),

...Indigenous forms of governance are increasingly appropriated to achieve ends sought by political programmers. In the process, however, it is evident that the subjects of rule have also brought the governors into alignment with *their* wills and *their* governances. Key liberal technologies of rule are reshaped or abandoned in pursuit of 'better' government. A new irony begins to emerge in which (White) government has to accept Aboriginal structures in order to have greater control over *its* own affairs.

Of course, this fortuitousness and inadvertence is not what Cornell has in mind when he distinguishes 'nation-building' from a mere amalgam of Indigenous and non-Indigenous structures of governance. Yet, in the implications of his own data that show nation-building justified by economic affluence, there is, at best, a 'measured sovereignty' within reach of Aboriginal struggles and possibly attainable over the course of revived treaty-talks. This is a sovereignty that is, in conception, paradoxical, since it can be pursued only along lines that enhance or leave undisturbed the hegemonic project of the larger nation, be it the province of British Columbia, or Canada. It is for this reason that unabashed sovereigntists such as Taiaiake Alfred (1995; 1999) would equate Aboriginal rationalism in this measured sense with cooptation, since it exploits values of the larger society (e.g., materialism) in ways that resonate, ultimately, with the aims of governmentalist prudentialism, and abandons traditional indigenous truths. Such objections underscore a fundamental and, as yet, unanswered question: will the treaty process in British Columbia merely renegotiate the terms of colonialism, or will it provide the political and economic basis for a re-assertion of Indigenous values and determined nation-making amidst the realities of the contemporary world?

Notes

1. The authors wish to thank Bill Carroll, John Torpey, and the anonymous journal reviewers for their helpful comments and suggestions. A previous version of this paper was presented at XV World Congress of Sociology, The University of Queensland, Brisbane, Australia, July 9, 2002.
2. Our intention in this paper is to synthesize the information gathered in order to highlight the relevant discursive frameworks. Specific quotes are generally avoided; as well, confidentiality/anonymity were pledged to informants, often themselves engaged in delicate negotiations.
3. The lifeworld is dependent on the material resources planned and generated by the system, and the system is dependent on the socialization that occurs in the interactive milieu of the lifeworld.
4. Again, it should be noted that, for Habermas, the 'ideal speech situation' is only intended to serve as an 'ideal.' It is not expected that this situation will be met in full (or even at all in many cases).
5. These views are excluded from the treaty process through the activities of both Aboriginal and non-Aboriginal leaders. On the Aboriginal side, the male leaders who comprise the majority of the First Nations Summit (the assembly that represents First Nations within the process at the provincial level) cannot be said to speak on behalf of large segments of the overall Aboriginal constituency, which includes off-reserve Aboriginal persons and Métis. Moreover, approximately 30% of the First Nations in B.C. have elected to boycott the B.C. Treaty Process because they feel negotiations should take place on a nation-to-nation basis with Canada, excluding the government of British Columbia from the treaty process. Thus, many voices are excluded from the First Nations Summit decision-making process and thereby also from the treaty negotiations. On the non-Aboriginal side, the governments of British Columbia and Canada have been able to use their significant power advantages at the treaty tables in order to limit negotiations to areas of instrumental concern ('certainty'), subordinating questions of past injustices to the imperative of preparing British Columbia for the future economic order.
6. First Nations interpret the rigid negotiation mandates of the non-Aboriginal governments as a barrier to realizing their visions of just treaty settlements. They respond to these mandates by engaging in legal and political actions against the non-Aboriginal governments to try to move them from their fixed positions. As the parties' posi-

tions become more intractable, they are more likely to engage in instrumental and strategic interaction with one another.

7. The differing cultural heritages of the parties to the negotiations exacerbates this problem, as the parties tend to have trouble agreeing on what basic concepts such as 'good faith' and 'ownership' mean.
8. It could be argued that Aboriginal rationalism would best be pursued as a litigation strategy (i.e., through the courts) since this would be the most 'rational' strategy for First Nations to secure adequate land claim settlements. Although this would be a rational course of action, it is not 'rational' in the Habermasian sense of communicative rationality because it is adversarial and is not grounded in consensual dialogue between the parties.
9. The term 'capacity-building' is used in the treaty-making lexicon to refer to the development of human, technical and financial resources in First Nation communities. For example, the province suggests that 'some First Nations may require capacity building to respond to provincial requests for consultation concerning Aboriginal rights, and subsequently to carry out the authorities that they will assume under treaties' (Treaty Negotiation Office, n.d.).
10. The term 'affirmative repair' is adapted from the work of Nancy Fraser (1997) and used here to describe responses to injustices that are designed to maintain and reproduce the status quo.
11. At the time of the B.C. Claims Task Force, the right-wing Social Credit party was in power in the province. Although this government made the historic decision to participate in treaty-making with First Nations, its members did not favour Aboriginal self-government, fearing that this would create a third order of government and have negative consequences for the provincial economy. Their opposition, the New Democratic Party, was elected soon after the release of the B.C. Claims Task Force Report, and had promised in their election campaign to negotiate Aboriginal self-government.
12. In 1995 the federal government recognized the inherent right to Aboriginal self-government as an existing right under S. 35 of the Constitution Act, 1982 (Ladner, 2001).
13. Since the lawsuit was filed against the Attorney General of the province, the B.C Liberals, if they had continued their challenge while in government, would have been suing themselves.
14. Prior to taking their claim for Aboriginal title to Haida Gwaii to the Supreme Court, the Haida won a case against the B.C. government and the logging company Weyerhaeuser, requiring these parties to consult with the Haida regarding any forestry activities in their traditional territories.

15. In the aftermath of the referendum, Attorney General Geoff Plant has tried to adopt a more conciliatory and innovative approach (at least in theory), with talk of increased flexibility and a need for compromise. There is talk of 'revenue sharing' (i.e., shared profits from resources), 'co-management' of lands (i.e., shared Aboriginal and non-Aboriginal jurisdiction over lands) and 'incremental' treaty-making (i.e., treaty-making performed through a series of sub-agreements). The potential downside of this approach is that discussion of these issues may serve as a distraction to reaching a final treaty, offering First Nations economic incentives instead of autonomy.
16. It appears that the *First Nations Governance Act*, in its current form, will not be implemented. Prime Minister Jean Chretien's replacement, Paul Martin, has shown less support for the Act and for the efforts of former Indian Affairs Minister Robert Nault. Therefore, it is probable that the Act, which has not managed to make its way through parliament during Chretien's tenure, will be revised significantly once Martin assumes power. In addition, it should be noted that, while we focus our remarks on the *First Nations Governance Act*, the federal legislative campaign also envisions a *Specific Claims Resolutions Act* and a *First Nations Land Management Act*. Our specific interest in the *Governance Act* is because of its relationship to the sovereignty issue. However, it is also necessary to note that the entire legislative package proposed by the federal government seems to equate self-determination with economic development.
17. Aboriginal opponents to the *First Nations Governance Act* argue that this consultation was never 'extensive'; rather, they suggest that the consultations were carried out in a haphazard way, relying on Internet and phone-based responses that did not even track whether the respondent was Aboriginal or whether repeat responses were received.
18. This area of emphasis in the *First Nations Governance Act* has caused offence to First Nations. In the words of the former Grand Chief of the Assembly of First Nations, Mathew Coon Combe, 'Native Governments will continue to design and implement their own accountability regimes independently of the Act...Mr. Nault is attempting to write our laws for us' (quoted in Chasiakowska, 2002).
19. Under the *Indian Act*, First Nations are restricted in their ability to exploit the resources located on reserve lands. For example, many First Nations have trouble accessing loans since banks do not recognize them as the owners of their lands and therefore they are perceived as lacking sufficient collateral.
20. Thus far, First Nations have been less critical of other initiatives that

the federal government was expected to launch in the fall of 2003 to assist First Nations in their economic development. These initiatives were to include the creation of a First Nations Finance Authority (Bill C-19) that would allow First Nations to collectively guarantee each other's credit as they borrow money from national and international sources. This measure would permit First Nations to gain much needed access to loans so that they can finance economic and infrastructural projects on reserves (Dunfield, 2002). It was a major disappointment, therefore, to see this bill die on the order paper with the prorogation of the second session of the 37th Parliament.

21. Here, we are referring to the AFN under the leadership of Mathew Coon Come. It appears the current leader of the AFN, Phil Fontaine, is receptive to some form of government revision to the *Indian Act*.
22. Indeed, some First Nations leaders in Manitoba have pointed out that at the same time Nault was launching the *First Nations Governance Act*, he was reducing funding for the *Manitoba Framework Agreement Initiative*, a self-government initiative that came into being in 1995. The *Manitoba Framework Agreement Initiative* is a negotiation process intended to provide First Nations in the province with self-governing powers that correspond to the federal government's Inherent Right policy and which free Manitoba First Nations from the governmental restrictions of the *Indian Act*. It remains to be seen whether or not this initiative will move forward with any urgency now that the *First Nations Governance Act* appears to be the federal government's primary concern (Kruzenga, 2001).
23. This point refers to the distinction articulated earlier in the paper (pp. 10-11) between First Nations who have responded to non-Aboriginal government negotiating positions through a strategy of 'Aboriginal pragmatism' and those who respond by developing unmovable positions of their own. Some First Nations accept negotiation parameters that severely restrict their potential land and sovereignty claims. This is viewed as a pragmatic strategy for bringing immediate benefits to the First Nation community and for revitalizing the Aboriginal culture through the treaty settlement lands and monies. Others argue that First Nations have waited 500 years for justice and they will not settle for insufficient settlements simply to gain fleeting economic rewards. This latter group is often critical of those leaders who prefer a strategy of Aboriginal pragmatism. For example, Chief Bill Wilson, a former member of the First Nations Summit Task Force, states '(some Aboriginal leaders) are more prepared to sell out for a few bits of beads and trinkets than they are in trying to get the ultimate goal which is control of resources' (quoted in Mulgrew,

2002).

24. The fear of Aboriginal 'sovereignty' held by many non-Aboriginal persons is not of the term itself (or even of Aboriginal independence), but fear of Aboriginal title—i.e., Aboriginal ownership of the land and resources—that might detract from the security and 'certainty' of non-Aboriginal Canadians.
25. It is interesting that Aboriginal groups in Canada are increasingly turning to the research performed by the Harvard Project on American Economic Development and, in particular, the work of Stephen Cornell, rather than to models that exist within the Canadian context (e.g., the James Bay Northern Quebec Agreement and the Yukon Indians Umbrella Agreement). It should be noted, however, that in these two Canadian examples of treaty-making, self-government does not receive the same attention that it does in B.C. Treaty Process. Until the mid-1970s the federal government typically avoided the topic of self-government, and from 1975 to 1998 it was generally accepted that self-government arrangements would be negotiated separately from treaties. During this time, federal policy was aimed at keeping self-government separate from constitutionally protected Aboriginal and treaty rights. Although for reasons of time limitations stemming from the non-Aboriginal governments' desire to launch a massive hydro-electric project, the James Bay Northern Quebec Agreement broke from the pattern of separating self-government and Aboriginal rights, the governing powers distributed through the treaty are nonetheless minimal compared to those negotiated in the Nisga'a treaty (which provides the Nisga'a Government law-making powers) and those under consideration in the B.C. Treaty Process (Rynard, 2000). In the Yukon Indians Umbrella Agreement, self-government was not negotiated; instead, the federal government promised in the agreement to engage in individual self-government negotiations with each of Yukon First Nations. For this reason, these earlier treaties do not provide a suitable model for envisioning Aboriginal self-determination through treaty-making.

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