

Shiri Pasternak and Dayna Nadine Scott

Introduction: Getting Back the Land

Who brought law to a new land already dense with legal orders and declared theirs universal? Who claims absolute authority to determine land access and use based on these laws? Whose laws *should* govern the resource economy? In Canada, these questions are essential for understanding why dispossession is ongoing and how it can be reversed.

Canada's claim to exclusive territorial authority across all the lands and waters is a failed project. But that fact has only succeeded in more complex legal and political subterfuge as Canada has sought to mitigate this uncertainty with grander performances of recognition. The essays in this issue offer diagnosis, critique, and radical visions for the future from some of the leading thinkers and experts on the tactics of the settler capitalist state, and on the exercises of Indigenous jurisdiction that counter them. It provides readers with the developments on the ground that are continually moving the gauge towards Indigenous self-determination even in the face of ramped up nationalist rhetoric fueled by a divisive politics of extraction.

Canada has always been treated, internationally, as a repository of resources for other nations. Rupert's Land—a massive region that included the

The South Atlantic Quarterly 119:2, April 2020

DOI 10.1215/00382876-8177723 © 2020 Duke University Press

Hudson Bay and every stream, river, lake, and ocean into which it flowed, covering nearly a third of present-day Canada—was literally regarded as a fur warehouse for the British. The abundance of the land was like a windfall for the English. And despite the fact that only a few isolated forts were operated by these countrymen—and that most of the hunting, trapping, long-distance travel, and survival was done by Indigenous labor—these sovereign claims informed a national, masculine, White settler self-image of adventurers taming a vast and rugged wilderness. But none of that wealth was actually theirs to take, or Canada's to give.

The frontier rhetoric that drives the contemporary slogan of national pride, #WeTheNorth, and that produced the influential “staples theory,” continues to infuse our politics, churning with protracted debates about specific fossil infrastructure projects, such as the Trans Mountain Expansion Pipeline. These debates, at their core, are as much about to whom the “We” refers, as they are about whether we want, need, or will be saddled with another “outlet” for our dirty tar sands oil.

The “staples theory” is a domestic economic theory that grew out of the particular historical, ecological, and communicative conditions of life in this northern settler colony, as first theorized by Harold Innis (1956). The Canadian economy is susceptible to the “staple trap” that has defined it—prone to crisis based on an over-reliance on raw commodity exports—and the structures of financial and commercial investment associated with primary resources (Watkins 2007). The natural resource sector is also a historically vulnerable *labor economy* in Canada due to harsh winters and the ongoing crisis of seasonal unemployment (Struthers 1983). When a national economy emerged from the regional organization of staples at the turn of the twentieth century, the demand for massive labor consignment shaped the introduction of a federal welfare policy that divided seasonal workers into the “deserving” and “undeserving” poor. Much of this moral disciplining was driven by the farming industry and colonial imperatives to settle the west, urging workers to go “back to the land” to provide the labor power for the capitalist owning classes.

But the capitalist agenda was deeply and necessarily enmeshed in a colonial one. As Struthers describes it, no recognition was paid to the seasonal nature of unemployment. Rather, this moral rationale justified the deliberate formation of reserve armies of surplus labor, accomplished by moral invectives against citizens and through immigration policies designed to drive down wages by driving up supply (Struthers 1983). A key underlying agenda of these policies on migration, labor, and resource development was

driven by the need to secure the land. Without physical occupation, *legal* possession is insecure and land cannot be controlled. So, one way to read the political economy of Canada is by trying to understand how Canadians are disciplined through economic policy in ways that enmesh colonial capitalism. That is, by securing racial antagonism between Indigenous peoples and working-class peoples. For example, to gain social license to drill, Kinder Morgan jobs have been promised and exaggerated by hundreds of thousands by industry and governments, as reported by Robyn Allen in *iPolitics* (2017).

But perhaps undertheorized, as the essays in this issue demonstrate, “legality” is also a crucial resource in the struggle (Smith 2019). The underlying assumptions of settler state legality shape all of the mechanisms through which continuing dispossession and land alienation happens: the granting of pipeline easements, mining stakes, timber licenses. When Indigenous peoples put their bodies on the land in every way to contest these incursions (Elliot 2018), they force an encounter between Indigenous and colonial laws (Pasternak 2014), in the form of blockades, camps, checkpoints. And inevitably, this leads to confrontations in courts, and the application of the violent settler law of injunctions, as Ceric demonstrates in this volume. These are the “sharp ends” of the law, the encounters Indigenous peoples are often involuntarily drawn into, which entail the use of foreign legal tools and logics in legal venues not their own.

The stark divergence between the relational, generative, Indigenous economies of care that are celebrated here (for example, in Pictou, as well as in Curran, Slett, and Kung in this issue), and the cold extractive vision of the state that consumes all life in its path (as theorized in Benton-Connell and Cochrane in this issue), informs the trajectory of the complex relationship between movements for Indigenous sovereignty and environmental justice.

The Legacy of Arthur Manuel (b. September 3, 1951–d. January 11, 2017)

The origins of this volume rest on the work Shiri was doing with Secwepemc leader Arthur Manuel for the decade before he passed away suddenly in January 2017. In particular, two of the interrelated projects they worked on closely were around the meaning of Indigenous economies and identifying ways to antagonize capital, leveraging so-called rights and title “uncertainty” to agitate for full recognition of Indigenous inherent rights. As part of the effort to water the seeds of thought Art, as we called him, planted on these issues, Shiri helped organize a meeting in November 2018 hosted by the Yellowhead Institute—an Indigenous-led think tank at Ryerson University,

where she is Research Director. Partially funded through a grant held by Shiri and Dayna, land defenders and allies from across the country were invited to come together to discuss the meanings of Indigenous consent, and the barriers to the exercise of full Indigenous jurisdiction on their lands. All of the authors in this volume, save for Winona LaDuke and D. T. Cochrane, attended the workshop and contributed analysis toward resisting further land alienation and restoring Indigenous economies.

Art was always a big fan of these kinds of “think tanks.” He understood the value of bringing together academics, activists, and practitioners who were committed to generating strategies for real land restitution, diagnosing the barriers, and devising ways around whatever stands in the way. This volume contains thinking from some of the most experienced and visionary experts on what this change could look like in Canada; tactics that could also be applied far outside its false borders. For instance, these essays contemplate how financialization can be both a weapon used by and against First Nations to fight for land rights and title, how colonial legal mechanisms can also be asserted strategically to defend homelands under attack, where precedents can be refused and overcome. The essays also unequivocally reject various tools through which the settler state seeks to draw Indigenous peoples into the trappings of settler colonial capitalism, as ways of reacting to the mounting pressure from Indigenous peoples asserting their territorial authority, and their own notions of consent grounded in specific Indigenous legal, political and social orders. Theories of contract law, racial capitalism, flesh-eating cultures, and relational economies figure into these essays that contemplate the future of Indigenous life.

But first, to ground these articles, we want to take you to Secwepemcul’ecw, where the Manuel family and their ancestors have lived since time immemorial, to break down the fight they will never give up to get the land back.

Back to Where It Began

On August 24, 2019, the Manuel family organized a symposium. It was held at the community center in Adams Lake reserve on Secwepemc territory, on the western shores of Little Shushwap Lake as it enters and spills into the South Thompson River, under the dry, shrub land mountains fragrant with wild sage. The symposium was called “Recovering the Land, Rebuilding the Economy,” after the subheading of Art’s book *Reconciliation Manifesto* (2017). The gathering brought together activists and leaders from across the continent to discuss the revitalization of Indigenous economies through the assertion of territorial authority over their lands.

Art, The inspiration for the event, was an extraordinary leader who rose up through the normal violence experienced by Indigenous people in Canada. He attended residential school where the food was worse than what he ate in jail when arrested for train hopping the summer of his sixteenth year. And he experienced the intense fragmentation of his family and systemic poverty of their struggles, as well as employment discrimination in racist small towns near his Neskonalith reserve in the southcentral interior of British Columbia. But he was also born into a community and a family with a resilience so undefeatable it can hardly be imagined. His father was the late Grand Chief George Manuel who helped to form the first national Indigenous rights organization, the National Indian Brotherhood, but also the first international grassroots movement of its kind, the World Council of Indigenous Peoples. George was also a writer, and he penned *The Fourth World* in 1974 (recently reissued by Minnesota Press), theorizing and documenting the internal colonization of modern settler states (Manuel and Posluns [1974] 2018).

Arthur Manuel's daughter, Kanahus Manuel, is of course the grandchild of George, but also of Wolverine Ignace. As Kanahus describes below, Wolverine served one of the longest political prisoner sentences in Canada for his arrest following a sacred Sundance ceremony at Ts'peten, an area the Secwepemc (Shushwap) people have been using for centuries (now called Gustafsen Lake), that was ambushed by police in 1995. The Royal Canadian Mounted Policy (RCMP), shot seventy-seven thousand rounds of ammunition at the Indigenous warriors in the camp in a standoff that lasted a month. When Wolverine came out finally, it was not a surrender letter in his hand, as some reported, but as Tupac Enrique-Acosta recounted at the symposium, it was an indictment of the illegal settler occupation of his lands.

Kanahus Manuel in Her Own Words

At the symposium, Kanahus spoke on the second panel of the morning:

We made t-shirts that say, "We have to stop crying on the shoulder of the guy who stole our land." And what my dad, Arthur Manuel, meant, was that we've got to stop going to Ottawa. We got to stop going to the oppressors, the ones that continue to oppress us. We have to go international. One of the things that my slé7e, Wolverine, once said is that we are held *hostage* in Canada.

Even after Gustafsen Lake—it ended up being at the time the lengthiest and costliest trials in Canadian history—they were bringing out these Canadian laws, and one of the things my father said before he passed was, "You need to read that 'OJ' Pitawatikwat case. That's going to show you a lot about

what we talk about.” Wolverine always said, too, about third-party adjudication: you have to go out of the country for them to look at our rights, our land rights. During the Gustafsen Lake trial, Wolverine, he said, he was in the prison van with OJ. And OJ said, “If I get a day pass, I’m heading over there,” and he pointed to the mountains over stateside, where he was going to head for his freedom. And he did, he got his day pass and he fled. He fled over to the US.

And he was picked up, I’m not sure how much longer it took for him to get picked up, but he got to Oregon. And Canada wanted to extradite OJ back to face his Gustafsen Lake charges. And so he went to trial, an extradition trial in Oregon, with Justice Janice Stewart, who was the one who made the decision on that. And they refused to send OJ back. They really looked at the legal arguments. And what they said was that Canada was really political motivated, how they reacted to the Secwepmec land defenders there at Ts’Peten, at Gustafsen Lake. So, Canada went there thinking there were going to get their guy, they were going to cuff him, they were going to transport him, and that he was going to do his time in Canada. But that day, Justice Janice Stewart refused to send OJ back.

So OJ is still in political exile, a political refugee in the US And he continues to watch everything very closely. Wolverine adopted him as his son. I say all this because I not only learned from my father, but I also learned from Wolverine, and I stood by his side as we fought for our lands together, along with Flo [his widow since Wolverine passed away in 2016]. I see a lot of fighters here, we are fighters here in this community. We have a long line of resistance. And education. It comes not just because we are warriors, but because we’ve had a lot of education, many educators in our lives, about the land.

When we say we are asserting territorial authority, what I see is us going out onto our lands, us leaving the 2 percent Indian reserves. My father made that 2 percent figure famous. He said if you add up all the Indian reserves in Canada, it will add up 2 percent. Indigenous peoples don’t even have 1 percent of the land in Canada. And he would say, you don’t have to have a PhD in economics to know who will be rich and who’s going to be poor, looking at those figures. And it’s easier to fight the poor. It’s easier to fight the poor, he would say. But he would say, all of us are wealthy, if you look at our Indigenous economies. Our Indigenous economies are everything that flows from the land, and all of our beautiful reciprocal relationships that flow from the land, it’s not just the monetary value of the tree. My father would say, they look at a tree they see a 2x4, we look at a tree, we see our brother, our relation. That’s the different between how the economy is viewed. It’s a beautiful relationship with that tree. There are stories that go back to the beginning of time,

with our relationship to these trees. Some of these trees are the most powerful medicine men in our mountains, as elders have said to me.

So, when you want to challenge the government, my father would say, and challenge corporations, he would say, you have to create that risk and uncertainty. The more risk and uncertainty you create, with the businesses, the more certainty we are creating over our title. The more we stand on our title, the more uncertain their projects are. They know that as the title holders to our land, in our nation, the Secwepemcul'ecw, we have ten thousand plus men, women, and children in our nation—those are all the inheritors of the nation. They're the ones who inherent not just the responsibility but the privilege to be able to live on this land, exclusively live and use and occupy the territory—it's a big responsibility—we have a lot of responsibility for our territories—it means going out onto the land, it means building our homes on the land. We have heard many times in our meeting—you have to go out and build on the land to assert your jurisdiction.

Over the past two years, we have embarked on a huge mission to build tiny houses on wheels. We've built six tiny houses on wheels. And we brought the sixth one out to the memorial for my dad yesterday, and had the Secwepemc radio airing live there, and we're going to be building 4 more tiny houses there on wheels. And the reason we built them on wheels is because we've been faced with injunctions, we've been faced with police oppression and repressions, arrest and criminalization, and we built these homes so we could be mobile out on our land.

We come from one hundred eighty thousand square kilometers. And they want five hundred eighteen kilometers of this pipeline to go through Secwepemcul'ecw, our land. So, our hope is to get houses to all the spots where they're threatening construction. And we have someone here who put a drone in the sky, caught Trans Mountain doing construction, which we believe is illegal construction. Under the Thompson River, which is a big threat to our way of life and our salmon. There are over five hundred streams and rivers from the Alberta tar sands to my brother's home in Tsleil Waututh territory. *It must be stopped.*

Disintegration of Colonial Borders

Kanahus was a key organizer of the symposium and is a spokesperson in her family's struggle. She is on the frontlines of a movement to block the Trans Mountain Expansion Pipeline from being twinned through their territory. As she describes in her talk transcribed above, she is part of the Tiny House

Warrior Society that is building mobile houses along the proposed pipeline route. She and her brother, Ska7cis Manuel, have traveled internationally to the United Nations and to meet with investors and insurance companies in Europe to create economic uncertainty for the pipeline proponents and assert their jurisdiction in the face of state authorization for the pipeline's construction.

Today, Kanahus is a hero to so many, but she is also a lightning rod attracting racist and violent attacks on the frontlines in Clearwater, BC, where the Tiny House Warriors are currently attempting to stop a "man-camp" from being built. It is planned to house a thousand or more men as a mobile labor force for the pipeline. The dangers to women of these man-camps are well known and other communities have gone as far as stocking up on rape kits when such temporary settlements are built nearby.

Kanahus's safety is not secured by anything but the support of her family, community members, and the cross-movement alliances she has built across the world, and perhaps by her high-profile social media accounts. She is very clear, however, that wherever she goes in Secwepemc territory she is on her territory and the RCMP, pipeline workers, man-camp force, etc., have no jurisdiction on her land. She shows no fear in asserting this jurisdiction. Nor does she speak on behalf of only herself, but also, as all Salish people do, she speaks on behalf of the salmon—the critical foodstuff that literally keeps people alive and has been like kin to riverside communities since time immemorial. Kanahus is a fierce leader but she is defending the territory not just for her nation but also for the salmon nation, the critical food that literally keeps people alive and has been kin to both coastal and interior communities since time immemorial. She is deeply grounded in her responsibilities to care for these relations—at heart of the Secwepemc economy—and do what she must do to defend them. She is what stands between capitalist destruction and the future of Indigenous life.

Indigenous resistance is also the face of meaningful and just climate activism, which foregrounds the problem of land in a settler state. The Tiny House Warriors mark one point in a global constellation of Indigenous resistance. As the new Special Report on Climate Change and Land, the Intergovernmental Panel on Climate Change (IPCC) report states, where Indigenous peoples are stewards of their lands and their customary tenure is recognized, their knowledge and conservation economies hold powerful mitigation and adaptation strategies for holding the global temperature rise to 1.5 degrees C. This is the materialism of struggle, survival beyond rhetoric and hyperbole, keeping Indigenous justice in the foreground.

Just as her father had warned Indigenous people not to “cry on the shoulder of the guy who took your land,” at our workshop in November, Kanahus did not want to talk about negotiating with the Canadian government to get her land back. She implored the land defenders gathered around the table: “We have to burn down the forts.”

References

- Allan, Robyn. 2017. “Those Trans Mountain Employment Numbers? They’re Bogus.” *iPolitics*, August 30. ipolitics.ca/2017/08/30/those-trans-mountain-employment-numbers-theyre-bogus/.
- Elliot, Alicia. 2018. “A Memo to Canada: Indigenous People Are Not Your Incompetent Children.” *Globe and Mail*, January 5. theglobeandmail.com/opinion/indigenous-memo-to-canada-were-not-your-incompetent-children/article37511319/.
- Innis, Harold. 1956. *The Fur Trade in Canada: An Introduction to Canadian Economic History*. Revised Edition. Toronto: University of Toronto Press.
- Manuel, Arthur. 2014. *Unsettling Canada: A National Wake-Up Call*. Toronto: Between the Lines.
- Manuel, Arthur. 2017. *Reconciliation Manifesto*. Toronto: Lorimer Books.
- Manuel, George, and Michael Posluns. (1974) 2018. *The Fourth World: An Indian Reality*. 2nd ed. Minneapolis: University of Minnesota Press.
- Pasternak, Shiri. 2014. “Jurisdiction and Settler Colonialism: Where Do Laws Meet?” *Special Issue: Law and Decolonization*, Canadian Journal of Law and Society 29, no. 2: 145–61.
- Smith, Adrian A. 2019. “Toward a Critique of Political Economy of ‘Sociolegality’ in Settler Capitalist Canada.” In *Change and Continuity: Canadian Political Economy in the New Millennium*, edited by Mark P. Thomas et al., 167–84. Montreal, CA: McGill Queen’s University Press.
- Struthers, James. 1983. *No Fault of Their Own: Unemployment and the Canadian Welfare State, 1914–1941*. Toronto: University of Toronto Press.
- Watkins, Mel. 2007. “Comment: Staples Redux.” *Studies in Political Economy* 79: 213–36.