



Embedded Bordering

Territorial Authority, Indigenous Utilities, and Settler Colonialism in British Columbia

Abstract

Borders and bordering practices can be understood as both an act of sovereign authority and establishing the contemporary international system. The drawing of borders also simultaneously legitimizes the state's sovereign authority, creating a political community 'inside' borders through which modern politics takes place. These processes are especially pertinent for settler states such as Canada, whose sovereign authority over its recognized territory is contingent on the erasure of Indigenous sovereignty. However, Indigenous nations reject Canadian claims of settler authority and legitimacy, instead continuing to uphold their own modes of governance and relationships to territory. This contestation of settler territoriality is practiced in various ways, with this article exploring how energy utility governance and infrastructure act as bordering practices—that is, as a productive means of manifesting and demonstrating territorial authority. Through the British Columbia Utilities Commission's Indigenous Utilities Regulation Inquiry, we explore the contestation of territory through what we refer to as 'embedded bordering'. In doing so, we identify a tension between ongoing settler moves to dispossession alongside decolonial potential in the border-making practices of energy governance and infrastructure.

Keywords: borders, utilities governance, settler-colonialism, Indigenous self-determination, British Columbia

JOSHUA K. MCEVOY

Queen's University, Canada

LIAM MIDZAIN-GOBIN

Brock University, Canada

Introduction

Demarcating space through the drawing of borders and their materialization in bordering practices can be understood as a productive act. Amongst other things, borders and bordering practices produce identities, assign rights, and demonstrate authority and control. Borders are also generative of the contemporary international system, serving to legitimate the state's sovereign authority and creating an 'inside' within which modern politics take place (Salter, 2012). This is especially important for settler states such as Canada, whose sovereign authority over its recognized territory is contingent on erasing Indigenous nationhood and competing claims to authority. Such authority is further generative of wealth and capital accumulation through the dispossession of Indigenous peoples and the exploitation of colonized lands and resources. Nevertheless, the colonial project of Indigenous erasure has never been realized, and instead remains contested. Though the settler state attempts to reproduce its sovereign authority through an array of bordering practices and technologies, Indigenous nations resist by upholding their modes of governance and relationships with territory. Bordering technologies themselves are sometimes mobilized for such resistance, such the creation of passports by the Aboriginal Provisional Government in Australia (Mansell, 2017) or the longstanding tradition of First Nations using physical checkpoints on roadways into and through their territory (Midzain-Gobin, 2019). In this way, certain bordering practices and technologies can be understood at once as both an attempt by the colonial state to reconcile the contradictions of settler state sovereignty while also being generative of spaces for contention and resistance (Klein and Kothari, 2020; see also Müller, 2020 and Batterbury, Kowasch and Bouard, 2020).

In this article, we posit utilities¹ and their governance as a contested bordering technology in British Columbia, Canada. In April 2020, the British Columbia Utilities Commission (BCUC) submitted its final report as part of its Indigenous Utilities Regulation Inquiry ('the Inquiry' hereafter). The Inquiry was established in response to the rejection of S'cianew First Nation's application for an exemption under the *Utilities Commission Act* (UCA) as a municipality to provide utility services to a residential development, Spirit Bay Community, within its reserve territory. Over the course of thirteen months, the Inquiry deliberated over whether and how to regulate Indigenous utilities, such as what territories they could serve and how much of an ownership stake a First Nation² must hold for the utility to qualify as Indigenous. As we discuss further below, the Inquiry proceeded from a limited scope and mobilized technocratic procedures in line with the colonial reproduction of today (Strakosh, 2019). Seeking to use the Inquiry to further their claims to self-determination, First Nations' interventions asserted that '[t]he questions asked do not grapple with the nature of the relationship between the Commission and Indigenous governments or recogniz[e] Indigenous rights to self-determination or self-government' and that 'the need to accept and respect the authority of Indigenous governments trumps any administrative issues that remain to be resolved' (Beecher Bay [S'cianew] First Nation and Adams Lake First Nation, 2019, pp. 2 and 8).

The Inquiry ultimately made thirty-five recommendations to be considered by the BC government. At the time of writing, it remains unclear which of the recommendations will be taken up if any. However, as we elaborate below, the recommendations largely reflect a principle of domestication, whereby the territorial authority of the settler state is assumed, and Indigenous claims to sovereignty must be established. First Nations' forceful assertion their territorial sovereignty and contestations of the colonial strictures of the process itself highlight their continued resistance to the settler state. It also highlights how utility governance and infrastructure are mobilized as a contested borderland with potential for the reclamation of Indigenous territory and sovereignty.

This article explores the multiplicity of the Inquiry, understanding it simultaneously as an attempt by the settler state to reconcile the precarity of its sovereign authority, an exercise in the liberal politics of recognition, and a site

of resistance with decolonial potential. We do so as two settler scholars implicated in the settler colonial project, using this positionality to frame our contribution to bordering literature in two ways. Firstly, we further problematize the conventional view of borders in International Relations, one which holds that borders are both a source and manifestation of authority unavailable to nations that do not fit the imagined European ideal of the sovereign state. We thus contribute to a growing body of literature that takes seriously the multiple, liminal, and essentially contested nature(s) of borders and bordering practices—acknowledging their use and importance to colonial settler politics while also identifying their decolonial potential as sites and tools of resistance helping to provide a pathway to a future which ‘brings about the repatriation of Indigenous land and life’ (Tuck and Yang, 2012, p. 1). Second, by positing utility governance as a bordering technology, we seek to expand the conventional understanding of borders by exploring the bordering practices and power embedded in infrastructure and the borderlands that exist away from sovereign territorial boundaries. Like Simpson’s (2014) analysis of ‘embedded sovereignties’, we advance the idea that not only are bordering technologies often not visible as such nor located in spaces conventionally thought of as a border but that the governance of everyday practices like the heating of a home or the turning on of a lamp, is constitutive of an embedded border that reflects particular configurations of power and their contestation. Our contention is that such a conceptualization helps to further elucidate how the seemingly mundane practices of the everyday are implicated in the related phenomena of colonialism, capitalist exploitation and ecological despoliation, while also opening up new ways of thinking about building political relations beyond (sovereign) borders.

The following article is organized in four sections. First, we outline our understanding of borders as productive, aligning ourselves with critical border studies by rejecting traditional rational understandings of borders as the lines on a map distinguishing between sovereign states. Instead we look within these containers to unearth the embedded and reproduced borders of settler states. Second, we contextualize our understanding of embedded and productive borders by engaging with the ways Indigenous nations and peoples have resisted the colonial imposition of borders. We argue that doing so generates

embedded borderlands in which territorial authority is contested within the settler state itself. Third, we explore the coloniality of utility infrastructure and governance in BC while also identifying the decolonial potential for Indigenous utilities and the Inquiry itself. Although the BCUC Inquiry reflects a liberal politics of recognition that seeks to contain radical transformation via technocracy, First Nations' engagement in, and advocacy throughout, the Inquiry elevated and clarified the stakes: the delineation of territorial authority. Ultimately, we argue that the embedded borderland of utility governance, and the prospect for Indigenous utilities, has the potential to serve, as Franz Fanon put it, as both a subjective and objective decolonial project. Finally, we conclude the article by reflecting on the additional work our analysis invites.

Modern politics, borders, and the production of space

Before outlining the case of the BCUC Inquiry and contestations over Indigenous utility governance in British Columbia, we first discuss bordering as a mode of sovereignty-making. We do so by engaging with what Novak (2011, p. 742) describes as their 'key ambiguity': borders are 'both static markers of sovereign jurisdictions and socially produced and reproduced institutions.' Borders, then, are fundamentally *productive* institutions (Paasi, 1998). Not only do borders delimit the space and territory of the (in this case, settler) state, but they also serve to produce and continually reproduce the sociopolitical nation itself (Anderson, 2006; Begg and Devadas, 2017).

To briefly sketch this view, we begin with the more traditional understanding of borders as lines demarcating between sovereign territories—a function Goettlich (2019, p. 204) describes as one of the organizational features of 'virtually all territorial politics' today. In this account, borders exist as politically neutral functions of territoriality (Agnew, 1994; Goettlich, 2019) and markers of a form of sovereign politics (Kent, 2011). Inside borders, authority is maintained by a singular sovereign entity comprising the polity. As a result, there is an orderliness and productivity to borders. This productivity is reflected in the realization of sovereign territorial claims inside borders, and the construction of our visions of the international composed of sovereign states outside of them. This is not to say that contention does not arise around borders, but rather, that border politics can be generally read as arising from the

placement of the border, and not the *functioning* of them.

Instead of this vision of borders as (relatively) static, our analysis rests on understanding borders as forms of what might be called productive enactments. In this view, borders are productive, and we analyze not only the practices that construct borders but also those enacted by borders as well. Moreover, and crucially for this article, we are interested in processes related to bordering away from the sovereign markers of state borders. That is, following Novak (2011), borders-as-enactments are a sort of resource, which are practiced by those contesting continuing colonization as a way of delimiting alternative visions of nationhood and community like Leonard (2020) does in writing of the 'medicine lines' enacted by Indigenous communities in response to the COVID-19 pandemic. Importantly, however, as settler scholars, our text here is not written from an Indigenous geographies perspective; rather, in drawing on the analytics from critical border studies we are seeking to illustrate the ways Indigenous nationhood and authority are enacted through borders even where those borders do not appear as the (traditional) lines on the ground. In this respect, we follow Goettlich's (2019) argument that rationalized, linear (in this case, state) borders existed alongside non-linear borders throughout much of what is referred to as the colonial era. While Goettlich historicizes this layered bordering, we illustrate the way it remains prevalent today as Indigenous communities engage in decolonial bordering practices that reject clean and rationalized borderlines.

We engage with the embedded nature of borders in three ways. First, we understand borders as phenomena that can be found throughout the territory of a nation, rather than solely at a nation's territorial end, with bordering also taking place through practices across and through territory. This reading of borders and bordering follows other interventions in critical borders studies such as those by Salter (2008) on airports or Kent (2011) on US-Canada border policies and 'new sovereignty.' Both these point to the way that borders exist far from those lines in the ground that constitute designated national boundaries—and do so via the extension of bordering practices of control throughout the territory of a given nation. Put differently, borders are embedded throughout the space that constitutes the state. Second, following Anderson (2006), Paasi (1998), Rumford (2008), and Mielke (2017), we

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understand borders and bordering as embedded phenomena through a sociopolitical lens. That is, in addition to their materiality, borders also operate on a subjective level to structure, organize, and even create the societies and political communities they encompass. As a result, they are constitutive of, and remain deeply implicated within, these nations and communities. Finally, we understand borders to be embedded in, and productive of, the economic life of a community. This understanding follows from Kent's (2011) analysis of the new sovereignty style of relationship between Canada and the United States, wherein the border is understood as a transit-point for economic goods rather than a hard or dividing line between two sovereign nations. Frowd's (2014) understanding of the border as an economic project further extends this analysis by showing how the borderlines and outposts themselves are productive of economic relations.

By engaging with the embedded nature of borders we are moving past the understanding of borders as a more formalized 'boundary' (Parker & Adler-Nissen, 2012), and towards a reading of *bordering* as a productive practice. Doing so aligns us with the work Mezzadra and Nielson (2013, p. 58) have done to develop an understanding of 'borders as method' which 'points to the elusive moment when new spaces emerge from violent clashes and struggles that simultaneously challenge and disassociate established geographic and cognitive borders.' In these moments we can see the contestation of boundary lines, with the instantiation of new borders contributing to the production of both the material and sociopolitical lives of nations.

The framing of border as method also offers insights into the making and continued remaking of settler colonial relations in white, Anglo states such as Canada. When read as more than linear markers of state territory, borders—and the associated practices that enable their realization—illustrate the operation of colonial relations of power. Through these relations of power, settler states and societies stake out their claims to sovereign authority through domestication efforts aimed at undercutting Indigenous nations' authority (Lightfoot and Macdonald, 2017) and the reinforcement of settler jurisdiction (Pasternak, 2017). Even while settler bordering is rejected by many Indigenous peoples and nations (Simpson, 2014), the assumed naturalness of settler-established borders continues to uphold colonial and racial lines of authority

and our vision of the international (Anievas, Manchanda and Shilliam, 2015). By making Indigenous peoples a domestic concern the settler state mobilizes borders not only to reaffirm its own authority, but also to create it, and the associated community, in the first place. Understood this way, borders exist as more than lines on the ground, and indeed function as more than apolitical markers of the end of one state's sovereign territory and the beginning of another's. Rather, while marking distinctions between territories under sovereign claim, borders also work to construct the very polity that claims this sovereign authority. In settler states, such as Canada in this article, bordering technologies are mobilized and bordering practices are enacted both by settler governments and Indigenous communities and nations. In so doing, the 'clean lines of Canadian settler sovereignty' (Midzain-Gobin 2019, p. 25) remain contested.

As we explore in greater empirical depth below, these contestations of sovereign settler authority produce a form of borderland. Described initially by Anzaldúa (2004), the hybridity inherent in borderlands offers a lens through which to analyze the simultaneous enactment of Indigenous and settler authority. Both enactments aim to construct (and reconstruct) a specific polity and the associated lines of authority and jurisdiction. That is, we see overlapping claims to authority between the apparatus of the settler state and S'cianew and other First Nations in BC. However, while contesting each other's lines of authority, there is not the suggestion of a clear separation; instead, as with other cases of Indigenous assertions of self-determination through the Indigenous rights discourse (Lightfoot, 2016; Lightfoot and MacDonald, 2017), S'cianew and many other First Nations in BC are claiming self-determining powers *within* existing settler borders.³ On the one hand, this presents problems in that Indigenous expressions of self-determination and moves towards decolonization continue to be encompassed within settler colonial systems of power. On the other, and as we outline in greater detail below, this does not necessarily take away from decolonial moves but rather can create spaces in which Indigenous nations reassert their governance systems and authority alongside settler systems (see also: Simpson, 2014). Especially in cases such as that before the BCUC Inquiry, this can be done through re-enacting responsibilities to land, water, and the rest of Creation in line with those

Indigenous ways of being in the world that have been maintained into the present day. We explore this phenomenon and the ways in which bordering is implicated in these processes below.

Embedded borderlands and decolonial contestations

The imaginary of the Canadian state, like other settler states, is animated in part by the assumption of sovereign uniformity: the idea that the state's authority is evenly applied throughout its territory. As Lightfoot and MacDonald outline, this understanding of the settler state has led to a zero-sum view of sovereignty where settler states have, in the face of Indigenous assertions of self-determination, 'jealously guarded sovereignty and self-determination as their exclusive domain' (2017, p. 25). Nonetheless, Indigenous peoples have persistently resisted this 'colonial impulse for control' (Ibid) in ways that both directly contest the settler state's territorial authority as well as those that fundamentally reject the colonial ethnocentric understanding of sovereignty as zero-sum. These are not mutually exclusive, of course. However, for our discussion, contestations of settler authority are perhaps best exemplified by the creation of physical barriers by Indigenous peoples to control access to their lands, such as the recent case in BC of the Unist'ot'en checkpoints where barriers were constructed to regulate passage onto their territory as a means of blocking the construction of pipelines that would carry fracked natural gas and bitumen from Alberta through their territory.

Rejections of a zero-sum vision of sovereignty, in contrast, often do not involve direct action but instead takes the shape of treaty negotiations and self-governance agreements between the settler state and Indigenous nations. These have, as Lightfoot and MacDonald argue, the effect of 'stretching the limits of how state sovereignty has been previously understood' while not directly threatening 'nation-state sovereignty or result in a loss of state territorial integrity' (2017, p. 26). In both cases, however, what is generated is an embedded borderland—a site of contestation between political entities over territorial authority 'inside' the settler state itself with the effect of fracturing the facade of sovereign uniformity. In the case of BC, the contestation is seen through the simultaneous reification of two overlapping accounts of sovereignty. One is that of Indigenous nations and is realized through lived

practice; the other is Canadian and relies on settler legal designations.

However, although both strategies are generative of an embedded (often contested) borderland, Glen Coulthard (2014) has argued that the latter form of contention, characterized by participation in negotiations and colonial legal proceedings, is undermined by its engagement with asymmetrical processes and colonial institutions that are designed and committed to the continued dispossession of Indigenous peoples. Coulthard invites our analyses to peer beyond the formal 'liberal politics of recognition and accommodation' evidenced in these processes and toward the ways in which they run up against the structures of domination that not only circumscribe radical transformation but actually serve to perpetuate and deepen what he views as the primary aim of the settler-colonial project: access to Indigenous territory for the purposes of privatization, commodification, and extraction (Coulthard, 2014, p. 7). Coulthard's analysis of these processes maps well onto the case of BC treaty negotiations.⁴ In 1993, the settler state in BC began the process of treaty negotiations with sixty-five First Nations to address the fundamental issue that for the vast majority of the BC mainland no treaty over land claims between First Nations and the Crown has ever been agreed.⁵ Tellingly, and in keeping with Coulthard's analysis, the state excluded from negotiations issues of authority or ownership related to private lands. In this way, the settler state seeks to legitimize its territorial authority through the agreement of land treaties on terms that exclude from contestation the material basis on which the reproduction of the settler-colonial project is based: access to, and ownership of, Indigenous lands and the resources therein.

Such processes are generative of embedded borderlands in which territorial authority is contested and (re)shaped in various ways; at the same time, they are also illustrative of embedded borderlands in that treaty negotiations themselves stem from a recognition of Indigenous authority by the settler state. Though a deep analysis of this colonial dynamic of recognition is outside the scope of this paper, it is important to note that the asymmetrical and nonreciprocal nature of these processes inhibit, although do not necessarily preclude,⁶ their potential contribution to decolonialization in the sense meant by Frantz Fanon and that we adopt here: the interruption of colonial relations and the structural dependency that defines them. For Fanon, an authentic

interruption of colonial dependency requires anticolonial struggles to take place on both the 'objective as well as the subjective level' as 'historically these levels are mutually dependent' (2008, p. xv). Fanon's refusal to separate the material or objective level of the socioeconomic from the subjective experience of consciousness and identity is especially helpful in thinking about utility governance and infrastructure in settler colonial states. This is because the (objective) material relations utilities both embody and (re)produce are intrinsically tied to the (subjective) manner in which utilities as bordering technologies delimit space and produce identities in particular ways. In other words, energy utilities are products of, and serve to (re)produce, the conditions for capital accumulation. In doing so, they also serve to define territory and those within it in particular ways, such as being subject to settler jurisdiction and as stakeholders in contrast to sovereign nations. Thus, the project of Indigenous utilities takes on decolonial potential as both the undoing of colonial material relations and the manifestation of First Nations' self-determination.

Indigenous utilities as de/colonial projects

Although utilities, their associated infrastructure and governance mechanisms are not typically thought of in de/colonial terms, they are nevertheless deeply implicated in the colonial relations between the Canadian settler state and Indigenous nations. For instance, the creation of utility-scale hydroelectric facilities has long been a site of contention over territorial authority. In 1970, 'Robert Bourassa, prime minister of Quebec, proposed a massive hydroelectric project damming all the rivers which fed into James Bay...This entailed the flooding of hunting lands shared by the Cree, Inuit and Innu' (Samson and Cassell, 2013, p. 40). The project elicited both legal challenges and direct action, including the use of blockades, with negotiations eventually leading to an agreement between the Indigenous nations and Quebec (see: Richardson, 1991; Samson and Cassell, 2013). More recently, in Ontario, the Saugeen First Nation and Chippewas of Nawash Unceded First Nation successfully stopped a plan to construct a storage facility to house nuclear waste from the province's Bruce Nuclear Generating Station on their territory. In his remarks on the success of a fifteen-year struggle against the plan that ended in 2020, Chippewas of Saugeen Chief Lester Anoquot directly referenced the territorial

authority of his nation, stating, 'We worked for many years for our right to exercise jurisdiction in our territory and the free, prior and informed consent of our people to be recognized. We didn't ask for this waste to be created and stored in our territory' (quoted in Perkel, 2020). Each example illustrates the duality of infrastructure: the settler state both assumes the authority to build on Indigenous territory and potentially destroy it and the nation's relationship to it, however, in both cases Indigenous nations had their jurisdiction recognized and authority affirmed by the state. Even where agreements have not been completely fulfilled—as in the case of James Bay—infrastructure can be used to both deepen colonial relations or push back against them.

Similar conditions exist in BC, where the public energy utility, BC Hydro, has been complicit in Indigenous dispossession. The construction of large-scale utility infrastructure in BC, which began with massive hydroelectric projects built on the Peace and Columbia rivers in the 1960s, was of critical importance to the settler colonial project of 'modernization' and the creation of 'a particular kind of society—one that was connected, institutionally anchored, urban, wealthy, and domestic' (Loo, 2004, p. 161). Indeed, such projects were and continue to be critically important to the settler colonial economy, with Indigenous dispossession enabling capitalist extraction. Projects such as the W.A.C. Bennett Dam, constructed on the Peace River between 1961 and 1968, were built not only for the purposes of delivering electricity to residential consumers but primarily as a means of powering industrial projects, such as pulp and paper, mining, and fossil energy extraction (Loo, 2004; 2007). In turn, these projects attracted foreign investment, both into the projects themselves as well as the industries that they powered. Such projects can be understood as acts of 'socio-natural production,' whereby the environment is reshaped and put to work for capital accumulation and the creation of 'modern' society (Swyngedouw, 1999).

These projects also had the effect of erasing Indigenous peoples' social and material ways of life. In the case of the Bennett Dam, the people of the Tsay Keh Dene First Nation and Kwadacha Nation saw homes, land, and burial sites flooded. The resulting reservoir, the largest lake in BC, cut-off some Tsay Keh Dene communities from others, resulting in objective and subjective forms of alienation: from their traditional ways of life and relations with the land, their

people's history, and each other (Loo 2007, p. 906).⁷ The severing of these ties had profound political economic effects as well, producing the conditions for a colonial relationship of dependency as physical isolation and the destruction of lands that supported traditional ways of living resulted in the need for greater state economic assistance (Ibid).

The untreated nature of much of BC frames the colonial relationship between First Nations and the settler state. Indeed, settler claims to authority rest on assertions of Crown sovereignty through most of the province (Borrows, 1999), meaning historically there has been an assumption of more robust authority on the part of settler governments. That the land is largely untreated, however, also provides First Nations greater authority in their refusal of projects (Wood & Rossiter, 2017) and assertions of self-determination. Recent court decisions have re-affirmed this, though communities have also implemented their authority through direct action, as in the case of the Unist'ot'en.

The utility as colonial bordering technology

For the settler state, then, such projects are productive in multiple ways. Firstly, they produce the conditions for 'modernization' and the energy-intensive way of living it entails. A significant motivating factor for hydroelectric and other utility infrastructure projects is, of course, the cost of and access to energy, and in constructing such massive and long-term projects, a key input of modern settler life is secured. Secondly, they produce the conditions for further capital accumulation by enabling the creation or expansion of manufacturing facilities and, as is especially the case in BC, the privatization and commodification of the non-human environment, such as through the extraction of resources like minerals, timber, and fossil energy. Finally, they serve to produce territories shaped and dominated by colonial relations. In the cases of hydroelectric projects in Quebec and BC from above, Indigenous claims to authority were either outright dismissed or made the subject of negotiation on terms favourable to the settler state. In both cases, vast swaths of Indigenous land were fundamentally altered and, with them, traditional Indigenous ways of living. This is the material or political economic dimension of Fanon's double process of colonization which, perpetrated through the erasure and/or dispossession of Indigenous peoples, produces asymmetrical colonial relationships founded

on structural dependency. These material or objective relations are also dependent upon and constitutive of the subjective identities, such as the capitalist consumer subject within a utility's designated 'service area' who must enter into a transactional market relationship with the state- or privately-owned utility to obtain electricity and such basics of human life as potable water, and heating.

In BC, energy utilities were first regulated through the *Public Utilities Act* of 1938. Since 1980, energy utilities are subject to the *Utilities Commission Act* (UCA), which has been amended several times since. These acts and the regulatory bodies and mechanisms that administer them, namely the BCUC, are assumed to apply universally within the territorial borders of BC, including on territory subject to treaty between the state and Indigenous nations and the vast untreated territory of mainland BC. Indeed, not only is universal authority within its borders assumed by the state through these acts but Indigenous rights and authority are not mentioned in their text at all, nor is there any evidence that First Nations were consulted in drafting them (BCUC 2020, p. 8).⁸ The UCA stipulates that all public utilities, defined as entities providing energy services and products for compensation, are subject to regulation by the BCUC. Notably, the UCA makes no exception for First Nations but does do so for municipalities that operate energy utilities within their jurisdiction.

Erasing underlying Indigenous authority in this manner effectively perpetuates what Nisancioglu (2020) identifies as a 'racialised sovereignty' across BC that continues to reify a uniform settler authority within BC's borders. In doing so, it further defines and shapes what constitutes BC and settler colonial territory more broadly. For instance, this regulatory context meant that when the S'cianew First Nation sought to establish Spirit Bay Utilities to provide electricity to a proposed community development on its reserve territory on Vancouver Island in 2016, the only available means of doing so was to apply for an exemption under the UCA as a municipality. Although the application was ultimately rejected (the outcome which led to the BCUC Inquiry into Indigenous utilities) the presumption of settler state authority with regard to utilities even on recognized reserve territory, and the lack of an alternative remedy to engaging with the asymmetrical colonial system, is a clear example of the 'municipalization' of Indigenous nations in Canada (see: Pasternak, 2015;

King and Pasternak, 2018; Schmidt, 2018). As Shalene Jobin and Emily Riddle argue, 'the municipalization of First Nations reserves, effectively domesticat[es] Indigenous nations in the Canadian settler state rather than actually dealing with them in a 'nation-to-nation' manner' (2019, p. 14). In other words, Indigenous authority over territory is made contingent based on it (1) being conferred by the settler state, and (2) conforming to the contours of a jurisdictional entity recognizable as an organ of the state (i.e., a municipality). Such a framework, then, entails not only an attempt at objective control of physical territory but also the subjective production of Indigenous nations as organs of the settler state.

The liberal politics of 'inquiry'

For the S'cianew First Nation, however, the 'practical approach to regulatory oversight' they took by applying for an exemption as a municipality to avoid a 'protracted discussion over jurisdiction,' did not produce the desired result (Spirit Bay Utilities Ltd. 2016, p. 2). Despite the existence of federal legislation and agreed land codes concerning reserve lands that may have allowed for the designation of S'cianew First Nation as a municipality for the purposes of providing energy utility services, the BCUC contended that these did not displace the UCA as 'a provincial law of general application' meaning, in its view, could not be interpreted as allowing for the proposed exemption (BCUC 2016, p. 4). In the wake of the rejection of S'cianew First Nation's application a technocratic body, the BCUC Indigenous Utilities Regulation Inquiry, was created to clarify and 'advise on the appropriate nature and scope, if any, of the regulation of Indigenous Utilities' (Government of British Columbia, 2019, p. 2). The Inquiry's fundamental aim was to make a recommendation to the BC government regarding 'whether Indigenous utilities should be regulated under the UCA or under another mechanism, self-regulated, or unregulated. In other words, should Indigenous Utilities be subject to regulation? If so, why, how and to what extent should they be regulated?' (BCUC 2020, p. 17). Notably, by referring this matter to an Inquiry, the question of territorial authority and Indigenous sovereignty is depoliticized and domesticated—it is made the subject of expert deliberation rather than engaged with between sovereign entities.

The Inquiry's process of discovery included submissions from First Nations as one group of stakeholders among other such as BC Hydro (the provincial energy utility), FortisBC Energy (a large private utility), and utility customers. As such, the Inquiry's procedures did not substantively distinguish between the input of sovereign Indigenous nations or First Nations with recognized territorial authority over treaty, reserve and/or traditional lands, and that of private or public economic actors. This was clearly pointed out to the Inquiry in a joint submission made by S'cianew First Nation and Adams Lake First Nation in which they argued,

Although the Commission has invited Indigenous Peoples to participate in the Inquiry, the scope and focus of this Inquiry was predetermined by the OIC [Order In Council] and the Commission's subsequent order (G-32-19) establishing the inquiry. The terms of reference directed the parties to answer specific questions about practical and legal regulatory matters with little substantive consideration of principles of reconciliation or recognition of Aboriginal rights under s.35 of the Constitution Act, 1982 or Indigenous rights under the United Nations Declaration on the Rights of Indigenous Peoples ('UNDRIP'). (2019, p. 2)

S'cianew First Nation and Adams Lake First Nation also raised concerns about non-Indigenous participants failing to 'meaningfully engage with Indigenous perspectives' and the 'context of reconciliation,' and instead narrowly focusing on 'hypothetical regulatory situations and complex constitutional and legal questions' (Ibid, p. 1). Further, a submission by Collective First Nations,⁹ also citing the BC government's stated commitment to reconciliation with First Nations as well as UNDRIP's¹⁰ Article 3 which provides for the right to Indigenous self-determination, argued that,

The right of self-determination includes the right of First Nations to freely pursue their own social, economic, and cultural development. Policies and programs of the Provincial Government must not prevent First Nations from developing their own projects or utilities.

Self-determination means that First Nations will regulate their own activities. Which they develop in their own way in their own time frame. There should not be oversight of their utilities by another body when First Nations can do so themselves. The time for paternalism is over. (2019, p. 5)

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The assertion of the right to self-determination, and the concerns raised with the Inquiry's process, make clear that the fundamental issue at stake in the Inquiry for First Nations was more than utility regulation itself but the territorial authority such regulation embodied.

In this way, BC utility governance was made an embedded borderland, a space in which territorial authority is contested 'inside' the state's external borders. Although the Inquiry was designed in such a way as to depoliticize the issue and render Indigenous nations as functionally equivalent to other participants, through the assertion and argumentation of First Nation participants the final report and its thirty-five recommendations were compelled to grapple with such issues as authority over reserve, treaty, and traditional territories. The issue of traditional territory was particularly contentious, with the Inquiry ultimately recommending that questions of regulatory jurisdiction on those lands be resolved through BC's modern treaty process, and that in the meantime the BCUC continue to act as the utility regulator in those areas (BCUC 2020, p. 67-72). Although it remains unclear whether this recommendation will be taken up, what the assertive engagement of First Nations over questions of jurisdiction produced is a form of uncertainty concerning final authority over non-treatied lands. Canadian jurisprudence has previously found Indigenous nations to have underlying title over (see: *Tsilhqot'in Nation v British Columbia*, 2014; *Delgamuukw v British Columbia (The Queen)*, 1997), decisions that provincial and federal governments have not respected despite these same decisions ultimately furthering the settler project of interpellating Indigenous lands into Canada (Borrows, 1999).

Indeed, while it is yet to be determined which, if any, of the Inquiry's recommendations the Government of BC will implement, perhaps the most notable recommendation was that prospective Indigenous utilities be subject to a 'competent arm's length regulator,' and should there be no Indigenous regulator or if one fails to demonstrate it has a 'complaint and dispute resolution process to protect all ratepayers' that the BCUC fulfil this role (BCUC, 2020, p. 32, 41). This amounts to the BCUC assuming its own regulatory authority on Indigenous territory, including on reserve and treated territory, until a First Nation requests to 'opt-out' of that regulation and provides sufficient evidence that another regulator meeting certain criteria is in place. Although

multiple First Nations objected to the opt-out framework when it was first proposed by the Inquiry, instead suggesting an 'opt-in' mechanism to better recognize and respect their territorial jurisdiction and right to self-government, the recommendation remained (Ibid, p. 40). First Nations were, however, successful in persuading the Inquiry that the body charged with drafting and evaluating the criteria by which Indigenous regulators would be measured be composed of 'Indigenous people and others with specialized knowledge' (Ibid, p. 44). Nevertheless, the Inquiry made clear that of primary importance in determining such criteria should be the economic concerns of utility customers (residential and commercial) and their ability to seek redress through a complaint and dispute resolution body should they have an issue related to service or rates (Ibid, pp. 42-45). The BCUC further recommended that Mandatory Reliability Standards (MRSs), which were drafted by the US National Electricity Regulatory Commission (with Canadian representation) and adopted by the Government of BC in 2008 in response to the massive blackouts experienced in the eastern US and Canada in 2003, apply to all grid connected utilities regardless of their location in the province or who owns or controls them (Ibid, p. 57-59).

Read through the lens of colonial relationships, such recommendations can be said to constitute a principle of domestication whereby unless otherwise specified, the settler state will assume territorial authority for the purposes of utility governance until an opt-out request is made, and certain criteria satisfied. Even then, the Inquiry recommended BC legislation pertaining to the MRSs supersede Indigenous sovereign authority. This is very much in keeping with Coulthard's understanding of liberal processes of recognition, particularly as the criteria most emphasized in the Inquiry's opt-out is the very basis for continued capitalist accumulation and the production of settler modernity: the security of access to and price of energy. Moreover, these processes in BC reflect Nadasdy's (2017) argument that other governments in Canada (notably, the federal government) grant Indigenous nations decision-making power only in those cases where nations become sufficiently 'state-like' to govern according to a colonial model.

The transformative potential of indigenous utilities

This is not to suggest that decolonial potential does not exist in the establishment of Indigenous utilities. We view this potential, and indeed the assertions of territorial authority made within the Inquiry, as contributing to the interruption and undoing of colonial relations through the production of an embedded borderland in which the settler state's claim to uniform sovereign authority are contested. In doing so, we contribute to a growing literature concerning the decolonial and emancipatory potential present in the transformation of socio-technical configurations of energy and power (e.g., see: Boyer, 2019a, 2019b; Howe, 2019; Lennon, 2017; Love and Garwood, 2013; Mookerjee, 2019; Salem, 2020). In a material sense, Indigenous utilities and their governance have the potential to significantly remake both the colonial political economy and relationship to land, the non-human, and the rest of Creation. As cited throughout multiple First Nations' submissions to the Inquiry, and as acknowledged in the Inquiry's final report, economic development and self-determination are important factors motivating the creation of Indigenous utilities. The capacity to raise revenue through the utility is an example of a potentially significant interruption of colonial relations of dependency, but other possibilities exist as well. Indigenous utility infrastructure and the services they provide may also contribute to other economic endeavours by reducing the cost and other barriers to energy access that exist when it is procured from state and private utilities. Out of the settler state's or a private actors' hands, it is also possible that the logic(s) of capitalism may not dictate the rate formulas, the built infrastructure, and the operation and objectives of the utility.

More broadly, Indigenous utilities offer the opportunity to further develop governance capacity while implementing principles of self-determination. This may allow for the potential for Indigenous utilities to contribute to the creation of good relations with the land and environment as well as with each other through more equitable, fair and less deleterious energy production and distribution. The undoing of colonial political economic relations through Indigenous utilities and their governance, therefore, may serve to interrupt and contribute to the dismantling of a fuller scope of colonial relationships.

As described above, utilities, particularly when read as a bordering technology, are also important aspects of colonial projects in a subjective sense and can, in turn, play an important role in their undoing as well. For instance, throughout a defined service area utilities can serve to delimit space between one polity and another. In the context of Indigenous utilities, this is especially important as it serves to fracture the facade of colonial sovereign uniformity through the establishment and everyday enactment of Indigenous authority within the borders of the settler state. Utilities are also constitutive of and critical to the reproduction of political economic relations. Today, these relations are shaped by neoliberal capitalism, but this need not be the case. Alternative relations exist, for instance, in the form of energy cooperatives and other more collectivist models, and Indigenous nations may similarly choose to shape their utilities in ways that reflect their particular traditions and worldviews as distinct from capitalistic relations and Western cosmologies. Further, community members, users of utility services, and workers have been shown to have a stake in the production of utility scale energy in ways that go beyond objective relations. For example, in Sara Salem's study of postcolonial Egypt under Nasser, she describes how the construction of the Aswan Dam in Egypt was involved in the complex processes of generating decolonial subjectivities. Salem describes how '[w]orkers described themselves as having been mobilized—not conscripted—precisely because they wanted to feel part of this new project, and new country. The Aswan Dam was theirs, it belonged to them' (2020, p. 135). In Alia Mossallam's discussion of the same hydroelectric project, she similarly describes how '[i]nternational politics became a realm of the everyday. In working on the dam, builders believed they were chipping away at imperialism, building the history of a new nation and inscribing themselves into it' (quoted in Salem, 2020, 135). These accounts of the Aswan Dam's origins suggest that utility infrastructure—and control and ownership over it—played an important and productive part in the generation of a decolonial subjectivity in Egypt. In Fanon's terminology, it can be said to embody the interruption of both the objective and subjective processes of colonialism. This is the sort of decolonial potential we identify in the prospect for Indigenous utilities in BC as the everyday markers of embedded borders and the Indigenous authority that governs them as well as the material basis on which the colonial relations of dependency are transformed.

Conclusion

The BCUC's Indigenous Utilities Regulation Inquiry offers an excellent case for analyzing the reproduction (and interruption) of settler colonialism through state policy systems today. On its face, the final report articulated a vision of ongoing energy production and utility governance that follows a logic of settler unilateralism tying contemporary energy development to historical processes that enabled Indigenous dispossession, and which continue today in BC in the form of the Site C dam. Indeed, this includes the logic of technicalization explored by Strakosh (2019), insofar as a settler institution is understood as the appropriate vehicle for governance based on its own expertise. However, in a broader view, our exploration also attempts to decentre the assumption of settler sovereignty contained within the BCUC's recommendations, highlighting the decolonial potential of new clean energy utilities and infrastructure. We identify this decolonial potential in the way utility governance and infrastructure might enable Indigenous communities to resist the colonial relations of dependence through which settler sovereignty is practiced.

In our reading, the duality of utilities infrastructure leads to the simultaneous existence of colonial assertion with the opening of decolonial possibilities. This latter potential—that of Indigenous-led utilities—reflects what we have termed 'embedded bordering'. More than lines on the ground, we understand borders to be productive entities that help define, shape and ultimately, produce, communities. While utility infrastructure is material, it also helps to produce the political and social relationships that constitute both colonial orders and decolonial opportunities. It is in this sense that they can be read as bordering technologies. Here we are using embedded in two senses. First, the borders are in a sense hidden. Rather than overt, material representations of authority, the bordering processes we discuss are inherent in the way they serve to separate lines of authority between Indigenous nations and the provincial government. Second, the borders are also constitutive. That is, they serve a productive function in the creation and ongoing renewal of communities. In this sense we are also contributing to the ongoing discussion (see: Mitchell 2011; Malm 2016; Boyer 2019a, 2019b; Daggett 2019; Barak 2020; Stephens

2020; Baker 2021) concerning the important role that energy, and power over it, plays in shaping social and political economic relations, with clean energy infrastructure and decolonial configurations of power potentially offering transformative potential. It is our contention that not only does the exploration of Indigenous energy development and struggle for control over utility governance provide for a greater understanding of the political and social effects of energy utilities and infrastructure, but that it serves to orient us to their relation to coloniality and its potential undoing—as demonstrated in the recent work of Salem (2020), Curley (2021), Cowen (2020), and LaDuke and Cowen (2020).

For us, centring our argument in a decolonial reading of infrastructure has particular resonance. As two settler scholars implicated in, and benefitting from, settler colonialism, we aim our analysis at deconstructing and illuminating some of the ways in which this version of settler colonialism is reproduced. In so doing, we have chosen to focus on the processes, recommendations, and findings of the BCUC Inquiry not because such an analysis itself is emancipatory, but rather to point to other ways in which communities are working to reaffirm their own authority and capacity. There is much additional work that could be done to connect energy infrastructure and utility governance to decolonial worldmaking. In particular, we would point to the ways investment in renewable energy technology may offer an opportunity for communities to strengthen their relationships with their territories and reaffirm these relationships as integral parts of the governance traditions that settler colonial state-making criminalized. Such analyses are not our purpose, nor indeed would they be appropriate for us to initiate. However, as we consider the revolutionary and decolonial potential of Indigenous energy utilities and infrastructure, engaging with Indigenous communities working to build this future for themselves strikes us as a crucial component of the project.

JOSHUA K. MCEVOY is a PhD Candidate and Teaching Fellow in Political Studies at Queen's University. His research interests include the political economy of the environment and climate change, infrastructural politics, and social transformation. His dissertation research centres on just transition with a focus on energy democracy, mobility justice, and green labour movements. Joshua is a settler scholar living on unceded Algonquin Anishinaabe territory.

LIAM MIDZAIN-GOBIN is an Assistant Professor in the Department of Political Science at Brock University. He is a settler scholar whose research focuses on settler colonialism and its interruption through Indigenous governance practices and decolonization. He is particularly interested in the role of knowledge production in the (re)production of settler coloniality and Indigenous-settler relations in Canada. His research has been published in *Critical Studies on Security*, *Ethnic and Racial Studies*, and elsewhere.

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Notes

¹ For the purposes of this article, when we reference 'utilities,' we specifically have in mind 'energy utilities' as the S'cianew First Nation's initial application to establish a utility, the BCUC Inquiry which followed, and its recommendations, were all in reference to such entities. However, we do not mean to suggest that other types of utilities are not of similar importance, and it should be noted that we view this case as part of a broader movement. For instance, First Nations in Atlantic Canada have come together to form the Atlantic First Nations Water Authority, which is set to begin operations in 2022 (Tutton, 2020).

² In the paper, we refer to Indigenous nations where we are writing with regards to the broader Indigenous community within Canada. First Nations (as referenced here) are

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referred to when we are speaking specifically of the colonially defined governance entities responsible for a specific subset of Indigenous peoples.

³ While beyond the scope of this paper, it is important here to note that S'cianew First Nation itself remains a product of the settler reserve system implemented through the *Indian Act*. Thus, the First Nation is claiming authority from the settler government, while its own claim to authority rests on an acceptance of broader settler colonial jurisdiction-making.

⁴ For a more in-depth discussion of treaty-making in British Columbia, see Woolford (2005; 2011).

⁵ There are a few exceptions to this, notably Treaty 8 (1899) and the Nisga'a Final Agreement (1999) with many other more recent comprehensive land claims offering various levels of certainty over the status of territory.

⁶ Coulthard, for instance, does not go so far as to suggest disengagement from such processes, but instead advocates for a reorientation of the basis on which they are conducted—away from a liberal politics of recognition and toward 'a resurgent politics of recognition that seeks to practice decolonial, gender-emancipatory, and economically nonexploitative alternative structures of law and sovereign authority grounded on a critical refashioning of the best of Indigenous legal and political traditions' (2014, p. 179).

⁷ In 2016, at the Bennett Dam, in a museum largely centred around the generation of electricity, an exhibit was unveiled to acknowledge these events where visitors are greeted with the words: 'they call it progress, we call it destruction' (quoted in Wakefield, 2016). Despite this acknowledgement and commitments to not repeat past mistakes, BC Hydro is currently constructing another hydroelectric facility on the Peace River, the Site C Dam, which has been the target of legal actions and protests by Indigenous nations and others.

⁸ The first reference to and engagement with First Nations in BC energy utility regulation came in 2010 with the *First Nation Information Filing Guidelines for Crown Utilities* (BCUC, 2010). This directive resulted from a legal challenge brought by the Carrier Sekani Tribal Council concerning the duty of public utilities in BC to consult First Nations affected by their activities.

⁹ This was a group formed by multiple First Nations entities for the purposes of participating in the Inquiry, which included: Nuu-Chah-Nulth Tribal Council, Cowichan Tribes, Gitanyow First Nation, Homalco First Nation and BC First Nations Clean Energy Working Group.

¹⁰ The BC government passed the *Declaration on the Rights of Indigenous Peoples Act* in November 2019, with the aim to bring BC laws into compliance with the UNDRIP.