

# How does a settler state secure the circuitry of capital?

Environment and Planning D: Society and Space

2018, Vol. 36(4) 739–757

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DOI: 10.1177/0263775817713209

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## Abstract

Indigenous peoples interrupt commodity flows by asserting jurisdiction and sovereignty over their lands and resources in places that form choke points to the circulation of capital. In today's economy, the state has begun to redefine its "resilience" in terms of its relative success in the protection and expansion of critical infrastructure. We find that there has been a political re-organization of governing authority over Indigenous peoples in Canada as a result, which is driven by greater integration of the private sector as national security "partners." The securitization of "critical infrastructure"—essentially, supply chains of capital, such as private pipelines and public transport routes—has become the priority in mitigating the potential threat of Indigenous jurisdiction. New political and socio-temporal imperatives have led to shifts in risk evaluation, management, and mitigation practices of state administration, in cooperation with the private sector, to neutralize Indigenous disruption to supply chain infrastructure. In this paper, we examine two forms of risk mitigation: first, the configuration of Indigenous jurisdiction as a "legal risk" by the Department of Indigenous and Northern Affairs Canada; and second, the configuration of Indigenous jurisdiction as a source of potential "emergency." Built on the literal ground of historical patterns of land grabs and migration, logistical space configures new networks of infrastructure into circuitries of production that cast into vivid relief the imperfections of settler sovereignty and the vital systems of Indigenous law.

## Keywords

Logistics, critical infrastructure, Indigenous jurisdiction, security, resilience, law, Canada, risk, emergency, settler colonialism

## Introduction

In December of 2012, members of the Aamjiwnaang First Nation drove a snowplow across the tracks of the CN Rail line that runs through their reserve situated in Southern Ontario. Their reserve is located in a region known throughout the country as "Chemical Valley."

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The snowplow remained on the tracks for 13 days impeding the spur line that conveys approximately 450 cars a day of industrial chemicals through the reserve to a dense cluster of petrochemical companies in the region (Scott, 2013). Ron Plain, spokesperson for the blockade, told the media that, “The rail line where we are standing is illegally on our property. . . That’s why we have chosen to take our stand” (CTV News, 2012). When CN Rail filed for an injunction against protesters, Justice Brown refused to view the blockade as an expression of Aboriginal rights. He placed the “balance of convenience”<sup>1</sup> instead on an economic model at peril. The inbound and outbound flows of materials and commodities, the jobs on the line, the loss of risk-averse customers, and the necessities of life such as propane that were required by customers to heat their homes throughout Eastern Canada were all submitted for consideration to protect the supply chains gridlocked by Aamjiwnaang’s assertion of jurisdiction. But Entropex Inc.’s intervention on behalf of CN Rail’s injunction most directly spelled out the stakes of the blockade where the company stated that their delivery of resin to customers is done on a “just in time” basis” (*Canadian National Railway*, 2002). Therefore, without the injunction, the company would be unable to meet its contractual obligations.

The timely circulation of goods, services, information, resources, and energy through territory is critical to capitalism today, rendering acute the problem of blockades and resource extraction stoppages for the state. Over the past few decades, just-in-time and on-demand commodity production has increasingly reorganized economic space through the architecture of “logistics”—a military science developed to overcome geopolitical obstacles to supply chain circulation (Cowen, 2014). Built on the literal ground of historical patterns of land grabs and migration, logistical space configures new networks of infrastructure into circuitries of production (Cowen, 2014). And no other political group in Canada shares with Indigenous peoples the legal and material power to consistently intervene in the flow of capital from coast to coast and over international borders.

We want to open questions here as to the specific ways in which settler state policies concerning Indigenous peoples articulate with these new spatial ontologies and international strategies of accumulation. If the domain of knowledge called logistics is restructuring capitalism along leaner, faster lines of accumulation, how do assertions of Indigenous jurisdiction over their lands and resources shape the strategies of mitigation regimes designed to smooth the flows of circulation? If settler colonial regimes are co-produced in relation to the global political economy of capitalism, then how has settler governance adapted to these shifts, given the unique standing of Indigenous lands in a settler state context?<sup>2</sup>

The “circuitry of capital” is theorized here with attention to Marx’s understanding of its role in production: when a house is sold, for example, capital can circulate without the house actually moving—thus circulation of capital is “value in motion” and does not necessarily entail a “change of location”—though it certainly can (and is easier to spot when it does) (Cowen, 2014; Marx, 1956). Building on Cowen’s reading of Marx, we think through the concept that “all capital is circulating capital” with a focus on both resource extraction and transport blockades. We also draw inspiration from Labban’s work (2011) that argues that it is precisely the case that raw material has been bracketed from consideration of the uneven production of space when, in fact, “the increasing emancipation of capital accumulation from ‘its roots in nature’ runs counter to a process whereby the accumulation of capital has struck ever deeper roots in the material space of physical nature—not only expanding ‘vertically’ but also extending technically and financially into new layers of materiality” (256). Bringing together readings of social space with physical space, we argue that blockades and disruptions to extraction are both processes that have been recast

in importance within the vital systems security networks emerging in the context of a logistics economy. In this regard “disruption to circulation,” takes a more materially grounded and historical meaning than simply the physical interruption of a transport truck.

In this article, we examine how the uncertainty of Indigenous disruption—and, more specifically, the economic implications of this uncertainty—has been materialized by the state into institutional infrastructures of risk management and mitigation. We argue that through the frame of risk, the domestic “problem of Indians” in Canada<sup>3</sup> has become the international problem of supply chain management. Jurisdictional powers are being re-allocated according to new imperatives of capital flow through territory and across international borders.<sup>4</sup> In particular, framing Indigenous rights as risk can be used to justify new forms of regulation and to extend state power beyond regional, provincial, and federal boundaries (Hameiri, 2011: 390). This shifting territorialization, though, cannot be read purely through a critical geoeconomic lens that reimagines imperial blocks across disappearing state borders (Sparke, 2007). For these shifts in territoriality may reshape colonial cartographies, but they merely continue to overlap and criss-cross Indigenous territorial boundaries.

Simply put, Indigenous peoples interrupt commodity flows by asserting jurisdiction and sovereignty over their lands and resources in places that form choke points to the circulation of capital. Thus, the securitization of “critical infrastructure”—essentially supply chains of capital, such as private pipelines and public transport routes—has become a priority in mitigating the potential threat of Indigenous jurisdiction. In today’s logistics economy, the state is redefining its “resilience” in terms of its relative success in the protection and expansion of critical infrastructures. Risk is the “style of reasoning” (Hacking, 1990) and risk management is the technique for implementing this knowledge to mitigate the disruption caused by assertions of Indigenous rights and responsibilities towards their lands. New political and socio-temporal imperatives have led to shifts in risk evaluation, management, and mitigation practices of state administration, in cooperation with the private sector, to neutralize Indigenous disruption to supply chain infrastructures. We find that there has been a political re-organization of governance over Indigenous peoples in Canada as a result, which is driven by greater integration of corporations and industries as national security “partners.”

In this paper, we examine two forms of risk mitigation: the first is the configuration of Indigenous jurisdiction as a “legal risk” by the Department of Indigenous and Northern Affairs Canada (INAC), which is mitigated through the imposition of a socio-economic agenda designed to gain their political and financial investment in the market economy. The second form is the configuration of Indigenous jurisdiction as a source of potential “emergency,” which acts to harmonize the timelines of logistical circulation through the state’s security and administrative resources. In this case, risk mitigation takes the form of constant monitoring to identify risks and inform pre-emptive intervention strategies. The constitution of Indigenous peoples’ self-determination as potential “emergency” within the critical infrastructure paradigm of national security is linked to the “legal risk” of Aboriginal rights that escape mediation through federal policy. We believe that both forms of risk mitigation act together to reproduce key dynamics of colonial dispossession in Canada today. In examining these risk frameworks, we parse the ways in which the state is reorganizing around newly conceived security imperatives. Making visible the co-dependent roles of capitalist and colonial institutions, we argue that “resilient” infrastructures of circulation are governed in relation to Indigenous peoples whose assertions of jurisdiction drive the need for risk management and mitigation planning, as one version of “vital systems” meets another powerful form.

## Uncertainty as a euphemism

Over the past few decades a euphemistic language of “uncertainty” has emerged to describe Indigenous land rights in Canada. For example, on the heels of the Supreme Court of Canada decision *Tsilhqot'in Nation v. British Columbia*, 2014, reaction was swift in bemoaning the “uncertainties” it created for the business sector.<sup>5</sup> The *Tsilhqot'in* decision recognized that the Indigenous nation held underlying title to over 1700 square kilometers of land, muting provincial jurisdiction over natural resources therein. This ruling invoked a broader panic over how approvals in the natural resource sector would be secured for development, given this recognition of Indigenous proprietary interest. A widely cited report by the conservative Fraser Institute think tank warned of “increased uncertainty” for economic development nationwide (Bains, 2014). The *Vancouver Sun* (2014) lamented that further “uncertainty” would result from the decision of bands within the *Tsilhqot'in* Nation to turn these Aboriginal title lands into a tribal park. Even prior to the decision, when the Indigenous nation challenged provincial permits for a mine on their territory in 2011, a financial services newswire reported, “Uncertainty hits Taseko stock value” (Kennedy, 2011).

The dual discourse of certainty/uncertainty does not refer to the status of Indigenous land rights, as governments claim, but to the economic implications of what these land rights might mean for industrial operations, related commercial industries, and the national economy more generally. In fact, the province of British Columbia (BC) has undertaken numerous studies since 1990, attempting to quantify the cost of this “uncertainty.” That year, the province commissioned a report that concluded “uncertainty” was costing the province \$1 billion and 1500 jobs annually (Price Waterhouse, 1990: 2).<sup>6</sup> A few years later, former BC Premier Campbell (1993) remarked that the “cloud of uncertainty” around property rights due to Aboriginal title was the primary concern for foreign investors. More recently, with the expanding landscape of Aboriginal rights and title jurisprudence, the estimated boost in revenues to the province and private sector that could be secured by the “certainty” of settling native claims was estimated at \$10 billion (BC Treaty Commission, 2009).<sup>7</sup>

The federal department of INAC has most succinctly articulated the stakes of uncertainty concerning First Nations. Its website describes why Canada has agreed to support a land claims settlement process in BC, stating that “uncertainty about the existence and location of Aboriginal rights create uncertainty with respect to ownership, use and management of land and resources” (INAC, 2016a). BC is “ground zero” for “uncertainty” regarding Indigenous land interests in Canada because most of the province was never settled through historic treaty or surrender—conditions for legal Crown possession under the terms of the *Royal Proclamation* of 1763 (Curry et al., 2014). But throughout the country, there are many pockets of land that were never ceded or surrendered through treaty. These lands, including in BC, are subject to a federal land claims process, which prioritizes “certainty” as its main policy objective.<sup>8</sup> Moreover, treaty nations do not consider their treaties with the Crown to indicate surrender; therefore, these traditional territories are also subject to contestation over provincial and federal assertions of jurisdiction (Promislow, 2014; Venne, 2007). The *Tsilhqot'in* decision does not apply to treaty signatories—only to those communities excluded from the treaty process. However, legal precedents like the state’s duty to consult and accommodate with Indigenous peoples apply to treaty and non-treaty people, imposing obligations on the Crown when development potentially could violate Aboriginal rights.<sup>9</sup> Lands throughout the country—from urban centers, to border-spanning regions, to the farthest reaches north, west, and east—remain subject to

overlapping jurisdiction with Indigenous nations who assert *inherent* rights, as well as those recognized by Canadian courts.

The late Secwepemc leader Arthur Manuel, who chaired the Indigenous Network on Economies and Trade, paid close attention to the euphemistic language of “uncertainty.”<sup>10</sup> Commenting on the language of uncertainty to describe his land rights, he contended that as long as the status of Indigenous lands remain uncertain in the courts, private property and all Crown title lands that were imposed *on top* of this land must be uncertain, too (Manuel, 2010). When Manuel’s people tried to stop the Sun Peaks ski resort from being built on a mountain in their territory, an enormous sign was nailed into the ground by land defenders, which read: “Where’s your deed?”<sup>11</sup> One would be hard pressed to encapsulate more concisely the question underlying the stability of resource investment in Canada. Further, in contrast to the state definition of critical infrastructure, the Secwepemc were clear that social and economic vitality rests in their relations to the deer, moose, bears, beavers, lynx, bobcat, cougars, and wolverines, and in the medicines and berries they harvest, and in the clear lakes that ski hill chemicals would pollute.

In 2017, Canada celebrates 150 years of being a nation state. The country’s territorial boundaries have changed as internal and external pressures have re-stitched its seams of sovereignty.<sup>12</sup> But even the most recent boundaries do not seal a territorial container of power, only what Benton (2010: 2) calls “enclaves and corridors” of jurisdiction. The differentiated legal zones within Canada’s national boundaries comprise the political orders of over 600 First Nations who are part of 60 Indigenous nations. Yet, since Confederation in 1867, Canada has claimed radical underlying title to all lands within its modern national borders, based on English common law and the doctrine of tenure that *Crown title* underlies all land held by the monarchy. As Henderson et al. (2000: 70) write, the doctrine of tenure “cannot be historically justified, but exists as a fiction of the common law. Its purpose is to ensure that all estates, possessions, or interests are registered, and the resulting titles are viewed as the evidence of legitimate entitlement to use the land.” When Aboriginal rights challenge this state claim to exclusive underlying title to land—through gains in Aboriginal title jurisprudence, for example—Canada’s authority to govern all land within its territorial base as absolute sovereign becomes *uncertain*.

Though Indigenous peoples asserted jurisdiction to their lands long before the courts began to recognize these rights, the government is increasingly worried about legal victories that recognize Aboriginal land rights, especially in light of escalating struggles over natural resource extraction across the country. A report released by the Ontario Bar Association shows that INAC is at the top of all federal departments’ spending for legal services and that land claims top the list of unresolved legal issues in 2012’s public accounts (Taddese, 2013). The figure of around \$100 million in annual legal spending has held steady for at least the past five years (Eyford, 2015). That is because INAC is party to 452 proceedings involving section 35(1) rights (Eyford, 2015: 29), which are the constitutional protections that “affirm existing aboriginal and treaty rights in Canada.”

Section 35(1) rights have been subject to incremental definition, increasing the uncertainty around Aboriginal rights in Canada. In 1982, when section 35(1) rights were adopted, a series of constitutional talks between First Nations and the First Ministers were meant to define the meaning of these rights. These talks ended in failure, however, and since then it has been left largely up to the Supreme Court of Canada to determine the shape and the scope of these rights. A growing body of jurisprudence has been filling the gap. While legal scholars like McNeil (e.g. 2000–2001, 2007) read the jurisprudence on Aboriginal rights and title with an eye towards openings where Indigenous peoples may create spaces for meaningful legal recognition, Christie (2005) reads this jurisprudence strictly as the

interior design of colonial institutions that further entrench Crown sovereignty. He and others (e.g. Coulthard, 2014; Wilkins, 2016) argue that Canada has largely tended towards the most regressive forms of legal reasoning, strengthening and retrenching its early arrogances, rather than distancing the state from the racist anthropology of its foundations (Christie, 2005: 8).

McNeil's and Christie's respective readings both bear out on the ground in the tense mixture produced by the denial of Indigenous jurisdiction and the necessity for conveying incremental change within a multi-cultural liberal state. Take again, for example, the Crown's "duty to consult" with Aboriginal peoples found in the *Haida*, *Taku River Tlingit* and *Mikisew Cree* decisions.<sup>13</sup> Christie (2005: 21) dresses down the precedent set by these cases—that the government must "consult and accommodate" First Nations where their Aboriginal rights might be infringed by development—as a "kinder and gentler taking of land." He cites the glaring flaw in the precedent that consultation does not require Indigenous consent. However, a recent 150-page decision from the Federal Court of Appeal overturned approval of the Northern Gateway pipeline project for failing to properly consult with First Nations.<sup>14</sup> The pipeline, owned by Enbridge, was valued at \$5.5 billion if the project had gone through (Eurasia Group, 2012). Thus, despite the limited reasoning of the "duty to consult" precedent, the legal *assertion* of Indigenous jurisdiction can create sufficient uncertainty to elicit sobering economic implications.

### Mitigating the risk of Indigenous jurisdiction

The risk of Indigenous jurisdiction lies in the interrelated dynamic of their constitutional rights and the exercise of inherent responsibility to the land. While much attention has been paid to analyzing the legal content of watershed decisions on Aboriginal rights and title, little attention has been paid to how governments and industry are dealing with the uncertainty that these rights and responsibilities generate. Despite the limitations of colonial legal recognition and the intractability of Canada's policy landscape regarding the settlement of land claim disputes with Indigenous peoples, court decisions have generated significant economic risk in the domestic economy.<sup>15</sup> Emerging out of a fiscal accountability program,<sup>16</sup> for example, INAC's 2010 Risk Assessment is presented as a matrix of indexed factors where only one factor is considered "extreme": "Legal Risk" (INAC, 2010a).

In 2011, the department released a risk assessment that also references Aboriginal rights as a driver of risk. It states: "There is a risk that the legal landscape can undermine the ability of the department to move forward on its policy agenda" (AANDC, 2011a: 8). Discrepancy between the federal policy agenda and the legal landscape of Aboriginal rights becomes increasingly apparent in subsequent evaluations. The 2012 Executive Risk Report states: "There is a tension between the *rights based agenda* of Aboriginal groups and the *non rights based approaches* grounded in socio-economic outcomes" (AANDC, 2012: 98; emphasis in original). The "non rights based" approach to federal Aboriginal policy is juxtaposed to a "rights based agenda" that is grounded in the jurisprudence on Aboriginal rights and title.

The potential consequences of legal risk are laid out in the 2012 risk assessment. Two consequences in particular are worth noting in the context of this paper: (1) the "development of legal precedent and principles that are at odds with the government policy agenda" and the concern that (2) "Aboriginal groups will disengage and Crown-Aboriginal relationship will become increasingly adversarial (i.e. Idle No More)" (AANDC, 2012: 98). Aboriginal "disengagement" coupled with legal precedents supporting their rights and title is reinforced as risky in more recent evaluations where the

“Aboriginal relationship” is a highly rated risk, alongside “implementation,” “resource alignment,” and “information for decision making”—categories that outline the failures of the department to properly implement policy, to manage information about Indigenous peoples, and to respond to highly contentious issues like land claims, community infrastructure, and child welfare with appropriate resources (INAC, 2016b).

The relationship between the legal risk of Aboriginal rights and the government’s policy agenda is unique because it centres on the question of land, which structures the political economy of Canada. The non-rights based, *risk-mitigating* socio-economic agenda of INAC pivots on a requirement for Indigenous bands to exchange their collective, inherent rights and jurisdiction for the delegated authority of the state. Mitigating the risk of Indigenous jurisdiction, and therefore control over resource extraction and circulation, these policies seek to transform Aboriginal rights into market access rights (Altamirano-Jiménez, 2004; Stanley, 2016). The federal Comprehensive Land Claims policy is exemplary in this regard because it forces bands to extinguish their Aboriginal rights and title upon settlement, transforming collective, *sui generis* rights into individual parcels of private property. In BC, the policy also effectively means First Nations must cede approximately 95% of their land base (Pasternak, 2017). The 1997 *Delgamuukw* decision,<sup>17</sup> which recognized that Indigenous peoples have a title interest on unceded lands, should have at least prompted a review of the land claims policy that forces the extinguishment of this interest. The Union of British Columbia Indian Chiefs’ 2016 report issued following the *Tsilhqot’in* decision (White and Danesh, 2016) found serious inconsistencies between the land claims policy and section 35(1) rights in light of recent Supreme Court of Canada decisions.

Legal risk is inextricable from security risk as the rights-based approach of Indigenous peoples—in their assertions of both inherent and constitutionally protected rights—is perceived as a liability to the securitization of supply chain infrastructure throughout the country. As a “driver” of political and economic risk to proprietary regimes of the state and as an expression of Indigenous self-determination, these rights are managed as risks to critical infrastructure.

## The spatiality of risk

There are close to 3000 Indian reserves distributed throughout Canada, each nestled inside a broader treaty or traditional territory (Statistics Canada, 2013). The geographical dispersion of reserves over the course of Canadian history created “an archipelago of spatial containment” (Nichols, 2014: 454). Remote and isolated from other bands within the nation, this spatial fix nonetheless linked to a circuitry of capital accumulation and its fixed infrastructures of commodity production through vast networks of roads, rails, flight paths, and waterways to the rest of the country. These transport corridors form part of the critical infrastructure of the state and the backbone of international trade.<sup>18</sup>

The awesome potential of Indigenous peoples to “shut down” the country through disruption to transport corridors was demonstrated by the Idle No More movement. What was dubbed the “Native Winter” sparked off in December 2012 under the common banner of “Idle No More” (INM). Hundreds of communities across the country rallied against the introduction of omnibus Bills C-38 and C-45 by Conservative Prime Minister Stephen Harper.<sup>19</sup> The bills were the sparks that lit the flame, but they touched on long-simmering issues of colonization, often carried forward through destructive extractive industries on traditional Indigenous territories. In January 2013, Grand Chief Nepinak stated to the media: “The Idle No More movement has the people... and the numbers that can bring the Canadian economy to its knees. It can stop Prime Minister Stephen

Harper's resource development plan" (Reuters, 2013). At a rail blockade in Portage la Prairie, Manitoba, Chief Terry Nelson of Roseau River First Nation was even more precise about the economic implications of transport disruption. As he told the *National Post*, "This is all about the businesses in Canada that depend on CN [railway] and their product being there *on time*" (Postmedia News, 2013; emphasis added).

Indigenous protest struck at the heart of the critical infrastructure-dependent economy. On 21 December 2012, there were three significant blockades in Alberta: a rail blockade in Calgary by Treaty 7 protestors, a road blockade by the Siksika Nation, who blockaded highways 547 and 901 in the south, and another rail blockade (also in the south) by the Blood Tribe (CBC, 2012). On 5 January 2013, in addition to five international bridge blockades between the US and Canada, a number of rail blockades were also enforced. For example, in Marysville, near Kingston, Ontario, a Tyendinaga Mohawk blockade affected Via Rail passenger trains on major passenger transport routes between Toronto and other cities (Slaughter and Graff, 2013). Dozens of roads were shut down across the country as well causing 125 disruptions to transport infrastructure (Groves, 2012a) in a single day in regions with few convenient alternate routes (Galloway and Moore, 2013). What distinguished the INM movement was the level of coordination amongst communities. The national days of action in the peak period of INM boasted hundreds of demonstrations taking place on "days of action," outpacing state capacity to police disruptions. The movement also spiraled outwards to become international days of action, with Indigenous peoples in the US, New Zealand, Hawaii, Palestine, Gambia, and a dozen other countries participating worldwide (CTV News, 2013).

Instead of deeming this insurgency a crisis, police forces took what appeared to be a highly measured approach, calling for tolerance and understanding by Canadian citizens towards Indigenous peoples (OPP, 2013). To understand police reaction, an understanding of the political and spatial context of Indigenous lands is essential. Because the INM movement represented the political potential of *coordinated* Indigenous action, it dramatized the impact of Indigenous assertions of sovereignty and jurisdiction on the economic geography of the country. Thus, enormous restraint had to be shown in order not to escalate the movement further. A contingency planning document for the Government of Canada produced by the Government Operations Centre (GOC) noted that, "success breeds success," and that while protests have been peaceful, "the anger underlying this situation is not going away."<sup>20</sup> Any escalation in policing tactics could spark a backlash that could not only jeopardize state-Indigenous relations, but also pose serious economic implications.

A scan of developments in the transport infrastructure sector gives us a good glimpse at efforts at coordination between state and industry to produce risk management plans into the future. According to the Transportation and the Economy Taskforce (2014), there are several aspects of the "New Normal" that are driving integration. New Canadian free trade agreements and trading blocs are inviting deeper ties and integration beyond the US, towards India, China, Europe, and Latin America, with the aim to support long-term economic development along emergent global supply chains. But slow growth in world markets is also putting pressure on Canada to develop advantages to compete internationally by reducing supply chain costs through improved technology—funded by state infrastructure funds.<sup>21</sup> The report predicts that intensifying competition for energy and other resources will also intensify pressure on critical infrastructure, especially given how climate change is affecting current transportation routes in the north, such as crucial, seasonal ice roads. This last point is important here because, as the report (2014: 2)



states, “Resource development is a priority that cannot be realized without greater access to many remote and northern communities.” Thus, colonial policy must smooth the course for capital accumulation.

The spatiality of risk is not limited to transport infrastructure. The current global scramble for energy, minerals, oil, and gas in light of Indigenous resistance also has governments concerned about blockades and disruptions; for example, there are 1200 Indigenous communities located within 200 kilometers of producing mines (Prospectors and Developers Association of Canada, 2006). Lee et al. (2003), for Global Forest Watch Canada, produced a series of maps showing the overlap between Canada’s boreal forest and Aboriginal treaty lands. Their research shows how 56% of large intact forest landscapes are found on lands in historical Aboriginal treaty areas. Modern land claim settlements contain another quarter of Canada’s intact forest landscapes (Lee et al., 2003: 40). In the energy sector, Canada has the fourth-largest oil reserves in the world after Saudi Arabia, the US, and Venezuela, though less accessible—most of it is in the tar sands, where effective Indigenous resistance by Treaty 8 and other First Nations has led to global boycott campaigns and fierce resistance.<sup>22</sup> About one-fifth of Canada’s GDP is based on its natural resource economy (NRC, 2015). In terms of trade, in 2014 natural resources accounted for more than *half* of Canada’s merchandise exports (NRC, 2015). International trade, as well as foreign direct investment in the natural resource sector, influences state regulation,<sup>23</sup> and is likewise affected by Indigenous assertions of jurisdiction against the state regulation of their lands. Thus understanding the geography of Indigenous lands is critical for understanding the securitization of critical infrastructure and supply chains, and new modes of risk mitigation concerning Indigenous political power.

### **Critical infrastructure and supply chains**

Until the 1990s, Indigenous peoples’ land defense strategies were criminalized by the assumption that they had limited legal rights to the land (Ford, 2010; Ross, 1998). As Indigenous peoples have continued asserting inherent and constitutional rights, the government has had to contend with the growing body of jurisprudence recognizing rights and title; in this context, the deployment of police-military power to secure corridors of circulation has had to be reconciled with judicial affirmations of Indigenous jurisdiction and inherent assertions of Indigenous responsibilities to the land. Economic vulnerabilities and opportunities have proliferated in the wake of legal risk, as companies hedge their bets in emergency preparedness financing and insurance schemes (a topic we aim to cover in further work).

As logistics drives the reorganization of national economies to enable the formation and operation of global circuits of capital, the geographical location of reserves and assertions of Indigenous rights are increasingly problematized as threats to the existing infrastructures of supply chains, as well as to their future expansion. This problem of economic risk for businesses is also a problem of state security as 85% of what has been deemed to be critical infrastructure in Canada is privately owned and operated. In many cases, supply chains *are* the “processes, systems, facilities, technologies, networks, assets and services essential to the health, safety, security or economic well-being of Canadians and the effective functioning of government” (PSC, 2009: 2). The conceptualization of critical infrastructure protection as the object to be secured as means of bio-political and national security (Cowen, 2014), and the attendant array of securitization practices, reflect a *logistics logic*.

The military science from which the business model of logistics emerged gave rise to a twin field of *civil defense* during the period between world wars. The objective of civil defense programs was to identify and secure domestic infrastructures deemed essential or “vital” to the life of population and to the industrial capacities of nation-states; this “vital” status made these infrastructures strategic targets for attack (Collier and Lakoff, 2008; Neocleous, 2014). Gradually, the scope of civil defense expanded beyond wartime defense to a broader program of *emergency preparedness* in relation to natural or industrial disasters affecting a wider range of infrastructures. Meanwhile, the organization of national security around the threat of external geopolitical “enemies” was increasingly seen as anachronistic. In the mid-1970s, security experts turned their attention to the vulnerabilities of vital infrastructure *systems* because of their increased interconnectedness and embeddedness in society. Disruption of these systems could have potentially catastrophic effects for the population and economic well-being. Whether intentionally caused by non-state actors (i.e. terrorists or “subversives”), technology failures, or forces of nature, the problem is to reduce system vulnerabilities (Collier and Lakoff, 2008). While the systems vulnerability model took root in techno-scientific knowledge production, it did not enter political discourse in the US and Canada until the mid-1990s as a dominant paradigm for national security. Significantly, this *all-hazards* emergency management approach adopts principles and practices from the supply chain security field of business logistics (Collier and Lakoff, 2008).

The all-hazards framework shares two core underlying assumptions with supply chain security. The first is that intentional and unintentional disruptions—and potential emergencies—stemming from natural and human-induced causes are an inevitable reality of the complexities of contemporary society, including trade. The second assumption is that *all* types of threats can be managed through four pillars of risk management: mitigation, preparedness, response, and recovery. Mitigation is the most important pillar, which relies on identifying potential risks and acting to prevent or minimize disruption to avoid emergencies. This model of risk management attempts to address the incalculable uncertainty of “unforeseeable events” through pre-emptive planning (Petit et al., 2010: 5). A key strategy of mitigating supply chain vulnerabilities is to enhance system *resilience*—the capacity to adapt to or “bounce back” from disruption to ensure continuing circulation or functionality (Petit et al., 2010). Rather than responding to concrete imminent threats, this is a broader pre-emptive strategy that anticipates unknown future threats by designing them out. Through this logic, resilience requires not just *maintaining* or *defending* existing infrastructures and capacities, but augmenting, enhancing, and creating them. Future uncertainties become present opportunities.

The all-hazards emergency management approach is a future-oriented paradigm that deploys the conceptual elasticity of *emergency* in ways that expand the bounds of pre-emptive interventions in the name of security. The specific conditions and thresholds that constitute an emergency can only be delimited when a situation is occurring and its effects being experienced (Hussain, 2003). This is detrimental in the context of logistics, as responding to a disruption only after it is occurring compounds potential damages to interdependent supply chains. In the context of state governance, the “emergency imaginary” (Calhoun, 2004)—the pervasive, always-in-the-future potential of emergency—rationalizes interventions undertaken in the interests of the health, safety, and “well-being” of people, property, the economy and government. As Neocleous (2008) argues, “emergency” masks the political effects of such practices. Indeed, this is particularly the case in colonial contexts, as Indigenous peoples’ self-determination poses a *perpetual* emergency for the settler-colonial state’s claim to absolute sovereignty (see Dafnos et al., 2016).

## Indigenous jurisdiction as cause for emergency management

The adoption of the all-hazards risk management logic by state institutions simultaneously reflects and shapes a reorganization of political governance. This reorganization is evident in an institutional “convergence” of emergency management with national security (Cavelty and Kristensen, 2008), and the formal integration of critical infrastructure owner-operators and industry stakeholders as partners in national security.

The key policy piece in the reorganizing of national security in Canada is the 2004 National Security Policy, which established priorities of creating an “integrated security system,” enhancing intelligence capacity, and establishing an emergency management framework focused on protection of critical infrastructure (Government of Canada, 2004). The 2007 Emergency Management Act (EMA) provided the legislative framework for several NSP objectives by requiring every federal department to apply the four pillars of all-hazards emergency management planning to itself and its portfolio area; this includes managing risks to critical infrastructure. Through the EMA, responsibility for national security is integrated into the “normal” activities of government. Consistent with the objective of whole-of-government coordination, departments without explicit policing or security mandates—such as INAC—are integrated with security, intelligence, and policing agencies (see Dafnos, 2013).

The constitution of Indigenous peoples’ self-determination as potential “emergency” within the critical infrastructure paradigm of national security is twofold. First, risk stems from the location of physical assets and circuits of critical infrastructures snaking through or near Indigenous territories. As evidenced in our earlier discussion, this produces uncertainty arising from the exercise of rights and the duty to consult, which can disrupt the circulation of goods and services; it also poses uncertainty for future economic projects and investments. The second dimension of risk is political, as the assertion of jurisdiction by Indigenous peoples poses risk to the government’s “effective functioning” and its ability as a sovereignty state to ensure “economic well-being.”

While the logic of all-hazards risk management works to standardize the management of all types of risk under a common framework, the distinctiveness of Indigenous jurisdiction as a form of risk to the settler state is highlighted by the practices undertaken by INAC under the direction of the EMA. This is reflected in bureaucratic management mechanisms such as the corporate risk assessments discussed above, as well as through the management of risks within the department’s portfolio. The “management” of Indigenous peoples has been INAC’s *raison d’être* since its earliest iteration as a department; the conceptualization of Indigenous self-determination as potential “emergency” triggers unique mitigation strategies within a security logic that neutralizes and obscures their colonial dimensions.

Because INAC administers the Crown’s subsection 91(24) constitutional responsibility for “Indians and lands reserved for the Indians,” it is responsible for emergencies affecting reserve communities. This obligation has largely been met through funding commitments for local emergency response activities. Historically, these activities were concerned with fire suppression and flooding threats to reserves, gradually expanding to include other aspects of on-reserve infrastructure such as housing. INAC’s involvement in managing “emergencies” has expanded significantly via the all-hazards logics of the EMA. Through the elasticity of the notion of “emergency,” INAC has defined “civil unrest” related to Indigenous issues as falling within the scope of its emergency management program; an issue to be monitored alongside fires, floods, landslides, or pandemics that threaten reserve communities. On one level, this is rationalized in relation to the EMA’s requirement for internal risk management,

as “civil unrest” poses risk for INAC specifically since “the outcomes of these events have a direct impact on First Nations and, by extension, on the Department” (INAC, 2010b: 18). The inclusion of “civil unrest” extends to events outside of reserves, technically outside INAC program authority. This was justified on the basis that “if the underlying causes of Aboriginal civil disobedience are a departmental responsibility then the EMA encumbers the department as the drivers of the conflict are related to the Minister’s area of responsibility.”<sup>24</sup>

According to INAC’s *National Emergency Management Plan*, mitigation entails “identifying and anticipating possible issues and emergencies” and “taking proactive measures” (AANDC, 2011b: 4). Consequently, INAC’s expanded emergency management mandate has formalized an active, ongoing monitoring of Indigenous peoples and groups for potential and ongoing “civil unrest” through information collection and analyses within INAC, as well as in exchanges with law enforcement and other “partners” as discussed below. Reflecting the elasticity of “emergency,” this monitoring captures a wide spectrum of “unrest,” ranging from Idle No More blockades to commemorations on World Suicide Prevention Day.<sup>25</sup> These are reported in situational awareness products such as notifications and “hot spot reports,” which are intended to inform decision-making by INAC officials.

In turn, these emergency management activities hook into the broader national security assemblage as INAC disseminates its situational awareness products to its government and non-governmental partners, as well as through hubs of information-intelligence exchange, such as the GOC introduced earlier. The GOC receives and disseminates situational awareness provided by federal departments, law enforcement, intelligence agencies, provincial and territorial level emergency management organizations, and other “stakeholders.” The GOC also produces its own risk assessments—such as the INM contingency plan referenced above—which are intended to inform immediate decision-making by senior government officials and longer-term strategic planning. Because of the interconnectedness of critical infrastructure, the risks stemming from Indigenous peoples’ inherent and constitutional rights are not limited to INAC, but are also captured by the emergency management activities of other departments such as Natural Resources Canada.

Along with the convergence of emergency management with national security, the second aspect of the reorganization of political governance has been the formal integration of corporations and industries as partners in national security. Recognizing the extent of private ownership and operation of critical infrastructure, government departments, law enforcement, and security agencies have been making concerted efforts to develop partnerships with owner-operators and stakeholders such as industry associations. Since risk knowledge is at the root of mitigation, the primary aim of these partnerships is to increase the flow of information between state institutions and private-sector actors (PSC, 2009). However, because private-sector participation is voluntary, these efforts have encountered significant hurdles, particularly corporate concerns about sharing proprietary information about infrastructures, operations, and practices—including *vulnerabilities*—with the state (as regulator) and potentially with competitors (see Kristensen, 2008).

Alleviating these risks for corporations has come through a range of measures that extend privileges of state power. The EMA included amendments to the federal Access to Information Act that exempt from release any information provided by non-state partners for critical infrastructure protection; this extends to them a blanket of secrecy reserved for national security agencies. To facilitate information sharing, Public Safety Canada has pursued multiple initiatives including critical infrastructure sector network meetings between government, owner-operators, and stakeholders. These meetings feature classified intelligence briefings from the RCMP, Canadian Security Intelligence Service, and

Communications Security Establishment (Groves, 2012b).<sup>26</sup> Significantly, these fora are increasingly being driven by private-sector demands. At a 2015 multi-sector network meeting there was “general agreement that critical infrastructure owners/operators (end users) require more information from government and industry alike, and should be engaged more proactively,” including on national security policy. Participants sought more national security briefings from police and intelligence agencies, “with the content being demand driven”.<sup>27</sup>

In addition to in-person meetings, there are several web-based initiatives such as the Critical Infrastructure Information Gateway, a secure portal for exchanging resources, best practices, and information-intelligence. Another example is the RCMP’s Suspicious Incident Reporting (SIR) system, which allows owner-operators to directly report “suspicious incidents.” In 2010, the RCMP opened a SIR file on Indigenous environmental rights activist Clayton Thomas-Muller, noting his travel to the Unist’ot’en protection camp (Barrera, 2014). To facilitate these initiatives, the government prioritized increasing and expediting security clearances for sector representatives, allowing them to receive classified intelligence (PSC, 2009).

These examples start to paint a picture of how political governance is being reconfigured around the priorities of logistics. The entwining of state security with supply chains means that risk management in the name of critical infrastructure protection is driven by the needs and interests of accumulation. By reporting “suspicious incidents,” supplying information about their activities, and directing content of intelligence-information, owner-operators and stakeholders influence security priorities and how state resources are deployed.

Corporate and industry responsiveness to state-led initiatives and their more “proactive” engagement reflects their other integral national security role: critical infrastructure resilience. Resilience requires “creating or strengthening social and physical capacity in the human and built-environment” to mitigate vulnerabilities (Public Safety and Emergency Preparedness Canada, 2007: 9). Resilient critical infrastructure requires ongoing investments by owner-operators and stakeholders in their supply chains. This is integral to (settler colonial) state security not only by mitigating vulnerabilities, but also as the basis for a resilient economy in the context of global trade. The critical infrastructure strategies of Australia, Canada, New Zealand, the UK, and the US “have articulated how important critical infrastructure is to promoting economic prosperity and economic security.” By actively ensuring infrastructure resilience, governments “can protect and increase the strength and vitality of their respective economies” (Critical 5, 2014: 4–5). The uncertainties of Indigenous assertions of jurisdiction, which render infrastructures vulnerable, have become opportunities for new circuitries of capital (see Stanley, 2016). In the increasingly collaborative political governance of national security, deployment of the state’s prerogative power—through law, policy-making, and police-military power—towards securing private investment in critical infrastructure is understood as a key mitigation strategy. Paradoxically, these strategies open up new spaces of contention.

## Conclusion

Paralleling the proliferation of logistics-based capitalism since the 1990s, new articulations of risk have emerged in state governance practices contributing to re-territorializing the settler state. There are two major forms that this re-territorialization has taken. The first is through pushing First Nations towards economic development policies that can provide the state and private sector access to lands, resources, and transport networks. Carving out market access from unceded or treated Indigenous lands re-routes the flows of capital through Indigenous

territory. The legal risk of the “rights-based” approaches taken by Indigenous peoples is contrasted by INAC to its socio-economic agenda that promotes precisely this kind of compliance with economic development policies favoured by the state. The second form of re-territorialization is through a complementary national security assemblage meant to police and secure this access through constituting communities resisting this re-territorialization as posing potential “emergencies.” While Indigenous assertions of jurisdiction and sovereignty are always described as native occupations and blockades, Borrows (2005: 20–21) points out that settlers—whose tenuous land claims and property deeds are rarely depicted as occupations, but who regularly blockade Indigenous peoples from reaching and using their lands—have used these strategies predominantly throughout Canadian history. In rethinking Indigenous dispossession through the new circuitries of capital, we hope to present a counter-narrative to dispossession that is based on the incredible power of Indigenous peoples to shape the national and global economies of trade.

### Declaration of conflicting interests

The author(s) declared no potential conflicts of interest with respect to the research, authorship, and/or publication of this article.

### Funding

The author(s) received no financial support for the research, authorship, and/or publication of this article.

### Notes

1. The court must exercise discretion when considering this legal principle to determine the likely inconvenience or suffering of the applicant compared to the potential injustice suffered by the respondent.
2. In this article, we use the term “Indigenous” to refer to the original peoples and governments of these lands and the term “Aboriginal” when attached to government policy, e.g. Aboriginal treaty rights or in titles of statutes. Occasionally, we have used the term “First Nations” to describe those peoples formerly described as “Indians,” as the key constituents of federal policy.
3. The “Indian problem” in Canada was first articulated by Duncan Campbell Scott, head of the Department of Indian Affairs from 1913 to 1932, in defense of residential schools. He wrote: “I want to get rid of the Indian problem. . . Our objective is to continue until there is not a single Indian in Canada that has not been absorbed into the body politic and there is no Indian question, and no Indian Department, that is the whole object of this Bill.” Today the term is widely used to describe Indigenous peoples’ failure to assimilate more generally.
4. For example, Canada–US collaboration on critical infrastructure security is demonstrated by the 2011 Report by Public Safety Canada, “Beyond the Border Action Plan: A Shared Vision for Perimeter Security and Economic Competitiveness.”
5. *Tsilhqot’in Nation v British Columbia* 2014 SCC 44 [hereafter *Tsilhqot’in*].
6. Lost capital in mining was estimated at \$50 million per year, in addition to \$75 million per year of expenditures that were delayed for three years on average. Approximately 100 jobs per year were lost due to unsettled claims, and, “An investment premium of less than 1% was needed to compensate for the uncertainty of unsettled land claims” (Price Waterhouse, 1990: 2).
7. For analysis on how native claims secure certainty through extinguishment of Aboriginal title, see, for example: Altamirano-Jiménez I (2013) *Indigenous Encounters with Neoliberalism*. Vancouver, Toronto: UBC Press and Rynard P (2000) ‘Welcome in, but check your rights at the door’: The James Bay and Nisga’a Agreements in Canada. *Canadian Journal of Political Science* 33(2): 211–243.

See also the campaign site for Idle No More and Defenders of the Land at [www.idlenomore.ca/turn\\_the\\_tables](http://www.idlenomore.ca/turn_the_tables).

8. As the policy states: “The concept of certainty over lands and resources is central to the purpose of treaty negotiations” (Renewing the Comprehensive Land Claims Policy: Towards a Framework for Addressing Section 35 Aboriginal Rights – September 2014: 11).
9. For non-treaty nations, see: *Haida Nation v. B.C. (Minister of Forests)*, 2004 SCC 73, para. 16 (Hereafter “*Haida*”). In a treaty context, see: *Mikisew Cree v. Canada (Minister of Canadian Heritage)*, 2005 SCC 69, para. 34 (Hereafter “*Mikisew*”).
10. The Secwepemc Nation is located in the south central interior of the westernmost province of British Columbia in Canada. It is comprised of 16 bands, the vast majority of which have never signed land treaties and live on what is known in Canada as “unceded” land.
11. Credit for the photo goes to the Skwelkwek’welt Protection Centre <[www.firstnations.de/development/secwepemc-skwelkwekwelt.htm](http://www.firstnations.de/development/secwepemc-skwelkwekwelt.htm)>
12. Despite the fact that these borders were not even set at the time of Confederation. The westernmost province of BC joined later in 1871, and a vast “northern territory” was sandwiched between the Pacific Ocean and the geographic and political centers of the country, what are today the provinces of Ontario and Quebec. The easternmost province of Newfoundland on the Atlantic shore did not formally join federation until 1949, remaining until then under the jurisdiction of the United Kingdom. Nunuvut was formed as a new territory in 1999.
13. *Taku River Tlingit First Nation v British Columbia (Project Assessment Director)*, 2004 SCC 74, [2004] 3 SCR 550.
14. *Gitxaala Nation et al v. the Queen* 2016 FCA 187.
15. A separate essay is warranted to canvas the private sectors’ risk mitigation strategies against the “legal risk” of Aboriginal rights jurisprudence, as well as the proliferation of mitigation strategies against assertions of inherent Indigenous jurisdiction.
16. As part of its agenda for government “accountability and transparency”, the former Harper government passed the *Federal Accountability Act* in 2006. The Act contained specific provisions related to First Nations finances.
17. *Delgamuukw v British Columbia* [1997] 3 S.C.R. 1010.
18. As the World Bank declared, “A competitive network of global logistics is the backbone of international trade.” (World Bank (2010) *Connecting to Compete: Trade Logistics in the Global Economy. The Logistics Performance Index and its Indicators*. Washington, DC: The International Bank for Reconstruction and Development/The World Bank, p. iii).
19. The bills amended over 70 pieces of legislation and regulation and changed 44 federal laws, including enormous changes to environmental legislation; for example, the *Navigable Waters Protection Act* was amended to strip environmental assessment protections from 99% of lakes and rivers from the purview of the Act. Buried in the bill were amendments to the *Indian Act* regarding designated lands, new restrictions to citizenship participation in the *National Energy Board Act*, and a narrowing of Aboriginal fishery rights in the *Fisheries Act*. These changes, Indigenous peoples asserted, were infringements on their treaty rights, and more pressingly, compromised the legal capacity of Indigenous peoples to exercise inherent responsibilities towards their lands.
20. Public Safety Canada (PSC) (2013) GC Contingency Planning Scenario—FN Protests & Potential Escalation [Deck presentation] p. 7. PSC Access to Information (ATI) request #2012-00438.
21. Some of Prime Minister Justin Trudeau’s ‘Build Canada Plan’—the largest ever investment in infrastructure in the country’s history—could support this work. The Plan commits \$80 billion of public funds, building on a prior \$33 billion in infrastructure investment in 2007 by the outgoing Conservative Government.
22. The mega-industrial tar sands operations in northern Alberta are unfolding on the traditional territories of the Lubicon Cree, Athabasca Dene Chipewyan, Mikisew Cree, and Beaver Lake Cree First Nations. Other bands in Treaty 8 are also affected, such as the Wood Buffalo Region where much of the mining is taking place, and the Peace River region, where *in situ* operations are based, as well as the Indigenous and non-Indigenous communities downstream from the unfolding

ecological disaster. Groups like the Indigenous Environmental Network (IEN) have brought pressure to bear on elected officials, the tar sands industry, and its financial investors, in addition to taking direct action and mobilizing political campaigns to disrupt the infrastructure of the industry through strategic geographic coordination with Indigenous communities living along proposed pipeline routes and highway transport routes.

23. Foreign direct investment in Canada's natural resource sectors represents 37% of total foreign direct investment (Natural Resources Canada (2003). Important facts on Canada's natural resources. Available at: [www.nrcan.gc.ca/statistics-facts/home/887](http://www.nrcan.gc.ca/statistics-facts/home/887) (accessed 28 April 2013)).
24. Holman B (2007) *Final Report: Formative Evaluation—Indian and Northern Affairs Emergency Management Assistance Program*. Ottawa: Indian and Northern Affairs Canada, pp.18 and 29 INAC ATI request #A-2011-01156.
25. INAC (2010) Emergency and Issues Management weekly summary for the week ending 17 September 2010. INAC ATI request #A-2010-02632.
26. The Communications Security Establishment is Canada's cryptology/signals intelligence agency.
27. PSC (2015) National Cross Sector Forum. Meeting Summary. 4 December, pp.2–3. PSC ATI request #A-2015-00306.

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