"The federal cabinet needs First Nations' approval and social license from British Columbians, and they have neither," said Sierra Club BC campaigns director Caitlyn Vernon. And referring to the Save the Fraser Declaration signed by Chief Baptiste and so many others, she added, "First Nations have formally banned pipelines and tankers from their territories on the basis of Indigenous law."[60] It was a sentiment echoed repeatedly in news reports: that the legal title of the province's First Nations was so powerful that even if the federal government did approve the pipeline (which it eventually did in June 2014), the project would be successfully stopped in the courts through Indigenous legal challenges, as well as in the forests through direct action.

Is it true? As the next chapter will explore, the historical claims being made by Indigenous peoples around the world as well as by developing countries for an honoring of historical debts indeed have the potential to act as counterweights to increasingly undemocratic and intransigent governments. But the outcome of this power struggle is by no means certain. As always, it depends on what kind of movement rallies behind these human rights and moral claims.

in Klein
This Changes Everything (2014)

11

YOU AND WHAT ARMY?

Indigenous Rights and the Power of Keeping Our Word

"I never thought I would ever see the day that we would come together. Relationships are changing, stereotypes are disappearing, there's more respect for one another. If anything, this Enbridge Northern Gateway has unified British Columbia."

—Geraldine Thomas-Flurer, coordinator of the Yinka Dene Alliance, a First Nations coalition opposing the Enbridge Northern Gateway pipeline, 2013[1]

"There is never peace in West Virginia because there is never justice."

—Labor organizer Mary Harris "Mother" Jones, 1925[2]

The guy from Standard & Poor's was leafing through the fat binder on the round table in the meeting room, brow furrowed, skimming and nodding.

It was 2004 and I found myself sitting in on a private meeting between two important First Nations leaders and a representative of one of the three most powerful credit rating agencies in the world. The meeting had been requested by Arthur Manuel, a former Neskonlith chief in the interior of British Columbia, now spokesperson for the Indigenous Network on Economies and Trade.

Arthur Manuel, who comes from a long line of respected Native leaders, is an internationally recognized thinker on the question of how to force belligerent governments to respect Indigenous land rights, though you might not guess it from his plainspoken manner or his tendency to chuckle mid-sentence. His theory is that nothing will change until there is a credible

threat that continuing to violate Native rights will carry serious financial costs, whether for governments or investors. So he has been looking for different ways to inflict those costs.

That's why he had initiated a correspondence with Standard & Poor's, which routinely blesses Canada with a AAA credit rating, a much coveted indicator to investors that the country is a safe and secure place in which to sink their money. In letters to the agency, Manuel had argued that Canada did not deserve such a high rating because it was failing to report a very important liability: a massive unpaid debt that takes the form of all the wealth that had been extracted from unceded Indigenous land, without consent—since 1846.[3] He further explained the various Supreme Court cases that had affirmed that Aboriginal and Treaty Rights were still very much alive.

After much back-and-forth, Manuel had managed to get a meeting with Joydeep Mukherji, director of the Sovereign Ratings Group, and the man responsible for issuing Canada's credit rating. The meeting took place at S&P's headquarters, a towering building just off Wall Street. Manuel had invited Guujaaw, the charismatic president of the Haida Nation, to help him make the case about those unpaid debts, and at the last minute had asked me to come along as a witness. Unaware that, post-9/11, official ID is required to get into all major Manhattan office buildings, the Haida leader had left his passport in his hotel room; dressed in a short-sleeved checked shirt and with a long braid down his back, Guujaaw almost didn't make it past security. But after some negotiation with security (and intervention from Manuel's contact upstairs), we made it in.

At the meeting, Manuel presented the Okanagan writ of summons, and explained that similar writs had been filed by many other First Nations. These simple documents, asserting land title to large swaths of territory, put the Canadian government on notice that these bands had every intention of taking legal action to get the economic benefits of lands being used by resource companies without their consent. These writs, Manuel explained, represented trillions of dollars' worth of unacknowledged liability being carried by the Canadian state.

Guujaaw then solemnly presented Mukherji with the Haida Nation's registered statement of claim, a seven-page legal document that had been filed before the Supreme Court of British Columbia seeking damages and

reparations from the provincial government for unlawfully exploiting and degrading lands and waters that are rightfully controlled by the Haida. Indeed, at that moment, the case was being argued before the Supreme Court of Canada, challenging both the logging giant Weyerhaeuser and the provincial government of British Columbia over a failure to consult before logging the forests on the Pacific island of Haida Gwaii. "Right now the Canadian and British Columbia governments are using our land and our resources—Aboriginal and Treaty Rights—as collateral for all the loans they get from Wall Street," Manuel said. "We are in fact subsidizing the wealth of Canada and British Columbia with our impoverishment."[4]

Mukherji and an S&P colleague listened and silently skimmed Manuel's documents. A polite question was asked about Canada's recent federal elections and whether the new government was expected to change the enforcement of Indigenous land rights. It was clear that none of this was new to them—not the claims, not the court rulings, not the constitutional language. They did not dispute any of the facts. But Mukherji explained as nicely as he possibly could that the agency had come to the conclusion that Canada's First Nations did not have the power to enforce their rights and therefore to collect on their enormous debts. Which meant, from S&P's perspective, that those debts shouldn't affect Canada's stellar credit rating. The company would, however, continue to monitor the situation to see if the dynamics changed.

And with that we were back on the street, surrounded by New Yorkers clutching iced lattes and barking into cell phones. Manuel snapped a few pictures of Guujaaw underneath the Standard & Poor's sign, flanked by security guards in body armor. The two men seemed undaunted by what had transpired; I, on the other hand, was reeling. Because what the men from S&P were really saying to these two representatives of my country's original inhabitants was: "We know you never sold your land. But how are you going to make the Canadian government keep its word? You and what army?"

At the time, there did not seem to be a good answer to that question. Indigenous rights in North America did not have powerful forces marshaled behind them and they had plenty of powerful forces standing in opposition. Not just government, industry, and police, but also corporate-owned media that cast them as living in the past and enjoying undeserved special rights,

while those same media outlets usually failed to do basic public education about the nature of the treaties our governments (or rather their British predecessors) had signed. Even most intelligent, progressive thinkers paid little heed: sure they supported Indigenous rights in theory, but usually as part of the broader multicultural mosaic, not as something they needed to actively defend.

However, in perhaps the most politically significant development of the rise of Blockadia-style resistance, this dynamic is changing rapidly—and an army of sorts is beginning to coalesce around the fight to turn Indigenous land rights into hard economic realities that neither government nor industry can ignore.

The Last Line of Defense

As we have seen, the exercise of Indigenous rights has played a central role in the rise of the current wave of fossil fuel resistance. The Nez Perce were the ones who were ultimately able to stop the big rigs on Highway 12 in Idaho and Montana; the Northern Cheyenne continue to be the biggest barrier to coal development in southeastern Montana; the Lummi present the greatest legal obstacle to the construction of the biggest proposed coal export terminal in the Pacific Northwest; the Elsipogtog First Nation managed to substantially interfere with seismic testing for fracking in New Brunswick; and so on. Going back further, it's worth remembering that the struggles of the Ogoni and Ijaw in Nigeria included a broad demand for self-determination and resource control over land that both groups claimed was illegitimately taken from them during the colonial formation of Nigeria. In short, Indigenous land and treaty rights have proved a major barrier for the extractive industries in many of the key Blockadia struggles.

And through these victories, a great many non-Natives are beginning to understand that these rights represent some of the most robust tools available to prevent ecological crisis. Even more critically, many non-Natives are also beginning to see that the ways of life that Indigenous groups are protecting have a great deal to teach about how to relate to the land in ways that are not purely extractive. This represents a true sea change over

a very short period of time. My own country offers a glimpse into the speed of this shift.

The Canadian Constitution and the Canadian Charter of Rights and Freedoms acknowledge and offer protection to "aboriginal rights," including treaty rights, the right to self-government, and the right to practice traditional culture and customs. There was, however, a widespread perception among Canadians that treaties represented agreements to fully surrender large portions of lands in exchange for the provision of public services and designated rights on much smaller reserves. Many Canadians also assumed that in the lands not covered by any treaty (which is a great deal of the country, 80 percent of British Columbia alone), non-Natives could pretty much do what they wished with the natural resources. First Nations had rights on their reserves, but if they once had rights off them as well, they had surely lost them by attrition over the years. Finders keepers sort of thing, or so the thinking went.[5]

All of this was turned upside down in the late 1990s when the Supreme Court of Canada handed down a series of landmark decisions in cases designed to test the limits of Aboriginal title and treaty rights. First came *Delgamuukw v. British Columbia* in 1997, which ruled that in those large parts of B.C. that were not covered by any treaty, Aboriginal title over that land had never been extinguished and still needed to be settled. This was interpreted by many First Nations as an assertion that they still had full rights to that land, including the right to fish, hunt, and gather there. Chelsea Vowel, a Montréal-based Métis educator and Indigenous legal scholar, explains the shockwave caused by the decision. "One day, Canadians woke up to a legal reality in which millions of acres of land were recognized as never having been acquired by the Crown," which would have "immediate implications for other areas of the country where no treaties ceding land ownership were ever signed."[6]

Two years later, in 1999, the ruling known as the *Marshall* decision affirmed that when the Mi'kmaq, Maliseet, and Passamaquoddy First Nations, largely based in New Brunswick and Nova Scotia, signed "peace and friendship" treaties with the British Crown in 1760 and 1761, they did not—as so many Canadians then assumed—agree to give up rights to their ancestral lands. Rather they were agreeing to *share* them with settlers on the condi-

tion that the First Nations could continue to use those lands for traditional activities like fishing, trading, and ceremony. The case was sparked by a single fisherman, Donald Marshall Jr., catching eels out of season and without a license; the court ruled that it was within the rights of the Mi'kmaq and Maliseet to fish year-round enough to earn a "moderate livelihood" where their ancestors had fished, exempting them from many of the rules set by the federal government for the non-Native fishing fleet.[7]

Many other North American treaties contained similar resource-sharing provisions. Treaty 6, for instance, which covers large parts of the Alberta tar sands region, contains clear language stating that "Indians, shall have right to pursue their avocations of hunting and fishing throughout the tract surrendered"—in other words, they surrendered only their *exclusive* rights to the territory and agreed that the land would be used by both parties, with settlers and Indigenous peoples pursuing their interests in parallel.[8]

But any parallel, peaceful coexistence is plainly impossible if one party is irrevocably altering and poisoning that shared land. And indeed, though it is not written in the text of the treaty, First Nations elders living in this region contend that Indigenous negotiators gave permission for the land to be used by settlers only "to the depth of a plow"—considerably less than the cavernous holes being dug there today. In the agreements that created modern-day North America such land-sharing provisions form the basis of most major treaties.

In Canada, the period after the Supreme Court decisions was a tumultuous one. Federal and provincial governments did little or nothing to protect the rights that the judges had affirmed, so it fell to Indigenous people to go out on the land and water and assert them—to fish, hunt, log, and build ceremonial structures, often without state permission. The backlash was swift. Across the country non-Native fishers and hunters complained that the "Indians" were above the law, that they were going to empty the oceans and rivers of fish, take all the good game, destroy the woods, and on and on. (Never mind the uninterrupted record of reckless resource mismanagement by all levels of the Canadian government.)

Tensions came to a head in the Mi'kmaq community of Burnt Church, New Brunswick. Enraged that the *Marshall* decision had empowered Mi'kmaq people to exercise their treaty rights and fish outside of

government-approved seasons, mobs of non-Native fishermen launched a series of violent attacks on their Native neighbors. In what became known as the Burnt Church Crisis, thousands of Mi'kmaq lobster traps were destroyed, three fish-processing plants were ransacked, a ceremonial arbor was burned to the ground, and several Indigenous people were hospitalized after their truck was attacked. And it wasn't just vigilante violence. As the months-long crisis wore on, government boats staffed with officials in riot gear rammed into Native fishing boats, sinking two vessels and forcing their crews to jump to safety in the water. The Mi'kmaq fishers did their best to defend themselves, with the help of the Mi'kmaq Warrior Society, but they were vastly outnumbered and an atmosphere of fear prevailed for years. The racism was so severe that at one point a non-Native fisherman put on a long-haired wig and performed a cartoonish "war dance" on the deck of his boat in front of delighted television crews.

That was 2000. In 2013, a little more than an hour's drive down the coast from Burnt Church, the same Mi'kmaq Warrior Society was once again in the news, this time because it had joined with the Elsipogtog First Nation to fend off the Texas company at the center of the province's fracking showdown. But the mood and underlying dynamics could not have been more different. This time, over months of protest, the warriors helped to light a series of ceremonial sacred fires and explicitly invited the non-Native community to join them on the barricades "to ensure that the company cannot resume work to extract shale gas via fracking." A statement explained, "This comes as part of a larger campaign that reunites Indigenous, Acadian & Anglo people." (New Brunswick has a large French-speaking Acadian population, with its own historical tensions with the English-speaking majority.)[9]

Many heeded the call and it was frequently noted that protests led by the Elsipogtog First Nation were remarkably diverse, drawing participants from all of the province's ethnic groups, as well as from First Nations across the country. As one non-Native participant, Debbi Hauper, told a video crew, "It's just a real sense of togetherness. We are united in what is most important. And I think we're seeing more and more of government and industries' methods of trying to separate us. And let's face it, these methods have worked for decades. But I think we're waking up."[10]

There were attempts to revive the old hatreds, to be sure. A police officer was overheard saying "Crown land belongs to the government, not to fucking Natives." And after the conflict with police turned violent, New Brunswick premier David Alward observed, "Clearly, there are those who do not have the same values we share as New Brunswickers." But the community stuck together and there were solidarity protests in dozens of cities and towns across the country: "This is not just a First Nations campaign. It's actually quite a historic moment where all the major peoples of this province—English, French and Aboriginal—come together for a common cause," said David Coon, head of the Green Party in New Brunswick. "This is really a question of justice. They want to protect their common lands, water and air from destruction."[11]

By then many in the province had come to understand that the Mi'kmaq's rights to use their traditional lands and waters to hunt and fish—the same rights that had sparked race riots a dozen years earlier— represented the best hope for the majority of New Brunswickers who opposed fracking.[12] And new tools were clearly required. Premier Alward had been a fracking skeptic before he was elected in 2010 but once in office, he promptly changed his tune, saying the revenue was needed to pay for social programs and to create jobs—the sort of flip flop that breeds cynicism about representative democracy the world over.

Indigenous rights, in contrast, are not dependent on the whims of politicians. The position of the Elsipogtog First Nation was that no treaty gave the Canadian government the authority to radically alter their ancestral lands. The right to hunt and fish, affirmed by the *Marshall* decision, was violated by industrial activity that threatened the fundamental health of the lands and waters (since what good is having the right to fish, for instance, when the water is polluted?). Gary Simon of the Elsipogtog First Nation explains, "I believe our treaties are the last line of defense to save the clean water for future generations."[13]

It's the same position the Lummi have taken against the coal export terminal near Bellingham, Washington, arguing that the vast increase in tanker traffic in the Strait of Georgia, as well as the polluting impacts of coal dust, violates their treaty-protected right to fish those waters. (The Lower Elwha Klallam tribe in Washington State made similar points when its leaders fought to remove two dams on the Elwha River. They argued, successfully, that by interfering with salmon runs the dam violated their treaty rights to fish.) And when the U.S. State Department indicated, in February 2014, that it might soon be offering its blessing to the Keystone XL pipeline, members of the Lakota Nation immediately announced that they considered the pipeline construction illegal. As Paula Antoine, an employee of the Rosebud tribe's land office, explained, because the pipeline passes through Lakota treaty-protected traditional territory, and very close to reservation land, "They aren't recognizing our treaties, they are violating our treaty rights and our boundaries by going through there. Any ground disturbance around that proposed line will affect us."[14]

These rights are real and they are powerful, all the more so because many of the planet's largest and most dangerous unexploded carbon bombs lie beneath lands and waters to which Indigenous peoples have legitimate legal claims. No one has more legal power to halt the reckless expansion of the tar sands than the First Nations living downstream whose treaty-protected hunting, fishing, and trapping grounds have already been fouled, just as no one has more legal power to halt the rush to drill under the Arctic's melting ice than Inuit, Sami, and other northern Indigenous tribes whose livelihoods would be jeopardized by an offshore oil spill. Whether they are able to exercise those rights is another matter.

This power was on display in January 2014 when a coalition of Alaskan Native tribes, who had joined forces with several large green groups, won a major court victory against Shell's already scandal-plagued Arctic drilling adventures. Led by the Native village of Point Hope, the coalition argued that when the U.S. Interior Department handed out drilling permits to Shell and others in the Chukchi Sea, it failed to take into account the full risks, including the risks to Indigenous Inupiat ways of life, which are inextricably entwined with a healthy ocean. As Port Hope mayor Steve Oomittuk explained when the lawsuit was launched, his people "have hunted and depended on the animals that migrate through the Chukchi Sea for thousands of years. This is our garden, our identity, our livelihood. Without it we would not be who we are today. . . . We oppose any activity that will endanger our way of life and the animals that we greatly depend on." Faith Gemmill, executive director of Resisting Environmental De-

struction on Indigenous Lands, one of the groups behind the lawsuit, notes that for the Inupiat who rely on the Chukchi Sea, "you cannot separate environmental impacts from subsistence impacts, for they are the same."[15]

A federal appeals court ruled in the coalition's favor, finding that the Department of the Interior's risk assessments were based on estimates that were "arbitrary and capricious," or presented "only the *best* case scenario for environmental harm."[16] Rather like the shoddy risk assessments that set the stage for BP's Deepwater Horizon disaster.

John Sauven, executive director of Greenpeace U.K., described the ruling as "a massive blow to Shell's Arctic ambitions." Indeed just days later, the company announced that it was putting its Arctic plans on indefinite hold. "This is a disappointing outcome, but the lack of a clear path forward means that I am not prepared to commit further resources for drilling in Alaska in 2014," said Shell CEO Ben van Beurden. "We will look to relevant agencies and the Court to resolve their open legal issues as quickly as possible." Without Indigenous groups raising the human rights stakes in this battle, it's a victory that might never have taken place.[17]

Worldwide, companies pushing for vast new coal mines and coal export terminals are increasingly being forced to similarly reckon with the unique legal powers held by Indigenous peoples. For instance, in Western Australia in 2013 the prospect of legal battles over native title was an important factor in derailing a planned $45 billion LNG (liquefied natural gas) processing plant and port, and though the state government remains determined to force gas infrastructure and fracking on the area, Indigenous groups are threatening to assert their traditional ownership and procedural rights in court. The same is true of communities facing coal bed methane development in New South Wales.[18]

Meanwhile, several Indigenous groups in the Amazon have been steadfastly holding back the oil interests determined to sacrifice new swaths of the great forests, protecting both the carbon beneath the ground and the carbon-capturing trees and soil above those oil and gas deposits. They have asserted their land rights with increasing success at the Inter-American Court of Human Rights, which has sided with Indigenous groups against governments in cases involving natural resource and territorial rights.[19] And the U'wa, an isolated tribe in Colombia's Andean cloud forests—where the

tree canopy is perpetually shrouded in mist—have made history by resisting repeated attempts by oil giants to drill in their territory, insisting that stealing the oil beneath the earth would bring about the tribe's destruction. (Though some limited drilling has taken place.)

As the Indigenous rights movement gains strength globally, huge advances are being made in recognizing the legitimacy of these claims. Most significant was the United Nations Declaration on the Rights of Indigenous Peoples, adopted by the General Assembly in September 2007 after 143 member states voted in its favor (the four opposing votes—United States, Canada, Australia, and New Zealand—would each, under domestic pressure, eventually endorse it as well). The declaration states that, "Indigenous peoples have the right to the conservation and protection of the environment and the productive capacity of their lands or territories and resources." And further that they have "the right to redress" for the lands that "have been confiscated, taken, occupied, used or damaged without their free, prior and informed consent." Some countries have even taken the step of recognizing these rights in revised constitutions. Bolivia's constitution, approved by voters in 2009, states that Indigenous peoples "are guaranteed the right to prior consent: obligatory consultation by the government, acting in good faith and in agreement, prior to the exploitation of non-renewable natural resources in the territory they inhabit." A huge, hard-won legal victory.[20]

Might vs. Rights

And yet despite growing recognition of these rights, there remains a tremendous gap between what governments say (and sign) and what they do—and there is no guarantee of winning when these rights are tested in court. Even in countries with enlightened laws as in Bolivia and Ecuador, the state still pushes ahead with extractive projects without the consent of the Indigenous people who rely on those lands.[21] And in Canada, the United States, and Australia, these rights are not only ignored, but Indigenous people know that if they try to physically stop extractive projects that are clearly illegal, they will in all likelihood find themselves on the wrong

side of a can of pepper spray—or the barrel of a gun. And while the lawyers argue the intricacies of land title in court, buzzing chainsaws proceed to topple trees that are four times as old as our countries, and toxic fracking fluids seep into the groundwater.

The reason industry can get away with this has little to do with what is legal and everything to do with raw political power: isolated, often impoverished Indigenous peoples generally lack the monetary resources and social clout to enforce their rights, and anyway, the police are controlled by the state. Moreover the costs of taking on multinational extractive companies in court are enormous. For instance in the landmark "Rainforest Chernobyl" case in which Ecuador's highest court ordered Chevron to pay $9.5 billion in damages, a company spokesman famously said: "We're going to fight this until hell freezes over—and then we'll fight it out on the ice." (And indeed, the fight still drags on.)[22]

I was struck by this profound imbalance when I traveled to the territory of the Beaver Lake Cree Nation in northern Alberta, a community that is in the midst of one of the highest-stakes legal battles in the tar sands. In 2008, the band filed a historic lawsuit charging that by allowing its traditional territories to be turned into a latticework of oil and gas infrastructure, and by poisoning and driving away the local wildlife, the provincial and federal governments, as well as the British Crown, had infringed no fewer than fifteen thousand times on the First Nation's treaty rights to continue to hunt, fish, and trap on their territory.[23] What set the case apart was that it was not about one particular infringement, but an entire model of poisonous, extractive development, essentially arguing that this model itself constituted a grave treaty violation.

"The Governments of Canada and Alberta have made a lot of promises to our people and we intend to see those promises kept," said Al Lameman, the formidable chief of the Beaver Lake Cree Nation at the time the lawsuit was filed (Lameman had made history before, filing some of the first Indigenous human rights challenges against the Canadian government). Against the odds, the case has proceeded through the Canadian court system, and in March 2012 an Alberta court flatly rejected government efforts to have the case dismissed as "frivolous," an "abuse of the Court's process," and "unmanageable."[24]

A year after that ruling, I met Al Lameman, now retired, and his cousin Germaine Anderson, an elected band councilor, as well as the former chief's niece, Crystal Lameman, who has emerged as one of the most compelling voices against the tar sands on the international stage. These are three of the people most responsible for moving the lawsuit forward, and Germaine Anderson had invited me to a family barbecue to discuss the case.

It was early July and after a long dark winter it was as if a veil had lifted: the sun was still bright at 10 p.m. and the northern air had a thin, baked quality. Al Lameman had aged considerably in recent years and slipped in and out of the conversation. Anderson, almost painfully shy, had also struggled with her health. The spot where the family met for this gathering was where she spent the summer months: a small trailer in a clearing in the woods, without running water or electricity, entirely off the grid.

I knew the Beaver Lake Cree were in a David and Goliath struggle. But on that endless summer evening, I suddenly understood what this actually meant: some of the most marginalized people in my country—many of them, like all the senior members of the Lameman clan, survivors of the intergenerational trauma of abusive residential schools—are taking on some of the wealthiest and most powerful forces on the planet. Their heroic battles are not just their people's best chance of a healthy future; if court challenges like Beaver Lake's can succeed in halting tar sands expansion, they could very well be the best chance for the rest of us to continue enjoying a climate that is hospitable to human life.

That is a huge burden to bear and that these communities are bearing it with shockingly little support from the rest of us is an unspeakable social injustice.

A few hours north, a different Indigenous community, the Athabasca Chipewyan First Nation (ACFN), recently launched another landmark lawsuit, this one taking on Shell and the Canadian government over the approval of a huge tar sands mine expansion. The band is also challenging another Shell project, the proposed Pierre River Mine, which it says "would significantly impact lands, water, wildlife and the First Nation's ability to utilize their traditional territory." Once again the mismatch is staggering. The ACFN, with just over one thousand members and an operating budget of about $5 million, is battling both the Canadian government and Shell,

with its 92,000 employees across more than seventy countries and 2013 global revenues of $451.2 billion. Many communities see odds like these and, understandably, never even get in the ring.[25]

It is this gap between rights and resources—between what the law says and what impoverished people are able to force vastly more powerful entities to do—that government and industry have banked on for years.

"Honour the Treaties"

What is changing is that many non-Native people are starting to realize that Indigenous rights—if aggressively backed by court challenges, direct action, and mass movements demanding that they be respected—may now represent the most powerful barriers protecting all of us from a future of climate chaos.

Which is why, in many cases, the movements against extreme energy extraction are becoming more than just battles against specific oil, gas, and coal companies and more, even, than pro-democracy movements. They are opening up spaces for a historical reconciliation between Indigenous peoples and non-Natives, who are finally understanding that, at a time when elected officials have open disdain for basic democratic principles, Indigenous rights are not a threat, but a tremendous gift. Because the original Indigenous treaty negotiators in much of North America had the foresight to include language protecting their right to continue living off their traditional lands, they bequeathed to all residents of these and many other countries the legal tools to demand that our governments refrain from finishing the job of flaying the planet.

And so, in communities where there was once only anger, jealousy, and thinly veiled racism, there is now something new and unfamiliar. "We're really thankful for our First Nations partners in this struggle," said Lionel Conant, a property manager whose home in Fort St. James, British Columbia, is within sight of the proposed Northern Gateway pipeline. "[They've] got the legal weight to deal with [the pipeline] . . . because this is all unceded land." In Washington State, anti-coal activists talk about the treaty rights of the Lummi as their "ace in the hole" should all other methods of blocking the export terminals fail. In Montana, the Sierra Club's Mike Scott told me bluntly, "I don't think people understand the political power Natives have as sovereign nations, often because they lack the resources to exercise that power. They can stop energy projects in a way we can't."[26]

In New Brunswick, Suzanne Patles, a Mi'kmaq woman involved in the anti-fracking movement, described how non-Natives "have reached out to the Indigenous people to say 'we need help.'"[27] Which is something of a turnaround from the saviorism and pitying charity that have poisoned relationships between Indigenous peoples and well-meaning liberals for far too long.

It was in the context of this gradual shift in awareness that Idle No More burst onto the political scene in Canada at the end of 2012 and then spread quickly south of the border. North American shopping centers—from the enormous West Edmonton Mall to Minnesota's Mall of America—were suddenly alive with the sounds of hand drums and jingle dresses as Indigenous people held flash mob round dances across the continent at the peak of the Christmas shopping season. In Canada, Native leaders went on hunger strikes, and youths embarked on months-long spiritual walks and blockaded roads and railways.

The movement was originally sparked by a series of attacks by the Canadian government on Indigenous sovereignty, as well as its all-out assault on existing environmental protections, particularly for water, to pave the way for rapid tar sands expansion, more mega-mines, and projects like Enbridge's Northern Gateway pipeline. The attacks came in the form of two omnibus budget bills passed in 2012 that gutted large parts of the country's environmental regulatory framework. As a result, a great many industrial activities were suddenly exempt from federal environmental reviews, which along with other changes, greatly reduced opportunities for community input and gave the intractable right-wing government of Stephen Harper a virtual free hand to ram through unpopular energy and development projects. The omnibus bills also overhauled key provisions of the Navigable Waters Protection Act that protect species and ecosystems from damage. Previously, virtually 100 percent of the country's water bodies had been covered by these protections; under the new order, that was slashed to less than 1 per-

cent, with pipelines simply exempted. (Documents later revealed that the latter change had been specifically requested by the pipeline industry.)[28]

Canadians were in shock at the extent and speed of the regulatory overhaul. Most felt powerless, and with good reason: despite winning only 39.6 percent of the popular vote, the Harper government had a majority in Parliament and could apparently do as it pleased.[29] But the First Nations' response was not to despair; it was to launch the Idle No More movement from coast to coast. These laws, movement leaders said, were an attack on Indigenous rights to clean water and to maintain traditional ways of life. Suddenly, the arguments that had been made in local battles were being taken to the national level, now used against sweeping federal laws. And for a time Idle No More seemed to change the game, attracting support from across Canadian society, from trade unions to university students, to the opinion pages of mainstream newspapers.

These coalitions of rights-rich-but-cash-poor people teaming up with (relatively) cash-rich-but-rights-poor people carry tremendous political potential. If enough people demand that governments honor the legal commitments made to the people on whose land colonial nations were founded, and do so with sufficient force, politicians interested in reelection won't be able to ignore them forever. And the courts, too—however much they may claim to be above such influences—are inevitably shaped by the values of the societies in which they function. A handful of courageous rulings notwithstanding, if an obscure land right or treaty appears to be systematically ignored by the culture as a whole, it will generally be treated tentatively by the courts. If, however, the broader society takes those commitments seriously, then there is a far greater chance that the courts will follow.*

As Idle No More gained steam, many investors took notice. "For the

* Indeed, it may be no coincidence that in June 2014, the Supreme Court of Canada issued what may be its most significant indigenous rights ruling to date when it granted the Tsilhqot'in Nation a declaration of Aboriginal title to 1,750 square kilometers of land in British Columbia. The unanimous decision laid out that ownership rights included the right to use the land, to decide how the land should be used by others, and to derive economic benefit from the land. Government, it also stated, must meet certain standards before stepping in, and seek not only consultation with First Nations, but consent from them. Many commented that it would make the construction of controversial projects like tar sands pipelines—rejected by local First Nations—significantly more difficult.

first time in six years, Canadian provinces failed to top the list of the best mining jurisdictions in the world in a 2012/13 survey," Reuters reported in March 2013. "Companies that participated in the survey said they were concerned about land claims." The article quoted Ewan Downie, chief executive of Premier Gold Mines, which owns several projects in Ontario: "I would say one of the big things that is weighing on mining investment in Canada right now is First Nations issues."[30]

Writing in *The Guardian*, journalist and activist Martin Lukacs observed that Canadians seemed finally to be grasping that

> implementing Indigenous rights on the ground, starting with the United Nations Declaration on the Rights of Indigenous Peoples, could tilt the balance of stewardship over a vast geography: giving Indigenous peoples much more control, and corporations much less. Which means that finally honoring Indigenous rights is not simply about paying off Canada's enormous legal debt to First Nations: it is also our best chance to save entire territories from endless extraction and destruction. In no small way, the actions of Indigenous peoples—and the decision of Canadians to stand alongside them—will determine the fate of the planet.
>
> This new understanding is dawning on more Canadians. Thousands are signing onto educational campaigns to become allies to First Nations. . . . Sustained action that puts real clout behind Indigenous claims is what will force a reckoning with the true nature of Canada's economy—and the possibility of a transformed country. That is the promise of a growing mass protest movement, an army of untold power and numbers.[31]

In short, the muscle able to turn rights into might that Standard & Poor's had been looking for in that meeting with Arthur Manuel and Guujaaw back in 2004 may have finally developed.

The power of this collaboration received another boost in January 2014 when the rock legend Neil Young kicked off a cross-Canada tour called "Honour the Treaties." He had visited the tar sands several months earlier and been devastated by what he saw, saying (to much controversy) that the region "looks like Hiroshima." While in the region, he had met with Chief

Allan Adam of the Athabasca Chipewyan and heard about the lawsuits opposing Shell's tar sands expansions, as well as the health impacts current levels of oil production are already having on the community. "I was sitting with the chief in the teepee, on the reserve. I was hearing the stories. I saw that the cancer rate was up among all the tribes. This is not a myth. This is true," Young said.[32]

And he concluded that the best way he could contribute to the fight against the tar sands was to help the Athabasca Chipewyan First Nation exercise its rights in court. So he went on a concert tour, donating 100 percent of the proceeds to the court challenges. In addition to raising $600,000 for their legal battles within two months, the tour attracted unprecedented national attention to both the local and global impacts of runaway tar sands development. The prime minister's office fought back by attacking one of Canada's most beloved icons, but it was a losing battle. Prominent Canadians spoke up to support the campaign, and polls showed that even in Alberta a majority were taking Young's side in the dispute.[33]

Most importantly, the Honour the Treaties tour sparked a national discussion about the duty to respect First Nation legal rights. "It's up to Canadians all across Canada to make up their own minds about whether their integrity is threatened by a government that won't live up to the treaties that this country is founded on," Young said. And the country heard directly from Chief Allan Adam, who described the treaties his ancestors signed as "not just pieces of paper but a last line of defense against encroaching reckless tar sands development that my people don't want and that we are already suffering from."[34]

The Moral Imperative of Economic Alternatives

Making the most of that last line of defense is a complex challenge involving much more than rock concerts and having cash in hand to pay lawyers. The deeper reason why more First Nations communities aren't taking on companies like Shell has to do with the systematic economic and social disenfranchisement that makes doing business with heavily polluting oil or mining companies seem like the only way to cover basic human needs. Yes, there is a desire to protect the rivers, streams, and oceans for traditional

fishing. But in Canada, according to a 2011 government report, the water systems in 25 percent of First Nations communities are so neglected and underfunded that they pose a "high overall risk" to health, while thousands of residents of Native reserves are living without sewage or running water at all. If you are the leader of one such community, getting those basic services taken care of, no matter the cost, is very likely going to supersede all other priorities.[35]

And ironically, in many cases, climate change is further increasing the economic pressure on Indigenous communities to make quick-and-dirty deals with extractive industries. That's because disruptive weather changes, particularly in northern regions, are making it much harder to hunt and fish (for example when the ice is almost never solid, communities in the far north become virtually trapped, unable to harvest food for months on end). All this makes it extremely hard to say no to offers of job training and resource sharing when companies like Shell come to town. Members of these communities know that the drilling will only make it harder to engage in subsistence activities—there are real concerns about the effects of oil development on the migration of whales, walruses, and caribou—and that's without the inevitable spills. But precisely because the ecology is already so disrupted by climate change, there often seems no other option.

The paucity of good choices is perhaps best on display in Greenland, where receding glaciers and melting ice are revealing a vast potential for new mines and offshore oil exploration. The former Danish colony gained home rule in 1979, but the Inuit nation still relies on an annual infusion of more than $600 million (amounting to a full third of the economy) from Denmark. A 2008 self-governance referendum gave Greenland still more control over its own affairs, but also put it firmly on the path of drilling and mining its way to full independence. "We're very aware that we'll cause more climate change by drilling for oil," a top Greenlandic official, then heading the Office of Self-Governance, said in 2008. "But should we not? Should we not when it can buy us our independence?" Currently, Greenland's largest industry is fishing, which of course would be devastated by a major spill. And it doesn't bode well that one of the companies selected to begin developing Greenland's estimated fifty billion barrels of offshore oil and gas is none other than BP.[36]

Indeed the melancholy dynamic strongly recalls BP's "vessels of oppor-

tunity" program launched in the midst of the Deepwater Horizon disaster. For months, virtually the entire Louisiana fishing fleet was docked, unable to make a living for fear that the seafood was unsafe. That's when BP offered to convert any fishing vessel into a cleanup boat, providing it with booms to (rather uselessly) mop up some oil. It was tremendously difficult for local shrimpers and oystermen to take work from the company that had just robbed them of their livelihood—but what choice did they have? No one else was offering to help pay the bills. This is the way the oil and gas industry holds on to power: by tossing temporary life rafts to the people it is drowning.

That many Indigenous people would view the extractive industries as their best of a series of bad options should not be surprising. There has been almost no other economic development in most Native communities, no one else offering jobs or skills training in any quantity. So in virtually every community on the front lines of extractive battles, some faction invariably makes the argument that it's not up to Indigenous people to sacrifice to save the rest of the world from climate change, that they should concentrate instead on getting better deals from the mining and oil companies so that they can pay for basic services and train their young people in marketable skills. Jim Boucher, chief of the Fort McKay First Nation, whose lands have been decimated by the Alberta tar sands, told an oil-industry-sponsored conference in 2014, "There is no more opportunity for our people to be employed or have some benefits except the oil sands"—going so far as to call the mines the "new trap line," a reference to the fur trade that once drove the economics of the region.[37]

Sadly, this argument has created rancorous divisions and families are often torn apart over whether to accept industry deals or to uphold traditional teachings. And as the offers from industry become richer (itself a sign of Blockadia's growing power), those who are trying to hold the line too often feel they have nothing to offer their people but continued impoverishment. As Phillip Whiteman Jr., a traditional Northern Cheyenne storyteller and longtime opponent of coal development, told me, "I can't keep asking my people to suffer with me."[38]

These circumstances raise troubling moral questions for the rising Blockadia movement, which is increasingly relying on Indigenous people

to be the legal barrier to new, high-carbon projects. It's fine and well to laud treaty and title rights as the "last line of defense" against fossil fuel extraction. But if non-Native people are going to ask some of the poorest, most systematically disenfranchised people on the planet to be humanity's climate saviors, then, to put it crassly, what are we going to do for them? How can this relationship not be yet another extractive one, in which non-Natives use hard-won Indigenous rights but give nothing or too little in return? As the experience with carbon offsets shows, there are plenty of examples of new "green" relationships replicating old patterns. Large NGOs often use Indigenous groups for their legal standing, picking up some of the costs for expensive legal battles but not doing much about the underlying issues that force so many Indigenous communities to take these deals in the first place. Unemployment stays sky high. Options, for the most part, stay bleak.

If this situation is going to change, then the call to Honour the Treaties needs to go a whole lot further than raising money for legal battles. Non-Natives will have to become the treaty and land-sharing partners that our ancestors failed to be, making good on the full panoply of promises they made, from providing health care and education to creating economic opportunities that do not jeopardize the right to engage in traditional ways of life. Because the only people who will be truly empowered to say no to dirty development over the long term are people who see real, hopeful alternatives. And this is true not just within wealthy countries but between the countries of the wealthy postindustrial North and the fast-industrializing South.