

DYNAMICS OF ABORIGINAL LAND USE INSTITUTIONS: THE RISE AND FALL OF COMMUNITY CONTROL OVER RESERVE SYSTEMS IN THE LIL'WAT NATION, CANADA

Akihiko Nemoto

Forest Economics Research Institute

#301 Mansion Yoneda, 2-13-12 Hakusan, Bunkyo-Ku,
Tokyo, Japan zip 112-0001

E-mail: YQR01754@nifty.ne.jp

Abstract / Résumé

Through a combination of the participant-observer method and archival data collection, this descriptive study deals with the changing dynamics of land use institutions in an Aboriginal community of British Columbia, Canada, namely the Lil'wat Nation.

En alliant la méthode du participant-observateur et la collecte de données d'archives, l'étude descriptive se penche sur la dynamique en évolution des institutions responsables de l'utilisation du sol dans une collectivité autochtone de la Colombie-Britannique (Canada), soit la Nation Lil'wat.

1. Research Objectives and Methodology

In the context of "sustainable development," traditional resource use systems around the world have been gaining attention as practical ways to conserve natural resources today.¹ With respect to Aboriginal peoples in Canada, some scholars have advocated that there is a strong hope for contemporary resource management practices to incorporate the Aboriginal knowledge that has sustained the living resource base over extended periods of time.² However, these arguments tend to follow only philosophical lines, ignoring the reality of Aboriginal people who have been subjected to the politics of assimilation and economic modernization. As a way to explore Aboriginal relationship to land against the reality of their life, it is worthwhile investigating *de facto* land use institutions evolving in an Aboriginal community.

The purpose of this present study is to describe the changing dynamics of land use institutions with respect to the Mount Currie Indian Reserves of the Lil'wat Nation³ over the last 50 years. The Lil'wat Nation consists of about 1,000 people living on the reserves, a total area of about 2,500 hectares. All the reserves are located around Mount Currie in the Pemberton Valley, 100 miles north of Vancouver, British Columbia (BC).

This study is conducted with an in-depth descriptive case-study format. The participant-observer method was employed during this researcher's "socialization" process and initial hypotheses were developed (*stage 1*). In this stage of the research, staying eight months in the community in 1995, this researcher was able to have many informal consultations with Lil'wat community members. The informants offered numerous stories and explanations concerning land use practices, community affairs, life-style accounts, and so on. Then, the researcher corroborated these stories with a systematic examination of archival information, namely band records and minutes of meetings kept with the Mount Currie Indian Band Office. This information was used for validation, revision, or to discard unconfirmed hypotheses (*stage 2*). In that way, this researcher has used two convergent sources of evidence in data collection. In addition, copies of the research document were circulated among some of the important informants who participated in this research. Their endorsement of the descriptive accuracy of the document served as a further cross-validation of this study.⁴

2. Descriptive Framework: Property Rights, Reserve Systems and Aboriginal Peoples

As a land institution is a component of a property right, at first, the

term *property* should be defined. Among various meanings involved in the *property*, the definition used in this study follows the one offered by Macpherson⁵: "to have a property is to have a right in the sense of an enforceable claim to some use or benefit of something, [...] property is a claim that will be enforced by society or the state, by custom or convention or law". Therefore, as long as a certain condition (i.e. *existence conditions* explained in the endnote #6) is institutionalized in a society, any conventional system can confer a property right.⁶

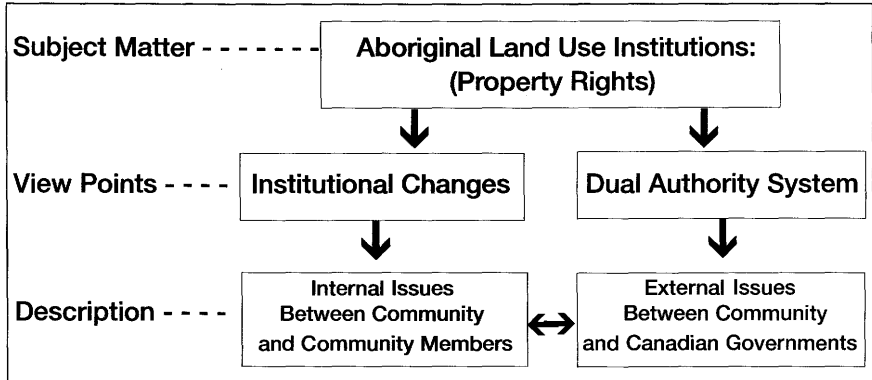
In a property system, institutional changes may occur so as to change the property system itself. Property is determined by the purposes it serves in any society, at any given time. As Macpherson⁷ puts it, "a system of property rights is an instrument by which a society seeks to realize the purposes of its members, or some of the purposes of some of its members". Therefore, as conditions in society change, the goals of its members change as well, which leads to changes in property systems. Two rationales have been proposed in order to account for this fluctuating quality of property: (a) to maximize individual utilities, and (b) to facilitate a person or a group of people in power.⁸ Property rights are the social institutions that determine the allocation of decision-making authority, the economic factors, and the distribution of wealth in a society. Therefore, when a change is the focus of description, which is the case of this study, one should look into the issues concerning authority (power) and economic and social imperatives around a property system.

In the case of Aboriginal peoples in Canada, it is unclear to what extent Canadian authority has ruled over Aboriginal peoples and their territory. Assuming that an Aboriginal society has retained its own property systems, the reciprocal influence between the Canadian and the Aboriginal property systems remains an open question. For example, in Canada, the Indian Act gives the federal government full authority over reserve land system. At a closer look, however, whatever the proclaimed state system is, local Aboriginal communities often retain their own *de facto* property systems that subsist against the proclaimed *de jure* state legal systems. These dual property systems with dual authorities are the main issues of this research project. In fact, in the academic field of natural resource management, it is recognized that, in many parts of the world, community-based *de facto* resource management has not only survived but also worked effectively under various conditions.⁹ It is, therefore, important to investigate the way in which *de facto* land institution functions in an Aboriginal community.

Then, a descriptive framework for the present study is formulated as shown in Figure 1. The subject matter 'Aboriginal land use institu-

tions' is divided into two parts for descriptive clarity. One part deals with community's internal issues that induce institutional changes. Another part is concerned about community's external issues, i.e. dual authority system, found in the relationship with Canadian governments. Although these two parts are mutually interrelated, this study describes them separately.

Figure 1
Formulation of the Present Study



3. Lil'wat Nation and Indian Reserve System in Canada: A Background

Europeans' first exploration of the Lil'wat was in 1808 by Simon Fraser of the Northwest Company pushing westward in search of new trade routes.¹⁰ He followed the Fraser River down to the sea establishing several forts as trading centers. It is presumed that, by the middle of 19th century, European goods such as guns, axes, cloths, beads, as well as potato cultivation had been popularized among the Lil'wat people. As Fisher¹¹ described, however, there were no apparent modifications of the Native culture during this period: "The Indians still to a large extent controlled both the trade and their culture, and European traders did not attempt any major interference with their way of life."

However, the following settlement period starting with gold rush fever in the 1850s was disruptive because it introduced major cultural changes so rapidly that the Aboriginal peoples began to lose control over important areas of their traditional life. Especially after Governor Douglas concluded a number of treaties with the Aboriginal peoples on a part of the Vancouver Island in the 1850s, Native peoples in BC have been banished from their lands without any treaties although this pro-

Table 1 Reserves for Lil'wat People in 1913

Name	Where Situated	Acreage	Remarks
#1 Pemberton	at the upper end of the lower Pemberton meadows	188.50	Allotted by Commissioner O'Reilly, Sept. 6, 1881, Surveyed 1882, Approved, June 4, 1884
#2	on the upper Pemberton meadows between the north and south branches of the Lillooet Rivers	105.00	same as above
#3 Ne-such	on the lower Pemberton meadows between the north and south branches of the Lillooet Rivers	909.50	same as above
#4 Lokla	on the Birkenhead river, about seven miles from reserve No. 1	19.50	same as above
#5 Grave-yard	near the 20 mile house at the foot of Pemberton lake, on Mr. J. Smith's pre-emption claim	1.40	Allotted by O'Reilly Sept. 6, 1881. Surveyed 1882, Approved June 4, 1884. The exclusive right of fishing in the Lillooet river from the foot of Pemberton lake 1/2 mile down stream is reserved for these Indians.
#6	on left bank of Birkenhead river, N. of reserve No. 3	4,000.00	The North Pacific Lumber Co. have the right of cutting timber on 1,640 acres lot 236, group, 1 for 21 years from April 1, 1903. Allotted by Commissioner Vowell June 15, 1904, Surveyed by D.J.F.Ritchie, D. and P.L.S., 1905, Approved Feb. 21 1906
#7	same as above	320.00	Allotted by chief Commissioner of Lands and Works, It was previously known as B. Smith's pre-emption
#8	L.99 G.I.L.98 G.I.	813.00	Purchased by Dominion Govt. on 4 th Nov., 1905 from Bishop Dontenwill, consists of lot 99, group 1, containing 287 acres, east portion of lot 98, containing 320 acres and west portion of lot 98 containing 206 acres.

Source: Schedule of Indian Reserves in the Dominion, 1913 (Department of Indian Affairs)

cess took a complex way. For example, in a series of proclamations from 1858 to 1864, in which settlers were allowed to pre-empt unoccupied, unsurveyed land, Native peoples also could start pre-empting.¹² However, this provision did not last long. The *Colonial Land Ordinance of 1870* prohibited any Aboriginal peoples from claiming their right of land pre-emption.¹³ By the end of last century, the basic configuration of relationships between Canada, BC, and the Aboriginal peoples had been established within a statutory framework, such as the Indian Act. The reserve system was introduced to keep the Aboriginal peoples in secluded areas.

With respect to the formation of reserve lands for Lil'wat people, parts of their reserves were first allotted in 1881 when many speculators were starting to buy the lands on Pemberton Meadow, the central part of Lil'wat's traditional territory. Also, some 800 acres of church lands were taken over in 1905 to be a part of reserve. Details about those reserves in 1913 are provided in Table 1.

Since the turn of 20th century, Lil'wat people have taken over these reserve grounds. Following table 2 shows a land use plan in 1982 which gives you a general idea about land use on reserve lands today.

With respect to a legal framework for the reserve system, the Constitution Act (1867) gave the federal government exclusive authority over the Indian Reserves. The Indian Act defines a reserve as a "tract of land, the legal title to which is vested in Her Majesty, that has been set apart by Her Majesty for the use and benefit of a band." The Department of Indian Affairs (DIA) exercise certain authorities concerning the management of reserves including: managing reserve lands for the use and benefit of Indian Bands; administering the land interests of individual band members; granting land interest to non-band members; authorizing land use and transfers of land for public purpose; supervising the surrender and designation of reserve lands; and authorizing band management of reserve land. These provisions of the Indian Act are the reflection of a paternal relationship between Canada and Aboriginal peoples. One of the contradictory points is that the Act does not recognize the bands' ability to administer their reserve lands. Especially, the Act does not recognize the bands as having proprietary interests in their own reserves. A band cannot independently grant interests in lands, dispose of lands, or manage reserve lands. This also means that these provisions of the Act encumber any land use activities by individual band members.¹⁴

The notion of collectivity clearly illustrates the prominent feature of Aboriginal peoples' traditional relationship to the land. Apparently, the provisions of the Indian Act undermined this distinctive aspect of Aboriginal peoples. For example, the introduction of a *certificate of pos-*

Table 2
Land Use Plan - Schedule of Approximate Areas

Zone	Hectares
Agriculture Reserve	820.0
Management Forest	398.0
Environmental Zone	188.0
Range	552.0
Secondary Forest/Range/Open Space	540.0
Temporary Forest	64.0
Wildlife Reserve	56.0
Watershed Zone	96.0
Commercial Campsite Area	4.0
Rodeo - Showground	5.0
Picnic Site	2.5
Xit'olacw (new town site)	60.0
Residential Area	7.5
Commercial	1.5
Industrial	4.0
Gravel Reserve	36.0
Community Facilities	2.5
Band Summer Campsite	5.0
Total	2,740.0

Source: Mount Currie Reserve Lands - Land Use Plan 1982

session, a pseudo-private ownership, is a typical case. The system was created to recognize individual land holdings on reserves. Nevertheless, an individual band member cannot 'own' the land as a 'fee-simple' holding. The problem becomes eminent when an individual band member intends to set up a business on the reserve lands. The *certificate of possession* enables an individual band member to use his/her land for mortgage purposes. Subject to approval by the Band Council, a *ministerial guarantee* must be obtained. According to this system, if the business fails, the DIA pays the price from the band funds. The band is often reluctant to take this kind of risk to support individual entrepreneurs. Also, there is the fear that such a business failure may lead to land alienation. In any case, those who intend to start a business using the lands are often trapped between the individual and collective interests on the

reserve. The majority of Aboriginal people will agree to have a certain form of land holdings that is lawfully recognized in order to protect the individual interests in the lands. On the other hand, many people do not agree with the certificate of possession because it emphasizes individuality to the detriment of the collective use and benefit on reserve lands.

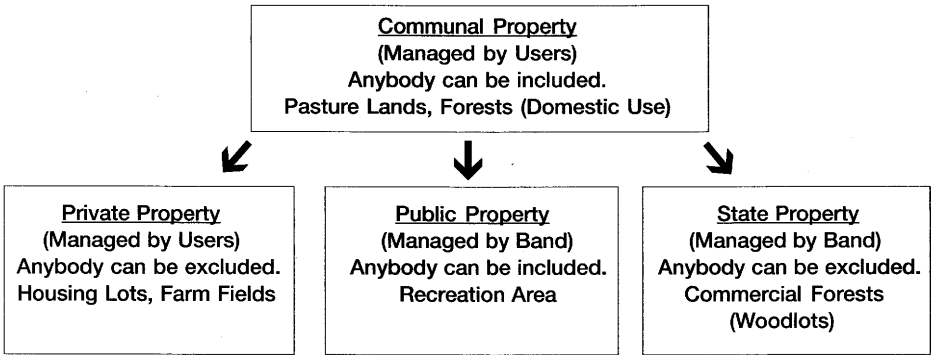
In many Aboriginal communities, including the Lil'wat Nation, the certificate of possession has not been generalized. In most cases, a system of dual authority (i.e., certificate of possession, customary laws) operates. With respect to land management practices, it is often the case that a band acts in accordance with its own customary law. In the Lil'wat Nation, indeed, the history of *de facto* land use shows that the band, as a governing body, has had certain authority over the management of reserve lands based on customs. Also, some family groups have exclusive customary rights over their family grounds.

In general, reserve management can be characterized by the conflict between *individual interests* and *community control*. Individual interests are represented by: the Canadian reserve politics (e.g., certificate of possession), and economic development on and off reserve that inevitably promotes entrepreneurial interests. On the other hand, some customary activities may protect collective interests by not only preserving old customs, but also creating new rules (norms). New rules may be created out of customary decision-making. As such, many initiatives both from the band and family groups often aim at community control over evolving individual interests. Then, a question is: *Can a compromise be reached such that it could accommodate both individual interests and collective interests in the community?* The following sections explore the history of land use on reserve, focusing on the relationship between the band and its members.

4. Evolution of Customary Land Holding Institutions

In general, the use of band lands has changed over the past 50 years. Conceptually, all band lands were communal property except such places as certain fishing points and farmlands that belonged to certain family groups. More recently, however, newly created farmlands have been considered as private assets rather than family assets. Also, band role in land management has been expanded. In fact, while communal use of lands has continued over pasture and forestlands and private use of lands has developed over housing lots and farm grounds, property arrangements similar to public property and state property have gradually appeared on band lands. Recreational areas and woodlots represent those, which reflects a change in the relationship between the band and

Figure 2
Changes in the Use of Band Lands



band members, whereby the band adopted some land management strategies similar to those employed by the Canadian governments (Figure 2). Also, it is important to recognize that the band is expected to retain a final authority in the level of Alienation of most land holding.

The band represents the customary administrative authority over the reserve lands. The exercise of this administrative authority can be explored in terms of the system of land holding. With the reference to Schlager and Ostrom¹⁵ who identify players' positions in a property system as shown in Table 3. Table 4 summarizes the land holding structure in the Lil'wat Nation based on customary practices on the reserve lands. Depending on the kind of property right and the level of activity, each land use agent plays a different role. The agents include individual band members, family groups, and the band. With respect to four land uses: (1) pasture lands, (2) family lands, (3) lands cleared by individuals, and (4) housing lots, an explanation is given to clarify the way in which customary laws work.

Details of land use structure of the Lil'wat Nation can be found in the band minutes.¹⁶ For example, certain portions of the reserve lands have been managed as a common *pastureland*. In a sense, they are still a part of the band lands to be used only by stockholders. Around 20 people (households), who are stockholders, formed a stockman committee and managed the pasturelands (800130, 800115). The maintenance of the fence around the pasturelands is the main activity of the committee (570809). Occasionally, people have asked for permission to cut hay from the pasturelands. The band is the authority to grant these requests (740506). This is a communal use of lands where users have a management authority.

Table 3
Bundles of Rights Associated with Positions

	Owner	Proprietor	Claimant	Authorized User
Access	X	X	X	X
Withdrawal	X	X	X	X
Management	X	X	X	
Exclusion	X	X		
Alienation	X			

Where: *access* = the right to enter a defined physical property;
withdrawal = the right to obtain the "products" of a resource;
management = the right to regulate internal use patterns and transform the resource by making improvements;
exclusion = the right to determine who will have an access right, and how that right may be transferred;
alienation = the right to sell or lease either or both of the above collective choice rights

Family lands are the lands belonging to certain family groups. Generally, these lands were cleared prior to the 1940s for agricultural purposes. A family has an ultimate authority to the family lands: "Concerning the lands that have grown into brush from neglect of owner, the Council can confiscate them, but only land that was issued by the Council to a band member. The Council cannot take land that is owned by a family and has been handed down to another member of the family. (660412)" On the other hand, without the band's approval, the family lands cannot be alienated to someone who is not a member of that family group.

Some individual band members have acquired lands through clearing band lands. This type of land acquisition has been practiced since the 1950s for the purpose of opening individual farming grounds. For example, this procedure of acquiring land through clearing can be seen in minute 580502: "The council resolved that H. Ram¹⁷ be granted the land on I.R. #2 which he cleared and is using for farm purposes. And that Mr. Jones (Indian Agent) is to go ahead and measure and make a map of this piece of land, which H. Ram wants to claim."

Even once a band member has acquired lands through clearing, the band still has a certain power over those holdings as seen in minute 660412 where the band retrieved lands that have stayed unused for a

Table 4
Internal Property Structure on Lil'wat's Reserve Lands

	Access/Withdrawal	Management/Exclusion	Alienation
<i>Public Spaces</i>			
<i>Forest Lands</i>	Individuals	Band	Band
<i>Pasture Lands</i>	Individuals/Companies	Band	Band
<i>Family Fields</i>	Stock Holders	Stockman's Committee	Band
<i>Individual Fields</i>	Family Members	Family	Family/Band
<i>Housing Lots</i>	Individuals	Individuals	Band/Individuals
	Individuals	Individuals	Band/Individuals

long time. On the other hand, the band also protects those holdings. For example, in reference to a piece of land belonging to a band member who had been away from the community (living in USA), the band discussed that the land should be kept under cultivation by other band members until the original holder returned (600411).

Until 1976, there was no explicit limitation concerning the area that one might acquire. However, due to population growth, especially among young couples, the band started to worry about the possible shortage of lands in the future which led to setting up certain limitations: "A lot of young people who are going to ask for land and so that the Band Council should begin planning. Clear away from the river so that there will be a riverfront for others. Limit the acreage to 3 acres. Each person asking for new land should be limited to 3 acres to begin with and each should have a water frontage. If he needs more, he can clean up some more but it should be used. (760408)" Also, in the 1970s, the band started using some form of land planning. For example, the band proposed to set aside some areas for recreational purposes: "Aides Lake to be a recreation area. Swimming area. A park for ourselves. Possibility of a ski-hill there too. Maybe put the Rodeo Ground there. [...] We resolve that Aides Lake is for a Recreation Area where no development is allowed in five years (760129)".

Another way to acquire individual land holdings is through the allotment of *housing lots* by the band. In some old houses (some were constructed in the last century), the band had to confirm land holdings to avoid the confusion among the people (521215, 550108, 570526, 600109, 650412, 650513). When a housing lot becomes vacant, or when the band develops new housing lots, the band assigns them to band members. Basically, the band gives housing sites to people whenever they need them. In the 1950s, 60s, and 70s, because there was not a constant demand for housing, the band provided houses mostly on a one-by-one basis (541204, 560906, 590919, 600411, 651012, 720502, 770530, 791122). When the demand exceeded available housing, the band sometimes demonstrates its power over the rights of band members to holding lots. For example, minute 541204 reads: "A. Anderson and O. Regan, both young married band members wished lots while some members hold lots that are never used. D. Mead, a councilor, is going to contact the present owners of these lots and try to obtain releases from them, so that lots may be allotted to persons in immediate need of places to build homes." The band also gets involved in the consultation process as seen in minutes 561028: "House #64 was for M. Dixon. But as O. Dye is a new man here without a home, the council asked M. Dixon to give a consent that O. Dye would take over lot #64." Typically, when the demand for housing exceeds the number of lots available, the band sets up a priority list. Such lists were in use in the 1950s, as seen in minutes 570526. In the 1970s, the use of such lists is also seen in minutes from the 1970s (720502). In fact, since a new housing site was developed in the 1980s, most allotment has been done through the priority list. As

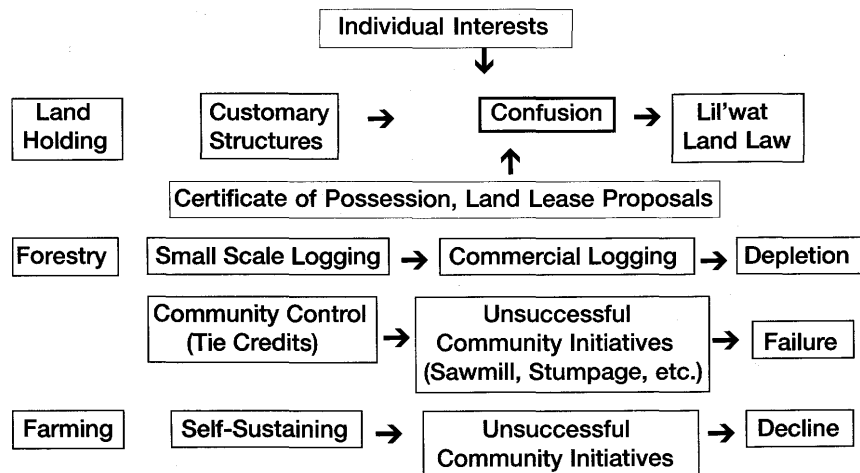
other customary practices in which the band has shown its power, in 1965, the band reclaimed some old housing lots as seen in minutes 650615, thus exercising its discretion power: "We decide that the three small lots that were destroyed by fire be divided into two bigger lots. These three lots belong to: F. Bell, M. Jordan, and I. Anderson. We will offer them \$50 for their lots. Then, these lots would be turned over to Band Lots." A similar example is seen in minutes 710312: "G. Sharp agreed to let the portion of land go if we agreed to give him a house next year." Some lots were swapped between lot holders with the band's recognition (650412).

5. Rise and Fall of Community Control over Land Management

5.1. General Trend

Figure 2 summarizes the events that relate to the institutional changes on reserve grounds. A number of factors led to a state of confusion over the customary land holding structures. In the 1960s, individual interests in land had increased for housing and farming purposes. In this period, people started to regard parcels of land as exchange objects. As land transactions became more frequent, the band failed in its task to administer the land holdings. Also, Canadian initiatives impacted heavily on the reserve land use system. In particular, the Certificate of Possession undermined the customary land holding arrangements.

Figure 3
Land Use Structures On Reserve (Institutional Changes)



Eventually, the Lil'wat Land Law (Box 1), which formalized the existing customary activities, emerged from the band's initiative in the 1980s. However, the land law is still in need of refinement and recognition in order to function as a governing land law on the reserve.

Box 1
Proposed Lil'wat Land Law

WHEREAS the Mount Currie Indian Band (the "Band") has had its own customs, rules and proceedings relating to the use of Mount Currie Indian Band land; AND WHEREAS the Land Management Portfolio of the Band has prepared this land law as a reflection of previously existing laws of the Indian People of Mount Currie; AND WHEREAS at a general meeting of the Band, held March 23, 1986, the Band membership has approved the land law hereinafter set out, and has approved that the Indian Government of the Band will continue, in the future, to assert jurisdiction over the use of Band land; NOW THEREFORE the Council of the Band, in accordance with the wishes of the members of the Band enacts as its law the following land law:

- A. **DEFINITIONS:** Band means the Mount Currie Indian Band; Band Council means the elected Chief and councilors of the Mount Currie Indian Band; Family includes grandparents, parents, siblings and children of any Band member; Family Land means land in the Reserve which has been used and occupied by a family; Land Management Board means those persons appointed by Band Council Resolution or by election of the Band, as the case may be, to perform duties and functions under this Land Law; Land Management Portfolio means those persons appointed by Band Council Resolution to perform duties and functions under this land law; Land Registrar means the person appointed by resolution of the Band Council to perform the duties and functions under this Land Law; Land Use Plan means the Mount Currie Reserve Land Use Plan prepared in May, 1982, attached as Schedule "A" to this Land Law; Reserve means all those lands set aside for the use and benefit of the Mount Currie Indian Band.
- B. **ZONING:** 1. The land within the Reserves will be zoned for use according to the Land Use Plan. 2. The Land Use Plan may be amended from time to time by Resolution of the Council, after

such amendments have been approved at a meeting of members of the Band. Thereafter the amended Land Use Plan shall form part of this Land Law. 3. Any use of Reserve land by a Band member (provided that the Band member has had historical use of the land) which, at the time of coming into force of this Land Law, conflicts with the Land Use Plan, will be considered as a non-conforming use. Such non-conforming use may be continued, PROVIDED HOWEVER THAT any change to the historic use which is contrary to the Land Use Plan is also contrary to this Land Law, and shall be dealt with in accordance with Clause L(2), hereof. 4. Band land within the Reserve shall only be developed according to the uses specified in the Land Use Plan. 5. If a Band member wishes to develop Band land for any particular use, he or she shall apply to the Land Management Board. a. The application shall state the desired use of the land, the length of time the Band member wishes to use the land, and any proposed license fee. b. The Land Management Board will review the proposal, discuss it with the Band member, and make any necessary changes. c. The Land Management Board will present the application to Chief and Council, indicating whether the Land Management Board approves or disapproves of the application. d. The Land Management Board will consult with the Economic Development Portfolio concerning a license fee for the use of the land as a condition for the approval of the application. e. The recommendations of the Economic Development Portfolio will be submitted by the Land Management Board to the Band Council for approval or disapproval with the application. f. Band Council will either approve or disapprove the proposal. If the proposal is rejected, no new application can be made for the same use for six months. 6. Except for the designated area in I.R. #7, as set out on the Land Use Plan, no timber shall be cut on any of the Reserves, whether for commercial or domestic use, without the approval of the Land Management Board. a. An application for a permit to cut wood by any Band member shall be made to the Land Management Board, who shall decide whether to issue a permit. b. The Land Management Board shall charge stumpage rate for commercial use permits as established each year by the Economic Development Portfolio, with a base rate as at 1985, and variations made thereafter according to market conditions. c. If the Land Management Board approves of the application, a permit will be issued by the Land Manage-

ment Board. If the permit is refused, the Band member may appeal to the Council for review. Such appeal shall be made within 30 days of the decision of the Land Management Board. Council will hear the appeal within 14 days of receiving notice of the appeal.

- C. **PASTURE LAND:** Pasture land on the Reserve will be opened for use by all Band members. Band Council may close such pasture land as and when it deems necessary for the purposes of restoring or upgrading the land.
- D. **FAMILY LAND:** 1. Band members shall not register their land under Certificates of Possession pursuant to the Indian Act, but shall be governed by the provisions of this Land Law. 2. All land transactions involving family land will require the approval of the Land Registrar. 3. The Land Registrar shall approve the transfer of family land in accordance with the following conditions: a. Family land will not be sold outside the family, unless all members of the family consent to such disposition. The Land Registrar shall ensure that such consent has been obtained, on evidence satisfactory to the Land Registrar, before considering the transfer. If there is only one member of the family who is alive, the consent of that person's cousins, nieces and nephews must be obtained. b. The Land Registrar shall approve any transfer of family land to other family members. c. Transfers of family land shall only be to members of the Band. d. i) If family land on the Reserve is not being used and occupied by that family, in whole or in part, then any Band member may apply to the Land Management Portfolio to use the land; ii) After receiving such an application the Land Management Portfolio shall prepare a report and make a recommendation to the Land Management Board who shall decide whether the applicant should be allowed to use the family land. In so deciding, the Board will contact the family and hold such interviews as it may deem advisable in an attempt to get agreement with the family on the application; iii) If the Land Management Board cannot obtain such agreement with the family the issue will be referred to Band Council. Band Council may allow any other member of the Mount Currie Band to use that land for a certain period of time, including using the land for the purposes of a residence. Notice of such a decision will be given to the head of the family. e. Any transfer of family land will not be considered valid without the approval of the Land Registrar, and the proper forms filed in the Land Registry,

as provided in Clause F, hereof. 4. Documentation on Historic Use: a. No transfer of any family land will be approved under this Land Law unless the Land Management Portfolio is satisfied that there is no dispute involving such land. b. No transactions or transfers of land will be approved unless the Land Management Portfolio is satisfied that the person transferring the land is fully aware of the nature and extent of the transaction. c. The Land Management Portfolio will document all areas held by a family upon a request of the family. The purpose of the documentation is to ascertain which family has the right to use and occupy such land. d. At the request of any Band member, the Land Management Portfolio will conduct a search into the history of any piece of land on the Reserve. Such history will include the taking of oral evidence, and searching documentary evidence as to title. e. Any member of the Land Management Board may conduct such an inquiry. If, in the course of such inquiry, there are disagreements as to the historic use or entitlement, a member of the Land Management Board shall meet with the parties to the dispute, and review the oral and documentary evidence surrounding the history of the land. The Land Management Board member will attempt to resolve such disputes, and make a decision as to land entitlement, if possible. If such a decision is reached, the Board will present a report to Band Council on the decision. The Band member may appeal this decision within 60 days of receiving notice of it. The appeal shall be heard by the Band Council. f. If improvements have been made on land, which add to the value of land, in an area where there is a dispute as to the land, the individual making such improvements shall be compensated for those improvements by the person entitled to use the land, provided that the improvements were made with the consent and knowledge of the disputes.

- E. **CHARGING LAND:** No Reserve land will be used as equity for the securing of a loan, without the consent of the Band Council.
- F. **LAND REGISTRY FORMS:** 1.Land Registry Form #1 shall be used in transferring land from one person to another. It shall also be used in the resolution of disputes. 2.Land Registry Form #2 shall be used when any Band member makes application to use Reserve land.
- G. **TRANSITIONAL PROVISIONS:** Any Certificates of Possession which have been issued prior to the coming into force of this Land Law shall be re-issued under the terms and conditions of

this Land Law. Any and all uses of Reserve land by Band members shall only be authorized under the terms and conditions of the Land Law, which shall include agreements relating to the Xito'lacw Housing Project.

- H. **ROAD AND EASEMENTS:** 1. The Land Management Portfolio, in consultation with Chief and Council as may be necessary, shall provide easements through Reserve land required for road, sewer, water, or other community purposes. As far as possible, the Portfolio will obtain the consent of Band members when required to go through family land, provided that such consent shall not be unreasonably withheld. 2. All trails and roads through the Reserve shall be for the use of Band members, except such roads as are built solely by a Band member, for the specific use of a particular piece of family land. Band members are absolutely prohibited from fencing their property in such a way to prevent access to other parts of the Reserve, by other Band members. With the approval of the Land Management Board, any Band member may install a gate to the satisfaction of the Land Management Board, so that access is provided.
- I. **AGREEMENTS WITH BAND EMPLOYEES:** Band Council may enter into agreements with any Band employee who is not a Band member for the temporary use of Reserve land for residential purposes. The rates charged for such land shall be similar to those charged under the Tenancy Agreement for the trailer court.
- J. **ALL LAND REQUIRED:** The Band declares that all Reserve land is required for the use of buildings, gardens or for the more convenient use of buildings located on Reserve.
- K. **LAND DISPUTES:** 1. In addition to Clause 4 hereof, there shall be a procedure established for the resolution of disputes as to land entitlement on the Reserve. The disputes which shall be resolved in accordance with this procedure shall be the following: i) Inter-family disagreements; ii) Disagreements between one family and another; iii) Disagreements between the Band, as represented by Band Council, and a family or family members. 2. The objective of this procedure shall be to clarify the existing land holdings in a manner satisfactory to Band members, and without the involvement of outside parties. 3. The head of the Land Management Portfolio will be responsible for meeting with members of the Band and charting the existing land holdings on the Reserve. As part of this procedure, it will be necessary to try to

resolve all outstanding disputes by hearing both sides of the issue and coming to a resolution. The charting of the existing land holdings will involve both mapping and documenting the land holdings. This task may be delegate by the head of the portfolio to a staff member. 4. If the Land Management Portfolio is not able to resolve the disputes as to entitlement, the question shall be referred to a panel consisting of Chief and Council and the Land Management Board. The families involved in the issue may meet with the Panel and present their viewpoints. The Panel will attempt to resolve whatever differences arise. 5. For issues which are resolved by the above procedure, there will be a document which will certify the resolution of issues and the state of the existing land holdings. Once certified, it will be entered in the records of the Land Registry, and be considered proof of entitlement to the land. 6. If there is an unresolved dispute over the land, no transfer shall be made until that dispute is resolved. 7. The Land Registry office will be responsible for the custody of all documents concerning Reserve land. The Land Registry shall also be in charge of the documents dealing with other land alienations on reserve (such as hydro agreements, roads, spurline agreements etc.). Survey plans and maps shall be kept in the Land Registry office. 8. The person appointed as Land Registrar will obtain a commission for taking oaths as notary public. In that way, statutory declarations and affidavits can be certified by the Land Registrar and have the force of law.

- L. ENFORCEMENT: 1. This Land Law shall come into force on a day fixed by Resolution of the Band Council. 2. If any Band member acts in breach or in violation of the provisions of this Land Law, the Band Council, by notice served on the Band member, shall require the attendance of the Band member at a duly convened meeting of the Band Council. Band Council may impose such sanctions on the Band member as it deems meet, including, but not limited to the cancellation of any permission to use Reserve Land. The penalty imposed by Band Council shall be confirmed at the next general meeting held after the Council meeting.

5.2. Forestry

In recent Lil'wat history, community control over reserve lands worked well when small-scale economic activities prevailed. For example, timber resource management was under band control until the mid-1960s when *self-sufficient logging* and/or *small-scale logging* were in practice.

However, the band lost control when *corporate logging* started.

Self-sufficient logging represents very small logging operations that many people are engaged in, in order to supply wooden materials for their own households and family members (kin group). The wooden materials include firewood and poles for sheds, crafts, etc. There has not been strict regulations over resource users for this type of timber resources because the amount of timber people consumed was small enough not to jeopardize timber resources. And, in many cases, dead trees, including driftwood, were used for those purposes. This type of logging has certainly been practiced throughout history. In property terms, this is a typical form of communal property. With this type of timber use, the band has the responsibility to exclude non-band members. On the other hand, band members are expected to be responsible for not depleting this resource and ensuring an easy access to it.

Small-scale logging includes all small-scale logging practiced by band members for exchange purposes. As the money economy had already permeated the economic structures of the Lil'wat people by 1950, timber resources on the reserve would also be used for exchange purposes by this time. However, this type of small-scale logging mainly served to support the domestic economy of band members. By the early 1960s, the dominant use of small-scale logging was tie cutting practiced by many band members. The ties were to be sold to the Pacific Great Eastern (PGE) Railway. Tie cutting was considered important winter work. A store in the community provided food and other necessities to band members through 'tie credits'. Those credits could be used based on an agreement among the band, the community store, and the PGE Railway. The PGE paid for those credits to the store after ties were provided from band members. Minutes 541204 provides some details:

Whatever number of ties P.G.E. Railway wished us to cut, Indians would get full price. The arrangements for the contract with P.G.E. have already completed so that as soon as the man started on his ties, the store would issue credit week by week, in correspondence to the number of ties cut. The store would receive payment direct from the P.G.E. [...] Indian Agency Assistant stated that arrangements were fairly complete whereby a floater contract could be had with the P.G.E from 1,000 to 2,000 hewn ties. As it was known that many people of the Reserve did not have enough Unemployment Insurance to last through the winter, there would be a number of families who would be in financial difficulties before the spring work commenced. People need money for food.

Other than tie cutting, some people had started small-scale logging in this period. For example, P. Smith was allowed to cut one carload of fir piling at the rate of .02 cent per lin ft. directly across from the Pemberton I.R. #10 (550320). Other examples of small-scale logging are seen in 600229, 611113, 650615, 660815. These logging activities were more or less within personal needs and the sales were often very small. For example, minutes 660324 reads: "A timber permit be granted to L. Regan to log one carload of cedar poles to be sold to Mr. Collins of Pemberton. Stumpage to be collected at the rate of 3 cent per lineal foot. This is considered as welfare measure to help this family." It can be seen that although this small-scale logging may have been a starting point for commercial activities, the timber permits issued to band members in those days were few in number and this type of logging was regarded as a small social assistance to one's domestic economy.

Incentives for selling out timber resources from reserve lands can be identified in the mid 1950s as the band decided to sell all marketable timber on the north-east side of the BC Electric Railway right of way (550514). Prior to this decision, the band decided to accept the Indian Timber regulation in the Indian Act authorizing the Department to dispose of the said timber through public advertising (550108, 550306). This was the starting point for the band's practice of selling out the timber on their reserve. The band gave timber licenses to companies outside of the reserve (580420). However, it is in the mid-1960s that some companies started relatively large-scale and consistent logging on reserves. One of those companies was Cascade Fir Product as attested by minutes 660412. Although the band opened its timber resources to outside interests, there was some hesitation in the beginning and the band had a provision of conservation. The band often rejected requests from companies to log on reserve, as was the case with Chris Carson Logging Co. (681105). Also, in 1965, in response to the request from Tye Forest Product to log cedar on reserve, the band rejected it on the grounds that there was not enough cedar to sell on reserve (650513, 650615). This shows that the band protected resources from over-exploitation at least until 1965, although it later decided to sell out cedar and other resources.

In the 1970s, some Lil'wat people assumed the role of middlemen, buying timber on reserves for outside companies. From the viewpoint of the companies, to have such middlemen in the community was a much easier way of acquiring timber from the reserve. The companies encouraged those individuals to make contracts with the band and used the results of their labor. Mainly four people worked for outside companies. Those companies were: Canadian Forest Product, B & I Forest Product, and North Inlet (740506). Two of those middlemen later created their

own logging company. In this period, timber sales were under the control of the companies.

There were some efforts in the band to maintain community control over forest resources even in the period of commercial logging. For example, in 1971 the band started to built up a timber fund to facilitate the band economy (740527), although the project was not successful. The band's effort to regain control over timber sales by increasing the stumpage rate from \$5.00 to \$10.00 per 1,000 feet in 1974 (740506) was overturned in the next year, when the rate decreased from \$10.00 to \$6.00. The changing market conditions were blamed for the decrease (750217). Although since the 1960s the band had taken some action towards reforestation (651012, 730620, 816205), the tendency towards forest resource depletion did not stop. In the 1980s, due to the depletion of timber resources, most companies lost interest in timber on reserve. When timber resources became dangerously scarce, some people started criticizing the limited access to the benefits from the band property (841024). By 1985, a proper forestry management plan was not developed and forest resources were virtually depleted.

The band was considering having their own sawmill in order to derive additional value from their own resources. An attempt to acquire a sawmill in 1950s failed partially because the money collected for purchasing the mill was missing (570302, 591110). In the 1950s, there was only a small sawmill owned by R. Anderson, a band member (541204) and the band helped him run the operation. When some band members tried to acquire a sawmill in the 1960s, the band searched for a loan for them (601214, 611113). During the 1970s, the band was eager to establish its own sawmill for economic development. Once the band considered building a paper mill (711016). There was an opportunity to take over the operation of Evans Product Sawmill in Pemberton. Unfortunately, the band did not have enough timber to run the mill. Minutes 751030 states: "Push hard for the Evans Products mill. Mr. Grey is interested in a possible joint venture contract. Proceed with the acquisition of the Evance Products. [...] But without cutting rights for the supply of logs, no use buying the mill. Duffy Lake is under Macmillan & Bloedell. That's all our timber." In 1976, the band bought a smaller sawmill: "To get the timber, set a meeting with Canadian Forest Product [which has cutting right on reserves]. Start with a feasibility study on how much and where the trees are coming from. So much redtapes on Crown lands. (760217)." In 1979, the band decided to sell the sawmill for \$5,000 and buy a second sawmill, later called Lil'wat Sawmill. Again, there was not enough timber to run the mill (790218). With the operation of the Lil'wat Sawmill, the band tried to provide jobs for band members. The band

made a resolution stating that "we get incentive money for Social Assistance recipients to work at the mill" (790218). But that never happened and the sawmill itself did not run well. In fact, the Lil'wat Sawmill had difficulties in keeping up with the fuel cost of \$50 minimum a day. The Lil'wat Sawmill was relocated to a place on I.R. #6 (810623, 810707). For this relocation, H. Grant, a band member, took the initiative of opening the Lil'wat Sawmill Co. (810623, 810707). In order to help the sawmill operation, the band tried to find a demand for lumber in the community, such as house construction projects and rodeo ground facilities (830428). Also, the band made a resolution stating that "the DIA contribute \$15,000 towards the purchase of a used skidder, \$20,000 towards the purchase of flat bed lumber truck, and \$6,000 to purchase a sawdust conveyer for our sawmill (850117)." However, the management of the sawmill was not going well as there was a proposal to sell out the mill in 1986 (860304).

5.3. Farming

Similar sequences can be seen in a farm management on reserve lands. By the 1960s, farming was the main land use activity. The councilors calculated the requirements of seeds, fertilizers, drainage, stock and equipment for the next season and asked the DIA to provide them (541204, 600123, 610213). At that time, there were two conflicting views about the farm operations on about 600 acres of land that could be used as agricultural fields.

One way was a sort of communal farming, as seen in minute 600124 where a councilor requested that the band council control the reserve lands and operate a band farm. This idea led to a communal seed farm (Clover Timothy) in the late 1960s (660324), and another farm project at the Band's initiative in the early 1970s. Although these projects were short-lived, similar ideas have been brought up from time to time to the present. For example, the band intended to start a cattle ranch by leasing lands from individual holders (730212). In 1975, the Band opened a community garden where ploughed portions of land were offered to unemployed band members (750609). In the case of a band initiative for farming in the 1970s, the band decided to conduct a farm operation by itself to grow potatoes, strawberries and barley on the band lands. In this operation, the band helped potato diggers with providing a loan so that they could survive until the potato-digging season commenced.

Another way was to provide individual incentives for farming by dividing the lands into 10 acre lots. However, the concept of individual farming never reached the point of dividing band lands into lots. Probably because the proposition of dividing the lands into blocks was related to

the surrender and land lease issues at that time, the majority of people did not want to take the risk involved in that option (600124). In fact, during the 1960s and 70s, the Federal Agriculture Rural Development Act, which was supposed to provide funds to help agricultural operations, actually put the emphasis on a direction that had the potential of alienating reserve lands through land survey, surrender, and land lease (720201).

In any case, agricultural activities, once the main activities in the community, had shrunk dramatically by the late-1960s. Many band initiatives mentioned above were in a sense efforts to stop such a decline. In 1981, only one-tenth of the arable land was used for agriculture and lands were deteriorating (810602). It is difficult to specify the reason for this decline in farming practices. Some people, like former Chief B. Victor, blame welfare: "Long time ago when social assistance came here, we did not want it. The government think that all we can do is live on welfare, that we can't do anything else, and that we are helpless so just keep giving us more welfare each year (810602)."

6. Issues around Dual Authorities

In summary, since the 1970s onward, the Lil'wat Nation has failed to maintain internal authority systems that ensure customary property arrangements. The 1970s is the time when conflict intensified between Canada and the Lil'wat Nation. The Liberation Movement was formed in the community and it involved, among others, the Union of BC Indian Chiefs, and George Manuel, a prominent Native leader at that time. The road blockade and the rejection of governmental funds in 1975 were important moments in this process. Unfortunately, the movement did not materialize in the development of a Native land use strategy on the traditional territory due to the fact that no management authority was given to the Aboriginal people. Although some attempts were made to re-construct a self-sufficient economy, they did not result in long-lasting, fully autonomous institutions and policies. Rather, since the 1980s, the diversity of interests has led to strong political divisions within the community and traditional authoritative structure has been eroded.

Under these circumstances, the band's ability to administer resources and programs became the central concern. However, it is the DIA who controlled the allocation of governmental funds that left the majority of the community members unable to develop their own community strategies. In fact, since the late 1970s, as logging companies started to withdraw from the regional labor market, the Lil'wat people became almost entirely dependent on welfare and governmental funds. Also, the

Table 5
Development of Band Administration

Year	Administration Structure
1955	1 Chief, 5 councilors
1959	Secretary was introduced.
1961	1 Chief, 6 councilors
1965	1 Chief, 7 councilors
1966	DIA Assistant Superintendent died. He was the last DIA official residing in the community. Chief and councilors started to receive salary.
1970	Band manager was introduced.
1971	School Board was formed.
1972	Bookkeeper was hired.
1973	5 portfolios were formed and distributed among councilors: (1) Housing, (2) Economic Development, (3) Health and Welfare, (4) Education, (5) Recreation and Cultural Affairs.
1974	Economic Development Committee was formed. Council of Elders for the Lillooet District was formed.
1976	1 Chief, 9 councilors. Band manager was introduced. Management advisor and trainer were hired from DIA office. Band receptionist and band accountant were introduced. Land Claim Negotiation Committee was formed.
1977	Band Development Training Program is introduced.
1980	Band planner is introduced.
1981	1 chief, 10 councilors, 1 band manager, 1 secretary
1983	Portfolios were diversified: (1) Lil'wat Government, Land Claim Legal Affairs, (2) Recreation, (3) Education, (4) Social Development, (5) Housing, (6) Public Works, (7) Education Development, (8) External Affairs, (9) Finance, (10) Land Management
1984	Land portfolio is formed.
1985	1 Chief, 12 councilors, 1 band manager, 1 secretary
1990	Tribal police is introduced.

Source: Chief and Council minutes

allocation of governmental funds produced an economic stratification within the community. This process has accompanied the devolution process that has transferred administrative programs and funds from the DIA to the band, and this process has brought about a bureaucracy in the band (Table 5).

The system of bureaucracy in a band council has not only led to a general sense of alienation of the band members from band management, but also diminished the function of the traditional decision-making process. Currently, the band's financial decisions resulting from the devolution process are nothing more than an extension of the DIA's control. Every program and the allocated budget is controlled by Canada, so that there is little room for the band council to implement its own plans. This has weakened the economic base of the community to the point where the Lil'wat Nation has virtually no bargaining power in the dialogue with Canadian institutions.

Overall, Lil'wat's land use institutions had once worked well controlling over community affairs until the 1960s when homogeneous small-scale economy prevailed. However, as private interests have developed on reserve lands and Canadian welfare state systems have come into effect, the Aboriginal community has been losing its control over land use activities. Even though some efforts have been made to retain community control within the Aboriginal community, they have not been successful. Typically, the proposed Lil'wat Land Law has not been able to acquire official status in the presence of dual authority issues. That is, a traditional system may work only if modern state like Canada could develop a legal setting to accommodate traditional Aboriginal systems.

7. Future Directions

A descriptive study such as this research project is not meant to generate normative conclusions. However, this final section covers some potentially important land use strategies for the Lil'wat Nation, based on the community's expressed ultimate goal, which is self-determination.

There are various opinions concerning the way to reach self-determination. While most Lil'wat people may agree that the long-term goal is to reconstruct their own decision-making authority, there is some disagreement with respect to the short-term strategies to be used in their relationship with the Canadian authorities. Similarly, while some Native people insist that economic independence is the key to self-determination, others say that economic advancement along the lines of today's capitalist society will mean furthering the process of assimilation. As

such, there is no single agreed-upon formulation for self-determination.¹⁸ With respect to future directions, three levels of concern among Lil'wat people are addressed: (1) internal agreement, (2) framework of relationship with Canada, and (3) economic development.

7.1. Internal Agreement

Consensus among the people of the Lil'wat Nation is important when making any future directions. In the long-run, rebuilding a sense of cohesiveness in the Lil'wat Nation may need the development of a sense of cultural identity through the advancement in education. Promoting cultural identity through education will foster a sense of pride among the members of the Lil'wat Nation.

Of immediate concern is resolving a number of political divisions among community members. Due to those internal divisions, many former leaders of the 1970s and 1980s have withdrawn from political life, which has translated into a significant loss of moral authority and leadership for the Native community.

Furthermore, currently, a large part of the people is indifferent to political issues. This may be partly due to economic difficulties that have eroded Native people's sense of hope and motivation. Immediate and effective action is required in order to restore a viable level of political participation.

7.2. Framework of Relationship with Canada

Although there is a disagreement in the community's views on the possible framework of relationship with Canada, the knowledge of property rights may help the Lil'wat people articulate their aspirations for a better future. Traditional property rights are based on the Aboriginal worldview; traditional authorities accompanied by traditional institutional arrangements governed by traditional land use activities. Changes have occurred regarding the following factors: overall changes in the people's way of life, the presence of dual authority, the Canadian policy of assimilation, and Native people's struggle towards self-determination. Future studies, using different research methods, may reveal the existence of some already entrenched modern aspects of Lil'wat's life. Although changes in favor of modernity have occurred relatively recently, they may be found to be irreversible. The analysis of property rights and their changing dynamics can help the Lil'wat community generate informed strategies in terms of what they need to protect, revive, or create in order to attain self-determination.

The strategies drawn from a study on property rights are particularly

important if the Lil'wat Nation chooses to start a dialogue with the Canadian governments. The analysis of property rights may also help Native people articulate the meaning and contents of 'Aboriginal rights' from the perspective of the Lil'wat Nation. This will be an important step given the fact that the definition of Aboriginal rights is still ambiguous and often limited to the withdrawal activities, such as fishing, hunting and gathering, without the specification of management authorities (as shown in Table 3).

In Canada, a rights-based legal arrangement may be the only way to involve the Canadian people into a constructive dialogue. "Aboriginal rights" are an evolving concept, although the content of Aboriginal rights has been narrowly defined by the Canadian courts. Sanders (1996) argues that Aboriginal peoples have been employing the process of litigation in an attempt to advance their own cause. At the same time, the provincial and federal governments have accommodated the concept of Aboriginal rights because, as a modern state, Canada fosters a fundamental respect toward minority cultures. As such, it has been in the national interest to accommodate Aboriginal rights, acknowledge the differences, and promote integration.

7.3. Economic Development

The people of the Lil'wat Nation agree to the need to end the state of economic dependency, thus reducing the high rate of welfare recipients. However, it is difficult to reach a consensus on the most effective way to achieve economic independence. Typical disagreements center around the questions: (a) whether the Lil'wat Nation should depend on governmental funds, and (b) how governmental funds should be used.

In place of governmental funds, some community members propose the revival of a self-support economy based on fishing, hunting, and farming. Others advocate the construction of small-scale economic projects by utilizing regional resources. Finally, for some, a total rejection of governmental funds may not be a realistic option since this may hinder any attempts at becoming self-sufficient. They criticize the DIA's control over the governmental funds and believe that the DIA can be persuaded into giving the Native community more discretionary power in the administration of those funds. It is hoped that this may lead to the creation of a new economic base under Native control. In any case, building a new and elaborate relationship with Canadian governments is crucial for the Lil'wat people to attain their acceptable style of economic independence, leading to their ultimate target of "self-determination."

Notes

1. See Fikret Berkes ed. and trans. *Common Property Resources* (London: Belhaven Press, 1989), 70-88.
2. For example, National Workshop on People, Resources and the Environment North of '60 Canadian Arctic Resources Committee ed. and trans. by Peter J. Usher, *National and Regional Interests in the North* (Ottawa: Canadian Arctic Resource Committee, 1984), 389-415. and J. R. Ponting ed. and trans. by Leroy Little Bear, *Ardous Journey: Canadian Indians and Decolonization* (Toronto: MacLelland and Stewart, 1986), 224-267.
3. The Lil'wat Nation is a division of the Stl'atl'imx people all of whom speak the same language. The spelling *Lil'wat* is used to reflect the correct pronunciation in their language [li:l-uat]. Today's Lil'wat people are the inhabitants of the Mount Currie area in British Columbia, Canada.
4. This study was initially conducted as this researcher's doctoral thesis entitled "A. Nemoto, *Changes in Aboriginal Property Rights: A Chronological Account of Land Use Practices in the Lil'wat Nation* (Vancouver: University of British Columbia, 1998).
5. See Crawford B. Macpherson, *Property: Mainstream and Critical Positions* (Toronto: University of Toronto Press, 1978), 1-20.
6. According to Leonard W. Sumner, *The Moral Foundation of Rights* (Oxford: Clarendon Press; New York: Oxford University Press, 1987), 3-213, any right must contain a rule system in its structure. He points out that a system of rules is constructed as a combination of: rules defining normative relations (*first-order*) and rules that operationalize those relations (*second-order*). Likewise, a right is comprised of its *core* and *periphery*. The core of a right defines both its content (what is this a right to) and its scope (subject and object: who holds the right against whom). The periphery of a right is composed of any further ingredients that enhance or protect its core. All these ingredients at the core and the periphery of a right represent the *existence condition* for a right. In other words, a rule system can generate property rights if it contains rules that can confer liberties, claims, duties (first-order), as well as powers, disabilities, liabilities, and immunities (second-order). All of this constitutes the *existence condition* of a property right.
7. See Macpherson, *Property: Mainstream and Critical Positions*, 1-20.
8. See Jack Knight, *Institutions and social conflict* (New York: Cambridge University Press, 1992) explored several classical and contemporary accounts of institutional change. He claimed that the

- concept of social institutions as instances of the coordination-for-collective-benefits came from David Hume, Adam Smith, and Herbert Spencer. In contrast, some theorists like Karl Marx and Max Weber indicated that social institutions can be explained in terms of their beneficial effects on particular segments of the community, focusing on the conflict of interests inherent in distributional questions.
9. See Berkes, *Common Property Resources*, 70-88.
 10. See Kaye W. Lamb ed. and trans. by Simon Fraser, *Letters and Journals, 1806 – 1808* (Toronto: Macmillan Co. of Canada, 1960)
 11. See Robin Fisher *Contact and Conflict: Indian-European Relations in British Columbia, 1774-1890*. (Vancouver: University of British Columbia Press. 1992), 24.
 12. See Paul Tennant *Aboriginal Peoples and Politics: The Indian Land Question in British Columbia, 1849-1989*. (Vancouver: University of British Columbia Press, 1990).
 13. See Doreen Jensen and Cheryl Brooks eds. and trans. by J. Mathias & G. R. Yabsley *The First Nations of British Columbia* (Vancouver: University of British Columbia, 1991), 34-45.
 14. See Department of Indian Affairs and Northern Development *Lands, Revenues and Trusts Review: Phase II Report*. (Ottawa: Minister of Supply and Services Canada, 1990), 1-142.
 15. See Edella Schlager & Elinor Ostrom. "Property-rights Regimes and Natural Resources: A Conceptual Analysis," *Land Economics* 68 (1992): 249-262.
 16. Hereafter, all quotations from band minutes are followed by a six digit number, in brackets, representing the date on which the minutes was written. For example, 850416 means April 16th, 1985. The minutes since the late 1940s are stored in the band office (the minutes before that time were lost in a fire). Some minutes are typewritten, others are hand-written. While some dialogues are written in great detail accompanied by letters and materials relevant to the agenda under discussion, other entries provide only a summary of the discussion.
 17. To protect Individual confidentiality, fictitious names will be used hereafter.
 18. Predicting future directions is inevitably difficult, as can be seen by a number of questions raised by D. Sanders (The Nisga'a agreement. in *Proceedings of the American Anthropological Association Conference, San Francisco, California, Nov. 21, 1996*) regarding the larger historical context: Why has the post-war period seen a revival of concerns about ethnicity, ethnic nationalism, religious "fundamentalism", Aboriginal rights, and issues of cultural identity and differ-

ence?; Were both liberal and Marxist assumptions on modernization wrong?; Will the new deference to cultural pluralism continue?; or, Is this a transitional phase in a longer-term pattern of modernization and assimilation? For Aboriginal peoples, the very struggle to compete with the Canadian mainstream often makes Native people choose to stay in or return to the traditional way of life. As Coughlan (*Economic Dimensions of Ethnic Conflict* New York: St. Martin's Press, 1991) mentioned, ethnicity is a political process, emerging and coalescing within political struggles. These struggles generate emotional intensity, which, in turn, reflects back onto ethnic group identity. This applies very well to Canadian social order, as identified by Porter (*Vertical Mosaic: An Analysis of Social Class and Power in Canada*, Toronto: University of Toronto, 1965) under the term of "vertical mosaic." Different racial and ethnic groups are organized vertically by class: people of White Anglo-Saxon Protestant origin sit at the top of the hierarchy, while Aboriginal people are at the bottom.