Research Articles

Renegotiating the Columbia River Treaty: Transboundary Governance and Indigenous Rights

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Abstract

This article builds on regional environmental governance (REG) scholarship to explore alternatives to conventional transboundary agreements. Specifically, we use two narratives to tell the story of one river variously known as Wimahl, Nich'i-Wàna, or Swah'netk'qhu, and, more recently, the Columbia River. We suggest that the state-led narrative of the signing and implementation of the 1964 Columbia River Treaty has obscured Indigenous narratives of the river—a trend replicated in most scholarship on transboundary environmental agreements more broadly. In exploring these narratives, we: situate the silencing of Indigeneity in the 1964 Columbia River Treaty; highlight the reproduction and amplification of that silence in the relevant literature in the context of strengthened Indigenous rights; and explore what a multilateral—as opposed to binational—approach to environmental agreements might offer practitioners and scholars of REG.

The powerful waters known as the Big River, Wimahl, Nich'i-Wàna, Swah'netk'qhu, and most recently the Columbia, have served as the life force for diverse ecosystems and thriving communities for thousands of years—since time immemorial. Fed by glaciers from the Rocky Mountains, the Big River starts as a trickling stream and empties as a wide-mouthed, fast-flowing river into the Pacific Ocean near Portland, Oregon. Through its journey to the ocean, the Big River runs 2,000 kilometers, making it the fourth largest river in North America, with a drainage basin approximately the size of France.

* We are grateful to the editors and two reviewers for their thoughtful and constructive comments on an earlier draft of this article. Thanks to Karen Bakker (UBC) for her contributions to a much earlier version of this article and to Lynda Jenson (Northwest Indian College) for her helpful edits. We also are grateful to Volker Mell for working with us to create the maps. This material is based in part upon work supported by the National Science Foundation under grant 1461441. Any opinions, findings, and conclusions or recommendations expressed in this material are ours and do not necessarily reflect the views of the National Science Foundation.

Global Environmental Politics 18:4, November 2018, doi:10.1162/glep_a_00477

The Big River was fundamentally changed when the US government decided to utilize the powerful flow of water for hydropower. The Rock Island Dam, originally built in 1894 and poured into concrete in 1932, was the first to make its mark on the river; after this, the number and size of dams increased dramatically with the signing of the Columbia River Treaty (CRT) in 1964. The 1964 Treaty focuses almost exclusively on flood protection, power provision, and financial compensation. The treaty also includes a clause to either terminate or renegotiate the terms of the treaty after fifty years, given ten years' notice. This window of negotiation or termination was opened in September 2014.

The renegotiation of the 1964 CRT presents an opportunity for a different—and more nuanced—form of environmental governance than the current treaty provided. Such a possibility, albeit not focused on the CRT, was highlighted in a 2012 special edition of this journal. In that issue, focused on regional environmental governance (REG), the issue's editors, Balsiger and VanDeveer, wrote that much of the scholarship on global environmental agreements draws on regime theory. As they rightly point out, "standard texts in international environmental politics scarcely make mention of regional dynamics and typically lump 'global,' 'international,' 'multilateral,' and 'regional' agreements together" (Balsiger and VanDeveer 2012, 3). In setting out to rectify this overgeneralization, they delineate three axes along which REG can be understood. The first of these is the coordinating agency, that is, the degree to which the coordinating or rule-making agency of a regional initiative is a "formal intergovernmental cooperation" or an "informal arrangement such as transnational networks of state and non-state actors" (7–8), citing NGO-led initiatives as an example of the latter. The second axis along which we can understand REG is in its scope, with single-issue initiatives at one end of the continuum and broad mandates at the other. The third axis is the territoriality of the REG initiative under examination: is a given initiative focused on nation-state borders, or does it correspond more closely with the increasingly popular ecological boundaries (Cohen and McCarthy 2015)? This latter axis is emphasized in this article, which focuses on the opportunities presented in the renegotiation of the 1964 CRT. Since the treaty included factors beyond the river itself (e.g., flooded areas and power provision), it is a relatively early example of a governance initiative that aimed to account for—if not fully encompass—the river basin as an ecological unit.

Recent literature on REG underscores the complexities of regionalism. Borzel and Risse's (2016) *Handbook of Comparative Regionalism*, for example, is structured region by region, tracing the economic, legal, and governance dimensions of particular regions around the globe. Similarly, Temby and Stoett's (2017) edited collection *Towards Continental Environmental Policy? North American Transnational Networks* takes a broad view of the governance landscape, situating North American REG within a matrix of broader issues, including border security and trade agreements. This approach strengthens and enriches the REG discussion by imbricating discussions of environmental governance with the

transboundary landscape more generally. Indeed, one chapter of that volume (Mumme and Brown 2017) argues that environmentalists must, among other things, "aggressively insert themselves into policy debates over infrastructure [and] mobilize and demand that national security at the border incorporate considerations of environmental and social values" (Sivaraman 2018, 3).

The trouble with using the REG literature as the basis for our theoretical framework is that it does not provide a conceptual basis for nations *within* or *across* states. The traditional territory of the Columbia Basin tribes, for example, straddles British Columbia (Canada), Washington, and Oregon (US). Indeed, the international Canada–United States boundary that makes the CRT an international treaty is a boundary not recognized by many Indigenous People,[1] as it was a border constructed and imposed by colonial act. A complicating factor here is that the relationships between government and tribes are different in Canada and the United States such that the concept of sovereignty holds different meaning and weight for the tribes on either side of the border. As Deloria and Lytle (1984) discuss in *The Nations Within*, this complicated relationship between tribes and the state changes as tribes assert their inherent and acquired treaty rights.

The CRT and its related actors thus fall outside of the REG typologies presented in the literature to date and therefore calls for a reimagining of how we understand and implement REG. Although the exclusion of Indigenous Peoples from the CRT was typical of the era's environmental agreements more generally, the ongoing strengthening and sharpening of Indigenous rights presents an opportunity to reconceptualize the CRT (and, indeed, other treaties) in ways that are more inclusive, just, and representative of modern legal reality.

The 1964 Treaty's current renegotiation means that this reconceptualization need not be entirely theoretical: because the legal frameworks around ecological protection and Indigenous rights have changed so dramatically in fifty years, these will very likely feature more prominently in the new treaty and the original. It is not our intention in this article to make specific recommendations about what should or should not be included in the new treaty—indeed, these recommendations have already been put forward through the regional process. Rather, our aims here are to explore and build a framework for the consideration of REG in the context of multistate nations. To do this, we explore two key themes. First, we track the silencing of Indigeneity in the original CRT and, relatedly, the reproduction and amplification of that silence in the academic literature on the CRT in the context of strengthened Indigenous rights. Our aim in tracing this history is both to tell the story of the Big River and to

1. A note on terminology: in this article, we use the term Indigenous to refer to pre-contact inhabitants of North America and their descendants. For the purposes of this article, the term is used to include persons who identify as Indian, First Nations, Métis, Inuit, or Aboriginal. The legal language used in section 2 reflects this broader range of terms, which are used differently on each side of the Canada–US border.

give an example of the way(s) in which counternarratives can inform a reconsideration of the agreements that fall under the REG umbrella. Second, we build on this story to explore what a multilateral (including Indigenous Nations as the third sovereign), as opposed to binational, approach to environmental agreements might offer to both practitioners and scholars of environmental politics. Together, these processes—tracing Indigenous silencing in practice and scholarship and exploring multilateral environmental agreements—provide a conceptual scaffolding on which we hope other scholars can build their own narratives.

To explore these issues, the rest of the article proceeds as follows. First, we introduce the river—its location, flow, and inhabitants, both human and nonhuman. We then detail two narratives of the same river. The first story is a familiar one: a tale of two states seeking to (re)establish themselves and consolidate power—both literally and figuratively—through the control and manipulation of the river and the establishment of what Donald Worster (1995) calls hydraulic societies. This is the story that is replicated in the mainstream academic literature: it focuses on the role of the state, the importance of binational negotiations, and monetary exchange for particular services. The agreement, however, came at the expense of the ecosystems, the fish, and the Indigenous communities whose ways of life were not valued in the decision-making for power generation. State power, both literal and figurative, usurped (and attempted to erase) Indigenous communities, which are the focus of the second narrative: a narrative of Wimahl, Nich'i-Wàna, or Swah'netk'qhu: the Big River. This river sustained Indigenous populations for thousands of years and, with the development of hydropower structures, underwent change that made impossible ways of life that had existed since time immemorial.

In presenting these narratives, we have three aims. First, we aim to show how the mainstream literature on international environmental politics—namely, stories that focus on regime theory and international relations—privilege one narrative over another. Second, we underscore how and why it is important to examine the historical contexts under which decisions are made. Third, we use this space to include narratives that were silenced in previous environmental (and other) decision-making. We then move to an account of the ways in which Indigenous rights have evolved on either side of the Canada–United States border. Although the specific mechanisms of change are different, Indigenous Peoples on both sides of the border have seen in the last fifty years a gradually increasing scope and specificity of acquired rights.[2] We, and others, suggest that

2. It is important here to differentiate between "acquired" and "inherent" rights. Acquired rights are those that have been negotiated through political processes and relate to legal mechanisms set in place with another sovereign, in this case, Canada and the US. Inherent rights are fundamental rights that cannot be usurped by law and policy—rights to maintain a way of life congruent with traditional customs and worldviews. For Indigenous Peoples, rights to fish in traditional waterways are an inherent right, codified through acquired rights, but not always upheld in practice.

although the culmination of these rights gives many Indigenous communities a "seat at the table," the "table" needs to be rebuilt to include Indigenous rights at the start (not added on). In so doing, we explore what a more multilateral form of renegotiation might look like for both practitioners and scholars. We conclude by exploring what a more inclusive process might look like and how it might benefit both practitioners and scholars of international environmental politics.

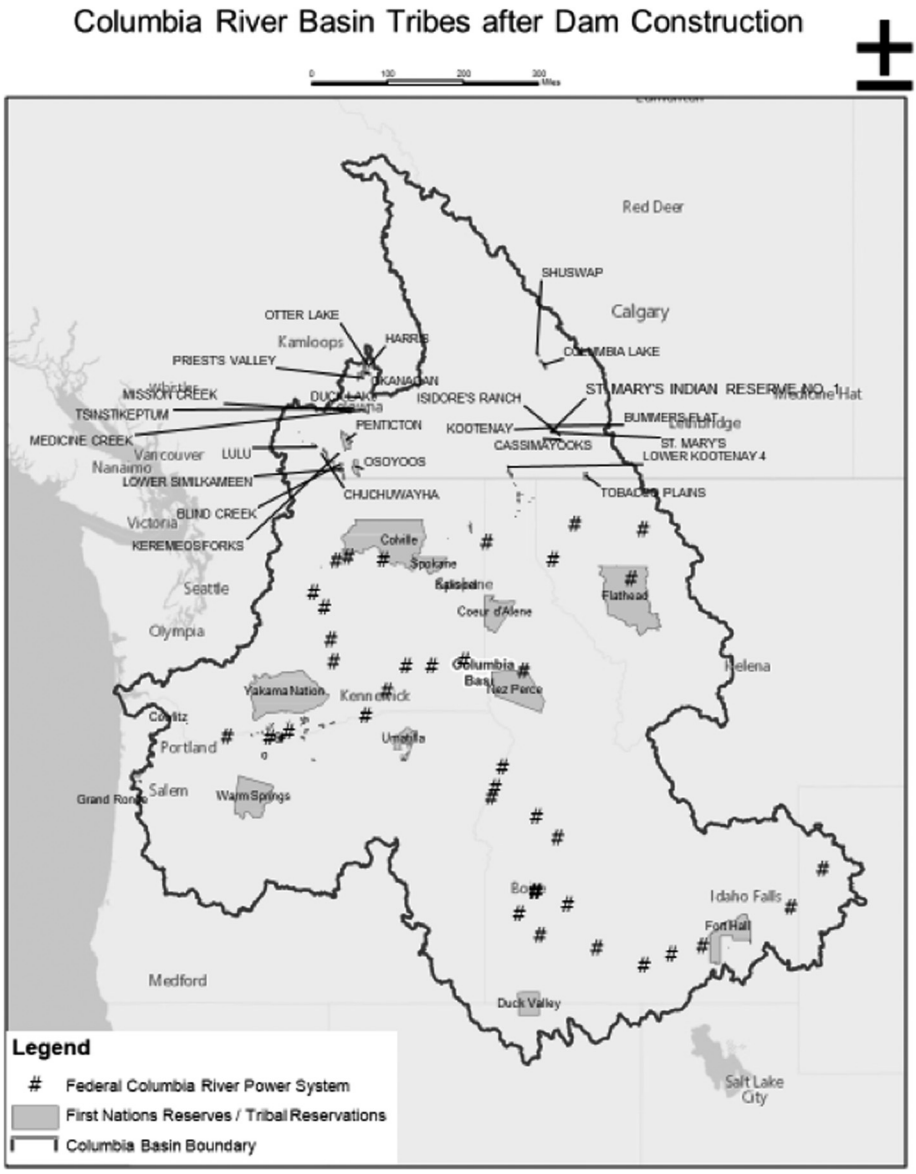
The Big River

The river spans what is now the Canada–US border, encompassing the province of British Columbia and the states of Washington, Idaho, Montana, and Oregon. Highly engineered, precisely managed, and financially measured, the contemporary Columbia River[3] is a far cry from a wilderness. A complex amalgam of human, natural, economic, and cultural influences, the Columbia has, since time immemorial, blurred the lines between what is human and what is natural. This hybridity is the underlying premise of Richard White's (1995) classic book *The Organic Machine*, in which he argues that it is impossible to separate the human from the natural in the Columbia River Basin. Indeed, the Columbia Basin exemplifies hybridities between people, nature, and economies: White argues that the relationship between people and the river has always been reflexive; that is, technologies have always been used to harvest the bounty of the river. For example, dipnetting—placing wooden planks over falls in the river—was used to catch migrating salmon at key fishing sites. Although these techniques had been used for thousands of years, they did not fundamentally change the ecosystem of the river, nor did they jeopardize the health and well-being of the salmon. Prior to the construction of dams, salmon ran all the way to the headwaters, occupying nearly 13,000 miles of Columbia River Basin streams and rivers and yielding 10 million to 16 million salmon annually (Maps 1 and 2).

The same characteristics that brought humans to inhabit this rich ecosystem—that is, the enormous flow of water, the steep pitch, and the forested riparian zone—make the river ideal for harnessing energy through hydroelectric development. However, the development of hydroelectric technologies and the financial push to modernize the river fundamentally changed the river and, in turn, impacted the traditional ways of life of the Indigenous communities who relied on it. The decision to build hydroelectric facilities and storage tanks—codified

3. The river is called Wimahl in the Chinookan language, Nich'i-Wàna to the Sahaptin-speaking peoples, and Swah'netk'qhu by the Sinixt people, who live in the area of the Arrow Lakes in the river's upper reaches in Canada. All three terms essentially mean "the Big River." Explorer and cartographer Robert Gray named the "Big River" the Columbia in 1792, after his ship *Columbia Rediviva*.

Map 1
The Columbia River Prior to Dam Construction with Indigenous Traditional Territories by Language Group



Map 2
Columbia River with Dams and Territory Carved by Nation-State and Reserve

through the CRT—impacted the landscape and hydroscape in significant ways, the most controversial of which was the blockage of the fish runs that have sustained populations in the basin for at least 15,000 years. These structural changes had (and continue to have) severe impacts on ecosystems as well as

Indigenous populations, whose culture and ways of life rely on intact ecosystems and healthy fish runs.

Two Tales, One River

We present herein two stories about the same river. The first story may be more familiar to most readers: it chronicles the development and signing of the CRT and its dual aims of power generation and flood control. It also provides an analysis of these processes from a critical geography lens, suggesting that the treaty and subsequent dam construction were as much about the treaty's stated aims as they were about the consolidation of state power. This analysis leads into the second story: the story about Indigenous perspectives on the Big River and about the ways of life that were forever changed as a result of the dam construction and the treaty. This second story is also familiar for many but is far less visible in the literature on, and political discussion about, the basin. This absence occurred for a variety of reasons, including absence of strong legal rights for Indigenous Peoples, lack of ecological considerations—including salmon health—in the treaty, and, of course the widespread racism that did (and continues to) permeate politics of all kinds. For these and other reasons, the Columbia Basin tribes and First Nations were silenced in the original treaty and in environmental politics in general in the CRT era.

What is arguably even more troubling is the reproduction of that silence in the academic literature on the CRT and on environmental politics more broadly, perpetuating a biased and state-centric view of the River. With a few exceptions (see, e.g., Nation-Knapper 2015a, 2015b; Norman et al. 2013; Norman 2015; Shurts and Paisley 2013; Heasley and Macfarlane 2016), political and academic debate about the CRT tends to focus on the upcoming Canada–United States renegotiation without considering how to include Indigenous perspectives and ways of knowing.

River of Empire: The Columbia and the State

The CRT, like most laws and policies, provides a portal back into state priorities of the time. In this case, the priorities were job creation, flood protection, and creation of hydroelectric power generation. These provisions make sense in the context of public priorities at the time: public concern with respect to flood control spiked in the postwar years, particularly after the infamous Vanport Flood of 1948, which displaced thousands of people along the Columbia, swept away towns, caused millions in property damage, and all but destroyed what was, at the time, Oregon's second largest city. The public—and, consequently, political—focus on flood prevention and mitigation helped to secure support for massive (and expensive) flood control projects.[4] At the same time, affordable and reliable power was

4. The strategy of having "crisis" mobilize action is well practiced (see Kaika 2003; Nevarez 1996).

needed to support the rapid and extensive population growth taking place in the American West. Importantly, the confluence of these two priorities was set against the backdrop of a world—and a North America—obsessed with large, national-scale water engineering projects (Figure 1).

The treaty was signed in 1961 by federal representatives of Canada and the US and ratified three years later, in 1964, after agreements between the national governments and their respective subnational parties were signed. The CRT was crafted to provide electrical power and flood control to Washington and Oregon, which, in turn, financially compensated the Canadian province of British Columbia for the construction and operation of four dams. The treaty led to the development of four storage dams primarily intended to provide both power and flood control benefits in the United States—these benefits (in the form of power and money) were to be shared. The benefit-sharing agreement between Canada and the United States took the form of a one-time payment of $64 million from the United States to Canada for flood control for the first sixty years of the treaty (1964–2024) and an agreement by the United States to send Canada either power generated or the monetary equivalent. The equity of the cost sharing has been under examination, as both countries claim they overpaid. Without a new agreement, the purchase of an annual operation of Canadian storage for flood control will expire in 2024. The terms of the original treaty state that the treaty can be terminated after sixty years, given ten years' notice. September 16, 2014, marked the fiftieth anniversary of the ratification.

At the time of the 1964 CRT, large dams were construed not only as sources of electrical power and flood control but as a tool of nation building

Figure 1
The Honorable John Diefenbaker and Dwight Eisenhower at the Signing of the CRT, January 1961

Source: White House Photo Office. JDG 6880 photo office image member: 6265 C. Public domain.

in the Cold War era (Worster 1985). Such societies are described in Worster's *Rivers of Empire* as hydraulic societies: "a social order based on the intensive, large-scale manipulation of water and its products in an arid setting" (7). Although Worster is writing primarily about California, the concept of a hydraulic society and the role of water in shaping people, politics, and place hold true for the Columbia Basin, where the large-scale manipulation of water was (and is) carried out not for irrigation but for hydropower generation and flood protection.

Of course, the hydropower and flood protection resulting from the extensive damming of the Columbia was not merely for the sake of local power provision and flood protection alone; it was part of a larger project focused on nation building in the Cold War era. Indeed, the development of massive water engineering projects was deeply intertwined with Cold War–era nationalism, lending significant political weight to the pragmatic problems of flood control and the need for electrical power. As noted in *Rivers of Empire*, a series of high-profile American politicians advocated for large-scale water engineering projects using the language of national security, identity, and religion. Lyndon Johnson (as a Texas senator), for example, wrote that "water management is … a decisive tool in our mighty struggle for national security and world peace" (Worster 1985, 264), and former Oklahoma governor Robert Kerr argued that such projects were emblematic of the "international struggle of free people against godless Marxists" (264), stating,

> Can a pagan Communist nation [he asked], by enslaving and regimenting its people, make more efficient use of soil and water resources than the most advanced and enlightened nation in the world? Can ruthless atheists mobilize and harness their treasures of God-given wealth to defeat and stifle freedom-loving peoples everywhere? (Kerr, as cited in Worster 1985, 264)

Apparently not. By reconstructing the local as the global, by turning tragedy and crisis into political opportunity, and by pulling in jingoistic language and imagery, the construction of large dams in the West continued apace. As Worster reflects, "thus did local ambition and global ideological conflict, a fear of deprivation and the loss of control, all fuse and run together toward the single potent symbol of a dam" (264)—or, in this case, a series of dams along the Columbia River. Folk songs by iconic artist Woody Guthrie, commissioned by Bonneville Power Authority, helped to glamorize (and rationalize) the harnessing of the Columbia River in the Pacific Northwest. His famous song "Roll on Columbia" includes the lyrics "your power is turning our darkness to dawn" and the verse "And on up the River is Grand Coulee Dam / The mightiest thing ever built by a man / To run these great factories and water the land, / It's roll on, Columbia, roll on."

It is this story—the story about nation building, flood protection, power provision, and the marvels of engineering—that permeates the mainstream narrative of the CRT and its signatories. The dominant narrative of the Columbia, then, is not simply a story about the Vanport Flood, the political opportunity

it created, and the need for power; it is a story about Indigenous dispossession and accumulation of power by states. In a sense, this is predictable. As Worster argues, the construction of dams is not just about the dams themselves but about what they symbolize: state control over nature, a managed—and therefore economically productive—landscape, and consolidation of state power.

The foregoing account meshes easily with REG literature that focuses on the complex relationships between the economic and governance dimensions of governance in particular regions because it focuses on how *states* can work together to manage the Columbia. But such a state-centric approach to understanding the Columbia only tells part of the story (Figure 2).

Wimahl, Nich'i-Wàna, or Swah'netk'qhu

Standing on the banks of the Big River, the hereditary chiefs and community members watched stoically as Celilo Falls disappeared under the rising waters. For more than 15,000 years, Celilo Falls served as an important fishing and trading site for Indigenous People throughout the Columbia River Basin. The site, considered the longest continuously inhabited village in North America, brought thousands of people together every year from as far away as Alaska and the Great Plains to trade and exchange goods and ideas. The falls themselves—the first of a series of waterfalls spanning twelve miles, now referred to as the narrows—was an incredibly significant fishing site. Prior to settler inhabitants, an estimated 15 million to 20 million salmon passed through the falls annually.

Figure 2
Traditional Chiefs of the Colville Indian Reservation in 1941 Gather to Witness the Completion of the Grand Coulee Dam

Source: US Bureau of Reclamation.

In the upper reaches of the river, First Nations communities also experienced great loss as their traditional territory was flooded to make room for storage facilities and reservoirs for the benefit of hydropower. The deal to increase storage facilities in British Columbia was negotiated between the United States and Canadian governments, with no involvement of First Nations, despite the fact that the flooding had direct and immediate impacts on their communities, such as the Ktunaxa, whose traditional homeland is in the headwaters, as well as the Sinixt (or Lakes People) and the Shuswap (Secwepemc), who reside in the upper reaches of the river.

Up and down the river, Indigenous Peoples were significantly impacted by the ecological changes of the river that resulted from dam construction and were accelerated by the CRT. In the upper reaches of the Columba River Basin, the Ktunaxa (or Kutenai), Sinixt (or Lakes People), and Shuswap (Secwepemc) were all severely impacted by the construction of the dams, which not only blocked the salmon from migrating but had extensive implications for ecosystems, including the flooding of culturally significant territory.

South of the international border, the Colville, Spokane, Coeur d'Alene, Yakama, Nez Perce, Cayuse, Palus, Umatilla, Cowlitz, and Confederated Tribes of Warm Springs all have a deep and sustained presence along the Columbia, whose relationship was impacted drastically with the construction of hydropower; while the Shoshone Bannock tribes reside along the upper Snake and Salmon River, the Chinook tribe, who remain federally unrecognized, live near the lower Columbia River.

The cultures, languages, and economies of the Indigenous populations that reside along the Big River are intrinsically tied to place and directly link to their identity. The stories, songs, culture, and foods all connect to place in a profound and reciprocal way; that is, they care for and protect the river, and in turn, the ecosystem (river) provides for them. Drastic changes in the river's flow therefore affect not only a change in diet or economy; they also have deep cultural and spiritual implications. The decision of the United States and Canadian governments to prioritize hydropower, flood control, and large engineering projects over maintaining ecological diversity was also a decision to knowingly adulterate and compromise an Indigenous way of life.

Along the Big River, salmon plays a fundamental role in cultural identity and practice. The Columbia River Inter-tribal Fish Commission (CRITFC) is an example of the kind of governance initiative that is not accounted for in the REG literatures: it is a regional initiative led by tribes and designed, in part, to hold the state accountable for its commitments to Indigenous Peoples. Moreover, the CRITFC and other groups like it have an essential role to play in treaty renegotiation but are overshadowed in the REG and international relations literature by a focus on the state, in large part because decision-making authority remains concentrated in provincial and national capitals. A key role of the CRITFC is to tell the stories of the connections between communities, culture, and salmon: as members explain, salmon is always placed as the main dish

for cultural events and ceremonies. This is to show respect and reverence, as salmon is a gift from the Creator. Although each community has its own creation story, many include salmon. For example, the following story is highlighted on CRITFC's web page, showing the importance of salmon and contextualizing their work of honoring the spirit of the Salmon, Wy-Kan-Ush-Mi Wa-Kish-Wit:

> When the Creator was preparing to bring humans onto the earth, He called a grand council of all the animal people, plant people, and everything else. In those days, the animals and plants were more like people because they could talk. He asked each one to give a gift to the humans—a gift to help them survive, since humans were pitiful and would die without help. The first to come forward was Salmon. He gave the humans his body for food. The second to give a gift was Water. She promised to be the home to the salmon. After that, everyone else gave the humans a gift, but it was special that the first to give their gifts were Salmon and Water. When the humans finally arrived, the Creator took away the animals' power of speech and gave it to the humans. He told the humans that since the animals could no longer speak for themselves, it was a human responsibility to speak for the animals. To this day, Salmon and Water are always served first at tribal feasts to remember the story and honor the First Foods. (Upper Columbia United Tribes 2015)

When the Rock Island Dam was completed in 1933, the communities knew it would disrupt the delicate balance that they had with the river. However, they could not have predicted that over the next sixty years, the water flow would be so drastically changed that fish would no longer reach the upper reaches of the river; that fish hatcheries would need to mechanically produce fish runs; that their intricate relationships with trading partners and other tribal communities would be strained and out of balance. The decision to dam the river—without consultation of tribal communities—was another form of cultural genocide. Disrupting a way of life that is integral to the well-being and structure of a community was part of the colonial project of disposition. Just like boarding schools were designed to take away language and culture and erode strong family ties, the construction of dams disrupted a way of life that was incompletely connected to the natural world. Yakama chief Meninock reflected in 1915, "My strength is from the fish; my blood is from the fish, from the roots and berries. The fish and game are the essence of my life. I was not brought from a foreign country and did not come here. I was put here by the Creator" (Upper Columbia United Tribes 2015).

The construction of these dams was a direct violation of previous agreements. For example, the 1855 treaties signed between the US government and the Nez Perce, Umatilla, Warm Springs, and Yakama tribes assured continued access to fishing and hunting grounds in all "Usual and Accustomed" areas (U and A). These tenets were determining factors in relinquishing traditional territory to move onto reservations. Thus the construction of these dams not only adulterated access to U and A but violated treaty rights. As Yakama chief Kamiakin ominously

foreshadowed in 1855 at the Walla Walla Treaty Council, "Let them do as they have promised. That is all I have to say."

The promises, of course, were not met. The powerful documentary *Empty Promises, Empty Nets* documents the erosion of these promises almost immediately from the time they were made. The 1969 litigation *Sohappy v. Smith* and *United States v. Oregon* affirmed the U and A for Columbia River tribes. The 1974 case *United States v. Washington* (known as the *Boldt* decision) further affirmed tribal fishing rights of coastal tribes of Washington, specifically through the interpretation of "In Common With" to mean 50 percent of catch and co-management. A large body of case law now exists that interprets the 1855 treaties to limit state and federal regulations of tribal fisheries and establishes tribes as co-managers. However, structural issues, such as the hydropower facilities—which were created without the consultation of Indigenous communities—violate these promises.

Indeed, the contemporary legal climate with respect to Indigenous rights is dramatically different from the legal climate in which the 1964 CRT was signed. Within Canada, Indigenous rights are protected under section 35 of the Canadian Constitution (1982) which recognizes and affirms existing Indigenous and treaty rights of the Indigenous Peoples of Canada. The courts have interpreted this provision as protecting traditional practices, such as salmon fisheries for food and social and ceremonial purposes, from government interference. Furthermore, courts uphold that governments are obliged to consult meaningfully with Indigenous communities in an actions that may potentially adversely affect Indigenous rights and practices. Thus provincial laws are subject to meeting a three-part test: there is a duty to consult and accommodate, government's actions must be backed by a compelling and substantive objection, and the government's action must be consistent with the Crown's fiduciary obligation to the affected First Nation (Upper Columbia United Tribes 2015).

With the CRT now up for renegotiation, this is the time to remedy the impacts of these previous decisions. Recognizing this opportunity, the tribes and First Nations along the Columbia provided leadership roles in the development of the regional recommendation plans. Most significant of the changes that were suggested in these regional recommendations were the inclusion of Indigenous rights, the focus on ecological integrity, and the inclusion of climate change adaptation. A priority for US Columbia Basin tribes and Canadian First Nations is integrating ecosystem-based function into the treaty, with the goal of increased fish passage and reintroduction of anadromous fish (Upper Columbia United Tribes 2018).

Indigenous Law, Policy, and Rights

The preceding narratives show how perspective changes what factors are included or excluded from official agreements. Importantly, no matter how transparent and inclusive the process is, decision-making power remains concentrated in provincial and national capitals. As such, it is ultimately up to the provincial

and national governments to decide if, and in what capacity, to integrate Indigenous governments into the renegotiation process. The ongoing strengthening and sharpening of Indigenous rights on either side of the border, however, provides a legal basis for inclusion in treaty negotiations. In addition, events such as the Idle No More movement and the Truth and Reconciliation Commission in Canada and Xwe'chi'eXen (Cherry Point) and Standing Rock in the United States have put pressure on federal governments to uphold treaty trust responsibilities (see Norman 2017). Together with international initiatives like the development of the Arctic Council and the United Nations Declaration on the Rights of Indigenous Peoples, these movements have contributed to a growing consciousness of injustices and maltreatment of Indigenous Peoples in North America and elsewhere.

The renegotiation of the CRT has the potential to actualize the strengthened and sharpened Indigenous rights and governance mechanisms developed since the signing of the 1964 Treaty. These new rights and frameworks have emerged through two mechanisms. The first mechanism is the creation of intertribal organizations like the Columbia River Treaty Inter-tribal Commission and the Upper Columbia United Tribes (both of which played central roles in the development of regional recommendations for the "modernized Treaty"), the Northwest Indian Fish Commission (which co-manages the coastal fisheries with the State of Washington), the Coast Salish Gathering (which provides a governing body for Coast Salish Peoples), the Yukon River Inter-tribal Watershed Council (a governing body for the protection of the Yukon River), and the Great Lakes Indian Fish and Wildlife Commission (a governing body that addresses water quality issues facing the tribes in the Great Lakes) (for a full description of each of these governing bodies, see Norman 2015). These groups have substantially helped to redefine (and reclaim) the role of Indigenous governance in the wake of colonial occupation and are examples of REG that falls outside of the typology presented in the 2012 special issue of *GEP*: the groups here are not issue focused or based on ecological boundaries but instead are based on linguistic or cultural boundaries not captured in either ecological or state boundaries.

A second mechanism through which Indigenous Peoples in the basin have been involved is the parallel—and mutually influential—development of national policies and laws in Canada and the US with respect to Indigenous rights and governance. Three areas of evolving Indigenous legal rights have particular relevance in the basin. The first of these is the realm of water, land, and title. The 1973 *Calder* case in Canada and the 1909 Winters Doctrine in the United States established land and title rights for Indigenous Peoples—rights that continue to be strengthened and redefined through the courts. Second, fishing rights for Indigenous Peoples continue to be (re)defined. The *Sparrow* (1990) and *Marshall* (1996) cases in Canada recognized that Indigenous Canadians have an existing right to fish and, in the case of the *Marshall* decision, earn a "moderate living" from fishing activities. In the US, the landmark 1974 *Boldt* decision resulted in

tribes being allocated 50 percent of the allowable catch, and the fisheries are comanaged with the state. Third, outside of law specific to particular resources, the question of process has also evolved. In Canada, the Supreme Court cases in 2004 (*Haida and Taku River*) and 2005 (*Mikisew Cree*) ruled that "the Crown has aduty to consult" with Indigenous Peoples in situations where Aboriginal or treaty rights may be impacted; in the United States, the government-to-government relationship was affirmed in a 2004 Executive Memorandum recommitting the federal government to "work with federally-recognized Native American tribal governments on a government-to-government basis and strongly supporting and respecting tribal sovereignty and self-determination" (US General Services Administration 2017).

Importantly, these "acquired" rights were negotiated through American and/or Canadian (and British) colonial legal systems. It is important also to consider the role of Indigenous inherent rights, which is the framework of governance structures that lie parallel to, but are often unrecognized in, the Western legal structures. Inherent rights are the social contracts Indigenous Peoples have with the natural world and within and between their communities. Understanding the difference between these systems is fundamental to rethinking the power structures that are set up in the contemporary legal and governance systems. Indigenous legal scholar John Borrows has written extensively on the topic of Indigenous law and governance, including the limitations and opportunities for overlap with colonial law (Borrows 2016; Borrows and Coyle 2017; see also Harris 2001). The evolution of acquired rights for the Columbia River tribes is connected with the legal and political structured as colonial law (and thus as *binational* systems). In the US, the tribes that signed treaties with the US government are considered sovereign nations and are in the position to negotiate directly nation to nation. However, in Canada, First Nations do not hold the same sovereign status. Thus, in transboundary cases such as the Columbia River, the legal relationships between tribal sovereigns and nation-states are complicated.

Analysis: Nature, Society, and Opportunity

The foregoing sections show how Indigenous perspectives were absent from the original CRT, and we have argued that mainstream political literature has replicated this absence by focusing on one narrative (i.e., the state-centric narrative) at the expense of the other (i.e., the story of Indigenous dispossession). In the following paragraphs, we explore what a multilateral approach that includes Indigenous Nations as sovereign might offer both practitioners and scholars of environmental politics.

The renegotiation of the treaty, and the talks that occurred in preparation of the regional recommendations, provides an opportunity to insert an Indigenous-led narrative into the conversation, in essence, shifting the conversation from *binational to multinational* and recognizing tribes' sovereign and inherent rights to the river. Such a perspective builds on, and extends, contemporary REG scholarship in several ways.

First, it broadens—and modernizes—the discussions on transboundary water politics to include nonstate nations as partners in modernized negotiations. Much has been written about conflict and cooperation over the world's 263 transboundary water bodies, especially in response to popular media's predictions of water wars and assertions that "water is the new oil" (e.g., Brookes 2011; McGee 2014). Here scholars have conducted extensive research on the likelihood of cooperation or conflict along international waterways (Sadoff and Grey 2002; Wolf 1998), while others have focused on redefining the terms of the conflict–cooperation debate, suggesting a spectrum rather than a binary (Zeitoun and Mirumachi 2008). Broadly, this work is predicated on the nation-state: it explores the conflict–cooperation question through the lens of state boundaries by focusing on the likelihood of state-to-state conflict and cooperation. This state-centric mode of understanding transboundary resources has been under scrutiny, both for obscuring intra- or subnational-level conflict (Blomquist and Ingram 2003; Castro 2008) and for reinforcing—rather than dissolving—borders. As Norman (2015, 181) writes,

> when the primary mechanism for transboundary water governance is state or federally controlled, the nation-state boundaries are inherently reified. Even if the stated purview of the state/federal agency is "transboundary," they are defined by systemic nation-state boundaries and associated policies—that are colonial relics. The work towards collaborating with partners on the *other* side of the border, continue to reinforce national identities and national interpretations of landscape. They do not (and cannot) genuinely include connected ecosystems, nor traditional territories for Indigenous communities.

Second, a *multinational* approach builds on REG's increasing focus on ecological boundaries as meaningful iterations of the regional. Indeed, such an approach can be understood as situated at the confluence of three evolving conversations: REG's focus on ecological boundaries, ecology's focus on governance at environmentally relevant scales, and a legal and political focus on the implementation of evolving rights of Indigenous Peoples. Indeed, in the water arena, there is an ever-increasing number of basin-scale water organizations that aim to overcome—rather than work with—state boundaries. Community-based watershed groups, community forests, and regionally based environmental groups have all become increasingly important actors in the environmental arena These rescaling efforts come not only in response to the putative restructuring of decision-making structures and the (critiqued) "hollowing out" of the state but also in response to the rise of the field of environmental management, which pivots on the notion that environmental governance decisions should be made along ecosystem boundaries (Cohen and McCarthy 2015). In the case of water governance, this means governance along hydrologic, that is, watershed or river basin, boundaries rather than political ones. The use of watershed boundaries for environmental decision-making, for example, has been critiqued in political ecology and elsewhere for, variously, not aligning with other ecological boundaries

(Molle 2009), not being subject to the same kinds of public debate and accountability as their jurisdictional counterparts (Wester and Warner 2002), creating false expectations with respect to public engagement and empowerment of local organizations (Norman and Bakker 2009), and having become an end unto themselves rather than a means to other clearly articulated policy or environmental goals (Cohen 2012; Cohen and Davidson 2011).

Third, such an approach problematizes the "region" by refusing to separate people (and their activities) from place. In the case presented here, a place is physically impacted by people—actors and politics—that stretch far beyond the region in question. Although the notion of breaking down problematic nature–society binaries and focusing instead on hybridities may be novel for political scholars, for many Indigenous communities and worldviews, the idea that an area needs to be either "natural" or "human impacted/nonnatural" is a false binary. Indigenous communities in the Columbia River Basin, as elsewhere around the world, successfully thrived on manipulating their environment to sustain their populations, and their worldviews already recognize the complexities of human–natural entanglements. The difference, of course, is a matter of scale and impact. Newcomers to the Columbia River Basin manipulated the rich lands through imported agricultural practices from Europe, which focused on monocropping and decimation of forestlands (Langston 1995; White 1995). Indeed, as Indigenous scholars and knowledge holders remind us, knowledge comes *from* place. This is distinct from other Linnaean traditions of science, in which knowledge systems are generalized and then applied *to* place. In an era of changing climate and declining salmon populations in the basin, understanding the connections between people and place is no longer a luxury but a necessity.

Finally, this case adds a temporal dimension to current REG frameworks: having a party (or group of parties) at the table who have oral history knowledge of an ecological timescale that tracks back beyond the time of Western science and hydraulic monitoring has the potential both to disrupt and to enrich the ecological scope of the treaty. Almost entirely silent on ecological factors, a renegotiated treaty has potential for environmental innovation, particularly if it adopts a "two-eyed seeing" approach, a term first coined by Mi'kmaq elder Albert Marshall, that aims "to see from one eye with the strengths of Indigenous ways of knowing, and from the other eye with the strengths of Western ways of knowing, and to use both of these eyes together" (Hatcher et al. 2009).

Alice Cohen's work focuses on environmental policy and governance. Specifically, her work examines the complex relationships between water and ecological, political, and social boundaries. Through her various projects, she explores the political and material implications of the policy frameworks, governance arrangements, and discourses used to understand and manage water at global through local scales. Currently she is working to better understand governance arrangements as they relate to community-based water monitoring in Canada.

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