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## The Anticipated Impacts of the Western Hemisphere Travel Initiative on Coast Salish Communities

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The Anticipated Impacts of the  
Western Hemisphere Travel Initiative  
on Coast Salish Communities

by

James Marlow Hundley

Accepted in Partial Completion  
of the Requirements for the Degree  
Master of Arts

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Moheb A. Ghali, Dean of the Graduate School

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### Master's Thesis

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The Anticipated Impacts of the Western Hemisphere

Travel Initiative on Coast Salish Communities

A Thesis

Presented to

The Faculty of

Western Washington University

In Partial Fulfillment

Of the Requirements for the Degree

Master of Arts

by James Marlow Hundley

March 2009

## ABSTRACT

### The Anticipated Impacts of the Western Hemisphere

#### Travel Initiative on Coast Salish Communities

by James M. Hundley

The Western Hemisphere Travel Initiative (WHTI) is the policy directive of the Department of Homeland Security following the Intelligence Reform and Prevention Act of 2004. It will require that all citizens, including American citizens as well as foreign nationals, entering the United States from any foreign country to show documentation demonstrating identification and citizenship.

This thesis will examine the Western Hemisphere Travel Initiative and its anticipated effects on indigenous populations along the United States' border with Canada, specifically the Coast Salish of western Washington and British Columbia. It will document and record border crossing practices, both current and historical, of different Coast Salish community members, to examine how WHTI is likely to impact them. This thesis will also examine the legal issues surrounding this policy regarding the treaty obligations of the United States government.

This thesis will also look at the treaties in force and how those treaties have historically shaped border crossing practices. I will analyze the differences in interpretation of the Jay Treaty of 1794 by the American and Canadian governments as it relates to the ability for free movement across the border by indigenous groups.

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## I. Introduction

For as long as the United States of America has been an independent and internationally recognized country there have been concerns within the federal government as to the rights of the inhabitants that occupied North America before European colonization and American expansion. These aboriginal inhabitants occupied and travelled throughout the North American continent since time immemorial. Since the establishment of modern nation-states and the creation of international borders, native peoples have had to cross these borders in order to maintain family ties; conduct business; and attend social, religious, and spiritual ceremonies and events. The ability to freely cross over these “borders” is something that has been a point of contention for politicians in the United States as well as Canada for the past 200 years. This controversy over border crossing rights continues to the present with the Western Hemisphere Travel Initiative.

This thesis will explain what the Western Hemisphere Travel Initiative is, provide an explanation of the history of indigenous border crossing rights in North America, discuss the history and culture of the Coast Salish peoples of Washington State and British Columbia, illustrate examples of border disputes involving native rights, and provide an analysis of anthropological fieldwork regarding the potential impacts of the Western Hemisphere Travel Initiative on Coast Salish communities.

The 49<sup>th</sup> parallel became the international boundary between the United States and Great Britain with the passage of the Oregon Treaty in 1846, thereby separating native and non-native families and villages. Forty of the 561 federally recognized tribal nations in the United States occupy lands near or on a border (Zeller 2007). Prior to the creation of the international border indigenous groups traveled freely where it was convenient for them. The US/Canada border



separated numerous Indian Nations into “American” and “Canadian” Indian groups despite their shared cultural heritage (Miller 2007). One Coast Salish Elder told me the shared cultural activities in Coast Salish territory include marriage and kinship ties, fishing and berry picking, summer festivals, canoe racing, and winter ceremonials that *all* require cross border travel.

Indigenous border crossing is not limited to the border with Canada and the United States. In fact, every international border in the Western Hemisphere bisects indigenous lands so this issue is a subject worthy of much future study (Berreiro 2001). The US/Canada border is particularly well suited for study and analysis because of the legal history surrounding its creation in regards to indigenous rights. Several treaties between the United States and Canada (Great Britain before 1867) have specified the rights of crossing over the international border for these different and diverse Indian Nations. Treaties that recognize the US/Canada crossing rights of natives on both sides of the border began with the Jay Treaty of 1794. In the last decade, however, guaranteed rights of free passage for indigenous peoples of both countries are in jeopardy because of the Western Hemisphere Travel Initiative, a unilateral United States policy requiring a passport for anyone to enter US territory. The treaty rights of American Indians and Canadian First Nations members are threatened because the United States’ focus is on preservation (and creation) of security, even at the expense of existing treaty rights. The cultural livelihood of the indigenous groups that straddle the 49<sup>th</sup> parallel is potentially at risk of disintegration due to this initiative. This threat is similar to previous experiences by the indigenous peoples who had their land divided by the creation of the border centuries ago. Eileen Luna-Firebaugh notes that the cultural ties of some of the nations were kept intact while others had them severed and suffered significant negative impacts on their culture and traditions (2005). This thesis will examine the likelihood that the Western Hemisphere Travel Initiative will have

an impact on the Coast Salish communities of Northwestern Washington State and Southwestern British Columbia.

Anthropological inquiry into this question offers a perspective different from a strictly policy oriented or purely descriptive approach. Brian Thom (2005: 19) argues that anthropology “is so philosophically engaged...to bring such a conceptualization to bear on practical political realities,” in other words, anthropology is situated in a real world, with “really real” borders that have drastic impacts and effects on the lives and futures of people, communities and nations.

## Objective of this Study

The intent of this thesis is to perform a cultural impact assessment of the Western Hemisphere Travel Initiative on Coast Salish Communities along the United States/Canada international border. This study examines the Western Hemisphere Travel Initiative and impact assessments performed to date, relevant treaties involving indigenous rights and border crossing, a history of the Coast Salish peoples, a review of border disputes, and analysis of some of the anticipated impacts of the initiative.

The major impetus for this study is the significant lack of literature specifically on the impacts of WHTI on any cultural group. Secondly, there is a general lack of research on the US/Canada borderlands and borderlands overall, especially in the form of government analysis (Gibbins 2005; Meyers and Papademetriou 2001). This thesis will fill in some of these gaps.

Additionally, treaties are documents that take priority in domestic and international law. Treaties supersede presidential executive orders and congressional acts as well as United States Code. With this in mind it is crucial to understand that if treaty rights are violated the federal court system in the United States is bound by the law and not the will of the people, or the will of the Department of Homeland Security. If any indigenous nation feels that these treaty rights have been violated then they have the right to file suit against the United States government. An impact assessment analyzing the rights of treaty nations may avoid the potential violation of rights as well as lead to the prevention of legal action against the federal government.

## Western Hemisphere Travel Initiative

The “Passport Law.” There is much ambiguity around the law that enacted the Western Hemisphere Travel Initiative. This chapter will discuss what the Western Hemisphere Travel Initiative is and the general context of the United States securitization efforts of domestic and foreign policy at the time of its inception. A review of the available impact analysis studies conducted to date and the reactions to the initiative by trade groups, scholars and politicians will also be presented and discussed.

The events of September 11, 2001 have altered the way that scholars, politicians, and others view the world in terms of the need for *securitization*, especially regarding international borders. Even the general American public has been more aware of its borders as a result of 9/11, at least in the case of the Canadian border as the Mexican border has always been a hotly debated issue due to immigration concerns (Sadowski-Smith 2002a). Until recently, the border with Canada has not been present on the minds of most Americans, even those living on the border (Gecelovsky 2007). The reverse of this does not hold because the border has always been a part of the Canadian psyche and a factor in determining Canadian identity.

One major response to the events of 9/11 was the creation of the National Commission on the Terrorist Attacks upon the United States, more commonly known as the 9/11 Commission. This commission, composed of former Governors, Senators, and scholars, was created by a Congressional act and signed into existence by President George W. Bush in 2002. It was “chartered to prepare a full and complete account of the circumstances surrounding the September 11, 2001 terrorist attacks, including preparedness for and the immediate response to the attacks” (9/11 Commission).

Following the recommendations of the commission, Congress passed the Intelligence Reform and Terrorism Prevention Act, or IRTPA, in 2004 (PL 108-458). One of the provisions, section 7209, of this act was the creation of a legal requirement for the Department of State (DOS) and the newly created Department of Homeland Security (DHS) to “implement a plan by January 1, 2008, to require U.S. citizens traveling from countries within the Western Hemisphere to carry and produce a passport or other accepted secure document” (DOS 2007b). The reasoning for the “secure document” is based on the 9/11 commission’s finding and quoted in the text of the Intelligence Reform and Terrorism Prevention Act. IRTPA<sup>1</sup> states, “Targeting travel is at least as powerful a weapon against terrorists as targeting their money” (178). This plan was developed jointly by DHS and DOS and became known as the Western Hemisphere Travel Initiative or WHTI.

In addition to requiring United States citizens to produce a secure document to enter the country, it also requires citizens of Canada, Mexico and other countries within the Western Hemisphere to follow suit. This initiative also applies to persons formerly exempt from providing documentation: “...all travel into the United States...by categories of individuals for whom documentation requirements have previously been waived under section 212(d) (4) (B) of the Immigration and Nationality Act” (IRTPA: 186). While citizens of the Western Hemisphere must now show citizenship and identity documentation this does not mean that they will be required to obtain a visa, unless they were required to do so beforehand (DHS et al. 2007).

WHTI is currently being implemented in two different phases: the identification requirement for air travel into the United States and the identification requirement for all land and sea border crossing. As of January 23, 2007, all passengers entering the United States via air travel must show a passport or other secure document to gain entry. At the present, the

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<sup>1</sup> The text of the act can be viewed at [thomas.gov](http://thomas.gov)

implementation date for the land and sea crossing is June 1, 2009, although as of January 31, 2008, a traveler must provide proof of citizenship as well as identification, though not necessarily in one document. A driver's license and a birth certificate, for instance, are sufficient documents for crossing. Prior to January 31, 2008, however, an oral declaration of citizenship was sufficient for most United States citizens re-entering the country (DHS 2008). Additionally, for many border stations, it was common practice for Canadian citizens to declare citizenship orally as well, though this was determined by the individual agent and not a matter of official policy. This has changed in what DHS has called the "first rational step" in WHTI implementation (Alberts 2007b).

According to the Department of State website, only the following forms of identification will be acceptable for admission into the United States (DOS 2007b):

- Trusted Traveler Cards such as NEXUS, FAST or SENTRI. These cards are issued to individuals enrolled in low-risk trusted traveler programs. They undergo an application process, a background check and are required to follow certain regulations to remain in the program. The cost for a NEXUS card, for example, is \$50, and the card is good for 5 years.

- State issued Enhanced Driver's License. Currently Washington State and the province of British Columbia offer a license that denotes identity and citizenship. It may only be used for land and sea border crossing and costs an additional fifteen dollars. (DOL 2008).

- Military Identification. This identification is acceptable for crossing the border only when traveling on official military business.

-United States Merchant Mariner Document. This identification is only acceptable when conducting official maritime business.

-Form I-872 American Indian Card. This card is acceptable only for enrolled members of the Kickapoo Band of Texas and Tribe of Oklahoma.

-Passport. This is the preferred document for admission into the United States according to the Department of Homeland Security. The costs associated with a passport as of June 5, 2008 vary from \$85 for a child to \$100 for an adult (DOS 2007c). A family of four can expect to pay nearly \$400 to simply cross the border. The average time to receive a passport is 6-8 weeks, although before the air portion of WHTI took effect it took an average of 12 weeks, although some people waited nearly 6 months to receive their passport (Higgins 2007).

-The Passport Card. The PASS card, as it is commonly referred to in the industry, stands for People Access Security Service. Production of this card began in 2008 and is acceptable for only land and sea border crossing and is available only to Americans (DOS 2006).

Originally, tribal identification cards and “enhanced tribal identification cards” were listed as WHTI alternatives. The Department of Homeland Security has removed these forms of identification from their website, as of June 2008. The tribal identification cards as a WHTI compliant document will be discussed later in this thesis. Of these available forms of identification, only the passport and air NEXUS card are acceptable for air travel, meaning that to cross any border by air will require a passport even if one has another WHTI approved document such as the PASS card. For Canadian land border crossers, there are only an estimated

sixty percent that currently have a passport, while there are about forty percent in the U.S. (Harper 2007).

While there are other options beyond the standard passport that are acceptable for satisfaction of WHTI requirements there are other deterrents to some of these forms of identification. Some people are not eligible for enrollment in trusted traveler programs. This could be due to a misdemeanor or other criminally inadmissible action committed in the United States that bars them admission by Canada, as NEXUS is a jointly administered program. The U.S. and Canada have different standards for criminal inadmissibility. For instance, a DUI charge in Canada will not bar one from entry into the U.S. while a DUI in the U.S. will bar you from entry into Canada. The slight differences in admissibility may be problematic for some people looking for WHTI compliant documents.

Many people may not wish to subject themselves to extensive background checks or having their identity converted into a digital version through the use of certain biometrics, namely digital facial recognition, retinal scanning and fingerprinting. According to Ben Muller, a political scientist at Simon Fraser University, many Canadians are opposed to giving a foreign government their personal information, especially, Mueller believes, when the United States has one of the worst data protection systems in the world (2008).

The enhanced driver's license that Washington and British Columbia are offering is one alternative but some citizens are uncomfortable having a card that transmits their information via radio frequency. Studies done by the American Civil Liberties Union, computer security experts (such as the Smart Card Alliance), and other civil liberties advocates found that people carrying cards that use RFID can potentially have their movements tracked and as a result have their privacy placed at risk (ACLU 2007, Ring 2007).



Another trade group that has submitted comments to DHS is the Electronic Privacy Information Center (EPIC). EPIC also objects to the use of RFID due to the substantial privacy and security risks it poses to users. This organization feels that the use of RFID is not only a possible invasion of privacy but a violation of the Privacy Act (5 U.S.C. Section 552a) in the amount of personal information collected and the way in which it is transmitted (EPIC 2007).

The enhanced driver's license is not the only document that uses RFID either. Current U.S. passports also have this capability; these are known as epassports. The International Civil Aviation Organization (ICAO) is the organization that sets standards for all countries to follow in terms of standardization of passports. One such standardization that the U.S. has pushed for is the inclusion of RFID. The federal government has said that it will no longer accept countries in the visa waiver program unless they adopt the new epassport standards (Border Policy Research Institute 2007).

## WHTI Impact Assessments

There have been several impact assessment studies done on the anticipated effects of WHTI. Most of these assessments discuss how WHTI will likely affect trade, tourism, security, privacy or a combination of these. The Senate Subcommittee on Immigration, Border Security and Citizenship, a division of the Judiciary Committee, held a hearing on December 2, 2005 in Laredo, Texas to discuss WHTI and how it is likely to affect trade and tourism. Testimony from United States Senator John Cornyn of Texas reiterates that a family of four would have to spend nearly \$400 to cross the border: “One need only look at the economy of Laredo to understand how a small change in the travel document requirement could have a significant negative impact on the economy,” (U.S. Congress, Committee of the Judiciary 2005: 2). This assessment can be applied to nearly every town and city along the international border with Mexico as well as with Canada. Senator Cornyn cites a Texas A&M study that found that a one percent decrease in border crossings would result in approximately \$19 million in lost revenue. It would also increase unemployment in the city of Laredo by 7.2 percent (U.S. Congress, Committee of the Judiciary 2005). This is not an isolated location, meaning that not only would other border communities face similar problems but that the economies of other cities in Texas and the region, which are interdependent with Laredo, would also be impacted. A significant negative economic change in one city will lead to a change in another.

The McAllen Chamber of Commerce estimates that WHTI will cost the entire state of Texas 215,000 jobs due to the changing of border crossing practices. Elizabeth G. Flores, the mayor of the City of Laredo in 2005, states that border cities economies are intimately linked to border trade and transportation and are “directly impacted by the continuing ability to move border trade expeditiously” (U.S. Congress, Committee of the Judiciary 2005: 4). Expeditious

crossing is essential in continuing the complex economic relationships the way they presently are.

As Laredo Mayor Elizabeth Flores stated in 2005: “Creating policy without including the individuals who those policies will affect is detrimental to the success of any new regulation” (U.S. Congress, Committee of the Judiciary 2005: 5). This basic concept applies not only to WHTI, but to any policy or regulation that is likely to have an impact on the people responsible for implementing the policy as well as the people whose lives may be changed. Echoing the calls of many Americans, Canadians and Mexicans, Flores asks Congress, the Department of Homeland Security and the Department of State to “spend the necessary time studying the impact of all new regulations affecting our border, the effect it will have on the Federal Governmental agencies and the citizens along the border of these United States, as well as the rest of the world” (U.S. Congress, Committee of the Judiciary 2005: 5).

Canadian Prime Minister Stephen Harper made a similar remark in 2005: “... let's make sure the WHTI works before it goes into effect, and let's take the time to get it right" (Canadian Consulate 2005). The desire to make sure that WHTI implementation goes smoothly without any major disruptions to the economies of the U.S., Canada, or Mexico is not being made only by foreign and local leaders, but by virtually everyone involved with border management or economic relationships that depend on cross border activity. Additional criticism of DHS and DOS points out that when it comes to indigenous populations near the border, they did not study the impact of these regulations in the way that which Mayor Flores or Prime Minister Harper were hoping (Singleton 2008).

The Travel Industry Association has expressed concerns about the potential impacts of WHTI as well. In referring to an impact based on Mexican tourism, they note most Mexican

nationals that cross into the U.S. are already using WHTI compliant documentation (TIA 2007). Their analysis is that, in the case of Mexico, there will be no impacts on the U.S. economy. This goes against the findings of the Congressional hearing cited above. One area where the Travel Industry Association may be correct is that there is potential for a more significant impact with Canada, which provides 30 percent of all international visitation to the U.S. (TIA 2007). Their observation that the border with Canada deserves more analysis is one that would seem to be justified.

Looking to the U.S./Canada border there is skepticism and trepidation among many different communities, both in the United States and in Canada, with respect to WHTI. There is huge potential for negative economic impacts in both the United States and Canada due to a reduction in daily international travel in border communities totaling tens of millions of dollars a year (Border Policy Research Institute 2006). On the Canadian side, the Canadian Tourism Industry anticipates a loss of 14.1 million incoming American visits that will likely cost the tourism industry 3.2 billion dollars between 2005 and 2010 (Industry Canada 2008). The Business for Economic Trade and Tourism (BESTT) Coalition is a cross-border coalition made of both public and private members created to seek alternatives to WHTI as it now stands. BESTT has stated that 1.2 billion dollars worth of trade crosses the U.S./Canada border on a daily basis, which supports 5.2 million jobs (2007). The Pacific Northwest Economic Region (PNWER) is another cross-border group with special interests in the economic impact of WHTI. They have stated the potential dangers of the land implementation of WHTI: 10.9 billion dollars in tourism comes from Canadian visitors every year to the United States, more than any other country (PNWER 2005). This revenue may be lost if the hassles, or perceived hassles, of crossing the border appear to outweigh any potential benefits.

Whatcom County, the northern most county in western Washington State at the end of Interstate 5 before entering into Canada, may not have as many negative economic impacts as was previously suggested. The Border Policy Research Institute followed their 2006 report with another in 2008. Some of their findings showed that because of the high number of British Columbians with passports combined with the strong Canadian dollar; these trends may offset the economic impacts in Whatcom County. However, in the borderlands to the east, "...the proportion of travelers lacking passports is larger, which will lead to a greater impact from WHTI within all border communities" (BPRI 2008: 4).

One problem with any impact assessment is that there are often different and sometimes contradictory assessments. InterVISTAS, a transportation and tourism consulting firm, found that the Department of Homeland Security severely underestimated the negative impacts in their analysis. InterVISTAS' study argued that Whatcom County could lose 2000 jobs because of WHTI and an estimated 2.5 million fewer Canadian trips into the United States rather than the earlier stated total of 500 jobs. This equates to nearly 820 million dollars in lost revenue (Stark 2007). The Canadian federal government also challenged the U.S. impact assessment saying that more than just trade and tourism may be negatively affected. The global competitiveness of both the U.S. and Canada may be harmed if the economic relationship between the two is harmed (Harper 2007).

The security versus trade (and also the security versus liberty) issues have also been discussed by scholars on both sides of the U.S./Canada border. InterVISTAS also questioned if WHTI, and other border crossing measures, would actually provide any increased public security (Stark 2007). The notion that requiring passports will increase security, and in this case the security of the United States, is seen as dubious by many scholars and trade groups. The

argument that requiring a passport as a form of post 9/11 security comes under scrutiny when several of the alleged hijackers had legitimate passports, as do many other domestic and foreign criminals. Therefore, these security measures would have had no effect on protecting U.S. national security (EPIC 2007). Similarly, security measures such as these are seemingly unable to be quantified. There is no method of judging whether or not a policy such as this would have any sort of positive impact. A lack of terrorist attacks does not necessarily show that the policy was at all successful as there is no way of demonstrating whether a policy such as this was responsible.

In addition to this problem of potential ineffectiveness and inability for measurability, Pierre Martin looks at how trade might be negatively impacted. He quotes a 2005 Transport Canada survey that found security delays entering the United States cost Canadian exporters 290 million dollars a year. Martin's concern is that in addition to the negative economic impact on tourism there will also be an economic impact on trade. Another economic impact is that taxpayers are spending a significant amount of money on increased border security on the former 'longest undefended border in the world' (Martin 2006). This claim of being an undefended border is being challenged, in part, because of the recent arming of Canadian Customs officers, who historically have never carried firearms, and the increased presence of the U.S. Coast Guard and other law enforcement agencies on both sides that work to secure the border (CBSA 2007).

WHTI was designed to protect the security of the United States' borders; however, these unintended consequences cannot be ignored and as Dorian Prince, Ambassador of the European Union to Canada, said at the Border Regions in Transition Conference in Victoria, British Columbia, "...new border security initiatives threaten to impede many cooperative relationships" (Donnelly 2008: 9). There are several cross border relationships at not only the federal level, but

also the state/provincial level. The Canadian RCMP has a working relationship with the U.S. Coast Guard and other U.S. law enforcement agencies, creating what is termed an Integrated Border Enforcement Team, or IBET. Other examples of what Ambassador Prince suggested include the annual Cross Border Crime Forum where cross border information sharing on law enforcement issues takes place (US Embassy 2008).

There is another sense of the word security that has a role in cross-border travel. WHTI may affect cross-border emergency services, such as fire, police and ambulance service. Fort Covington, New York has a unique relationship with Dundee, Quebec in that the Fort Covington volunteer firefighters include Dundee in their service area and have since 1888 (Resneck 2007). As it stands now firefighters returning from calls in Quebec are already harassed by U.S. border guards and the fear that firefighters that are volunteers will not be able to afford the proper identification is a fear for citizens of both municipalities. “I don’t see a bunch of volunteers paying \$100 just to go to fire calls in Canada,” says the former fire chief of Fort Covington (Resneck 2007). Situations such as this are other impacts of WHTI implementation that are being overlooked by DHS.

Speaking before the Senate Subcommittee on Western Hemisphere, Peace Corps and Narcotics Affairs, United States Senator Norm Coleman from Minnesota reminds us that “the very efforts we undertake to make us safer and stronger can have unintended or even counterproductive consequences” (US Congress, Committee on Foreign Relations 2005: 1). Senator Coleman argues that the 2.2 million people that travel through the International Falls border crossing could find themselves isolated from family and friends on the other side of the border. People cross the border to fish and hunt, to go to hockey games, to shop and trade; “crossing the border is part of their routine” (US Congress, Committee on Foreign Relations

2005: 2). The new identification requirements will likely hurt people outside major metropolitan areas more because they lack the ability to easily attain passports due to the fewer facilities available to them when compared to their urban counterparts. Coleman argues that while other options are available, such as trusted traveler programs, they are often cost prohibitive and inappropriate for the average American, at least in his jurisdiction. Situations such as this occur across the entire border, especially in more rural areas.

One of the more vocal opponents to WHTI in the United States Senate has been Vermont Senator Patrick Leahy. Senator Leahy at one point referred to WHTI as, “a planned train wreck” in how it is currently being implemented (Hall 2007). He and Alaska Senator Ted Stevens issued a letter to DHS urging “they acknowledge that the WHTI needs additional time for successful implementation and cease pressing the January 2008 implementation date. We urge you to announce that your agencies will use the time allotted by Congress – until June 2009 under current law – to execute the WHTI sensibly” (Stables 2007b). The law cited is the 2007 Homeland Security Appropriations Law (PL 109-295) (Stables 2007a). Another reason Congress sought a delay in land implementation is so that the Government Accountability Office can assess the severe backlog of passport applications.

The important point is that few, if any, of these interest or research groups are specifically calling for the rejection of WHTI, per se, simply the chance to implement a pilot program to test the economic impacts that this initiative will have, along the lines of what Mayor Flores and Prime Minister Harper stated in 2005. Economists Steven Globerman and Paul Storer argue that the relevant costs of WHTI compliance might be able to be reduced without any sacrifice in what DHS classifies as security by simply reallocating resources already available (2006). This means that there may not need to be such a dramatic change in policy if DHS were



to use the resources they already have available at their disposal. The change in what is categorized as a ‘security’ issue may be more properly dealt with by existing practices and procedures rather than the implementation of a new policy.

One problem with policies such as WHTI is that there is often “a disconnect between those who enact the laws and those on the front lines to enforce them,” according to Anne McLellan, the former Deputy Prime Minister of Canada (Donnelly 2008). McLellan also stated, “Tightening of U.S. border security since 9/11 is a ‘death of a thousand cuts.’ An ‘electronic Maginot line’ will not create a world of no risk” (Donnelly 2008: 11). The degree of hostility towards the initiative is something that is highly varied among trade groups, scholars and politicians. As shown through the research and publications of groups like the Border Policy Research Institute, The Pacific Northwest Economic Region and Business for Economic Security, Tourism and Trade, the potential economic impacts of WHTI are real and well documented. Despite the growing concerns expressed through groups conducting impact analyses, the increasing number of articles about the negative impacts of WHTI and the actions of Congress to delay implementation, Michael Chertoff, Secretary of DHS, gave the following advice when it comes to criticism of WHTI: “It’s time to grow up and recognize that if we’re serious about this threat, we’ve got to take reasonable, measured but nevertheless determined steps to getting better security” (Donnelly 2008: 8). Many are concerned that DHS is not taking the concerns of border communities and the nation as a whole very seriously. DHS says that the nation’s borders are at risk without rapid implementation of WHTI (Hall 2007). Calls for changes to implementation have been partly successful however. Concessions were made so that children under 15 do not need a single document to cross. Canada is seeking a similar exemption for senior citizens who may have financial difficulties acquiring documentation (Alberts 2007a)

This thesis focuses on the potential impacts of WHTI on indigenous communities along the United States/Canadian border, specifically Washington and British Columbia. To date there have been no direct analyses performed on what the potential impacts are to American Indian and Canadian First Nations groups. John E. Sununu, United States Senator from New Hampshire, testified before the Subcommittee on International Operations and Terrorism, stating that it is crucial “that we make sure that [WHTI] doesn’t have an unnecessarily negative impact on these wonderful trade, tourism, economic, diplomatic, and military relationships that we share” (2006: 2). Nearly every scholar or research scientist that has analyzed WHTI has also mentioned these relationships though few, if any, have talked about the cultural relationships between Americans and Canadians, or more specifically, the cultural relationships between indigenous groups separated by the border as it relates to the Western Hemisphere Travel Initiative. WHTI has been touted as a solution to the multiple types of documents that border agents are expected to know, but J.A. Jones says that “administrative convenience” can be highly destructive to indigenous rights, as is the case with WHTI (1970: 41).

The closest thing to a cultural impact assessment was a meeting in March 2006. Mike Mitchell, the former Grand Chief of the Mohawk Council of Akwesasne, called a summit where 200 delegates from the U.S. and Canada attended, including tribal leaders and government officials. According to Mitchell, “The summit was the first opportunity for representatives of Homeland Security to visit Akwesasne and to see what the effect would be of the [proposed] new regulation for passports to enter the U.S. from Canada” (Allen 2006). Despite this meeting, there have been no changes on WHTI implementation.

As mentioned earlier, DHS said that a Native American photo identification card was acceptable for US citizens as WHTI compliant documentation. This has changed since 2007 (See

Appendix 1). DHS now states, “Native Americans will be able to continue presenting tribal documents until June 1, 2009, provided they are affixed with a photo. We will work closely with Native American communities toward an appropriate solution while enhancing travel security” (2008b). There is no specific mention of a possible identification solution for indigenous communities, just the promise that DHS will work closely with them.

There is sufficient reason for criticism about this point for different reasons. The first is that the photo identification currently accepted applies only to nations recognized by the federal government. Non-federally recognized nations would be excluded from this. Similarly, the US does not recognize the passports of any indigenous nation within the borders of the US, i.e. the Haudenosaunee of New York issue their own passports, which are accepted by several nation-states such as Switzerland, as well as the United Nations (Shenandoah 2003). If the U.S. does not accept passports, which are largely seen as the most secure identification documents, of nations that it does recognize then it is highly unlikely that the federal government would accept any identification, be they passports or other forms, from nations that it does not recognize. Additionally, this rule, as stated, does not apply to Canadian or Mexican members because they happen to reside on the opposite side of the border.

Some indigenous nations may feel that if DHS is going to decide if their Native American photo ID cards are acceptable then it may change the requirements of who is and is not allowed to receive a card. Because Indian groups are sovereign nations, each individual nation sets its admission and enrollment criteria. The procedure to get a tribal identification card is often more difficult than acquiring state-issued identification due to the requirement to provide historical documents proving lineage (Jefferson nd). Regarding the ability of Canadian First Nations members to cross into the US under the provisions of the Jay Treaty the federal

government already has a say in who they accept. There is a list of criteria that one must meet, including a blood quantum determined not by the any tribal government, but by the federal government. In the U.S., for a Canadian Aboriginal to enter the country he or she must possess a 50 percent blood quantum (Boos nd). There are several problems with this process. One such problem is that some tribal leaders view a blood quantum as “a racist genocidal policy that was designed to wipe out the ‘Indian Problem’” (Kahon:wes nd).

Understanding the economic impacts and the use of the potential impacts as a mechanism to delay land implementation is crucial if a study is to be done on the impacts on indigenous groups. The literature on WHTI suggests that reforms to the initiative are needed and more analysis must be done to properly gauge the potential impacts on the economy, travel, tourism and cultural practices of not only the indigenous populations, but the population as a whole.

## II. Theoretical Overview and Literature Review

The problem of federal recognition of indigenous rights to freely cross borders is not unique to the United States and its border with Canada. The United Nations acknowledges this right due to the fact that freedom of movement is an inherent human right according to the United Nations Declaration of Human Rights (Article II, Article XIII See Appendix 8,9). The rise of nationalism, and the emergence of the Westphalian state system, has led to the notion of a state 'border,' a known and generally accepted arbitrary line separating two apparently different ethnic groups or other division of people. The purpose of this chapter is to briefly discuss some of the prevailing theories on borders, border management and illustrate through selected case studies how the relationship of WHTI and the Coast Salish is not an entirely unique situation. These case studies serve as a literature review and will also demonstrate some of the possible negative impacts that may occur when people are separated by an international border that historically had not been present.

### Nation-state theory

The very concept of contemporary nation-states does not coalesce with multinational or multicultural states. Native peoples in the United States have sought to preserve their territory, rights to self-government, sovereignty, and culture. Duane Champagne argues that only in a *multinational* state will native rights and cultures be respected, something the U.S. does not have (Champagne 2005). A nation-state typically refers to a country, i.e. state, that is made up of one people or nation governed by a single government. While there may be regional differences, including different dialects or religions, within the boundaries of the state, all people will identify as belonging exclusively to that nation. A multinational state would consist of multiple nations,

including indigenous nations, working within one state under one government, each with different cultures and institutions. Nation-states presently do not include native people, as distinct 'people,' in their definition of those included in governance but rather depend on conditions of assimilation (Champagne 2005). One problem with assimilation, however, is that the dominant society must be willing to accept the other, something unlikely to happen in the United States (Mathur 1990).

Many native communities have mechanisms of governance different than Western bureaucratic systems. Most native communities are composed of families, villages, clans or kinship groups and some sort of regional or tribal grouping. These communities have institutions that overlap with one another so that different positions in society including ceremonial and leadership positions along with economic relationships are highly interrelated. Nation-states need to have a homogenous method of governance in order to work most effectively, like that under the U.S. Constitution. Stability within the nation-state structure will not occur through assimilation and coercion but rather an attempt at multinationalism. A coercive approach is likely to encounter resistance and nonparticipation (Champagne 2005). The U.S. history of assimilation has not brought the results that the government had hoped for, namely a more unified nation with a similar culture. Instead, it has met with significant resistance by critics from both native and non-native backgrounds.

While a nation-state may recognize different religious or ethnic groups, indigenous nations have different forms of community and cultures than that of predominant Western societies. Champagne offers two theories why nation-states may attempt to diminish indigenous rights. The attempt at the unification or creation of a homogenous national community makes it easier to support the state when there is an imagined national character or community, according

to the theory offered by Champagne. A nation-state can accept multiple ethnic groups as long as they all adhere to the one state-one nation idea. If there are ethnic groups within the territory of the state that do not feel party to the ruling government then internal conflicts arise. While there are many other contributing factors, the Israel/Palestine conflict is a good example of this point.

The other theory Champagne describes is that most nation-states are politically unstable because of the need for consensus in policy making. The recognition of groups or the rights of those groups may be a threat to the stability of a ruling government. The situation with Kosovo and its declaration of independence from Serbia is one contemporary example, especially in regards to the fear that this brought to other nation-states with separatist movements. Nation-states that govern multiple ethnic groups that do not have loyalty to the ruling state may voice opposition if policies are enacted that go against the wishes of any of the minority groups.

In the U.S. and Canada, which are both considered politically stable, this is seen through their rejection of the United Nations' Draft Declaration on the Rights of Indigenous Peoples. This is a UN declaration promoting the legitimacy of the rights of all indigenous peoples around the world. The U.S. and Canada both rejected this declaration claiming that they already recognize indigenous rights. This argument is used with many international treaties and agreements that the U.S. has not ratified but that they agree with in principle, such as environmental emissions and the 1997 Kyoto Protocol on climate change. Opponents argue that the United States, and to a smaller extent, Canada, have either not upheld treaty obligations or blatantly violated them. Examples of these violations include alleged mismanagement of billions of dollars in trust by the Bureau of Indian Affairs or the failure to uphold treaties signed which created most reservations. While Canada recognizes the obligation to fulfill treaty requirements, it still fails to act according to international law, at least in the case of the Jay Treaty.

The Jay Treaty is central to any argument involving border crossing rights in the U.S./Canada borderlands. There is much confusion and ambiguity regarding the Jay Treaty, such as the idea that one must be a signatory to a treaty in order to receive benefits from it. In addition to the findings of international law scholars, the International Court of Justice has argued that third party treaty rights may be granted without a third party being a signatory to the treaty. Similarly, James Frideres points out that there are other treaties between the United States and Canada that mention indigenous rights even though the indigenous nations did not sign the treaties. The Pelagic Sealing Agreement of 1911 and the Fraser River Sockeye agreements, such as the Pacific Salmon Treaty, are examples involving the United States, Canada, and Indian nations (1974). Based on the findings of the International Court of Justice regarding treaties between the U.S. and Canada, it is clear that border crossing rights can still be legally guaranteed even if they are not specifically legislated or written into a treaty with the recipients of those benefits.

WHTI is not the first policy to interfere with borders and the movement of international or transnational groups of people. Claudia Sadowski-Smith mentions that the North American Free Trade Agreement (NAFTA) of 1994 created a large territory where goods and services could flow freely across the borders of the U.S., Mexico, and Canada, but that the borders themselves were still seen as an intrusion on everyday lives (2002b). NAFTA drastically changed the face of North American politics, economics and immigration because of the massive impact it had on the movement of people across borders. Ruth Jamieson argues that the U.S./Canada border has historically been one of the most porous borders in the world. NAFTA has actually enhanced this as the priorities of the trade agreement favor lowered barriers to international trade (Jamieson 1999). It may be that the very existence of modern nation-states



and the employment of management via geopolitics that creates the problems encountered at borders, as policies such as NAFTA and WHTI by nature interfere with the natural movement of goods and people over the border. Geopolitics is the discipline that studies how geography, politics and social sciences come together to make a better understanding of power struggles based on history and geography.

Looking at WHTI, especially in contrast to other agreements such as NAFTA, it is a unique situation. NAFTA was a tri-national agreement signed by all parties. WHTI is a unilateral United States policy that forces compliance by other nations. For instance, Canada does not require a passport to enter the country. It does, however, require that you satisfy the border agent of your ability to re-enter your country of origin. So an American traveling into Canada for a short or long term visit will need to demonstrate that they are able to return. After WHTI implementation, this will mean that they have to show a passport to enter Canada. WHTI is a policy that is having a significant impact on the ability of other countries to conduct their border crossing procedures in the way that they want. In a way, U.S. implementation of WHTI is a challenge, or a removal, of Canadian sovereignty by disallowing them to set their own admission criteria and being forced into de facto WHTI compliance.

## Case Studies

Along the United States/Mexico border there are a number of indigenous nations that occupied the area for thousands of years before the establishment of the present border. Three of the most well known nations among border scholars are the Tohono O'odham, the Kumeyaay, and the Kickapoo nations, although the Kickapoo migrated to the U.S./Mexico borderlands in the 1800s (Reid 1997). Like the Coast Salish, most of these groups have occupied their lands since time immemorial and have sacred places and sites in areas that cross the international border. The Treaty of Guadalupe Hidalgo in 1848 and the Gadsden Purchase in 1853 altered the future of visitation to these sacred sites by the creation of the international border with Mexico (Crum 2005). The Treaty of Guadalupe Hidalgo was the treaty that ended the Mexican-American war, also known by some in Mexico as the war of North American aggression. The terms of the treaty were that Mexico would give the territory that eventually became California, Nevada, Utah, and Arizona along with parts of Wyoming, Colorado and New Mexico in exchange for \$15 million dollars. Similarly, the Gadsden Purchase was an arrangement between the governments of the U.S. and Mexico whereby the U.S. purchased land that became southern Arizona. This transaction finalized the boundary between the two countries.

Using other nations that occupy territory along a single border as an illustrative example allows comparisons to be drawn using different border management theories. Just like many indigenous border nations, or more precisely, nations straddling a border, the Tohono O'odham believe that their land is under siege and that they must decide how to proceed in dealing with the federal government about problems on their land along the border (Luna-Firebaugh 2005). Not only do they feel that their land is under attack, but they question whether or not it is appropriate for the federal government to deny indigenous people access to sacred sites (Luna-

Firebaugh 2002). This appears to be at least a rejection of the first article of the Bill of Rights, which grants freedom of religion.

The Tohono O’odham are a nation along the U.S./Mexico border. Presently there are about 23,000 members living on the U.S. side and 1,400 living in Mexico who try to maintain contact with each other despite the inconvenience of the border. The Tohono O’odham grant full enrollment to members living on both sides of the border, something that no other Indian nation does in the United States (Luna Firebaugh 2002). The Tohono O’odham are an interesting example of how border management policy and indigenous rights are interconnected. Like most, if not all, border nations, the phrase, “We didn’t cross the border – the border crossed us” is certainly applicable in this case of the Tohono O’odham (Crum 2005: 27). Because the Tohono O’odham do not see the border as “their” border, they have used other border crossing locations than those assigned by the federal government as “official.” The US Border Patrol tolerated the use of unofficial crossing stations (Singleton 2008), at least until the recent “anti-immigrant” sentiment that led to approval to build a wall along the border when it became a matter of “national security”.

One solution that the Tohono O’odham are seeking is the recognition of relatives and tribal members residing in Mexico as United States citizens. Two attempts to pass bills through Congress in 2001 and 2003 have both failed however and this issue remains unresolved (Berreiro 2001). One thing that remains is the desire to fight against immigration control and especially the wall (Gaynor 2008): “No colonizer’s line drawn in the sand and fenced with steel walls and barbed wire can extinguish the reality of their shared bloodlines and cultures” (Taliman 2001: 10). In addition to the bills that failed other legislation was introduced to amend title 8 of the United States Code to give indigenous residents of borderlands on the U.S./Mexico border the

same rights recognized by the Jay Treaty (Luna-Firebaugh 2002). Like the other bills, this one also failed.

The Tohono O’odham sought the help of the United Nations in one border dispute. In 1989, they petitioned the United Nations Subcommittee for Indigenous Rights to investigate the policy of the United States in regards to the prevention of cross border travel for indigenous groups whose land spans multiple countries (Crum 2005). While the outcome of that request was not what the Tohono O’odham were hoping for, they did convince the government to grant them laser visas, which makes crossing the border easier. This is not enough, however. Though this quote is attributed to the Tohono O’odham, it is echoed by nearly every nation whose lands, and relatives, span the border: “the freedom to cross is a matter of preserving identity” (Crum 2005: 27). Being able to visit important sites and attend religious, social and familial events is a large part of one’s’ identity. Removing the ability to do this is like removing a part of their identity. Eileen Luna-Firebaugh (2002) notes that as time passes people begin to think of themselves as Mexican, Canadian *or* American rather than being an indigenous person. As a result of this “the traditional relationships among relatives eroded, and distinctions were perceived” (Luna-Firebaugh 2002: 164).

There is one case, however, where the situation involving the Tohono O’odham and the Jay Treaty ended successfully. The Tohono O’odham police department hired a Canadian member of the Mohawk nation. The certifying board decided that because he was not an American citizen by virtue of being born in the United States or having become a naturalized citizen that he was ineligible to work. The Tohono O’odham challenged this decision by citing the Jay Treaty. The board eventually honored the treaty provisions and granted certification (Luna-Firebaugh 2002).

The Kumeyaay nation occupies territory in southern California and northern Baja California. The establishment of the international border in 1848 split this nation into “Mexican” and “American” counterparts, both physically and “psychologically” (Crum 2005). This psychological separation is something that surfaces in nearly every instance where a border has separated a once unified people. There was an attempt in 1993 to allow cross border access to the Kumeyaay. They were issued border crossing cards by the Instituto Nacional Indigenista, which is the Mexican bureaucracy that most closely resembles the Bureau of Indian Affairs (BIA). U.S. Customs and Border Protection (CBP) apprehended non-Kumeyaay using the cards to cross the border and subsequently ended the use of the cards (Luna-Firebaugh 2002).

Steven J. Crum says that, at the time, the BIA referred to the travel between the two sides as nomadic, something of which the government disapproved (2005). Under the assimilationist policies, this was to be stopped, even at the expense of the culture of the Kumeyaay people. The Kumeyaay continue to live a life of separation. Crum describes the life of one Kumeyaay family whose lives have been negatively impacted by the border by not being able to keep in contact with family members because of militarization of the border (2005). Originally this militarization and securing of the border was a response to the threat of communism, then the ‘war on drugs,’ then the problem of illegal immigration and finally the ‘war on terror’ as a way of increasing national security in the U.S. The changing political justification always has the same outcome regarding indigenous rights. This outcome is typically the rejection of these rights.

The Kickapoo Nation’s situation is nearly identical to that of the Tohono O’odham and Kumeyaay in that they also occupied territory in the lands that became Mexico and the United States. Their case is different because they presently can use a Form I-872 card to cross the

border. The use of this type of identification is limited to the Kickapoo Band of Texas and Tribe of Oklahoma (Luna-Firebaugh 2002). This exemption from the need to show a passport is not going to change with the implementation of WHTI according to the DHS website (DHS 2008a). This form of identification will still be sufficient for border crossing.

Other countries have similar situations regarding their international borders and how they interact with indigenous people. Catherine Elton writes about the Shuar Indians in the Peru/Ecuador borderlands, though, like many nations separated by a border, they have a different name depending on which side of the border one presently resides. On the Peru side of the border they are called the Huambisa and while in Ecuador they are called the Shuar. To illustrate the negative impacts of being separated by a border they cannot cross, Elton explains that “Takup [a child near the border] was curious about these mysterious family members whom he’d never met. His father explained that because of the border conflict between Peru and Ecuador they could no longer visit their family as he and the elders had always done in the past” (2005: 107). Situations similar to that of Takup not knowing certain family members due to the border make anthropologists and border scholars wonder how many of their customs are either being lost or negatively affected due to changes in cultural identity because of a ‘false border.’ Similarly, cultural identity is being altered by the change of name depending on which country one resides as some residents begin to adopt the names that they are given.

The arbitrary nature of borders is illustrated in cases such as this multiple-decade-long dispute in the Peru/Ecuador borderlands, as is the possibilities for change. Elton argues that “During the years of separation, once unified people followed different trajectories of development on either side of the border” (2005: 114). These different trajectories lead to negative changes and emotions, according to Shapiom Nomingo, an elder from the Huambisa

nation. Nomingo also said that, “After the 1941 war...[we] could not travel freely to hunt and fish in places they had hunted and fished from time immemorial, nor could they cross the line to visit each other” (Elton 2005: 110). The life that they had known was taken away from them due to the border management policies of the countries of Peru and Ecuador.

This situation has begun the process of being restored, however. The countries of Peru and Ecuador have worked on a border agreement beginning in 1998 in which the Jivaro (including the Shuar and Huambisa) people who had been separated since 1941 will be able to cross over a border that “they never even knew existed before” (Elton 2005: 108). Other areas of indigenous border disputes have not always fared so well, as is the case with many if not most African nations. In discussing the similar situation of African tribes, Secretary Ripon, of Sierra Leone stated:

I sympathize strongly with Col. Cardew’s desire not to divide the territories of Native Chiefs. It is a wretched system, unjust to the chiefs and their people, and a fruitful source of disputes and trouble to the dividing Powers. But of course we cannot now deal with these matters as if the negotiations were to be entered upon for the first time. [Hargreaves 2005: 103]

This concept of indigenous peoples and borders that are both arbitrary and relatively new to them is one that arises in virtually every nation-state in the world and certainly applies to the Coast Salish.

Other nations along the border with Canada have more similarities with the Coast Salish than do nations along the border with Mexico because they share the recognition of rights under the Jay Treaty (and other applicable treaties and court decisions). The nations along the southern border do not have any specific treaties that grant any border crossing rights, which makes the US, border with Canada unique in this sense. To Roger Gibbins (2005), the phrase “longest undefended border in the world,” reflects the lack of barriers, be they geographical, linguistic,

racial or religious, between the peoples of the United States and Canada. These lack of barriers do not only apply to indigenous groups. The non-native communities occupying the borderlands of the U.S. and Canada often share more in common with each other than they do with the “core” of the nation-state (Donnan and Wilson 1999). The concept of core and periphery populations within a nation state applies to this study as many native communities, especially those in the borderlands, are viewed as peripheral to the nation-state.

The Six Nations Reservation, of which the Mohawk are a part, are a group that occupy territory within multiple jurisdictions. Their land is under the jurisdiction of the Mohawk nation Council of Chiefs, the United States, Canada, the State of New York, the Provinces of Ontario and Quebec, making it what Bruce Johansen and others call “a jurisdictional nightmare” (1993: ix) or a legal no-man’s land with no police force of its own because of the number of boundaries that run through it (1993: xxvii). Because their reservation spans multiple countries, states and provinces, the Mohawk encounter multiple problems when it comes to asserting their sovereignty. Given that the Six Nations land is divided, with about 8,000 people living on the Canadian side and about 5,000 living on the American side, there are problems with nearly every aspect of daily life occurring on the reservation (Gibbons 2005). Despite this international border, the Iroquois still claim that they occupy one territory:

I did not consider that there was any such thing as ‘Canadian Indian’ or United States Indian.’ All Indians are one people. We were here long before there was any border to make an artificial division of our people...It was our belief that the white man’s border should never be used to separate our people. [Crum 2005: 28]

This statement by Clinton Rickard, a Tuscarora member speaking out about the policy of excluding “Canadian Indians” from entering the United States with the Immigration Act of 1924, illustrates the frustration Rickard suffered through exclusion from entering the United States and harassment by border agents based on his Indian heritage. Because of this treatment, Rickard



established the Indian Defense League of America (IDLA) (Crum 2005). This organization is still active today as they hold annual protests along the U.S/Canada border (Luna-Firebaugh 2002). One such protest in 2004 was organized by Clinton Rickard's granddaughter Jolene Rickard (Adams 2004). Clinton Rickard went to federal court over the matter of excluding indigenous peoples from entering the U.S. and Canada. Many of the landmark federal court cases discussed in previous chapters involved members of the Six Nations reserve (these include the case of the United States ex Rel. Diabo v. McCandless [1927] and Francis v. The Queen [1956] for example). Essentially the Iroquois had to take the federal government to court to assert the rights that were guaranteed by treaties signed by the federal government.

The attempt to cite the Jay Treaty as justification for border crossing rights often goes ignored or mocked by U.S. border agents. Richard Hill, a Haudenosaunee scholar, asks, "Who gets to decide what the rights of Native peoples are in crossing international borders?" Since he is told to declare either Canadian or American citizenship, he is being denied his rights as a member of a separate sovereign nation (Hill 2001; Luna-Firebaugh 2002).

Looking at border disputes, such as the Six Nations scenarios and the Peru/Ecuador situation, one will see that the problem of the Coast Salish being divided is not unique. This does not mean, however, that it should be neglected or overlooked. Understanding the nature of nation-states should show how differently some indigenous nations operate. The difference between a multinational state and a traditional nation-state sets the foundation for tension between indigenous nations and the federal governments that challenge their sovereignty.

### III. The Jay Treaty and Subsequent Interpretations

This chapter discusses the history of the creation of the international boundary between the United States and the territory that eventually became Canada. It also examines the various treaties surrounding the border and the rights of the indigenous groups occupying the area regarding border crossing issues and how these treaties came into existence. Finally, a discussion of the federal court cases regarding the treaties in both the United States and Canada will help frame the present status of some of these issues.

The border between the United States and Canada (Figure 6) is often touted as the world's longest undefended border (Sadowski-Smith 2002a). It is certainly one of the most peaceful borders and has been without significant militarization for nearly two centuries. The history of this international border and the relationship between these two states has not always been without conflict, however. Prior to and immediately following the American Revolution of 1776 there was significant tension between the Americans and those who remained loyal to the British Crown and the question of Indian loyalty and Indian rights remained a pressing issue.

Prior to the formation of the United States, the British government was engaged in a war with the French colonies in the Great Lakes and Appalachia areas. The French and Indian War ended in 1763 with the British taking the French territories. The proclamation included provisions relating to aboriginal rights and title to the land. The text of the proclamation (See Appendix 3) states that the Indians under the protection of Great Britain shall not be disturbed or molested and that the lands, having not been ceded to the crown, are to be left to the Indians. The proclamation is the first document that native communities use in land claims cases as it explicitly states that the land belonging to the Indians shall remain theirs unless ceded. The Royal Proclamation of 1763 began a series of acknowledgements of aboriginal rights,

sovereignty and title to lands that would give rise to problems between the governments of Great Britain, native nations, and the eventual countries of the United States and Canada.

Before the American Revolution, there were growing disagreements between the methods of desired governance between what became the United States, and Great Britain and its loyal territories. These differences led to alternative viewpoints on how to read and interpret various laws in addition to how the rights of the people and the responsibilities of government should be implemented and acted out. The fundamental difference in the interpretation of policy and law created the tension that sparked the American Independence movement and eventual formation of a new state. These differences in interpretation of laws, and of treaties, continues to resurface between the two countries.

One of the first examples of legislation that served, in theory, to protect indigenous rights was called “An Ordinance for the Government of the Territory of the United States, North-West of the River Ohio, and also known as the Freedom Ordinance,” or more commonly called the Northwest Ordinance of 1787. Although this thesis focuses on U.S. and Canadian legal history the debate of indigenous rights in terms of land occupation and justice dates back to 1532 with Franciscus de Victoria who argued that Indians should not be deprived of their land without their consent (Lester 2006). In the history of the United States, the Northwest Ordinance is the first major defining point. Article III of the ordinance states:

The utmost good faith shall always be observed towards the Indians; their lands and property shall never be taken from them without their consent; and, in their property, rights, and liberty, they shall never be invaded or disturbed...but laws founded in justice and humanity, shall from time to time be made for preventing wrongs being done to them, and for preserving peace and friendship with them.

The dominant thinking at the time was that the United States government was in constant negotiation with the nation of Great Britain and various sovereign Indian nations which it did by

the creation of numerous treaties (Champagne 2005). The United States sought to preserve peace with both Great Britain and with the Indian nations. The preservation of indigenous rights was written into this ordinance under the Articles of Confederation and many of these principles were adopted into the US Constitution a few years later. In the U.S. Constitution, Article I, Section 8 discusses how the government is to deal with Indian nations: It lists Indian nations on equal footing with foreign nations: "...To regulate commerce with foreign nations, and among the several states, and with the Indian tribes;...". This article provides the reasoning why state governments have no jurisdiction over Indian reservations. As sovereign nations, only the U.S. federal government can enter into agreements with them (Briggs 2006). The way that the United States interacted with the indigenous occupants of the area was different than how British North America handled them based partly on these Constitutional distinctions.

The key points to Article III of the Northwest Ordinance are that the rights and liberties of the indigenous inhabitants of the territories shall not be infringed upon or disturbed. This is crucial in understanding the current situation of indigenous border crossing rights if one sees the current border management practices of the federal government as being in violation of these rights and liberties.

## The Jay Treaty

Following the American Revolution there were several key issues on which the governments of the United States and Great Britain could not agree. These issues were the over-representation of British goods in American markets and commercial barricades by the British navy, the occupation of military posts that were to be abandoned via the Treaty of Paris signed in 1783, and the forced impressment of American sailors on British ships (Combs 1970). With John Jay as the principal negotiator of the treaty, and Alexander Hamilton and George Washington being the other major contributors, Jay went to England to negotiate these major issues. The end product was the Treaty of Amity, Commerce and Navigation of 1794, more commonly known as the Jay Treaty signed November 19, 1794 (Monaghan 1935, Bemis 1962).

Only some of the major goals of the treaty negotiations were actually reached (DOS nd), though their effective implementation is something about which historians have argued (Bemis 1962, Combs 1970). Even today, it is apparent that the improvements in relations that the Jay Treaty was meant to fix have not been fully realized, such as the question of rights of passage across the border (Frideres 1983). One outcome of the negotiations was that the establishment of the international border between the United States and what is now Canada was clarified after confusion resulting from the Treaty of Paris. One of the most significant components of this treaty for Jay, and especially the British, was the recognition of the rights that the indigenous groups held in the US/British North American borderlands (Horn 1984, Rankin 1907). It is important to understand the term borderlands in this context. Jeremy Adelman and Stephen Aron use the term borderland to mean, “the contested boundaries between colonial domains” (2001: 816) rather than frontier, “a meeting place of peoples in which geographic and cultural borders were not clearly defined” (2001:815). To the policy makers of the day there were clearly defined

borders as a result of the Treaty of Paris and subsequent clarification via the Jay Treaty. The role of indigenous peoples in these borderlands was in question though and it was for this purpose that their rights were recognized. These rights were stated and recognized in Article III of the treaty (See Appendix 4).

The treaty states that this article applies to His Majesty's subjects, the citizens of the United States and to the "Indians dwelling on either side of the boundary line" (Article III: Treaty of Amity, Commerce and Navigation 1794). The Jay Treaty states that the Indians on both sides have the ability "freely to pass and repass by land or inland navigation, into the respective territories and countries of the two parties." What this meant to the governments at the time was that they did not have the right to stop and deny entry to indigenous groups living along the newly created border nor did they have the right to tax them on goods that were usual and accustomed to them at the time. This was especially important for the British because it was meant as a protective measure for the fur trade and to retain Britain's economic strength in North America (Duran and Duran, Jr. 1973). Additionally, this article may have been added to insure neutrality among the nations in case of future war between Great Britain and the United States, something that was a persistent possibility at the time (Mathur 1990).

While the Americans demanded that the British vacate the forts, as per the Treaty of Paris of 1783, under the Jay Treaty the price for withdrawal of British forts was free access to the Mississippi River and the "extension of new guarantees to Native peoples that they could move without restriction across the border in pursuit of their affairs" (Carroll 2001: 13). Historically these provisions have been honored, though not necessarily implemented by legislation, by both signatories of the Jay Treaty (Keller; Horn 1984). In 1796, shortly after the signing of the treaty there was an explanatory provision added that reinforced one of the most crucial aspects of the

treaty: that no future treaties could diminish the rights recognized by Article III of the Jay Treaty (Boos nd). Article XXVIII of the treaty clearly states:

It is agreed that the first ten articles of this treaty shall be permanent, and that the subsequent articles, except the twelfth, shall be limited in their duration to twelve years, to be computed from the day on which the ratifications of this treaty shall be exchanged, but subject to this condition... But if it should unfortunately happen that His Majesty and the United States should not be able to agree on such new arrangements, in that case all the articles of this treaty, except the first ten, shall then cease and expire together (See Appendix 5).

The explanatory provision was written nearly two years later on May 4, 1796 (8 Statute 130) and states:

That no stipulations in any treaty subsequently concluded by either of the contracting parties with any other state or nation, or with any Indian tribe, can be understood to derogate in any manner from the rights of free intercourse and commerce... (See Appendix 6).

These two clarifications of the intent of the treaty are ample evidence for the legitimacy of Article III of the Jay Treaty and the expectation that it would be a permanent fixture in the relationship between the two countries.

In addition to Elizabeth Duran and James Duran Jr.'s interpretation for the inclusion of Article III within the Jay Treaty, Denise Evans (1995) also provides analysis of this article. She states that "the imposition of border controls by Britain and the United States would have shown the First Nations that Britain was not prepared to consider them as independent political entities" (1995: 220). This concept is crucial because Evans is suggesting that contemporary sovereignty claims can be tied, in part, to the Jay Treaty (Evans 1995, Mathur 1990). If it is true that Article III was included to show the Indians that they were viewed as sovereign nations, at least by the British, then this gives more evidence to contemporary land claims in Canada. Land claims are issues closely related to border crossing rights and are also inherently tied to treaties. For example, the Cowichan Nation, a Coast Salish nation, do not fence their land (designated as the

reserve) for fear that they will lose claim to unfenced area. James Frideres (1974) argues that this may not be an effective mechanism for land claim proceedings, but it does indicate that Canada's First Nations are using legalistic means to try to defend their territory and their rights, including border crossing rights.

Benefits are often bestowed upon third parties in treaty negotiations between two separate countries. Horn shows that according to the International Law Commission, a part of the United Nations, "International law recognizes that states may conclude treaties which confer benefits upon third parties...which the third party can enforce under international law" (1984: 18). It is crucial to remember that it was not the United States or Great Britain that conferred these benefits upon the indigenous nations, but rather that they recognized that these benefits were Aboriginal Rights and should be respected. They saw that the best and easiest manner in which to do this was to include these rights in Article III of the Jay Treaty that they signed with each other.



### Subsequent Treaties and Agreements

The historical understanding of Article III of the Jay Treaty at the time of ratification is quite different than how this treaty is viewed today. The major changes since the ratification of this treaty are the legislation of Section 105 of the Tariff Act of 1799 by the US Congress; the War of 1812 which arguably nullified the treaty, the Treaty of Ghent of 1814; the British North America Act of 1867 which established the Dominion of Canada; the Indian Act of Canada of 1876, the American Indian Citizenship Act of 1924, the Immigration and Nationality Act (US) of 1952 which restated some of the rights of indigenous groups regarding rights of passage; and the Canada Act of 1982 which set up the modern state of Canada without legislative control by the British Parliament. These changes that occurred after the Jay Treaty went into effect ultimately affect how Article III is viewed by each respective government.

Section 105 of the Tariff Act states that the provisions of the Jay Treaty were to be continued in United States law. The legislation began in 1799 with the Tariff Act and continued until 1894 (Kappler 1941). This legislation demonstrates that the United States implemented the Jay Treaty into statutory law despite the condition that the treaty was self-executing within US territory. This section of the Tariff Act echoed the provisions of the Jay Treaty offering the same type of promise that the Indians could pass the international border with Canada with duty free passage of goods (Mathur 1970). The territory that became Canada did not reciprocate such legislation.

Kahn-Tineta Horn (1984) notes that both the United States and British North America, despite the lack of legislation by the BNA Parliament, honored the rights guaranteed by the Jay Treaty until the War of 1812. One reason for the possible “loss” of rights of passage was because many Indian nations took up arms and fought. Horn makes the assumption that it was because of

this taking up of arms that the treaty was null and void, or at least Article III. This seems dubious; however, because the Indian nations were never signatories to the treaty it would appear that the actions of a third nation cannot nullify a treaty between two other nations, though as was noted earlier by the International Law Commission, even though the actions of a third party cannot nullify a treaty, benefits conferred upon a third party are still legally valid under international law.

The Treaty of Ghent, in particular Article IX (See Appendix 7), included a clause to “restore to such Tribes or Nations respectively, all the possessions, rights and privileges, which they may have enjoyed, or been entitled to in 1811, previous to such hostilities.” While some, including Mary Mathur, recognize that the War of 1812 may have disrupted the policy of Canada and the United States honoring the provisions of the Jay Treaty, the Treaty of Ghent seems to have restored the rights. In essence then, the argument that the Jay Treaty was void because of the war of 1812 is irrelevant because Article IX restored the rights guaranteed before any such hostilities began.

Westward Expansion in the United States led to the displacement of many native people from their land. Governors and superintendents signed many treaties with Indian nations in a relatively short time period. One such treaty is the Treaty of Point Elliott of 1855, negotiated by Washington Territory Governor Isaac Stevens. This treaty was signed with several Coast Salish Nations, exclusively on the American side of the boundary, living along the northern part of Puget Sound. This treaty is important to recognize in a discussion of border crossing and duty-exemption rights because of Article 12 of this treaty. It states:

The said tribes and bands further agree not to trade at Vancouver's Island or elsewhere out of the dominions of the United States, nor shall foreign Indians be permitted to reside in their reservations without consent of the superintendent or agent.

This demonstrates that if, at the time of signing in 1855, the provisions of the Jay Treaty and Treaty of Ghent were still in effect, the right of the signatories of the Treaty of Point Elliott waived their right to free trade with any “foreign” Indians, even though many of the tribes and nations that the United States recognized as foreign were in fact family of the American tribes (See Coast Salish Chapter). While the right to duty free passage of goods may be lost to the Coast Salish signatories due to the Treaty of Point Elliott, the right to freely cross the border remained intact, as there were no provisions in the treaty that aimed to restrict the freedom of travel, solely the freedom of “international trade.”

Shortly following the Treaty of Point Elliott in 1855 was the establishment of the Dominion of Canada in 1867. This legislation accomplished several pressing issues. Until 1867, the territory north of the United States was officially titled “British North America.” After 1867, it became officially known as “Canada,” although British Columbia did not join the confederation until 1871. The current structure under which the government of Canada operates, being the House of Commons and Senate, was established in 1867. In addition to laying the foundation for the structure of government, Article 139 states that:

Any proclamation under the great seal of the Province of Canada issued before the union to take effect at a time which is subsequent to the Union...and the several Matters and Things therein shall be and continue of like Force and Effect as if the Union had not been made.

This statement in Canada’s constitutional document is crucial because it points out that any act, treaty or law created or enacted before Canadian confederation in 1867 is still legally valid and binding on the nation of Canada post-confederation.

In 1924, the U.S. Congress passed the Indian Citizenship Act, which granted native peoples United States citizenship if they chose to accept it. At the time, many native communities opposed the Indian Citizenship Act but according to the US government, all

peoples born within the boundaries of the United States are citizens (Champagne 2005). There are, however, some who continue to refuse citizenship. The Haudenosaunee are one nation that has consistently refused US citizenship and go so far as to print their own passports, which are recognized by several countries, although the U.S. and Canada do not accept these passports (Barnes nd). The rights of United States citizenship do not eliminate or supersede the rights granted by the Indian nation to which they belong. Some criticism of the 1924 act was that it was another step in continuing the assimilationist policies designed to strip native peoples of their identity (Champagne 2005).

The Immigration and Nationality Act of 1952 stated that:

Nothing in this title shall be construed to affect the right of American Indians born in Canada to pass the borders of the United States, but such right shall extend only to persons who possess at least 50 per centum of blood of the American Indian race (Section 289).

In terms of statutory law in the United States, this is the most recent addition that directly addresses the border crossing rights of Indians and First Nations members. While this is a United States law that applies to members of Indian nations born outside the boundaries of the U.S. it should be known that there is no equivalent law passed by the Canadian Parliament. An American Indian born in the U.S. does not have the freedom to cross into Canadian territory unless he or she meets the same criteria as other non-citizens.

The Canada Act of 1982 lists subsections that refer explicitly to Canada's aboriginal population. The text of the act states: "The existing aboriginal and treaty rights of the aboriginal peoples of Canada are hereby recognized and affirmed" (Canada Act 35 (1)). The treaty rights recognized are not only treaties that had previously been signed, but the act refers to the possibility for future treaties; "'treaty rights' includes rights that now exist by way of land claims agreements or may be so acquired" (Canada Act 35 (3)). If there are to be any amendments to

this agreement, “the Prime Minister of Canada will invite representatives of the aboriginal peoples of Canada to participate in discussions on that item” (Canada Act 35.1). According to the Canada Act, the rights and responsibilities of the federal government are clearly spelled out, but actual recognition of the rights and treaties involving Canadian aboriginal populations is severely lacking.

The manners with which these treaties are codified into law are vastly different with each respective country as well. This difference proves to be highly problematic when the Jay Treaty is tested in federal court. In the United States, after a treaty is signed it is then ratified by the Senate, which in turn sets it as law in United States territory. Speaking on behalf of the court, Chief Justice John Marshall stated, in 1829, “Our constitution declares a treaty to be the law of the land. It is, consequently, to be regarded in courts of justice as equivalent to an act of the legislature, whenever it operates of itself, without the aid of any legislative provision.”

The way that treaties become legally binding is different under Canadian law. When a treaty was signed it had to be enacted into legislation by the British Parliament before the passage of the 1931 Statute of Westminster, or by the Canadian Parliament after 1931. Without a specific legislative act, an international treaty is not binding on the Canadian government.

There are several problems addressed by scholars when the Jay Treaty is discussed in contemporary politics. The United States and Great Britain signed the treaty in 1794. Canada, as a modern nation-state, did not exist at that time and therefore did not sign the treaty. Some Canadian government officials argue that Canada is therefore not bound by the Jay Treaty, a view echoed by the Supreme Court of Canada. The Canadian Parliament never codified the treaty into statutory law, like the United States did with the 1952 Immigration and Nationality Act (Nickels nd), something that is necessary for the treaty to be enforceable (Mathur 1970).

The stance that “Canada” never signed the treaty is something of a misnomer however. Canada assumed all of the original obligations binding on territory that became Canada. In fact, Canada recognizes many treaties dating back to pre-independence days (Duran and Duran Jr. 1973). In addition to the recognition of pre-independence treaties, on June 22, 1964 the legal advisor of the Office of the Undersecretary of State of the Canadian Ministry of External Affairs wrote a letter to Mr. Leigh Antone, Grand Secretary of the Indian Defense League of America stating “that there has never been, to our knowledge, any formal abrogation of these particular articles or of the treaty as a whole” (Duran and Duran Jr. 1973: 34). For Canada to recognize other pre-independence treaties but claim that they are not party to the Jay Treaty for this particular reason demonstrates a certain level of hypocrisy. Another potential criticism of this line of reasoning is that the Queen of England is still considered to be the sovereign of Canada. For this reason all treaties made by Canada are officially made with the crown; this includes both pre-confederation and post-confederation treaties.

There are other inconsistencies as well regarding the Jay Treaty and its current legal status. For instance, the State Department still lists the Jay Treaty as being in force with Canada despite having gone to war in 1812. The official wording by the State Department regarding the Jay Treaty is that “Only article 3 so far as it relates to the right of Indians to pass across the border, and articles 9 and 10 appear to remain in force” (DOS ndb). Some U.S. government officials have claimed that the Jay Treaty is no longer in effect. This creates an inconsistent policy within the U.S. federal government as to the current status of the treaty.

If it is argued that the Jay Treaty was abrogated due to the war of 1812 then this is problematic as well because Canadian judicial and legislative branches argue that the Jay Treaty was not a peace treaty, therefore legislation must be enacted to put the Jay Treaty into law. In

essence, under Canadian law, a peace treaty is self-executing, but the Jay Treaty, being a different type of treaty, at least to the Canadian government, is not self-executing and must require specific legislation to be considered valid despite the international obligation (Horn 1984).

## Federal Court Cases

While Article III of the Jay Treaty was partially designed to protect indigenous border-crossing rights this has come under attack in several instances. In the United States, the border crossing right was challenged in 1924 with the federal court case *United States ex Rel. Diabo v. McCandless*, 18 F. 2d 282 (1927). Paul Diabo was a Mohawk Indian from Quebec who worked in the United States. He was deported to Canada for having violated the Immigration Act of 1924. He appealed this decision and appeared before federal court. The findings of the court were that an American Indian born in Canada cannot be deported (Reid 2007).

Prior to *U.S. ex rel. Diabo v. McCandless*, the Immigration Act of 1924 along with the Indian Citizenship Act was interpreted to mean that now all Indians born or living in U.S. territory were U.S. citizens; Indians born in Canada were no longer allowed to cross the border freely in the same manner they had previously enjoyed. The statement of the court on this case was:

The rights of Indians [are not] in any way affected by the treaty, whether now existent or not. The reference to them was merely the recognition of their right, which was wholly unaffected by the treaty, except that the contracting parties agreed with each other that each would recognize it...From the Indian[‘s] viewpoint, he crosses no boundary line. For him, this [boundary line] does not exist. [Luna-Firebaugh 2002: 163 (18 F.2d 282, 289 (1927)]

It should be noted the clear statement made by the court that “he crosses no boundary line,” because this is one of the principal challenges with WHTI.

The Immigration Case of Mohawk Ironworker Paul K. Diabo demonstrates that the right to enter the United States extends to the ability to work in the United States as well. Diabo was deported to Canada on the grounds that he was an illegal alien and did not obtain the proper authority to work in the United States. He challenged this decision in federal court by citing the Jay Treaty. He was officially charged with entering the United States without passports, failing



to comply with U.S. immigration laws, and “with the likelihood of becoming public charges,” or in other words, becoming a burden on the American taxpayer, despite being employed in the U.S. as an ironworker (Reid 2007: 64). The actual decision to deport him came, however, from the Department of Labor and not the department that handled customs at the time.

Ramdeo Sempat-Mehta quotes Judge Joseph Buffinton as saying, “Naturally, the Six Nations resented the establishment of any boundary line through their territory which would restrict intercourse and free passage to their people, and remonstrance was made to the assumption of sovereignty over what they regarded, and then occupied, as their own” (nd: 11). Whether or not the wishes of the indigenous inhabitants were taken into consideration, this case found that a full-blooded Canadian Indian and member of the Iroquois Nation was not subject to deportation under United States law under the 1924 Immigration Act because of the provisions of Article III of the Jay Treaty. Indians dwelling in Canada that have an American relationship are exempt and not considered immigrants under the terms of United States immigration law. This finding became statutory law on April 2, 1928 (45 Stat. 401; formerly 8 U.S.C. 226a).

The Canadian federal case of *Francis v. the Queen* S.C.R. 618 (1956) illustrates Canada’s interpretation of the Jay Treaty in regards to indigenous border crossing rights. In December of 1948, Mr. Francis was importing a washing machine, refrigerator and oil heater from the United States to his residence in Canada, on a reserve. He was ordered to pay customs duties on the goods brought into Canada. He refused to pay the duties and customs seized his property. Mr. Francis paid the duties, under protest that Indians do not have to pay duties as they are not taxed on their property.

*Francis v. the Queen* found that Indians entering Canada are not exempt from paying duties on goods imported into Canada. The relevant text of the Jay Treaty reads: “...nor shall the

Indians passing or repassing with their own proper goods and effects of whatever nature, pay for the same any impost or duty whatever.” The ruling of the Supreme Court of Canada found that the Jay Treaty, not being a peace treaty, needed to have the provisions codified into statutory law in order to be in effect. Since the Canadian Parliament failed to do this, the court argued that the Jay Treaty is not legally binding on the government of Canada. In addition to this Supreme Court ruling the court also found that while the Indian Act governed the rights and privileges of Indians regarding general taxation on reservations and on personal property, they were subject to the same customs and duties levied on goods imported on the same level as with other Canadian citizens.

Francis v. the Queen did not decide whether or not the Jay Treaty was abrogated by the War of 1812 but it did find that because the Jay Treaty was never codified into law by an act of Parliament the article pertaining to duty free exemption status for Indians is therefore not valid. The argument made by the Canadian government was that the Jay Treaty was not a peace treaty, something argued by historians based on the text of the first article of the treaty: “...there shall be a firm and inviolable peace, and a true and sincere friendship between His Britannic Majesty, His Heirs and Successors, and the United States of America...” The inclusion of the word “peace” in the treaty leads some to assume that it is a peace treaty while others take the opposite stance.

While Canada has ignored its responsibility to uphold international law by legislating the terms of the Jay Treaty, some still expect that Canada will act appropriately. Chief Jourdain of the Ojibwa nation says that the treaty recognizes historical and cultural realities. He sees the Jay Treaty as making a promise that European boundary lines would not apply to indigenous nations, something he is hopeful that they will honor (Keller nd).

Both the United States and Canada passed legislation granting indigenous groups citizenship in their respective countries but only in the United States did the terms of internationally binding treaties hold up in federal court. Something that the court neglected to take into consideration when deciding this case was a letter from the United States Treasury Department dated March 15, 1878. It states:

Referring to your [a Canadian official] letter of the 11<sup>th</sup> instant, addressed to the Secretary of the Interior, and by leave referred to this Department, in which you ask, in behalf of the Iroquois and other Indians in Canada, that they be relieved from all taxes or duties in their trade and intercourse with the people of the United States; I enclose herewith for your information that all Indians are free of duties passing or repassing the boundary lines of the United States and Canada, and also free of taxes, license in trading and selling bead-work, bark-work, baskets, snow shoes, moccasins, medicines, etc., etc., of their own manufacturing in premises. [Sampat-Mehta nd: 6]

This letter was a reply to a Canadian official asking for the status of rights enjoyed by Indians on both sides of the border. While this was the United States' reply to Canadian officials, it points out the American understanding of the treaty and while the Canadian government sought clarification from the U.S. government it was not obligated to agree with or implement similar policies.

One of the more recent federal cases involving the Jay Treaty in the United States is *Akins v. United States* 380 F. Supp. 1210 (1974). This case involved duties levied on goods brought into the U.S. for personal consumption. Citing *U.S. v. Garrow* 88 F.2d 318 (1937) the court found that the U.S. could in fact apply customs duties to goods for personal use and that the Jay Treaty did not protect them from paying this duty. The court did find, however, that "Indians had the right to pass the border without undue restriction or restraint" (*Akins v. Saxbe* 380 F.Supp. 1210 (1974)). The legal issues surrounding this are complex because the court in *Akins v. Saxbe* (1974), upheld the rights recognized in the Jay Treaty while citing a previous case from

1937, which found that the Jay Treaty was abrogated by the war of 1812. This decision by the court both upheld and denied the rights enjoyed by the Jay Treaty.

Another example illustrating the difference in opinion between the U.S. and Canada in regards to the status of the Jay Treaty occurred in 2003 with U.S. military recruiters. The recruiters were targeting First Nations members of border communities. Canadian members of indigenous nations are allowed to enter, work and reside in the U.S. U.S. federal courts have upheld this. Since the U.S. will allow Canadian First Nations members to work, they are also eligible for military duty, though they are not required to register for the selective service. With this in mind, the U.S. began to recruit members who had Canadian citizenship. Canada objected because they do not recognize the Jay Treaty and saw the U.S. recruitment efforts as illegal. Canadian Foreign Affairs official Reynald Doiron stated, “We did remind the U.S. authorities that even though they can refer to the Jay Treaty, we do not recognize the treaty...” (Pugliese 2003). This case demonstrates that the issues that the Jay Treaty created have still gone unresolved as disagreements between the U.S. and Canada still occur.

Throughout the history of the United States, the recognition of the rights of indigenous inhabitants has been something written into official correspondence with other nations and within statutory law. Unfortunately, the United States, along with most Western Hemisphere countries, has neglected to uphold most of the treaties it signed with indigenous groups (Mohawk 1978). There have been significant changes to this attitude beginning with the termination era policies. Briefly, these were policies that aimed to remove any treaty rights enjoyed by Indians thereby making them equal to other American citizens. One such difference is the exemption from income tax for Indians living on reservations (due to their sovereign status). This sovereign status is a contentious subject for many politicians and has been for some time. The case of

Worcester v. Georgia (31 U.S. 515, 1832), where the State of Georgia attempted to override the government to government relationship with the Cherokee, prompted the Supreme Court to state, "...the Indian nations had always been considered as distinct, independent political communities, retaining their original rights, as the undisputed possessors of the soil, from time immemorial..." (Jefferson nd: 5).

Indigenous groups of both countries have tried to seek change to policies that adversely affect them. A group of cross-border nations met in 1988 in Idaho to demand the following rights: The right to identify members of their own nations; the right to travel, work and reside in their nation's territory; the right to freely transport possessions and trade throughout their territory; and the right to receive services in each country on the same grounds as other members of their nation (Luna-Firebaugh 2002). These recommendations in addition to the desire for aboriginal border crossings met with much criticism from both U.S. and Canadian government officials. Regarding the suggested policy changes, Derek Konrad, a Canadian official, stated, "I can't for the life of me understand why they would need a special border crossing, unless they're beginning to see themselves as people with no border" (Luna-Firebaugh 2002).

Perhaps one of the most significant challenges to indigenous border crossing rights came on September 11, 2001. This event significantly altered the way that the United States government viewed its borders with Canada and Mexico. In particular, for a time following those events, many of the "terrorists" were thought to have illegally entered the country from Canada, thus giving Canada the temporary appearance as a haven for terrorists (Struck 2005). Those reports have been shown to be false however, and those responsible for the attacks actually had legitimate state-issued passports.

Since September 11, 2001, United States' security policy has undergone a series of modifications along the border with Canada. While the border is still considered "undefended" this is only due to the absence of an official military presence. The border itself is still armed with many different levels of law enforcement and technological barriers. Some of these levels are Customs and Border Protection, Immigration and Customs Enforcement and the United States Border Patrol on the law enforcement side and policies such as the Secure Border Initiative providing some of the technology that is meant to secure the border. Due to changes in security policy and initiatives the federal government has enacted, some scholars and even government agencies talk about either a thickening of the border as a result of 9/11 or a proliferation of borders, especially in terms of indigenous rights (RCMP nd, Singleton 2008, Muller 2008).

This thickening or proliferation of borders has significant impacts to groups that still see their rights as being protected under the Jay Treaty. The number of obstacles to the right to freely pass and repass the border has grown tremendously since this right was originally recognized in the late 1700s. There are several security initiatives that have been or are in the stages of being implemented. The securitization of the border is something that scholars are beginning to discuss more seriously, though the impact of securitization on border communities, be they native or non-native communities, is something that is a growing area of concern. One of the biggest obstacles to some of the rights recognized for indigenous groups, beginning with the Jay Treaty, is the Western Hemisphere Travel Initiative.

Knowing the history of these treaties and legal decisions is important because they impact how WHTI will affect indigenous communities and the possibility for native reaction to this policy that may adversely affect the state. A history of indigenous border crossing rights and

the status of WHTI as it presently stands is important in looking at how this is likely to affect Coast Salish communities along the US/Canadian border. The matter of border rights is crucial for cultural continuity. NCAI director Jacqueline Johnson has stated, “Native people on both sides of the border must have adequate access to border travel to...protect the culture and way of life for those indigenous people who have relatives on either side of the border” (Norrell 2006). The Lummi nation argues that “Indians had historical rights on each side of the border that remained un-extinguished to the present, although modified by applicable international politics” (Jefferson nd: 5). The next chapter will discuss the Coast Salish in particular to understand how WHTI, as one of the aforementioned international policies, will affect them specifically.

#### IV. Coast Salish Communities in the Borderlands

We are the Lhaq'temish, The Lummi People. We are the original inhabitants of Washington's northernmost coast and southern British Columbia. For thousands of years, we worked, struggled and celebrated life on the shores and waters of Puget Sound. Our culture was built on the abundant gifts of the sea and forest – food from fishing, hunting and plant gathering – *yo'mech*, the spring salmon; *soxwe*, butter clams; *kwawach*, the elk; *skao's*, wild potatoes; and *sqw'elengexw*, blackberries. The towering red cedar tree, *xe'py*, gave us life, shelter, clothing, transportation and spiritual well-being. We lived in villages throughout our territory – the San Juan archipelago and the mainland, including the present Lummi Reservation near Bellingham, Washington. The sea was our highway, the canoe our means of travel, sustenance and contact between villages. Our Elders believe that through the union of canoe-pulling, we achieve perfect harmony and balance. The idea of harmony and unison is the basis of Lummi spiritual and community existence. It is called *schelangen*, the Lummi way of life.

The Lummi Nation

The Lummi are one nation within the Coast Salish region (See Figure 1). This opening quote states some of the most crucial aspects of what it is to be Lummi and similarly, what it is to be Coast Salish. This chapter will describe the Coast Salish peoples of northwest Washington State and Southeast British Columbia. An introduction to their rich and remarkable history will allow for a deeper understanding of how the Western Hemisphere Travel Initiative may affect them after implementation in June 2009.

The Coast Salish people have occupied the regions around the Salish Sea, which became known as Puget Sound, the Strait of Georgia and the San Juan archipelago, since time immemorial. This territory would later be split into Washington State (Figure 2) and British Columbia (Figure 3) within the nation-states of the United States and Canada, respectively. In addition to the term “Coast Salish,” the term Salish Sea is another term that is growing in popularity. For instance, the Georgia Basin Action Plan, a branch of Environment Canada, is working on a Coast Salish Sea Initiative (Environment Canada 2007).



The geography of this region is important to discuss because it influenced the eventual formation of villages and later the different nations that developed. The northwestern corner of the United States and southwestern corner of Canada, collectively known as the Pacific Northwest is home to various mountain ranges and waterways. The area in which the Coast Salish live is bound by mountain ranges in both the east and the west in some areas. In the United States, the eastern mountains are known as the Cascades and in Canada, they are known as the Coast Range. In the west, the Olympic Mountains on the Olympic Peninsula and the Vancouver Island Range bind the region. There are numerous islands in the area, small islands such as those in the San Juan archipelago to large islands such as Bainbridge Island and Whidbey Island in Puget Sound and Vancouver Island. The topographical map (Figure 4) shows the region. Most permanent settlement occurred in the low-lying areas (marked as the blue area on the map), although the higher altitudes were also used for summer sites, berry picking, hunting and other purposes.

The climate varied between rainy winters and warm summers, which provided long daylight hours for fishing with sunrise occurring as early as 5:00 am and setting as late at 10:00 pm. Being a coastal group, the Coast Salish are not subject to the same types of strong ocean storms like other coastal groups, like the Nuu-chah-nulth on the western side of Vancouver Island. The cedar tree, mentioned in the opening quotation, was abundant and provided nearly waterproof clothing and shelter from the rain during the winter. Large cedar trees are also used to create canoes that could hold at least a dozen people. The cedar tree is something that is central to Coast Salish identity, as many ceremonial objects are carved from cedar.

Something to be aware of regarding geography is that there is a difference between native and non-native conceptions of geography. Thomas McIlwraith worked with the Sto:lo Nation on

conceptions of identity and “imported culture.” One aspect about identity relates to geography, especially in Coast Salish territory where land is central to identity. He found that “community members disagree about who the Sto:lo people are and *what constitutes traditional geography and lifeways*” (McIlwraith 1996: 46 my emphasis). It seems as though the very land that some Coast Salish nations occupy is open to various degrees of interpretation. The concept of identity, land use and community are themes that will be discussed later in this chapter.

The question of “what is Coast Salish culture” is something that is impossible to discuss despite being a central question to this thesis. While there is no singular culture or collection of cultural traits that applies to all Coast Salish nations this thesis will take some basic ideas that apply to most nations. It is understood by anthropologists that within one culture there will be variation. Some members of any given society will behave, think and act differently than others while still being considered a member of that culture. This idea is applied to the Coast Salish in this study. With that in mind the phrase Coast Salish communities applies loosely to the nations referred to by other anthropologists as being in the region described above. John Dewhirst takes a similar approach to describing Coast Salish culture. He describes culture and social identity as “the complement of attributes felt to be ordinary and natural” for a particular group of people (1955: 233). This definition allows for variation within a group while still providing a general set of attributes that apply to a given group of people.

The beginning of this thesis mentioned the shared cultural heritage of groups on both sides of the U.S./Canada border. Some of these attributes listed were shared languages, marriage and kinship ties, ceremonies, summer games, as well as fishing and harvesting in areas throughout the region. More detail will be paid to each of these, but more importantly, why

these are important when discussing border crossing rights and the possible impacts to culture with implementation of WHTI.

The indigenous peoples of the Northwest Coast of North America have been particularly interesting to anthropologists since the beginning of American anthropology and before by early European explorers. Most detailed study of the region has been of groups further north however, such as the Tlingit, Kwak'wak'wakw, Haida, and the Tsimshian. The Coast Salish, especially the groups that settled in the area that became Washington State, were not given the same amount of analysis by early anthropologists (Barnett 1938a). According to Bruce Miller (2007), early anthropologists viewed the southern peoples of the Northwest Coast differently for a number of reasons. First, they were seen as receivers, as opposed to originators: either of raiding parties from the north or of cultural development. This is evident in comments such as those made by Diamond Jenness: "Incidentally this masked dance seems to have been the only ceremony among the Coast Salish that called for the wearing of wooden masks, unless, perhaps, a few Comox Indians wore them at the winter dances in imitation of their Kwakiutl neighbors" (1955: 71).

Secondly, the Coast Salish occupied a region that found itself with a large number of settlers. The area's large cities of Vancouver, Seattle, Tacoma and Victoria, drew stronger assimilationist pressures than did the areas further north where there were fewer settlers and less competition for land and resources. Lastly, early American anthropology worked under a salvage ethnography paradigm largely due to the work of Franz Boas who sought to record as much as possible with American Indian and Canadian First Nations. Early researchers assumed that the native peoples were going to disappear and therefore their cultures must be recorded (Miller 2007). They were under the impression that the northern groups had a richer culture and

that the Coast Salish had a more watered down version of those traditions. With this in mind there was significantly less attention paid to them academically.

The term “Coast Salish” has a unique history, as it has not always been in favor among anthropologists and its use has changed. Early anthropologists, such as Diamond Jenness used the term differently than it is used today. When describing the Katzie, he referred to them as a small Indian reserve belonging to the Coast Salish tribe (Jenness 1955). Today many members of Coast Salish nations are using the term to refer to themselves, evident by the Coast Salish gathering where, “I am Coast Salish was said by virtually all speakers...” (Coast Salish Gathering 2008). There are many nations under the umbrella of Coast Salish. There are 50 nations in Canada and 24 recognized nations in the U.S., though these numbers change because not all nations are *federally* recognized (Miller 2007, my emphasis).

H.G. Barnett acknowledges that there was no distinction between many of the groups and the reason for little attention paid to the groups was an artificial one not based on cultural discontinuity. Because of the different degrees of study paid to the Coast Salish, anthropologists created different culture group areas with some receiving more academic attention. Within “Coast Salish” territory there are further distinctions, some of which include, Southern Coast Salish, Central Coast Salish and Northern Coast Salish (Suttles 1990) (See Figure 5). The boundaries of these subdivisions are similarly arbitrary lines depending on the analysis of the particular anthropologist. Some early anthropologists may have thought that each tribe within the Coast Salish group were entirely separate and isolated but Fredrik Barth in 1969 argued that the idea that tribes maintain their identity and culture through ignorance of their neighbors is outdated. Indian nations did not live in isolation from each other. Within the Coast Salish region

there was a tremendous amount of intervillage travel. Even outside the Coast Salish region there was interaction between different villages and communities.

The idea of a social boundary and its relationship to geopolitics is not unique to Barth. He does, however, give specific criteria for what constitutes an ethnic group that applies to the Coast Salish. These are: largely self-perpetuating; sharing fundamental cultural values; makes up a field of communication and interaction; and has membership which identifies itself and is identified by other ethnic groups (Barth 1969: 10-11). Based on these criteria, the Coast Salish, anthropologically speaking, are one ethnic group. However, the separation of the Coast Salish by the 49<sup>th</sup> parallel means that politically speaking, they are not one homogenous group.

These criteria for constituting an ethnic group include items mentioned earlier in this chapter. Being identified as one ethnic group, both internally and externally is one of these criteria. This is shown in several ways. The first is that members within different nations have different ways of self-identifying. There is a range of terms used depending on the context and audience, including: American Indian, Canadian Aboriginal, Canadian First Nations, Native American, Coast Salish, or any one of the individual nation names. As for external recognition, anthropologists have categorized the Coast Salish as a distinctive group because of the differences from both their southern and northern neighbors, a distinction held, presumably by natives and non-natives alike and primarily as a result of linguistic differences from their neighbors. There are multiple ways of self-identifying that are commonly used, though this may depend on the context and audience. Someone may say “I am Nooksack” to other Coast Salish people. That same person may say “I am Coast Salish” or “American Indian” to non-native people, though ultimately it is a matter of preference.

According to Barnett communication is another marker for social boundaries. There are multiple dialects throughout the region but are all part of the Salishan language family, with the exception of the Makah on the Olympic Peninsula, and the Chimakum and Twana languages (Miller 1996). Some of these that anthropologists have noted are Halkomelem, Lushootseed, and others. While there are many ways of spelling the names of the languages, nations, and other associated words this thesis will use the Western term for simplicity unless using a direct quotation or other necessary exception.

Around the time of European contact and the establishment of trading, Chinook Jargon was the method of communication used between nations, though this occurred mostly with European traders. Looking at the state of languages contemporarily, despite the similarities in dialects, according to Woodcock, “members of Salish bands from the State of Washington, who attend ceremonials among British Columbia Salish groups like the Cowichan of Vancouver Island, are obliged to converse with their hosts mostly in English...” (1977: 45). Native languages have taken a substantial loss in terms of the number of speakers. Most Coast Salish members speak English because native languages have nearly been lost. In some communities only a few members can still speak the language (Thom 2003). Partial reasons for the loss of indigenous languages in the U.S. and Canada stem from pressure by the federal governments to assimilate natives (Miller 2001). The removal of language was one step in the attempted termination of indigenous cultures in the U.S. and Canada. Losing one’s language is a step in losing one’s identity.

While a linguistic analysis of Coast Salish dialects, both historically and in modern times would provide a wealth of data, it is sufficient for the purposes of this thesis to argue that while there were regional differences, one nation could understand another, at least on a basic level,

especially if they had multiple connections through various means such as marriage or kinship connections. Anthropologists have concluded that the Coast Salish, linguistically speaking, are very closely related (Thom 2005). Being “largely self-perpetuating” and sharing cultural values are other ethnic markers described by Barnett that will be discussed in this chapter.

Coast Salish marriage patterns and kinship ties are vital to maintaining cross border relationships. In his book, *Twana Narratives: Native Historical Accounts of a Coast Salish Culture*, William Elmendorf describes in great detail the patterns of marriage and the resulting linkages that occur. He devotes a chapter to wedding ceremonies, describing how, for example, the Skokomish are related to the Skyhomish, who are related to the Satsop all because of marriages and residence patterns (Elmendorf 1993). The connections made between different nations in the Coast Salish world continue from southern Puget Sound up through Vancouver Island. One nation will marry into another and those relationships will remain and grow stronger as the families grow, thus deepening ties between varying nations. These intervillage links both established new connections between nations and preserved and deepened connections already made (Woodcock 1977). These intervillage connections make up the Coast Salish network: “Coast Salish communities can be understood only within the larger framework of intervillage ties between various named groups, reservations, and reserves” (Allen 1976) .

Related to marriages is the concept of social stratification and a class system. Suttles’ 1958 article titled “Private Knowledge, Morality and Social Classes among the Coast Salish,” offers a summary of how anthropologists viewed the class system among the Coast Salish. Suttles’ understood a social class to be “a segment of the community, the members of which show a common social position in a hierarchical ranking” (1958: 4). His fieldwork found that historically there were two distinct social classes; a large upper class and a smaller lower class.

This claim was supported by anthropologists before him who found that there was an upper elite although they seemed to be a majority. Suttles, however, found that each family would claim to be part of the higher class while giving reason for claiming that another family was of the lower class thus leading him to claim that the idea of social classes contemporarily, was more of a myth than something experienced in reality (1958, Jenness 1955). He supports this claim by conferring with William Elmendorf and saying that even if there were a few communities with a lower class they would be insignificant to the political structure of the community (1958). Suttles' asserts that this would most likely be the case among any of the Central Coast Salish communities.

Historically there was ample evidence for a two class system; an upper class and a slave class. Suttles cites Gunther (1927) and Barnett (1955) as finding this as well. Since exogamous marriages were more likely to be performed among the upper class, and nearly everybody seemed to be in the upper class it is likely that exogamous marriages were preferred by the majority of people. This would lead to a higher number of marriages taking place with members of another nation, thus increasing the number of intervillage connections. Edwin Allen discusses the degree of village exogamy among some Coast Salish nations (1976). He cites Gunther (1927) by saying that between the years of 1820-1920, at least 40 percent of marriages occurred with members of other Coast Salish nations. This may be the lower range percentage of exogamous marriages because in 1954, 90 percent of marriages of the Mid Fraser nation were exogamous.

Since marriage ties provide the foundation for kinship it is important to understand the relationship of marriage with property rights. It has been stated that while families do not "own" particular sites, they do control use of those sites. Therefore the role of ancestral figures, i.e.



long term family history, is what dictates Coast Salish property relations (Thom 2006). Bruce Miller says something very similar: “members of elite families, relying on the security of their strong ties to a particular landscape, were connected by obligation, ritual, trade, or marriage” (2001: 73).

Even ceremonial naming has ties to marriage and landscape. “Indian names” are family or ancestral names that are passed down within family lines, connecting the name holder to a long line of ancestors. These names and predecessors are ultimately tied to a location where that particular ancestor had a spirit encounter. Having this name in one’s family lineage implies a unique relationship to a particular site (Miller 2001). Marriage then becomes a way of establishing connections across landscapes as having a particular Indian name establishes ‘ownership’ rights despite village affiliation.

Marriage patterns also had a large effect on reciprocal exchange. Sahlins’ (1965) work on reciprocity was applied to the Coast Salish by Kathleen Mooney. She analyzed how social distance has an effect on the type and degree of generalized reciprocity. She found that exchange tends to decrease or move towards the unsociable extreme as genealogical distance increases (Mooney 1976). In other words, the fewer the ties due to kinship and marriage, the less reciprocity between two particular communities. Mooney’s main hypotheses were: Negative reciprocity increases with social distance; generalized reciprocity is the basis and standard for all degrees of social distance; and negative reciprocity increases with geographical distance (Mooney 1976). The ubiquity of the potlatch, especially the larger intervillage gatherings, demonstrates that there must have been significant marriage connections due to the great degree of reciprocity that both Sahlins and Mooney discuss since there were intervillage gatherings that spanned large distances.

Exogamous marriage patterns led to the Coast Salish maintaining close and intimate relationships not only with close relatives but also the more distant ones (Mooney 1976). While most studies done on Coast Salish marriage and residence patterns have been historical in nature, there is one item that needs to be addressed regarding present marriage, or more specifically, how marriage affects “Indian status” in Canada. Mooney points out that a legally defined status Indian is one who is a band member. Marriage plays an important role because a woman is considered non-status even if both her parents were status Indians but she married a non-Indian male. Legally, Indian status is traced only through men (Mooney 1976).

The problem of defining Indian status based on marriage is a complicated issue. Government intervention in determining how the nation determines its members is something that occurs not only in Canada, and not only regarding status due to marriage. Mooney makes an important point in saying that while the government may make legal decisions based on status, the Indian community does not make these distinctions (1976).

One of the most well known aspects of northwest coast culture is the practice of potlatching, or “klanak,” which, according to Woodcock is the springtime Coast Salish equivalent of a potlatch (1977: 137). The practice of potlatching, the preferred term in this thesis, combines several components that are central to this thesis. It is certainly a cross border activity, necessitates travel between nations, promotes Coast Salish culture and is a mechanism for preserving culture. There have been considerable studies done on potlatching including work by Barnett (1938b), Hill-Tout (1904), Sapir (1911), Boas (1925) and indirectly by Sahlins and Mooney mentioned earlier.

The Coast Salish had two different types of potlatching. The first of these, according to Suttles, was more of an invitation to intravillage gathering due to an unanticipated surplus of

food (Suttles 1958), and more recently things like transportation and other services (Mooney 1976). The second was a formal intervillage potlatch that was designed to give away large quantities of wealth (Suttles 1958). An intravillage gathering would have been much more informal and significantly smaller in terms of how many people had gathered. It would also not involve an extensive time period for planning as intervillage potlatches did. Intervillage potlatches had formal invitations, as well as their own set of complex rules, and took up to several years for which to prepare.

In addition to potlatching, fishing was another primary economic system. Subsistence in the Pacific Northwest depended, largely, on salmon. Salmon fishing was one of the most critical events of the year and aspects of social life stem from the reliance on salmon (Jenness 1955). The First Salmon Ceremony is one example. This has, in turn, attracted much anthropological literature analyzing the methods, meanings and symbols of fishing. Dan Boxberger's work on Lummi fishing is one such work that not only provides a full description of Lummi fishing practices, but it is a resource used by numerous anthropologists working on northwest coast economics (1989).

Regarding the extent of fishing as a means of economic survival McIlwraith found that, "the Fraser River and fishing are the core of Sto:lo culture" and "from time immemorial, salmon have provided a significant contribution – if not the major contribution – to the Sto:lo economy" (1996: 46 from the Sto:lo Heritage Policy by the Aboriginal Rights and Title Department 1995). This concept applies to not only the Sto:lo or the Lummi but to every Coast Salish community throughout the region. Fishing provides the foundation for much of what can be described as Coast Salish culture.

The inclusion of fishing in ethnographic analysis dates back to the beginning of anthropology in the region. There is more often than not a section reserved for fishing. This is the case with Suttles' 1955 work with the Katzie. He offers a detailed description of the types of fish, the seasonality of harvesting and most importantly, who was allowed to fish at certain sites. This last point is what begs for analysis. Anthropologists found out that while land was not "owned" in the European sense, it was communally owned, not by the community as a whole, but by families. It was because of this type of ownership and more importantly, the knowledge associated with this type of ownership that anthropologists began to study the area more closely.

Coast Salish identity, while often a subject of entire books, dissertations and articles, is something that must be mentioned, at least in part, for a better understanding of what constitutes Coast Salish culture for the purposes of this thesis. One large component that permeates most aspects of Coast Salish identity has to do with senses of place. Experiencing place is something that is the center of most aspects of life. Mythic historical stories, such as Raven and Qals stories, spirit power and the role of ancestors in daily and ceremonial life are all intimately tied to places. These stories are both history and mythology in that the time period covered in genealogical information, for instance, can stretch up to 600 years where the first ancestor removed their animal mask to become human (Berman 2004). There is more to Coast Salish "senses of place" than simply the territory that they live on; it goes into their family, inter-community relationships and even their economics (Thom 2005).

Some places have much more significance than others. Some places are "owned" by certain families despite being shared among other families, as mentioned previously. Coast Salish history, mythology and geography are all intimately tied together. For instance, during

Suttles' work with the Katzie Nation in British Columbia in 1955 he compiled a list of important place names in Katzie territory. For example, "a rock on the west shore of the mouth of Pitt River, a warrior turned to stone by the Transformer" (Suttles 1955: 17). The Transformer is a spirit who altered the landscape of Coast Salish territory by changing some people into different things – namely statues or other parts of the landscape. Many, if not all, Coast Salish communities have sites that are important to their history and include transformer sites or other physical locations influenced by mythological beginnings. Other examples of transformer sites can be seen in the Stó:lō-Coast Salish historical atlas (Carlson 2001).

Brian Thom argues that land is so intimately tied to identity that it would be impossible to conduct life and be Coast Salish without understanding this relationship. Activities such as ritual bathing to acquire spirit powers or to have relationships with spirits and non-humans such as those seen at transformer sites would be impossible if the ties to particular areas were not present; in essence these relationships with the land are the foundation of the Coast Salish experienced world (Thom 2006). Thom goes so far as to say that the way in which they view the world, or their "ontological orientation," is attributed to their sense of place (2005).

This concept of spirit power is a substantial part of Coast Salish identity. Since all things, human or not, have personal agency, there are interactions between people and the non-human world. This is important because these non-human agents are encountered as spirit powers as they "take wisdom from the spirit of the land, through the encounters with these beings throughout their lives" (Thom 2006: 4). These encounters are the foundation of identity and are rooted in a particular way of experiencing the land.

It is in this manner that cross border activity and travel becomes absolutely crucial. If being successful in the contemporary Coast Salish world depends on either acquiring spirit

power or some other activity that is dependent on physically encountering the land, then to not be able to visit these sacred locations would mean that a person would not be successful. Thom describes a story given by one Coast Salish member named Simon. His encountering of a spirit helper was based on the location of the encounter. This was a tremendously difficult experience but more significantly he describes how important the experience was for his success within the Coast Salish world as an artist. Without being able to visit these locations he would not have been an artist and would not have contributed to society in the same way (Thom 2006).

Bruce Miller argues a similar point in saying that landscape is what creates Coast Salish identity by connecting people to their spiritual relations, histories, one's sense of self and the way to a successful life (2001: 73). The meaning of landscape in identity formation is something that spans multiple locations. Essentially, the very core of how a person identifies is based, in a large part, on location. This location may be outside their immediate village or residence. This is the reason why cross border relationships are so crucial to maintain.

Another way in which the concept of identity is used is in the solidification of bonds. For example, the Sto:lo Nation promote a "Sto:lo identity" among their nation. The purpose of this is to "encourage a positive self-image of being native and to offer the hope of a healed community through cultural strengthening" (McIlwraith 1996: 44). Strengthening Sto:lo identity will lead to a cultural revitalization, which includes a resurgence of traditions and customs which typically involve members from other Coast Salish nations.

The purpose of inclusion of winter ceremonies as a subsection in this thesis is not to describe or to analyze the events performed at winter ceremonies. It is fully understood that some knowledge is proprietary and is not designed to be public (Boxberger 2004; Rasmus2002). It was told to me during the course of fieldwork that even some members of Coast Salish

nations will be asked to leave the room by members of their own families because things being discussed are not meant for them. It is with that understanding that much of the information in this thesis is designed to be given. The purpose is not in *what* goes on in these winter ceremonies, though to a small degree that will be described, but rather, *why* they go on: it is important to understand the significance of purpose of these events.

The Sto:lo Nation of lower British Columbia are one nation in particular that have winter ceremonies that have cross border participants. From my own fieldwork I found that during the months between November and April people will cross on a weekly basis to participate in longhouse meetings. Thomas McIlwraith (1996) also acknowledges these cross border ties and how winter ceremonies help to maintain them. He points out that the network of winter ceremonies had been declining in the middle of the 1900s, but since the 1970s there has been a resurgence in these traditions (McIlwraith 1996). As for the maintenance of cross border ties, he states: “These dance complexes also encourage community and social ties to be maintained, and facilitate the ongoing process of cultural rejuvenation in the wake of substantial population decline” (McIlwraith 1996: 43).

Guardian spirits are present at winter ceremonies, it is the guardian spirit that requires a song and dance. Guardian spirits are based on one’s individual behaviors, as seen by elder family members. Jenness describes this event by saying that a man obtains “power” that helps him throughout the year. During the winter this spirit swells inside him, in essence, causing him to sing and dance. This guardian spirit is not something that one goes after intentionally, to do so would be extremely dangerous (Jenness 1955). Judith Berman also describes that the spirits travel to human communities during the winter season, bringing with them all their power as well as danger, in the process (2004).

Part of the preparation for the guardian spirit is the wearing of regalia. Jenness describes much about the events, things ranging from colors of face paint to the types of spirits that are represented. While the details of how dances are performed are described by some anthropologists, it is my point that these descriptions should be not necessarily be given in this thesis. Jenness tells a story told to him by an unknown Coast Salish member, presumably from the Katzie nation. He got a letter from the chief at Musqueam requesting his assistance because his cousin was very sick. He paddled down the river to the village. Jenness then quotes the man as saying, "Knowledge came to me as I sang, and I whispered to the chief, who was sitting beside me: 'Jack is not really ill. He has only lost his vitality. Some guardian spirit has it'" (1955: 41). They took him to a large dance house and everybody danced in hopes of curing him. When it did not happen a medicine-man from Lummi said that he would be able to make the spirit come out of him. Jenness then describes the rest of the ritual, including the number of dancers, the method in which they danced and for how long they danced. The two interesting points about this story is that this situation could have occurred in virtually any Coast Salish nation. Winter dancing was extremely important, not just for social cohesion or entertainment, but as a way of preventing death from spirit sickness.

The other aspect about that story is that it was a man from Lummi who was already attending this event that was able to cure him. This suggests that people from other nations would attend winter ceremonies rather than being a strictly intravillage affair. Based on the system of marriage and economics this does not come as much of a surprise. The life and death of some members of society were dependent on cross cultural connections.

Spirit dances and the initiation into longhouses where these dances are performed is something that is highly secretive. As mentioned above this secrecy is in part what protects



dancers from illness or death. McIlwraith says, “the training for spirit dance initiates is carefully protected, and these dance communities provide tightly formed groups and a specific Coast Salish native identity for its participants...the result, then, is to create boundaries between native and nonnative peoples...” (1996: 52). My own fieldwork experience confirms this. According to David Williams:

... the biggest problem is people crossing over [the U.S./Canada border] with their traditional regalia because it’s so sacred to us. And when we bring across new dancers we have rules because of our beliefs that we’re supposed to always wear their traditional paint and stuff because it’s considered their protection and their regalia.

Ideally, these initiates would be able to travel to their longhouses to participate. Their regalia and traditional paint offers them a degree of protection. The actual events of these dances or other events that occurs in the longhouses is unknown and highly guarded, which is, according to both my informant and analysis by other anthropologists, exactly the way it should be.

To summarize, the nations that comprise the Coast Salish world continue to maintain, deepen and create new customs, traditions and connections. In a letter to the Department of Homeland Security, former Lummi Chairwoman, Evelyn Jefferson, stated:

The relationships between the intertribal communities have been based on in-common economies, inter-tribal politics, inheritance rights, intercommunity marriages, sharing of traditional spirituality and cultural practices, dependence upon common natural resources, and constant systems of communication amongst ‘relatives of the nations.’ These historical, political, legal, societal, familial, spiritual ties between the native communities have never been extinguished by the tribes/nations, the United States, or Canada by any national or international law. [Jefferson nd]

All of these facets coalesce to shape Coast Salish identity. It is the essential nature of cross border activity that holds several of these facets together. The extreme frequency and necessity of cross border travel, in both the winter for longhouse ceremonies and in the summer for canoe racing, are an intimate part of Coast Salish life and identity. Winter ceremonies, which in essence provide for cultural and spiritual safety, are absolutely dependant on the ability for participants to

frequently cross the border. Summer events such as canoe racing are by nature intertribal, and therefore international events. Canoe pullers spend countless hours, days and years in preparation for canoe racing. The significance of these events is more than simple sportsmanship; it is one thread in the fabric of Coast Salish life and identity. The Western Hemisphere Travel Initiative as it now stands poses a clear threat to the expression of Coast Salish culture as it currently stands.

## V. Analysis and Discussion

Data for this thesis were collected in different ways throughout the period of 2007-2008. The primary method of data collection was through participant observation conducted at numerous cultural events located throughout northwestern Washington State and British Columbia. My method of interviewing was very informal as all but one informant requested that I not tape record the interview. Virtually all of my informants requested anonymity. It is for this reason that I am not able to refer to names in most situations. I took their request one step further and chose not to identify the nation to which they belong to further protect their identity. In addition to cultural events such as Pow-wows, the Lummi Stommish, and the Honoring First People's Canoe Journey Day, I attended the Indigenous Service Learning Conference, Border Regions in Transition Conference and the Vine Deloria, Jr. Symposium. It was at these events that I was able to meet participants and discuss the problems associated with the contents of this thesis. When possible I arrived early and would leave after the events closed. In one instance I ended up volunteering which gave me access to a wider variety of potential informants who enthusiastically referred me to people they thought would be interested. Social networking websites were also used to meet informants and gather data, mostly to verify my findings. In all, I had nearly two dozen informants that provided me with data in addition to corroborating the information told to me by other informants and information discovered through academic sources. It is therefore through participant observation, my fieldnotes, stories told to me, conference presentations and information provided through pamphlets and leaflets in addition to academic sources that the data in this thesis is derived.

Data, in the form of private knowledge acquired by Coast Salish members, is something that can be very difficult for an anthropologist to study. Daniel Boxberger discusses the idea of

knowledge as private property in “Whither the Expert Witness: Anthropology in the Post-Delgamuukw Courtroom.” For instance, for a tribe to assert protected rights, such as land rights, fishing rights, etc., they often have to make certain knowledge public by testifying in court. This “publication,” or the transformation of private knowledge into public information, may end up destroying what made it worth fighting for in the first place. With this in mind, the primary goal of this thesis is not to gather data that is considered to be private knowledge, but rather to gather data that may help in the preservation of the private nature of that knowledge. It is still important to recognize that the identification of what is considered private and public knowledge is often difficult to ascertain and may appear contradictory. Boxberger (2004) argues that this decision is one that is best left with the community; in the case of the Coast Salish I could not agree more.

Border management concerns, challenges, and policies have been presented thus far in this thesis. NAFTA and WHTI are two such policies with border implications. One seemingly problematic issue with these two in particular is that their aims may be in conflict with one another. Jamieson argued that NAFTA’s goal was “to ease the trans-national movement of people and goods” (Jamieson et al 1998). According to several impact assessments, WHTI may have the opposite effect. If one of the unintended consequences of WHTI is a slow down of the travel of people across the border and the delay of just-in-time goods then this seems to be contrary to the goals of NAFTA. Both Canada and Mexico may be able to object to WHTI on the grounds that it violates NAFTA agreements.

WHTI as a method of risk management is another way in which to view the impacts. Ben Muller (personal communication) argues that WHTI, if viewed as risk management, is a mechanism for social sorting. This social sorting will impact groups in different ways. In the case of the Coast Salish, it will have potentially strong adverse effects. One of these potential

effects involves an idea that Foucault put forth regarding self-management using the panopticon example. The panopticon is a circular prison whereby prisoners look into the cells of other prisoners effectively guarding themselves. Essentially, people voluntarily alter their behavior because of the perceived negative impacts. When the U.S./Canada border, rather than the panopticon, is seen as a behavior modification device, people may choose to avoid crossing because of the perception that they will be harassed. Foucault used the panopticon example to refer to self-management and discipline in not only the prison system but in virtually every societal institution, which could include borders. While many indigenous groups report receiving harassment from customs agents, the intangible threat that this will continue or grow, justified or not, will alter people's behavior in a manner that will negatively impact their culture.

There has always been a certain amount of fear about crossing the border, even before WHTI entered into the collective consciousness of natives and non-natives alike. Jose Matus, the director of Indigenous Alliance without Borders has said, "people are very concerned and afraid to try to cross the border" (Zeller 2007). This fear permeates many native communities. As mentioned earlier, WHTI is not necessarily the starting point for border crossing nervousness, but it seems to have made it more of a pressing issue for many native communities.

Unintended consequences of policies are not a new phenomenon. Gerald Reid, cited earlier in reference to the Diabo immigration case of 1927, argues that the immigration quota system instituted by the United States in the early 20<sup>th</sup> century was not aimed specifically at native peoples in Canada, but it did have a negative impact on the ability of Canadian Indians to cross over into the United States (2007). The situation described by Reid that natives faced in the early 20<sup>th</sup> century is virtually identical to the situation they are facing in the early 21<sup>st</sup> century –

long lines to cross, a more tightly monitored border and a very real threat to their livelihood (2007).

One impact that WHTI is already having, though indirectly, on indigenous border communities began in 2006. According to the Kumeyaay Border Task Force (Norrell 2006), the Bush administration began efforts to require DNA testing to determine the amount of “Indian blood” a person has. To combat this, the National Congress of American Indians passed two resolutions, calling for DHS to respect their sovereignty by consulting with indigenous nations on a government-to-government basis. The NCAI sees these plans by the Bush administration as being illegal as they violate numerous treaties and legal decisions. In addition to speaking about the DNA testing requirement, Joe Garcia, president of the NCAI, also stated, “DHS did not consult with Indian nations on the ramifications of the WHTI proposal... This proposal will be detrimental to tribes and in direct violation of treaty rights including hunting, fishing and spiritual observances, harming tribal economies and disrupting the daily life of border tribal community members” (Norrell 2006). Garcia sees the two policies as being closely related as they are both an affront on tribal sovereignty and involve the ability to freely cross the border.

There are multiple objections to a proposal such as that offered by the Bush administration for DNA testing. As sovereign nations, Indian nations have the legal right to determine who qualifies as a member of that nation. DNA testing in order to assist with WHTI compliance is an attack on Indian sovereignty. It was mentioned earlier that most Indian nations disapprove of the use of a blood quantum to determine Indian status. Indian status needs to be determined by being a member of that particular culture, something that is not always consistent with a 50 percent blood quantum. Legislation, executive orders or even mere proposals of either may be met with significant resistance. The negative cultural impacts that would occur by

removing tribal sovereignty if they are not allowed to decide who their own members are would be considerable and detrimental. The United States Supreme Court ruled that each tribal nation may determine membership as a by-product of being a sovereign nation. As a result, many nations have tribal enrollment offices that screen, analyze, and document all enrollment applications presented to the tribe. The process of application verification is shared by all Coast Salish nations and is regulated by the Bureau of Indian Affairs, the Department of Interior, and Federal District Courts (Jefferson nd). The point here is that the Coast Salish, and presumably all other nations within the U.S. borders, are already following rules set forth by the federal government, even if these rules are something to which they should not be subject as sovereign nations.

A government-to-government relationship is not merely something that the U.S. federal government theoretically does because it wishes to establish better ties. This type of relationship is a requirement according to Executive Order 13175, signed November 6, 2000. The text of the order reads,

...in order to establish regular and meaningful consultation and collaboration with tribal officials in the development of Federal policies that have tribal implications, to strengthen the United States government-to-government relationships with Indian tribes, and to reduce the imposition of unfunded mandates upon Indian tribes (Executive Order 13175)

To date there have not been any resolved complaints regarding this order, although some have been filed, such as the case against the Department of Energy by the White Mesa nation (Whiskers and Badback 2005). In addition to Executive Order 13175, SCR 76 in 1987 and SCR 331 in 1988 reaffirmed the government-to-government relationship mandated by the U.S. Constitution (Jefferson nd). The history of this type of relationship with the federal government

is something that has been in place since the signing of the Constitution in 1787 and repeatedly legislated throughout the history of the U.S., although it has rarely been upheld.

One potential problem for all indigenous groups is that WHTI affects every tribal nation, not only border nations. Joe Garcia, president of the National Congress of American Indians, stated in a letter to U.S. Customs and Border Protection regarding WHTI, “the right of indigenous migration is not limited to those who happen to have been closest to the lines when they were drawn by the external governments” (2007: 3). Since this issue affects every indigenous nation there is a greater likelihood that the NCAI, rather than one individual nation, would file suit against the government for violating Executive Order 13175, though each individual nation may choose to do so. The challenge to sovereignty is an issue with which tribal nations have constantly dealt.

The respect of sovereign status by the U.S. and Canadian governments is something that tribal nations in both countries want. One of the major issues confronting federal governments is the issue of smuggling across native lands. Federal officials expect that Native governments will be able to control their border and that tribal land will not be used for illegal immigration or terrorist activities (Hill 2001). One problem with this argument, though, is that the government does not allow indigenous nations to police the border. U.S. Customs and Border Protection still claims jurisdiction over the border, whether or not they enter reservation land (personal communication: Customs and Border Protection). This demonstrates that this particular arm of the federal government does not respect the full sovereignty that native nations have in terms of the right to police their own land.

The question of the rights guaranteed under the Constitution as freedom of religion was raised earlier in this thesis. While this section does not aim to analyze border crossing rights as it



affects freedom of religion it is important to try to anticipate how WHTI may affect this situation. As it stands now, WHTI may interfere with what some would argue is their freedom to religion if their religion requires them to make pilgrimages or to travel to ceremonies that can only be performed across the border. The right to freedom of religion is something that is granted by not only the U.S. Constitution but also by the International Covenant on Civil and Political Rights, particularly Article 27. This article allows for minority groups to enjoy their own culture and practice their own religions. Luna-Firebaugh argues that this article is violated in the U.S./Canada borderlands because of the restriction on freedom of movement (2002). This violation is likely to increase with the final implementation of WHTI.

As discussed earlier, the Coast Salish, along with other indigenous border nations, have customs that require cross border travel. I will not be describing the nature of the customs, or necessarily the items used in ceremonies, but it should be pointed out that some ceremonies are gender specific. When nations bring ceremonial objects across the border, the border agent must be persuaded that the objects pose no threat to the security of the U.S. Usually this is done by a physical inspection. In some cases the mere handling of sacred objects by non-natives is detrimental to the objects. Many Coast Salish members feel personally insulted when a non-native border agent handles these objects and asks what they are used for. The idea of private knowledge becomes crucial to understand here. If some information is not meant for native members of Coast Salish nations, then it is certainly not meant for non-native border agents.

During one interview with a Coast Salish elder, she brought up a similar situation along the U.S./Mexico border. Native border nations cross over the border frequently with religious objects that must satisfy this requirement of not posing a threat to the security of the U.S. A compromise was reached with some of these groups where the border agents photographed the

objects, because physical handling of them was offensive. When they crossed in the future the agents could reference a particular item to a photograph. This was a way of pre-clearing religious objects that was acceptable to both CBP and the indigenous peoples. When asked if this method would work with the Coast Salish she argued that it would not. Some objects cannot even be viewed by those for whom they are not intended. Even some members of a particular nation are not allowed to see or witness certain objects. Thus the option for CBP to photograph and catalog these items is not a valid option. The positive side of this line of thinking, however, is that there is the desire to compromise with CBP in order to reach a solution that is mutually beneficial.

In an interview with David Williams, a member of the Squiala nation who resides at Lummi, we talked about a similar topic. He too mentioned that CBP examines religious objects and that they find this offensive. He too agreed that the border agents should not even be allowed to look at the items. A possible compromise that I suggested would be to allow canines to sniff the items in a sealed box. One area that is of concern to CBP in the Pacific Northwest is drug smuggling. Canines are adept at detecting narcotics and marijuana. It seemed a possible proposal to allow canines to try to detect illicit substances while not allowing the border agents to physically see the items. While it is not the goal of this thesis to provide recommendations, it does suggest that this sort of dialogue needs to be conducted between native leaders and Customs and Border Protection.

Some nations, such as the Blackfeet, have objects that cannot be touched by females, a problem that occurs when they cross the border and meet a female border agent (Luna-Firebaugh 2002). Through the course of my fieldwork, however, I have not been told about gender specific objects, although some ceremonies are male-only events. It is mentioned here because WHTI has

implications that span the length of the border. So while gender may not be a primary concern in Coast Salish territory it may be a primary concern elsewhere along the border.

It is not only one or two nations along the border that have this issue. It is not even one or two Coast Salish nations. The Lummi nation submitted a letter to DHS where they say that while the Lummi, Nooksack and Colville are “immediate border tribes” there are other nations within the Coast Salish world that require cross border activity to maintain their cultural connections. They list the Quinault, Quileute, Makah, Jamestown Sklallum, Port Gamble Sklallum, Lower Elwha Sklallum, Suquamish, Skokomish, Squaxin Island, Nisqually, Muckleshoot, Puyallup, Tulalip, Stillaguamish, Snoqualmie, Upper Skagit, Swinomish, and Sauk Suiattle as nations that will be negatively impacted if they are not allowed to maintain these historical, cultural and socio-economic relationships (Jefferson nd). These are only some of the tribes on the U.S. side of the border and this list does not take into account the numerous nations in Canada that face similar problems. As Lummi elder Al Charles said, these are all brothers and sisters or cousins in these different communities. They are all related despite having different names but according to Charles, they are all the same (Charles 1973).

Knowing where people are from, in a way, does not particularly matter, in the way that nationality is crucial to the U.S., for example. Charles said, “It go down that way and goes up this way. You’d go to Vancouver and you’d ask them, where are you from, what are [you] from, what is the name of your place? And they’ll say Suqualmish. And if you hear them speak, there’s Lummi in there...Every bit of word they say, because they’re all from the Lhaq’temish...So we are the Lhaq’temish” (Charles 1973). For Charles, language, family, economics and social issues are all wrapped up together so that Coast Salish becomes the group with which people identify. The creation of the international border between the U.S. and Canada was seemingly

insignificant for Charles. He said, “They put up a boundary line and split us in half, and got us all balled up here. You call those Indians, they’re Canadian Indians. But we’re related to them, they’re the same as we are” (Charles 1973). What the border did was split them apart; it did not make them into two different nations of Indians.

The interviews from the Center for Pacific Northwest Studies cited in this chapter serve to show that border crossing problems have been a constant reality for the Coast Salish. These interviews were conducted in the early 1970s, long before WHTI was even discussed. The interviews are still relevant because my own fieldwork demonstrated the same frustrations and sentiments that were expressed thirty years ago; sentiments and frustrations that have not been adequately addressed by the federal government, if addressed at all. These interviews point to a base problem, on which WHTI is another issue that further complicates an already tenuous situation.

Another reason why “we are all the same” is the way in which children are raised. Al Charles said that he was raised all over the place. He spent time at Nooksack and at Lummi, as well as some time across the border. Since he grew up in multiple locations how can he identify solely as Lummi, for instance? This was one question posed by Charles. Contemporaries of Charles’, Louisa George, Sarah James, Ella Reid, and Philomena Solomon agree with him (George et al. 1973). They all discussed how members of different nations are present all over Coast Salish territory and how they spent time as children travelling to different places. Identifying strictly as a member of one nation seems to be something done to satisfy the federal government rather than being an actual way to identify oneself. Charles’ statement about identity fits very well with the Coast Salish Gathering of 2008. Even 30 years after Charles gave his interview, people are still saying “I am Coast Salish” as a way of preserving their identity. The

imposition of the border and the changing requirements to cross that border will not change the associations, relationships and the declaration that “I am Coast Salish,” but it may make it more difficult to exercise those relationships.

The federal court cases discussed earlier also illustrate another facet of the U.S. and Canadian viewpoint of indigenous culture. The case of *Francis v. The Queen*, where Mr. Francis was required to pay customs duties on a washing machine, refrigerator, and heater, was upheld because those items “were not unusual or unique to Indians” (Luna-Firebaugh 2002: 175). I am not arguing that prior to European contact indigenous populations were using those appliances, but rather that the dynamic nature of culture is being ignored. Nearly 200 years had passed since the Jay Treaty and Indians were still only allowed to import goods that were in existence at the end of the 1700s. Anthropologists know very well the dynamic nature of culture and different methods for culture change. To suggest that goods that were not around in 1794 be disallowed is an attempt to create a version of what the government thinks “Indian-ness” should be.

One former CBP agent told me during the course of fieldwork that Indians can cite the Jay Treaty all they want, but it will not do them any good. Despite formal recognition of the Jay Treaty by the State Department, U.S. customs agents may choose not to recognize it. Similarly, David Wiwchar stated “Wearing a shirt proclaiming ‘We didn’t cross the border, the border crossed us’ may be a powerful political statement, but it won’t put you any further ahead in this post-Sept. 11, 2001 era of border security” (2005). Several elements mentioned in this thesis come together in these two statements: the increasing justification of repudiation of treaty rights in order to defend national security and the denial of Indian sovereignty. One item that may arise with the implementation of the land portion of WHTI is the discretionary recognition of treaty rights enjoyed by native peoples. Some border agents understand the nature of the Jay Treaty

while others will not exercise discretion when people argue that they have the right to cross. The inconsistent nature of how the Jay Treaty is understood within the Customs and Border Protection agency is something that will only cause further problems once WHTI is fully implemented.

While attending the Vine Deloria, Jr. Symposium at the Lummi Reservation in 2008, I was discussing border crossing rights with several attendees. Although I am focusing on the Coast Salish, two Nuu-chah-nulth conference participants argued that they are also affected. They too have ties to people in the U.S., though the magnitude of these relationships is less given their geographic and cultural proximity to the Coast Salish nations in the U.S. The point is, however, that these familial, social and economic ties are still there, even among groups outside of Coast Salish territory.

The idea of a once unified people being separated has other potential consequences than losing touch with family members or trading partners. When the members of the Mohawk nation were separated and not allowed to visit they not only started to see themselves more as “American” and “Canadian” rather than Mohawk, but they also started to develop a certain amount of animosity towards members on the other side (Allen 2006). While it is not likely that any significant level of animosity will arise between family members separated by the border, there may be problems that develop between family members if they are unable to attend family functions. The study that Allen (2006) conducted may not directly apply in Coast Salish territory but the problem of interruption of familial customs is a distinct possibility.

As mentioned in the marriage section of the Coast Salish chapter the relationship between marriage and kinship and land use demonstrates that travel between Coast Salish communities is a necessary part of life. The imposition of the border has been an impediment and the

implementation of WHTI, as it currently stands, may be not only an inconvenience but also a complete deterrent to sustaining family connections. Nearly every person I interviewed mentioned that visiting family was one of the primary reasons for crossing the border.

Economics is another facet of Coast Salish life that may be negatively impacted by WHTI implementation. Pow-wows are international, intertribal events that involve dancing and pan-Indian community celebration. At every pow-wow I attended there were numerous vendors. One particular informant, Steve, identified himself as a Canadian-Indian who lives in Seattle. His primary occupation is following the pow-wow circuit to sell goods. He lived in Bellingham several years ago and used to frequently cross over the border. Now that the border has become more of an inconvenience it has been many years since his last crossing. Being able to sell goods in Canada is something that he would like to do, but the uncertainty of crossing requirements and the uncertainty of how to officially conduct business in Canada is a major deterrent. When asked about his knowledge of WHTI and possible identification requirements he responded that passports and birth certificates are acceptable, but he also stated that a phone bill was a form of possible identification. Another informant had once used a Costco membership card as acceptable identification because the border agent did not recognize his tribal ID card and therefore did not allow him to use it. While the economic impacts of WHTI have been studied on a national or federal level, the economic impacts on tribal economies have not been fully analyzed.

Steve told me that the last time he crossed the border into Canada was to attend a funeral. Funerals are closely related to marriage and kinship. Funerals are by necessity cross border events because families come from all over Coast Salish territory. One Coast Salish Elder I spoke with mentioned that one of her relatives who lived in Canada passed away. They were not

able to cross the border to attend the funeral. To compensate they held a second funeral in the U.S. Funeral rites and customs are being negatively affected by the stricter border crossing requirements. WHTI was not a factor in border crossing for this particular funeral, but after implementation, WHTI may play an increasingly important role in shaping customs.

WHTI, as presented in this thesis, will undoubtedly impact social change among the nations along the border, Coast Salish included. Indigenous resistance to WHTI should not necessarily be viewed as resistance to social change however. Ramona Morris, a Lummi member, gave an interview in 1973 where she discussed the concept of social change, among other things. When asked about the rapid changes that the Lummi were facing in the 1960s and 1970s she stated,

And there was many difficulties and I guess I don't really...People call it opposition but I don't really view it as an opposition to social change. I viewed it that people just didn't accept social change so quickly...and they were very protective of their sovereignty rights as Indigenous people. (Morris 1973)

When looking at this statement in the context of post-9/11 border security and the upcoming WHTI implementation, her statement is still supported. Most Coast Salish nations are not completely against the initiative. But many people cannot afford the upgrade in identification requirements. According to interviews with two different Coast Salish nations, both in the United States, even the \$15 enhanced driver's license may be cost prohibitive to some families.

Ramona Morris's idea that people are not against change but against rapid change because it is a threat to sovereignty is perhaps one of the biggest challenges that WHTI faces. It has been mentioned that there are problems with allowing indigenous nations to issue their own WHTI compliant documents if DHS does not have a say in how those cards are issued. This is perhaps one of the strongest threats to native sovereignty that they have faced in a long time. According to interviews, both personally conducted as well as interviews by other researchers, it



appears that there are two conceptions of native sovereignty: a local, nation specific sense; and a Native, all-encompassing sovereignty. WHTI in this way affects not just local nations, as has been discussed in this thesis, but all nations. I have already mentioned the NCAI position on WHTI as well as the Lummi position. The way in which these two are bridged, in Coast Salish territory, is due to the intertribal connections. Al Charles, a Lummi elder, also gave an interview in 1973 where he discussed border issues and sovereignty rights. He argues that there is a tremendous mistake being made when people say the Lummi tribe, for instance. It is the Lummi Nation, not tribe, because of the inherent sovereignty that the Lummi, and other nations, have. It is for this reason that I use the term nation in this thesis, rather than tribe, plus it is the term the Lummi and other Coast Salish nations use.

If WHTI is challenged and Coast Salish peoples are allowed to use tribal identification cards to cross, but the government intervenes in determining enrollment status, then the right to cross may technically be respected, but at what cost? At the Coast Salish Gathering in 2008 Leah George Wilson, the Tsleil-Waututh Chief argued that it is the quality of treaty rights that is crucial. They should not be fighting for the rights in the first place. If a fight is required it should be about the quality; what good is the right if the quality of the resource is severely diminished? This argument was made specifically about fishing rights. George Wilson was arguing that if there are no fish left then what good is the treaty right protecting it? This argument is easily transferable to border crossing rights in that if the reasons for crossing the border are removed then the need to cross the border is also eliminated.

It is my assessment that nations within the borders of the U.S. will have more pronounced impacts than nations within the borders of Canada. It was explained to me that Vancouver Island is a sacred location, a place that elders go for clarification and assistance with cultural problems.

When elders from either the U.S. or Canada have questions or need guidance, they often travel there. “American” elders may also seek the guidance of “Canadian” elders as well, particularly those that live on Vancouver Island. If these elders, either Americans travelling north, or Canadians travelling south, are not able to cross the border, the impacts will be felt for generations. Canadian nations will not be impacted in the same way that American nations will be as they would not need to cross a border. The generational transmission of culture is something that may not be capable of reconciliation in the future if American nations lose access to this knowledge.

#### Positive impacts

There are potential positive impacts of land implementation of WHTI. During the Coast Salish Gathering at Tulalip in February of 2008 the problem of maintaining cross border relationships was discussed. In the face of federal opposition to maintaining these relationships one attendant said, we “cannot do this alone, we’re not an island, we need our brothers and sisters, north of the border that the white man created. We need to work together, to speak as one voice. To come together as a family, as relatives. We want to work with [the federal government]” (Coast Salish Gathering 2008). This echoes what I encountered in several of my interviews: the desire to work with the federal government to enter into a mutually beneficial working relationship. This can be achieved if, and only if, the federal government upholds its Congressional, Presidential and Constitutional requirements to engage in meaningful consultation with native leaders in a government-to-government relationship.

The fear that their culture may suffer negative impacts may lead leaders to compensate for this possibility. This may result in the deepening of bonds that are already present. More energy may be directed at language restoration, and cultural events may attract more participants.

A cultural rejuvenation or revival movement may emerge; not due to culture loss, which as most anthropologists argue does not happen, but rather they simply change. Since it has been established by now that change is something that native communities are not opposed to, there seems to be hope for a compromise.

## VI. Conclusion

The Western Hemisphere Travel Initiative is more than the requirement to show a single document that denotes citizenship and identity. It is a form of risk management where the border itself becomes a social sorting mechanism. WHTI is the policy manifestation of the security paradigm in which the United States finds itself in a post-9/11 world. Caught in the middle are the indigenous nations and ultimately their survival.

The extent of the impacts of WHTI implementation is far reaching. Numerous aspects of Coast Salish life and culture may be negatively impacted without significant change to the initiative. There is the possibility, however, that positive effects may arise from the pressure exerted on native communities as they respond to the Western Hemisphere Travel Initiative. It is crucial that the Department of Homeland Security accept that they need to fully understand how this initiative may impact all American citizens, native and non-native alike. Economic impact analyses are not sufficient.

The cultural impacts of WHTI will undoubtedly include changes to marriage ceremonies, potlatching, funeral ceremonies, winter dancing, summer festivals, canoe races, business opportunities, spiritual events, education, language restoration, geography, ontology, and identity. The argument presented here is not that Coast Salish culture may “be lost” with WHTI implementation. Instead, the case put forth is that if these negative impacts materialize then the Coast Salish of Canada and the Coast Salish of the United States will drift apart and diversify despite their shared history.

Ideally the Coast Salish will continue their efforts for full recognition of their inherent sovereignty, which will be granted, and they can continue to enjoy the rights recognized by numerous international treaties, court cases, Presidential and Congressional decrees. If the U.S.

government does not make changes to WHTI then there will likely be a challenge that would ultimately end up before the Supreme Court. The only way for indigenous groups to lose would be a complete repudiation of the treaties. Given that the federal government is not likely to unilaterally end these treaties it is likely that the government will at least spend a significant amount of money defending this new security paradigm. This has the potential to be the largest Indian sovereignty issue to date.

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DHS Approved Identification  
WHTI Compliant and available  
(as of September 2008)

- Trusted Traveler Card – NEXUS, FAST, SENTRI
- Enhanced Driver's License (EDL) – Washington State and British Columbia only
- Military ID – Official business only
- United States Merchant Mariner Document – Official business only
- Form I-872 – Kickapoo Band of Texas and Tribe of Oklahoma only
- Passport – U.S. approved passport
- People Access Security Service Card (PASS Card)

## Acronyms Used

ACLU – American Civil Liberties Union

BESTT – Business for Economic Security, Tourism and Trade

BIA – Bureau of Indian Affairs

BNA – British North America

BPRI - Border Policy Research Institute

CBSA – Canada Border Services Agency

CBP – Customs and Border Protection

DHS – Department of Homeland Security

DOL – Department of Licensing (also known as Department of Motor Vehicles in some states)

DOS – Department of State

EPIC – Electronic Privacy Information Center

ICAO – International Civil Aviation Organization

IDLA – Indian Defense League of America

IRTPA – Intelligence Reform and Terrorist Prevention Act

NAFTA – North American Free Trade Agreement

NCAI – National Congress of American Indians

NPRM – Notice of Proposed Rule Making

PNWER – Pacific Northwest Economic Region

RCMP – Royal Canadian Mounted Police

RFID – Radio Frequency Identification

SPP – Security and Prosperity Partnership

UN – United Nations

## Text of Royal Proclamation of 1763

Whereas We have taken into Our Royal Consideration the extensive and valuable Acquisitions in America, secured to our Crown by the late Definitive Treaty of Peace, concluded at Paris, the 10th Day of February last; and being desirous that all Our loving Subjects, as well of our Kingdom as of our Colonies in America, may avail themselves with all convenient Speed, of the great Benefits and Advantages which must accrue there from to their Commerce, Manufactures, and Navigation, We have thought fit, with the Advice of our Privy Council. to issue this our Royal Proclamation, hereby to publish and declare to all our loving Subjects, that we have, with the Advice of our Said Privy Council, granted our Letters Patent, under our Great Seal of Great Britain, to erect, within the Countries and Islands ceded and confirmed to Us by the said Treaty, Four distinct and separate Governments, styled and called by the names of Quebec, East Florida, West Florida and Grenada, and limited and bounded as follows, viz.

First--The Government of Quebec bounded on the Labrador Coast by the River St. John, and from thence by a Line drawn from the Head of that River through the Lake St. John, to the South end of the Lake Nipissim; from whence the said Line, crossing the River St. Lawrence, and the Lake Champlain, in 45 Degrees of North Latitude, passes along the High Lands which divide the Rivers that empty themselves into the said River St. Lawrence from those which fall into the Sea; and also along the North Coast of the Baye des Chaleurs, and the Coast of the Gulph of St. Lawrence to Cape Rosieres, and from thence crossing the Mouth of the River St. Lawrence by the West End of the Island of Anticosti, terminates at the aforesaid River of St. John.

Secondly--The Government of East Florida. bounded to the Westward by the Gulph of Mexico and the Apalachicola River; to the Northward by a Line drawn from that part of the said River where the Chatahouchee and Flint Rivers meet, to the source of St. Mary's River. and by the course of the said River to the Atlantic Ocean; and to the Eastward and Southward by the Atlantic Ocean and the Gulph of Florida, including all Islands within Six Leagues of the Sea Coast.

Thirdly--The Government of West Florida. bounded to the Southward by the Gulph of Mexico. including all Islands within Six Leagues of the Coast. from the River Apalachicola to Lake Pontchartrain; to the Westward by the said Lake, the Lake Maurepas, and the River Mississippi; to the Northward by a Line drawn due East from that part of the River Mississippi which lies in 31 Degrees North Latitude. to the River Apalachicola or Chatahouchee; and to the Eastward by the said River.

Fourthly--The Government of Grenada, comprehending the Island of that name, together with the Grenadines, and the Islands of Dominico, St. Vincent's and Tobago. And to the end that the open and free Fishery of our Subjects may be extended to and carried on upon the Coast of Labrador, and the adjacent Islands. We have thought fit. with the advice of our said Privy Council to put all that Coast, from the River St. John's to Hudson's Straights, together with the Islands of Anticosti and Madelaine, and all other smaller Islands Lying upon the said Coast, under the care and Inspection of our Governor of Newfoundland.

We have also, with the advice of our Privy Council. thought fit to annex the Islands of St. John's and Cape Breton, or Isle Royale, with the lesser Islands adjacent thereto, to our Government of Nova Scotia.

We have also, with the advice of our Privy Council aforesaid, annexed to our Province of Georgia all the Lands Lying between the Rivers Alatamaha and St. Mary's.

And whereas it will greatly contribute to the speedy settling of our said new Governments, that our loving Subjects should be informed of our Paternal care, for the security of the Liberties and Properties of those who are and shall become Inhabitants thereof, We have thought fit to publish and declare, by this Our Proclamation, that We have, in the Letters Patent under our Great Seal of Great Britain, by which the said Governments are constituted. given express Power and Direction to our Governors of our Said Colonies respectively, that so soon as the state and circumstances of the said Colonies will admit thereof, they shall, with the Advice and Consent of the Members of our Council, summon and call General Assemblies within the said Governments respectively, in such Manner and Form as is used and directed in those Colonies and Provinces in America which are under our immediate Government: And We have also given Power to the said Governors, with the consent of our Said Councils, and the Representatives of the People so to be summoned as aforesaid, to make, constitute, and ordain Laws. Statutes, and Ordinances for the Public Peace, Welfare, and good Government of our said Colonies, and of the People and Inhabitants thereof, as near as may be agreeable to the Laws of England, and under such Regulations and Restrictions as are used in other Colonies; and in the mean Time, and until such Assemblies can be called as aforesaid, all Persons Inhabiting in or resorting to our Said Colonies may confide in our Royal Protection for the Enjoyment of the Benefit of the Laws of our Realm of England; for which Purpose We have given Power under our Great Seal to the Governors of our said Colonies respectively to erect and constitute, with the Advice of our said Councils respectively, Courts of Judicature and public Justice within our Said Colonies for hearing and determining all Causes, as well Criminal as Civil, according to Law and Equity, and as near as may be agreeable to the Laws of England, with Liberty to all Persons who may think themselves aggrieved by the Sentences of such Courts, in all Civil Cases. to appeal, under the usual Limitations and Restrictions, to Us in our Privy Council.

We have also thought fit, with the advice of our Privy Council as aforesaid, to give unto the Governors and Councils of our said Three new Colonies, upon the Continent full Power and Authority to settle and agree with the Inhabitants of our said new Colonies or with any other Persons who shall resort thereto, for such Lands. Tenements and Hereditaments, as are now or hereafter shall be in our Power to dispose of; and them to grant to any such Person or Persons upon such Terms, and under such moderate Quit-Rents, Services and Acknowledgments, as have been appointed and settled in our other Colonies, and under such other Conditions as shall appear to us to be necessary and expedient for the Advantage of the Grantees, and the Improvement and settlement of our said Colonies.

And Whereas, We are desirous, upon all occasions, to testify our Royal Sense and Approbation of the Conduct and bravery of the Officers and Soldiers of our Armies, and to reward the same, We do hereby command and empower our Governors of our said Three new Colonies, and all other our Governors of our several Provinces on the Continent of North America, to grant

without Fee or Reward, to such reduced Officers as have served in North America during the late War, and to such Private Soldiers as have been or shall be disbanded in America, and are actually residing there, and shall personally apply for the same, the following Quantities of Lands, subject, at the Expiration of Ten Years, to the same Quit-Rents as other Lands are subject to in the Province within which they are granted, as also subject to the same Conditions of Cultivation and Improvement; viz.

To every Person having the Rank of a Field Officer--5,000 Acres.

To every Captain--3,000 Acres.

To every Subaltern or Staff Officer,--2,000 Acres.

To every Non-Commission Officer,--200 Acres .

To every Private Man--50 Acres.

We do likewise authorize and require the Governors and Commanders in Chief of all our said Colonies upon the Continent of North America to grant the like Quantities of Land, and upon the same conditions, to such reduced Officers of our Navy of like Rank as served on board our Ships of War in North America at the times of the Reduction of Louisbourg and Quebec in the late War, and who shall personally apply to our respective Governors for such Grants.

*And whereas it is just and reasonable, and essential to our Interest, and the Security of our Colonies, that the several Nations or Tribes of Indians with whom We are connected, and who live under our Protection, should not be molested or disturbed in the Possession of such Parts of Our Dominions and Territories as, not having been ceded to or purchased by Us, are reserved to them. or any of them, as their Hunting Grounds.--We do therefore, with the Advice of our Privy Council, declare it to be our Royal Will and Pleasure. that no Governor or Commander in Chief in any of our Colonies of Quebec, East Florida. or West Florida, do presume, upon any Pretence whatever, to grant Warrants of Survey, or pass any Patents for Lands beyond the Bounds of their respective Governments. as described in their Commissions: as also that no Governor or Commander in Chief in any of our other Colonies or Plantations in America do presume for the present, and until our further Pleasure be known, to grant Warrants of Survey, or pass Patents for any Lands beyond the Heads or Sources of any of the Rivers which fall into the Atlantic Ocean from the West and North West, or upon any Lands whatever, which, not having been ceded to or purchased by Us as aforesaid, are reserved to the said Indians, or any of them.*

*And We do further declare it to be Our Royal Will and Pleasure, for the present as aforesaid, to reserve under our Sovereignty, Protection, and Dominion, for the use of the said Indians, all the Lands and Territories not included within the Limits of Our said Three new Governments, or within the Limits of the Territory granted to the Hudson's Bay Company, as also all the Lands and Territories lying to the Westward of the Sources of the Rivers which fall into the Sea from the West and North West as aforesaid.*

And We do hereby strictly forbid, on Pain of our Displeasure, all our loving Subjects from making any Purchases or Settlements whatever, or taking Possession of any of the Lands above reserved. without our especial leave and Licence for that Purpose first obtained.

And. We do further strictly enjoin and require all Persons whatever who have either willfully or inadvertently seated themselves upon any Lands within the Countries above described. or upon any other Lands which, not having been ceded to or purchased by Us, are still reserved to the said Indians as aforesaid, forthwith to remove themselves from such Settlements.

And whereas great Frauds and Abuses have been committed in purchasing Lands of the Indians, to the great Prejudice of our Interests. and to the great Dissatisfaction of the said Indians: In order, therefore, to prevent such Irregularities for the future, and to the end that the Indians may be convinced of our Justice and determined Resolution to remove all reasonable Cause of Discontent, We do. with the Advice of our Privy Council strictly enjoin and require. that no private Person do presume to make any purchase from the said Indians of any Lands reserved to the said Indians, within those parts of our Colonies where, We have thought proper to allow Settlement: but that. if at any Time any of the Said Indians should be inclined to dispose of the said Lands, the same shall be Purchased only for Us, in our Name, at some public Meeting or Assembly of the said Indians, to be held for that Purpose by the Governor or Commander in Chief of our Colony respectively within which they shall lie: and in case they shall lie within the limits of any Proprietary Government. they shall be purchased only for the Use and in the name of such Proprietaries, conformable to such Directions and Instructions as We or they shall think proper to give for that Purpose: And we do. by the Advice of our Privy Council, declare and enjoin, that the Trade with the said Indians shall be free and open to all our Subjects whatever. provided that every Person who may incline to Trade with the said Indians do take out a Licence for carrying on such Trade from the Governor or Commander in Chief of any of our Colonies respectively where such Person shall reside. and also give Security to observe such Regulations as We shall at any Time think fit. by ourselves or by our Commissaries to be appointed for this Purpose, to direct and appoint for the Benefit of the said Trade:

And we do hereby authorize, enjoin, and require the Governors and Commanders in Chief of all our Colonies respectively, as well those under Our immediate Government as those under the Government and Direction of Proprietaries, to grant such Licences without Fee or Reward, taking especial Care to insert therein a Condition, that such Licence shall be void, and the Security forfeited in case the Person to whom the same is granted shall refuse or neglect to observe such Regulations as We shall think proper to prescribe as aforesaid.

And we do further expressly conjoin and require all Officers whatever, as well Military as those Employed in the Management and Direction of Indian Affairs, within the Territories reserved as aforesaid for the use of the said Indians, to seize and apprehend all Persons whatever. who standing charged with Treason. Misprisions of Treason. Murders, or other Felonies or Misdemeanors. shall fly from Justice and take Refuge in the said Territory. and to send them under a proper guard to the Colony where the Crime was committed of which they, stand accused. in order to take their Trial for the same.

Given at our Court at St. James's the 7th Day of October 1763. in the Third Year of our Reign.



### Text of Article III, Jay Treaty

It is agreed that it shall at all times be free to His Majesty's subjects, and to the citizens of the United States, and also to the Indians dwelling on either side of the said boundary line, freely to pass and repass by land or inland navigation, into the respective territories and countries of the two parties, on the continent of America, (the country within the limits of the Hudson's Bay Company only excepted.) and to navigate all the lakes, rivers and waters thereof, and freely to carry on trade and commerce with each other. But it is understood that this article does not extend to the admission of vessels of the United States into the seaports, harbours, bays or creeks of His Majesty's said territories; nor into such parts of the rivers in His Majesty's said territories as are between the mouth thereof, and the highest port of entry from the sea, except in small vessels trading bona fide between Montreal and Quebec, under such regulations as shall be established to prevent the possibility of any frauds in this respect. Nor to the admission of British vessels from the sea into the rivers of the United States, beyond the highest ports of entry for foreign vessels from the sea.

The river Mississippi shall, however, according to the treaty of peace, be entirely open to both parties; and it is further agreed, that all the ports and places on its eastern side, to whichsoever of the parties belonging, may freely be resorted to and used by both parties, in as ample a manner as any of the Atlantic ports or places of the United States, or any of the ports or places of His Majesty in Great Britain. All goods and merchandize whose importation into His Majesty's said territories in America shall not be entirely prohibited, may freely, for the purposes of commerce, be carried into the same in the manner aforesaid, by the citizens of the United States, and such goods and merchandize shall be subject to no higher or other duties than would be payable by His Majesty's subjects on the importation of the same from Europe into the said territories.

And in like manner all goods and merchandize whose importation into the United States shall not be wholly prohibited, may freely, for the purposes of commerce, be carried into the same, in the manner aforesaid, by His Majesty's subjects, and such goods and merchandize shall be subject to no higher or other duties than would be payable by the citizens of the United States on the importation of the same in American vessels into the Atlantic ports of the said States.

And all goods not prohibited to be exported from the said territories respectively, may in like manner be carried out of the same by the two parties respectively, paying duty as aforesaid. No duty of entry shall ever be levied by either party on peltries brought by land or inland navigation into the said territories respectively, nor shall the Indians passing or repassing with their own proper goods and effects of whatever nature, pay for the same any impost or duty whatever.

But goods in bales, or other large packages, unusual among Indians, shall not be considered as goods belonging bona fide to Indians.

No higher or other tolls or rates of ferriage than what are or shall be payable by natives, shall be demanded on either side; and no duties shall be payable on any goods which shall merely be carried over any of the portages or carrying places on either side, for the purpose of being immediately reembarked and carried to some other place or places.

But as by this stipulation it is only meant to secure to each party a free passage across the portages on both sides, it is agreed that this exemption from duty shall extend only to such goods as are carried in the usual and direct road across the portage, and are not attempted to be in any manner sold or exchanged during their passage across the same, and proper regulations may be established to prevent the possibility of any frauds in this respect.

As this article is intended to render in a great degree the local advantages of each party common to both, and thereby to promote a disposition favorable to friendship and good neighborhood, it is agreed that the respective Governments will mutually promote this amicable intercourse, by causing speedy and impartial justice to be done, and necessary protection to be extended to all who may be concerned therein.

### Text of Article XXVIII, Jay Treaty

It is agreed that the first ten articles of this treaty shall be permanent, and that the subsequent articles, except the twelfth, shall be limited in their duration to twelve years, to be computed from the day on which the ratifications of this treaty shall be exchanged, but subject to this condition. That whereas the said twelfth article will expire by the limitation therein contained, at the end of two years from the signing of the preliminary or other articles of peace, which shall terminate the present war in which His Majesty is engaged, it is agreed that proper measures shall by concert be taken for bringing the subject of that article into amicable treaty and discussion, so early before the expiration of the said term as that new arrangements on that head may by that time be perfected and ready to take place.

But if it should unfortunately happen that His Majesty and the United States should not be able to agree on such new arrangements, in that case all the articles of this treaty, except the first ten, shall then cease and expire together.

Lastly.

This treaty, when the same shall have been ratified by His Majesty and by the President of the United States, by and with the advice and consent of their Senate, and the respective ratifications mutually exchanged, shall be binding and obligatory on His Majesty and on the said States, and shall be by them respectively executed and observed with punctuality and the most sincere regard to good faith; and whereas it will be expedient, in order the better to facilitate intercourse and obviate difficulties, that other articles be proposed and added to this treaty, which articles, from want of time and other circumstances, cannot now be perfected, it is agreed that the said parties will, from time to time, readily treat of and concerning such articles, and will sincerely endeavor so to form them as that they may conduce to mutual convenience and tend to promote mutual satisfaction and friendship; and that the said articles, after having been duly ratified, shall be added to and make a part of this treaty.

In faith whereof we, the undersigned Ministers Plenipotentiary of His Majesty the King of Great Britain and the United States of America, have signed this present treaty, and have caused to be affixed thereto the seal of our arms.

Done at London this nineteenth day of November, one thousand seven hundred and ninety four.

That no stipulations in any treaty subsequently concluded by either of the contracting parties with any other state or nation, or with any Indian tribe, can be understood to derogate in any manner from the rights of free intercourse and commerce, secured by the aforesaid third article of the treaty of amity, commerce and navigation to the subjects of his Majesty and to the citizens of the United States, and to the Indians dwelling on either side of the boundary—line aforesaid; but that all the said persons shall remain at full liberty freely to pass and repass by land or inland navigation, into the respective territories and countries of the contracting parties, on either side of said boundary—line, and freely to carry on trade and commerce with each other, according to the stipulations of the said third article of the treaty of amity, commerce and navigation.

## Article IX, Treaty of Ghent

The United States of America engage to put an end, immediately after the ratification of the present treaty, to hostilities with all the tribes or nations of Indians with whom they may be at war at the time of such ratification; and forthwith to restore to such tribes or nations, respectively, all the possessions, rights, and privileges which they may have enjoyed or been entitled to in one thousand eight hundred and eleven, previous to such hostilities. Provided always that such tribes or nations shall agree to desist from all hostilities against the United States of America, their citizens and subjects, upon the ratification of the present treaty being notified to such tribes or nations, and shall so desist accordingly. And his Britannic Majesty engages, on his part, to put an end immediately after the ratification of the present treaty, to hostilities with all the tribes or nations of Indians with whom he may be at war at the time of such ratification, and forthwith to restore to such tribes or nations respectively all the possessions, rights, and privileges which they may have enjoyed or been entitled to in one thousand eight hundred and eleven, previous to such hostilities. Provided always that such tribes or nations shall agree to desist from all hostilities against His Britannic Majesty, and his subjects, upon ratification of the present treaty being notified to such tribes or nations, and shall so desist accordingly.

## Article II, United Nations Declaration of Human Rights

Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.

Article XIII, United Nations Declaration of Human Rights

1. Everyone has the right to freedom of movement and residence within the borders of each state.
2. Everyone has the right to leave any country, including his own, and to return to his country.

### Sample Interview Questions

- How would you identify yourself?
- Do you cross the US/Canada border?
  - o Why?
  - o How often?
  - o What do you use to cross (Identification)?
  - o Where do you cross the border?
- Are you aware of the Jay Treaty?
  - o Does this impact your thoughts or practices about crossing the border?
  - o Are you aware of any other treaties?
- What have been your experiences crossing the border?
- What do you know about WHTI?
- Are you planning on changing your cultural practices?
  - o How?
- What changes would you like to see implemented with this policy or with how policies are implemented and designed?
- How would you generalize tribal feelings about WHTI?
- Are there differences between individuals or families in crossing practices?





Figure 1. Coast Salish Region  
(A Stó:lō-Coast Salish Historical Atlas, 2001, Keith Carlson, ed)

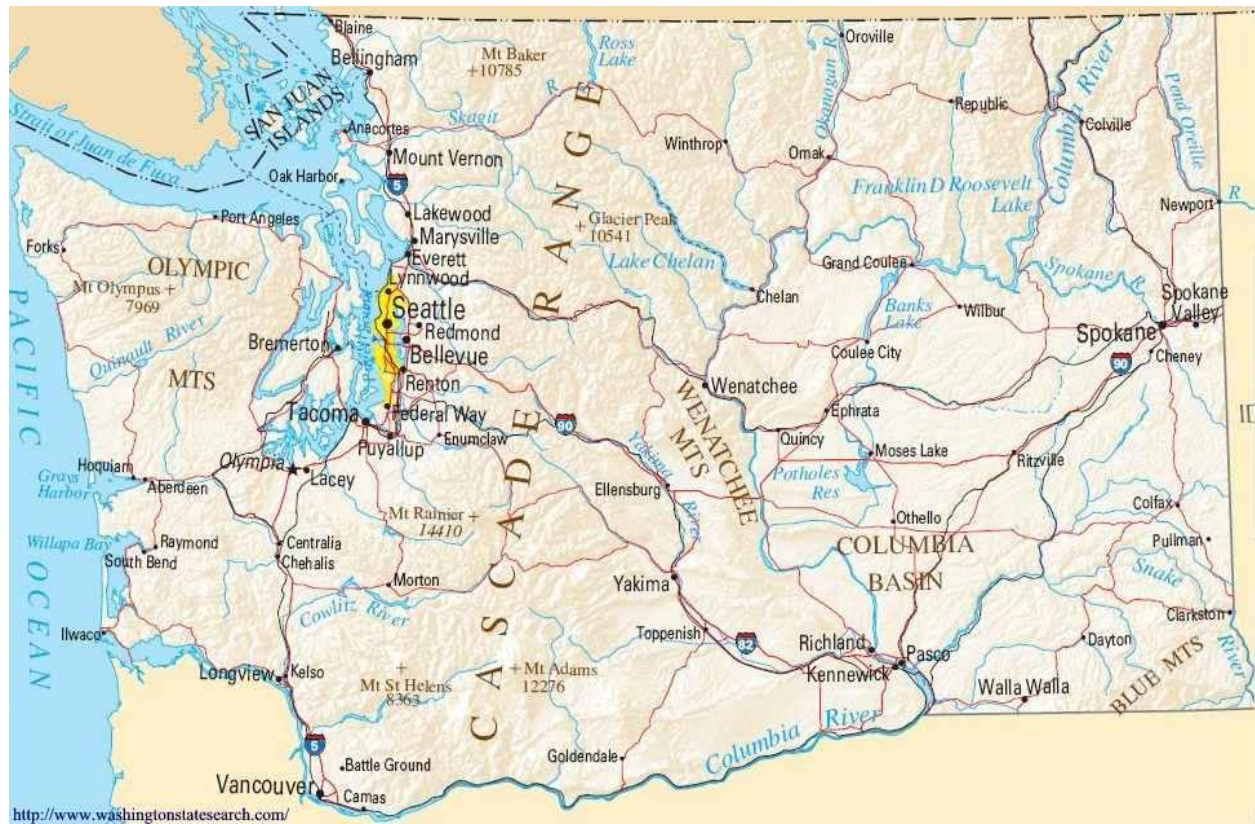


Figure 2. Map of Washington State  
([http://www.nationsonline.org/maps/USA/Washington\\_map.jpg](http://www.nationsonline.org/maps/USA/Washington_map.jpg))



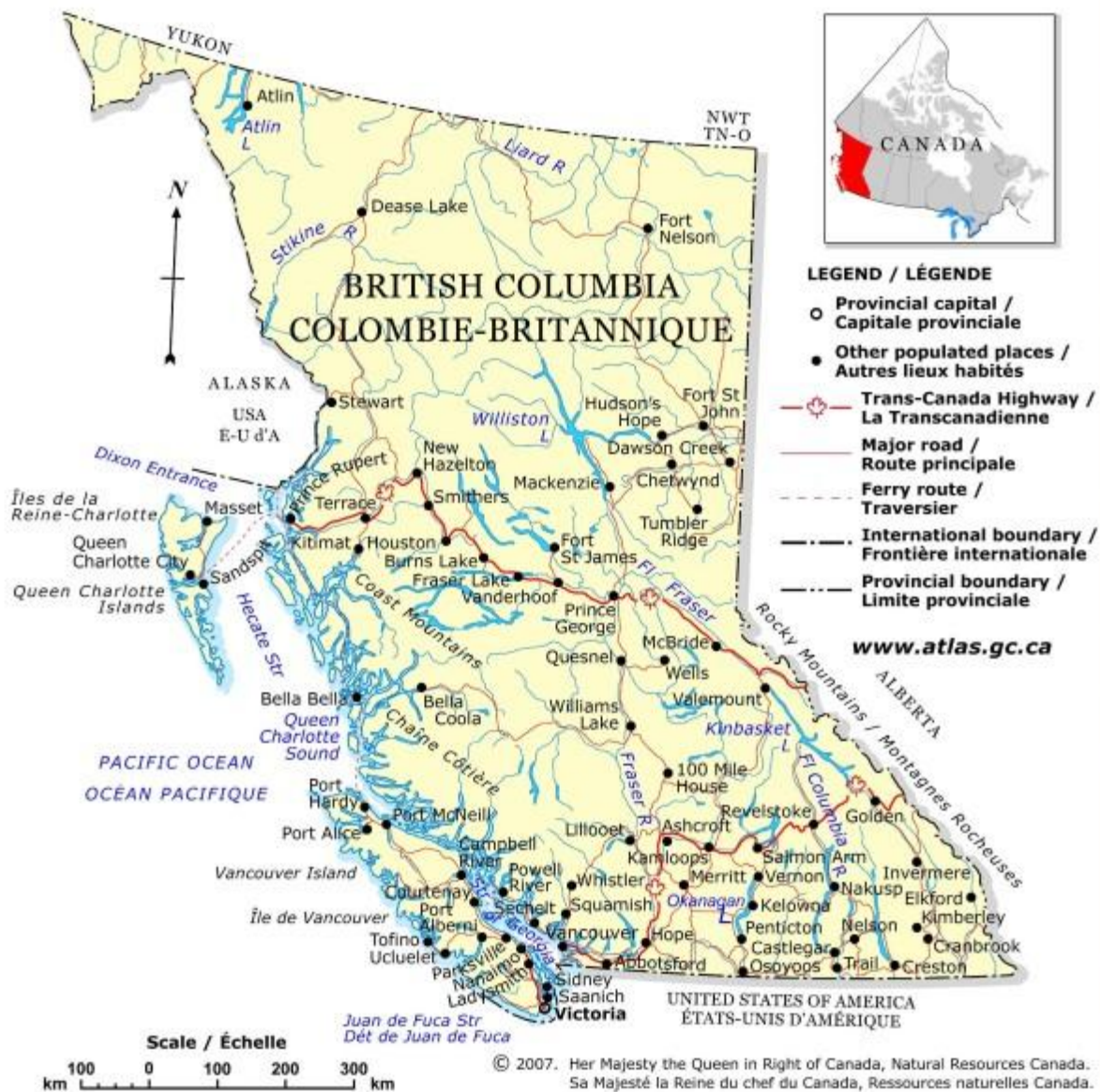


Figure 3. Map of British Columbia  
([http://atlas.nrcan.gc.ca/site/english/maps/reference/provincesterritories/british\\_columbia/map.jpg](http://atlas.nrcan.gc.ca/site/english/maps/reference/provincesterritories/british_columbia/map.jpg))



Figure 4. Topographical Map  
(<http://www.georgiastrait.org/?q=node/650>)



Figure 5. Wayne Suttles' Central Coast Salish Map  
(Suttles 1990: ix)

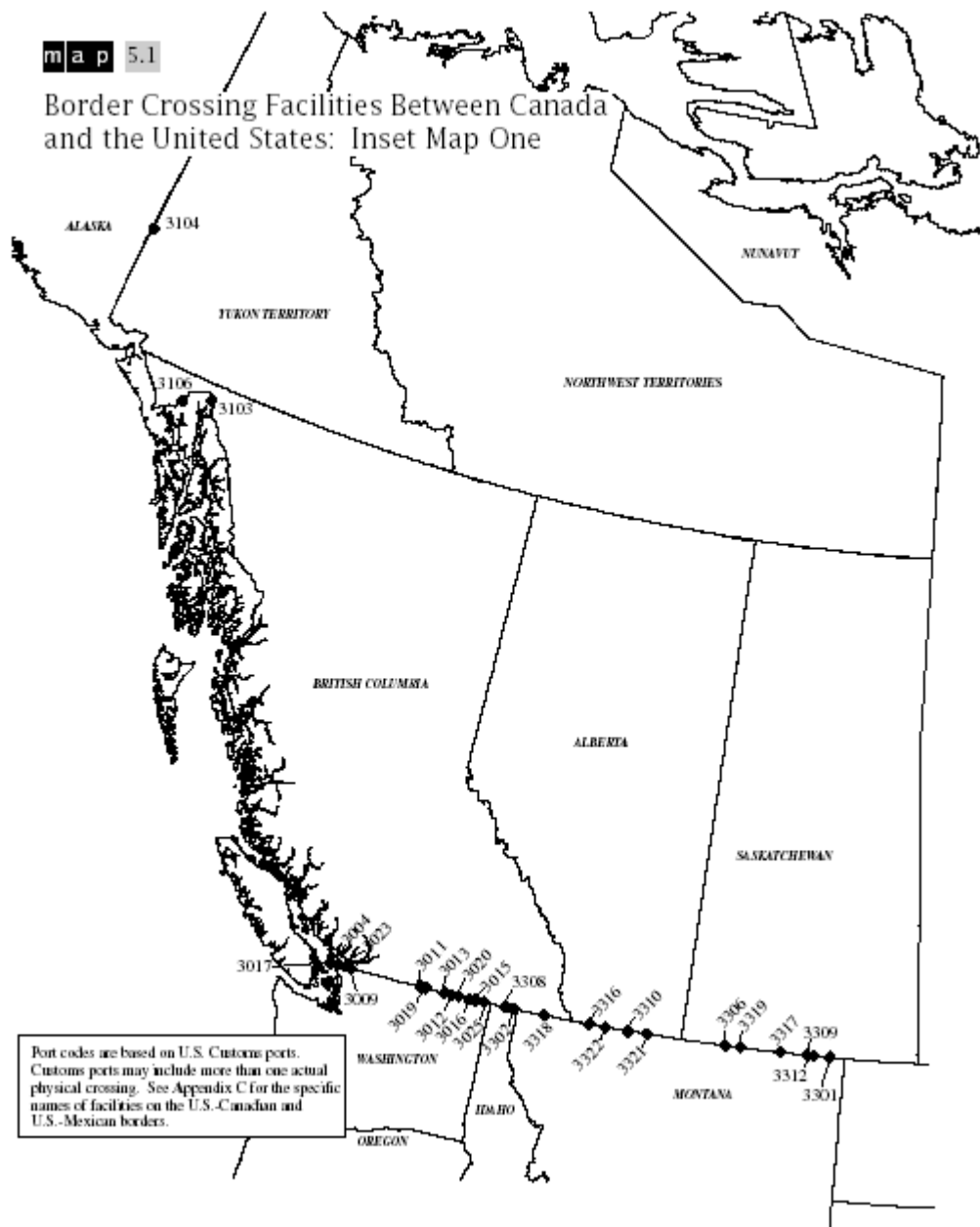


Figure 6  
 International border between western United States and Canada  
 ([http://www.bts.gov/publications/north\\_american\\_transportation\\_in\\_figures/images/map\\_05\\_1.gif](http://www.bts.gov/publications/north_american_transportation_in_figures/images/map_05_1.gif))