

# Reclaiming fire: resistance, resurgence and Indigenous jurisdiction in the climate emergency

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## The T̓silhqot'in National Government\*\*

*Climate-amplified emergencies are vital sites for Indigenous resistance and resurgence, even as climate change compounds layers of colonial oppression. Drawing on the experiences of the T̓silhqot'in Nation before, during and after record-breaking wildfires in the Nation's territory (in British Columbia, Canada), this article describes how the T̓silhqot'in employ strategies of resistance to presumed state authority and resurgence of their own laws and jurisdiction in response to the climate emergency. These record-breaking wildfires vividly illustrate how colonial laws and policies have converged over a century to produce the climate emergency. And yet, dominant discourses around climate change and emergency reproduce Indigenous erasure, vulnerability and marginalization. Counter to these discourses, the T̓silhqot'in Nation has advanced sophisticated emergency responses in relation to the state. Moreover, the wildfires have prompted T̓silhqot'in communities to revitalize deep-seated fire stewardship laws and responsibilities to properly care for the land, wildlife and each other in the face of the accelerating climate crisis. The T̓silhqot'in Nation's experiences reclaiming fire show how Indigenous resurgence provides pathways out of the climate crisis while also attending to its colonial roots and decolonizing the responses to it.*

**Keywords:** Climate change, Indigenous rights, Indigenous jurisdiction, Colonialism, Emergency, Wildfire

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## 1 INTRODUCTION

In 2017, British Columbia (BC), Canada's westernmost province, shattered its record for summer wildfires.<sup>1</sup> Then again in 2018. In the summer of 2021, as a fatal heat dome settled over the Pacific Northwest, a wildfire incinerated the town of Lytton in just 30 minutes. Later the same year, an atmospheric river flooded much of southwestern BC, killing hundreds of thousands of livestock and temporarily severing Metro Vancouver from Canadian transportation networks and supply chains. Indigenous communities were left isolated even longer than others, as highway repairs were slow, evacuations dragged on, and the river systems so many rely on were left inaccessible.<sup>2</sup> Such climate-amplified events now regularly disrupt the rhythm of life in BC. But as Grand Chief Stewart Philip, President of the Union of BC Indian Chiefs, pointed out in a joint call for an indefinite State of Emergency in 2021, 'First Nations continue to bear the brunt of climate change impacts'.<sup>3</sup>

Through health impacts, forced displacement and potentially irreversible changes to the landscape, climate change amplifies decades of colonial policies. The climate crisis is also profoundly juridically disruptive for Indigenous Peoples<sup>4</sup> because it threatens the land and the beyond-human world, which are the literal foundations of Indigenous legal orders. Potawatomi scholar Kyle Whyte explains that climate change is a new wave of colonialism.<sup>5</sup> Greenhouse gases produced largely by and for the benefit of non-Indigenous Peoples are rapidly constraining the worlds in which Indigenous Peoples live, forcing their relocation, disrupting traditional economies and exacerbating health and social impacts. Moreover, during climate-amplified emergencies, such as wildfires, the state often asserts itself – not as a humanitarian response to external threat, but *as* the threat itself. Rationales of urgency and exceptionalism justify emergency actions that are routine to colonialism, usurping Indigenous jurisdiction while imposing further harms and displacement.<sup>6</sup> Climate change is yet another form of colonial containment that diminishes the ability of Indigenous communities to live and govern on their own terms.<sup>7</sup>

1. The BC Wildfire Service publishes annual wildfire season summaries and related statistics: <<https://www2.gov.bc.ca/gov/content/safety/wildfire-status/about-bcws>>.

2. A Smart, 'After the Flood: First Nations along BC's Highway 8 Work on Recovery from Disaster and Trauma' *CBC News* (13 April 2022) <<https://www.cbc.ca/news/canada/british-columbia/shackan-first-nation-highway-8-communities-1.6418296>> accessed 12 May 2025.

3. Union of British Columbia Indian Chiefs (UBCIC), 'FNLC Calls for a State of Emergency Due to Unprecedented Climate Weather Events in BC' (Press release, 16 November 2021) <[https://www.ubcic.bc.ca/fnlc\\_calls\\_for\\_a\\_state\\_of\\_emergency\\_climate\\_weather\\_events](https://www.ubcic.bc.ca/fnlc_calls_for_a_state_of_emergency_climate_weather_events)> accessed 12 May 2025.

4. 'Indigenous Peoples' is an inclusive term for all Indigenous Peoples. Three distinct Indigenous Peoples occupy Canada: First Nations, Métis and Inuit. 'Aboriginal' is a legal term of art in Canada, typically in the context of 'Aboriginal law', the area of Canadian law that is specific to Indigenous Peoples.

5. K Whyte, 'Indigenous Climate Change Studies: Indigenizing Futures, Decolonizing the Anthropocene' (2017) 55(1–2) *English Language Notes* 153–62.

6. K Whyte, 'Against Crisis Epistemology' in B Hokowhitu and others (eds), *Routledge Handbook of Critical Indigenous Studies* (Routledge 2020) 52. See also E Feltes, J Stacey and Tšilhqot'in National Government (TNG), 'Crisis, Colonialism and Constitutional Habits: Indigenous Jurisdiction in Times of Emergency' (2023) 38(1) *Canadian Journal of Law and Society* 1–22.

7. K Whyte, 'Is It Colonial *Déjà vu*? Indigenous Peoples and Climate Injustice' in J Adamson and M Davis (eds), *Humanities for the Environment* (Routledge, New York 2017). Containment

In 2017, the T̓silhqot'in (People of the River) – who have long asserted their sovereignty<sup>8</sup> and hold a unique legal status as the first Indigenous nation to prove Aboriginal title in a Canadian court<sup>9</sup> – experienced a disturbing preview of the current climate emergency. When wildfires raged across the interior of the province, the flames singed the doorsteps of three of the six T̓silhqot'in communities. As BC issued ever-expanding evacuation orders, the Royal Canadian Mounted Police (RCMP) appeared in one of these communities to enforce them. Chief Joe Alphonse refused, relying on inherent jurisdiction as well as powers under the federal Indian Act<sup>10</sup> to implement the community's emergency measures, which differed from those of the state. The RCMP – despite their lack of jurisdiction – threatened to apprehend T̓silhqot'in children unless the Chief 'complied' with the province's evacuation order.<sup>11</sup> The RCMP eventually backed down and violent conflict was avoided, but this confrontation was a stark reminder of the immense state power that can be wielded under a state of emergency.

Indigenous responses to the climate emergency are fundamentally different to state-based approaches. State approaches tend to amplify the colonial conditions that produced the climate crisis in the first place.<sup>12</sup> Just as Indigenous Peoples have always resisted colonialism – resisting the imposition of colonial laws and policies that dispossess Indigenous Peoples of their land and jurisdiction<sup>13</sup> – resistance persists through the climate emergency. Indigenous Peoples respond to climate change in ways that do not centre the state. They respond through the resurgence of their languages, laws, cultural practices and political self-determination on their own terms.<sup>14</sup> As Nishnaabeg thinker Leanne Betasamosake Simpson states, 'resistance and resurgence are not only our response to colonialism, they are our only responsibility in the face of colonialism'.<sup>15</sup>

The 2017 wildfires prompted both sustained resistance and resurgence by the T̓silhqot'in. Through the fires, the Nation collectively enacted its own response – activating its own emergency operations centres, fire crews and emergency social services to displaced members – typically with little understanding or cooperation from provincial frontline responders.<sup>16</sup> Out of the fires, the Nation negotiated an unprecedented agreement with both BC and Canada to advance T̓silhqot'in leadership over emergency management in the territory.<sup>17</sup> Activated by the fires, the communities of

refers to the reserve and reservation systems imposed on Indigenous Peoples in Canada and the United States.

8. General Assembly of the Chilcotin (T̓silhqot'in) Nation, 'A Declaration of Sovereignty' (1983) <<https://tsilhqotin.ca/publications/general-assembly-of-the-chilcotin-nation-a-declaration-of-sovereignty-1983/>> accessed 12 May 2025.

9. *Tsilhqot'in Nation v British Columbia*, 2014 SCC 44.

10. RSC 1985, c I-5.

11. C Verhaeghe, E Feltes and J Stacey, *Nagwedižk'an gwaneš gangu ch'inidžed ganexwilagh: The Fires Awakened Us* (T̓silhqot'in National Government, 2019) <<https://tsilhqotin.ca/publications/the-fires-awakened-us-wildfire-report/>> accessed 12 May 2025.

12. L Simpson, *Dancing on Our Turtle's Back: Stories of Nishnaabeg Re-creation, Resurgence and a New Emergence* (Arbeiter Ring Publishing, Winnipeg 2011) 66.

13. K Ladner and L Simpson, 'This Is an Honour Song' in L Simpson and K Ladner (eds), *This Is an Honour Song: Twenty Years Since the Blockades* (Arbeiter Ring Publishing, Winnipeg, Manitoba 2010) 8.

14. See section 4.2.

15. Simpson, *Dancing on Our Turtle's Back* (n 12).

16. Verhaeghe, Feltes and Stacey (n 11).

17. Collaborative Emergency Management Agreement (CEMA) between the T̓silhqot'in Nation and HM the Queen in Right of Canada and British Columbia (19 February 2018)

Yunešit'in and Xení Gwet'in work to revitalize their own fire stewardship practices, including the historic and ongoing practice of controlled burning<sup>18</sup> in accordance with Tšilhqot'in law.<sup>19</sup> In short, the Tšilhqot'in have resisted the imposition of colonial emergency powers, reasserted their own emergency response and wrested recognition from the state, working to restore their own laws and relations to the land.

Focusing on the experiences of the Tšilhqot'in Nation, this article examines how climate-amplified emergencies are vital sites for Indigenous resistance and resurgence, even as the climate emergency compounds layers of oppression. Section 1 provides a brief background on Indigenous and settler jurisdictional relations in Canada, with a focus on Tšilhqot'in experiences. This examination sets the stage for understanding how the current climate emergency amplifies patterns of oppression and resistance that have long played out in Tšilhqot'in territory. Section 2 turns to the ways in which Indigenous Peoples are characterized in climate and emergency laws, policy and scholarship, drawing on Tšilhqot'in experiences of fire to demonstrate how dominant characterizations of the climate crisis do not attend to Indigenous self-determination but instead shore up the authority of the state. Section 3 squarely addresses the absence of Indigenous law, jurisdiction and self-determination in existing approaches. We show how Tšilhqot'in responses to fire are nuanced strategies of resistance to patterns of erasure and marginalization and how fire has activated a resurgence of Tšilhqot'in fire stewardship laws and responsibilities to the land. In short, this article emphasizes that climate-amplified emergencies are moments in which Indigenous Peoples enact their own distinct responses, assert their own jurisdiction and advance diverse visions of climate governance as distinct from those of the Canadian state.

## 2 INDIGENOUS–SETTLER JURISDICTIONAL RELATIONS IN CANADA

Canadian state responses to the climate emergency stem from a colonial history that has sought to erase and displace Indigenous jurisdiction. Counter to colonial tropes of Indigenous lawlessness, across the whole of the territory now known as Canada and before the arrival of European settlers, 'all Indigenous groups had self-complete, non-state systems of social ordering that were successful enough for them to continue as societies for tens of thousands of years'.<sup>20</sup> The social, political and legal orders of Indigenous Peoples are rich and diverse, just as their experiences of colonialism and strategies for engaging with the Canadian state are distinct and context specific. As this

<[https://www2.gov.bc.ca/assets/gov/environment/natural-resource-stewardship/consulting-with-first-nations/agreements/tng\\_collaborative\\_emergency\\_management\\_agreement\\_signed.pdf](https://www2.gov.bc.ca/assets/gov/environment/natural-resource-stewardship/consulting-with-first-nations/agreements/tng_collaborative_emergency_management_agreement_signed.pdf)> accessed 12 May 2025; Collaborative Emergency Management Agreement (CEMA) between the Tšilhqot'in Nation and HM the Queen in Right of Canada and British Columbia (19 February 2022) <[https://www2.gov.bc.ca/assets/gov/environment/natural-resource-stewardship/consulting-with-first-nations/agreements/tng\\_collaborative\\_emergency\\_management\\_agreement\\_signed.pdf](https://www2.gov.bc.ca/assets/gov/environment/natural-resource-stewardship/consulting-with-first-nations/agreements/tng_collaborative_emergency_management_agreement_signed.pdf)> accessed 12 May 2025.

18. There are many terms for this practice in the literature (e.g., cultural burning). We use Indigenous fire stewardship to refer to the application of Indigenous law to manage fire; the practices of burning fall within that stewardship.

19. W Nikolakis and others, 'Goal Setting and Indigenous Fire Management: A Holistic Perspective' (2020) 29(11) *International Journal of Wildland Fire* 974–82.

20. V Napoleon and H Friedland, 'Indigenous Legal Traditions: Roots to Renaissance' in MD Dubber and T Hörnle (eds), *Oxford Handbook of Criminal Law* (OUP, Oxford 2014).

section will show, the T̓silhqot'in experience colonialism in ways that are common but also particular.

For over a century, the Canadian government has enacted laws and policies that dispossess Indigenous Peoples of their lands and governing authority while forcing the assimilation of Indigenous community members into the Canadian body politic.<sup>21</sup> A central feature of this colonial project was residential schools, the last of which closed only in 1996. The goal of removing children from their communities was explicitly assimilationist: 'to kill the Indian in the child'.<sup>22</sup> St. Joseph's Residential school, where many T̓silhqot'in children were required to attend (alongside children from the Secwépemc, Dakelh and other First Nations), was one of the first Indian residential schools and one of the most notorious.<sup>23</sup> Children were beaten for speaking their languages, fed spoiled food and abused verbally, physically and sexually. Some parents tried to hide their children to keep them from being forcibly enrolled, many children attempted to run away, and many never returned home due to the horrific conditions of these schools.<sup>24</sup> Since at least 2015, settler Canada has been engaged in a public reckoning with this history, sparked in large part by the release of the Final Report from the Truth and Reconciliation Commission (TRC)<sup>25</sup> and subsequent confirmation of the deaths of thousands of Indigenous children through chilling ground radar surveys around former residential schools.<sup>26</sup>

Alongside the loss of land and children, Canada has also incrementally dispossessed Indigenous Peoples of their self-determining authority to steward and care for their territories and communities – in short, their jurisdiction. As the TRC Report documents, 'Canada replaced existing forms of Aboriginal government with relatively powerless band councils whose decisions it could override and whose leaders it could depose'.<sup>27</sup> The T̓silhqot'in, who prior to colonization occupied vast territory of over 6.5 million hectares and defended it forcefully from early settler encroachment, were forced onto small pockets of reserve lands intended to debilitate their systems of law and

21. Truth and Reconciliation Commission (TRC) of Canada, *The Final Report of the Truth and Reconciliation Commission of Canada: Canada's Residential Schools—The History, Part 1*, vols 1, 4 (McGill-Queen's UP, London 2015) <[https://ehprnh2mwo3.exactdn.com/wp-content/uploads/2021/01/Volume\\_1\\_History\\_Part\\_1\\_English\\_Web.pdf](https://ehprnh2mwo3.exactdn.com/wp-content/uploads/2021/01/Volume_1_History_Part_1_English_Web.pdf)> accessed 12 May 2025.

22. Prime Minister Stephen Harper on behalf of the Government of Canada, 'Statement of Apology to Former Students of Indian Residential Schools' (Ottawa, 11 June 2008) <<https://www.rcaanc-cirnac.gc.ca/eng/1100100015644/1571589171655>> accessed 12 May 2025.

23. L. Weir and R. William, *Lha yudir'ih: We Always Find a Way* (Talonbooks, Canada 2023) 66. See also the records for St. Joseph's (BC) at the Indian Residential School History & Dialogue Centre Collections <<https://collections.irshdc.ubc.ca/>> accessed 12 May 2025.

24. *ibid* Weir and William, ch 4.

25. TRC (n 22) vols 1–6. The Commission used the term 'cultural genocide'.

26. Beginning in 2021, work by First Nations to confirm these deaths and recover their loved ones has been made public. The Williams Lake First Nation identified approximately 150 burial sites around the St. Joseph's Mission Residential School. Updates are available on the Nation's website <<https://www.wlfn.ca/about-wlfn/sjm-investigation/>> accessed 12 May 2025. Tl'etinqox is currently leading an investigation of a fatal fire at the Anahim Indian Hospital. See M. Lamb-Yorski, 'Historical Tragic Hospital Fire Being Investigated at Tl'etinqox First Nation West of Williams Lake' *Williams Lake Tribune* (15 April 2022) <<https://www.wltribune.com/news/historical-tragic-hospital-fire-being-investigated-at-tletinqox-first-nation-west-of-williams-lake-5541981>> accessed 12 May 2025.

27. TRC (n 22) vols 1, 3.

governance. The entrenched ‘habit’<sup>28</sup> of hollowing out Indigenous jurisdictional orders while consolidating jurisdiction in the hands of the federal and provincial governments is central to the story of Canadian settler colonialism.<sup>29</sup>

Despite the individual, collective and intergenerational trauma inflicted by residential schools and the broader suite of assimilationist measures, Indigenous languages, cultures and laws persist. In the language of the Tšilhqot’in, *lha yudit’ih* – we will always find a way.<sup>30</sup> Meanwhile, Indigenous political movements have forced state recognition at the national and provincial levels. In 1982, Canada patriated its Constitution, a process that initially ignored Indigenous Peoples and treaty relationships. Sustained Indigenous advocacy resulted in the addition of Section 35 to the Constitution Act 1982, affirming the distinctive constitutional status of Indigenous Peoples in Canada.<sup>31</sup> However, while Section 35 recognizes and affirms Aboriginal and treaty rights, it initially did little to address jurisdiction.<sup>32</sup> For example, in 2014, the Tšilhqot’in Nation became the first Indigenous nation to win a declaration of aboriginal title in Canadian law. While recognizing the Nation’s collective ownership of a portion of its traditional territory, even the title declaration sidestepped the issue of jurisdiction.<sup>33</sup> After more than 40 years of litigation and negotiation of Section 35 rights, the courts are only now engaging this question.<sup>34</sup>

The stakes of this ongoing pattern of colonial dispossession and Indigenous resistance are amplified by the climate emergency.<sup>35</sup> Despite the developments noted above, in practice, Canadian laws and policies continue to assert control over land, constraining or outright ignoring Indigenous rights, title and jurisdiction. The past two decades have seen Indigenous communities at the front lines of opposition to new fossil fuel infrastructure approved by Canadian governments – numerous oil pipeline projects connected to the Alberta oil sands, coal and liquified natural gas projects have been flashpoints for Indigenous resistance and direct action.<sup>36</sup> In some instances, this action has been successful; in most, the result is criminalization, with the state rolling out new laws and tactics for policing Indigenous land defenders in support of fossil fuel

28. Feltes, Stacey and TNG (n 6).

29. S Pasternak, *Grounded Authority: The Algonquins of Barriere Lake against the State* (University of Minnesota Press, Minneapolis, MN 2017).

30. Weir and William (n 23).

31. See the special issue of *BC Studies*, ‘The Constitution Express: A 40-Year Retrospective’ (winter 2021/22), which examines whether this new constitutional status has resulted in meaningful gains in the lives of Indigenous Peoples.

32. Feltes, Stacey and TNG (n 6).

33. G Christie, ‘Who Makes Decisions over Aboriginal Title Lands?’ (2015) 48(3) *UBC Law Review* 743–49.

34. See *Reference re An Act Respecting First Nations, Inuit and Métis Children, Youth and Families*, 2024 SCC 5.

35. An official Canadian report notes that the north is warming at twice the rate of the global average. See E Bush and DS Lemmen (eds), *Canada’s Changing Climate Report* (Government of Canada, Canada 2019) 5–6 <[https://natural-resources.canada.ca/sites/www.nrcan.gc.ca/files/energy/Climate-change/pdf/CCCR\\_FULLREPORT-EN-FINAL.pdf](https://natural-resources.canada.ca/sites/www.nrcan.gc.ca/files/energy/Climate-change/pdf/CCCR_FULLREPORT-EN-FINAL.pdf)> accessed 12 May 2025.

36. DN Scott, ‘The Networked Infrastructure of Fossil Capitalism: Implications of the New Pipeline Debates for Environmental Justice in Canada’ (2013) 43 *Revue générale de droit* 11, available at <<https://dx.doi.org/10.2139/ssrn.2271320>> accessed 12 May 2025; A Spice, ‘Fighting Invasive Infrastructures: Indigenous Relations against Pipelines’ (2018) 9 *Environment and Society* 40–56; S Pasternak and others, ‘Infrastructure, Jurisdiction, Extractivism: Keywords for Decolonizing Geographies’ (2023) 101 *Political Geography* 102763.

infrastructure.<sup>37</sup> In short, the climate emergency is a critical site of both state oppression and Indigenous resistance. As the First Nations Leadership Council has repeatedly emphasized, the lives and collective existence of Indigenous Peoples are at stake.<sup>38</sup>

### 3 THE CLIMATE EMERGENCY IN CANADA

The climate emergency continues – and is a product of – over a century of colonial history in Canada. This part examines existing literature that identifies how dominant narratives in climate and emergency law and policy erase, marginalize and position Indigenous Peoples as vulnerable subjects. We do this to highlight how law and policy in BC, and in Canada more broadly, reproduce these dominant framings. How these sources frame the problem has a direct effect on relevant responses.<sup>39</sup> Erasure, vulnerability and marginalization underlie the assumption that the state is in the best position to define and implement climate emergency responses. Such an assumption forecloses possibilities for Indigenous Peoples to enact their own responses to the climate emergency.

#### 3.1 Climate

Whyte describes climate change as colonial *déjà vu* – not a new existential threat, but rather an intensification of colonially produced environmental change.<sup>40</sup> Like Whyte, Heather Davis and Zoe Todd point out that climate change constitutes a form of *recolonization* rather than a departure from the original colonial project of exploiting and transforming the land, dispossessing Indigenous territories and dismantling Indigenous institutions.<sup>41</sup>

Recent experiences of wildfire in British Columbia illustrate this *déjà vu*. BC was the first province to ban Indigenous burning practices in 1874, anticipating a suite of assimilation policies that further prohibited Indigenous cultural practices and ceremonies.<sup>42</sup> Until that point, some form of controlled landscape burning was practiced by First Nations throughout virtually all of BC.<sup>43</sup> The T̓silhqot'in had long used fire to

37. Canada has received numerous rebukes from the UN Committee on the Elimination of Racial Discrimination. See 'UN Committee Issues 3rd Rebuke to BC and Canada over Policing of Indigenous Land Defenders' *CBC News* (11 May 2022) <<https://www.cbc.ca/news/canada/british-columbia/un-committee-elimination-racial-discrimination-indigenous-coastal-gas-link-trans-mountain-1.6407798>> accessed 12 May 2025. The Province of Alberta enacted constitutionally dubious legislation in response to rail blockades in support of land defenders: Critical Infrastructure Defence Act, SA 2020, c C-32.7.

38. UBCIC, 'FNLC Calls for a State of Emergency' (n 3).

39. C Callison, 'Refusing More Empire: Utility, Colonialism and Indigenous Knowing' (2021) 3–4 *Climatic Change* <<https://link.springer.com/article/10.1007/s10584-021-03188-9>> accessed 12 May 2025.

40. Whyte, 'Is it Colonial *Déjà vu*' (n 7).

41. H Davis and Z Todd, 'On the Importance of a Date, or, Decolonizing the Anthropocene' (2017) 16(4) *ACME: An International Journal for Critical Geographies* 761–80.

42. See K Boutsalis, 'The Art of Fire: Reviving the Indigenous Craft of Cultural Burning' *The Narwhal* (20 September 2020) <<https://thenarwhal.ca/indigenous-cultural-burning/>> accessed 12 May 2025.

43. NJ Turner, "'Time to Burn': Traditional Use of Fire to Enhance Resource Production by Aboriginal Peoples in British Columbia' in R Boyd (ed), *Indians, Fire, and the Land in the*

promote biodiversity, cultivate berries and medicine and to prevent out-of-control fires by burning off dry grasses, dead leaves and other fire fuel left on the ground.<sup>44</sup> When the provincial government introduced the Forest Act in 1912,<sup>45</sup> it doubled down on the policy of total fire suppression – a policy that would span the entire 20th century, transforming the landscape, dismantling First Nations' fire stewardship, criminalizing community members<sup>46</sup> and prioritizing 'forest wealth'<sup>47</sup> (i.e., logging revenue) for the province. A 1969 interview with St'at'imc Elder Baptiste Ritchie put it plainly: 'If you go to burn then you get into trouble because the white men want to grow trees'.<sup>48</sup> This long-standing approach to fire suppression – in combination with the increased risk of wildfire as a result of climate change – set the stage for year upon year of record-breaking fires across the province.

Current fires, then, are reverberations of centuries-old colonial policies. As climate change literally ignites the fuel left by colonial fire suppression, it further limits the ability of Indigenous Peoples to flourish in accordance with their own legal and political orders. For the T̓silhqot'in, wildfire has destroyed medicine and berry grounds.<sup>49</sup> It has also compounded climate impacts on the once abundant and life-sustaining salmon runs that they steward according to their inherent rights and responsibilities.<sup>50</sup> Fire also directly threatens the vulnerable moose population, which the T̓silhqot'in rely upon for food security.<sup>51</sup>

Despite the fact that climate change stands as a reinvigorated form of colonial power over Indigenous law and jurisdiction, Indigenous Peoples generally feature in climate research only as passive and vulnerable subjects of the state. This framing follows a

*Pacific Northwest* (Oregon State UP, Corvallis 1999); M Lewis, AC Christianson and M Spinks, 'Return to Flame: Reasons for Burning in Lytton First Nation, British Columbia' (2018) 116(2) *Journal of Forestry* 143–50; AC Christianson and others, 'Centering Indigenous Voices: The Role of Fire in the Boreal Forest of North America' (2022) 8 *Current Forestry Reports* 257–76, 266–69.

44. Nikolakis and others (n 19); R Dawkins, 'Why Hazard Reduction Burning Is No Smokescreen' *Commonwealth Scientific and Industrial Research Organization* (5 October 2021) <<https://www.csiro.au/en/news/all/articles/2021/october/hazard-reduction-burn>> accessed 12 May 2025; K Hoffman and others, 'The Right to Burn: Barriers and Opportunities for Indigenous-Led Fire Stewardship in Canada' (2022) 7(1) *Facets* 464–81; W Nikolakis and RM Ross, 'Rebuilding Yunešit'in Fire (*Qwen*) Stewardship: Learnings from the Land' (2022) 98(1) *Forestry Chronicle* 36–43.

45. FA MacDonald, 'A Historical Review of Forest Protection in British Columbia' (1929) 5(4) *Forestry Chronicle* 31–35, 32.

46. There are accounts of T̓silhqot'in people being fined imprisoned for burning that circulate in the community, though they have not been documented in the literature.

47. See ads for and references to the Forestry Convention in the *Daily Colonist* from 1 September 1912 (with thanks to Tom Swanky for sharing his archival research).

48. Turner (n 43) 189.

49. Verhaeghe, Feltes and Stacey (n 11) 88.

50. See 'Fisheries' on the website of the T̓silhqot'in National Government <<https://tsilhqotin.ca/our-territory/fisheries/>> accessed 12 May 2025. For a summary of wildfire impacts on salmon, see Pacific Salmon Foundation, 'The Burning Issue: Wildfires and Salmon' (Pacific Salmon Foundation, 13 June 2024) <<https://psf.ca/blog/the-burning-issue-wildfires-and-salmon/>> accessed 12 August 2025.

51. Verhaeghe, Feltes and Stacey (n 11) 63. See also the T̓silhqot'in Nation Emergency Moose Protection Law (*Dechen Ts'ededilhtan*) 2018 <[https://tsilhqotin.ca/wp-content/uploads/2024/05/Law\\_2018\\_09\\_05TsilhqotinEmergencyMooseProtectionLaw.pdf](https://tsilhqotin.ca/wp-content/uploads/2024/05/Law_2018_09_05TsilhqotinEmergencyMooseProtectionLaw.pdf)> accessed 12 May 2025.



broadier trend identified by Lindroth and Sinevaara-Niskanen, in which perceptions of vulnerability circumscribe Indigenous subjectivity and the terms of Indigenous inclusion across the international sector, but particularly within environmental and human rights debates.<sup>52</sup> Since at least the mid-2000s, when climate advocacy turned toward human rights,<sup>53</sup> the unique position of Indigenous Peoples – including their disproportionate vulnerability to the impacts of wildfire<sup>54</sup> – has been a significant throughline in the story of the global climate crisis.<sup>55</sup> But despite a growing awareness of and ‘care’<sup>56</sup> for Indigenous concerns, scholars and policymakers rarely portray Indigenous Peoples as self-determining polities with diverse knowledges and expertise for living on a burning planet.<sup>57</sup>

Researchers closely analysing the United Nations Intergovernmental Panel on Climate Change (IPCC) Assessment Reports identify two such discursive trends: the reports portray Indigenous Peoples as passive, vulnerable subjects to climate change and/or as sources of Indigenous knowledge that can supplement scientific data.<sup>58</sup> While the most recent IPCC report acknowledges the inherent rights of Indigenous Peoples and the need for their inclusion in decision-making<sup>59</sup> – the result of decades of advocacy by Indigenous researchers and communities – there is little suggestion of a paradigm shift. Broader analyses of climate research reveal similar trends minimizing

52. M Lindroth and H Sinevaara-Niskanen, *Global Politics and Its Violent Care for Indigeneity: Sequels to Colonialism* (Springer, New York 2017) 60.

53. Petition to the Inter-American Commission on Human Rights Seeking Relief from Violations Resulting from Global Warming Caused by Acts and Omissions of the United States (7 December 2005) <[https://www.ciel.org/Publications/ICC\\_Petition\\_7Dec05.pdf](https://www.ciel.org/Publications/ICC_Petition_7Dec05.pdf)> accessed 12 May 2025; A Sinden, ‘Climate Change and Human Rights’ (2007) 27(2) *Journal of Land Resources & Environmental Law* 255–71; J Knox, ‘Linking Human Rights and Climate Change at the United Nations’ (2009) 33(2) *Harvard Environmental Law Review* 477–99.

54. G Wigtil and others, ‘Places Where Wildfire Potential and Social Vulnerability Coincide in the Coterminous United States’ (2016) 25(8) *International Journal of Wildland Fire* 896–908.

55. CJ Cuomo, ‘Climate Change, Vulnerability, and Responsibility’ (2011) 26(4) *Hypatia* 690–714; K Lynn, K MacKendrick and EM Donoghue, ‘Social Vulnerability and Climate Change: Synthesis of Literature’ (USDA Forest Service General Technical Report PNW-GTR-838, 2011) <[https://www.fs.usda.gov/pnw/pubs/pnw\\_gtr838.pdf](https://www.fs.usda.gov/pnw/pubs/pnw_gtr838.pdf)> accessed 12 May 2025; SR Singh, MR Eghdami and S Singh, ‘The Concept of Social Vulnerability: A Review from Disasters Perspectives’ (2014) 1(6) *International Journal of Interdisciplinary and Multidisciplinary Studies* 71–82.

56. Lindroth and Sinevaara-Niskanen, *Global Politics and Its Violent Care for Indigeneity* (n 52).

57. Good examples do exist. See, e.g., DJ Martinez and others, ‘Indigenous Fire Futures: Anticolonial Approaches to Shifting Fire Relations in California’ (2023) 14(1) *Environment & Society* 142–61.

58. P Rashidi and K Lyons, ‘Democratizing Global Climate Governance? The Case of Indigenous Representation on the Intergovernmental Panel on Climate Change (IPCC)’ (2021) 20(8) *Globalizations* 1312–27.

59. Intergovernmental Panel on Climate Change (IPCC), ‘Climate Change 2023’ (AR6 Synthesis Report, 2023) <<https://www.ipcc.ch/report/ar6/syr/>> accessed 12 May 2025; R Carmona and others, ‘Analysing Engagement with Indigenous Peoples in the Intergovernmental Panel on Climate Change’s Sixth Assessment Report’ (2023) 2(29) *npj Climate Action*, available at <<https://www.nature.com/articles/s44168-023-00048-3>> accessed 12 May 2025.

Indigenous jurisdiction and marginalizing Indigenous knowledge within western decision-making frameworks.<sup>60</sup>

Canada's response to the climate crisis reflects these tendencies. On the one hand, the state perpetuates the climate crisis through its continued approval of new fossil fuel infrastructure. In this register, Canada's response is openly colonial: exploiting Indigenous lands for the extraction of fossil fuels and erasing Indigenous jurisdiction, backed by Canadian law and law enforcement.<sup>61</sup> This extractive logic plays out in T̓silhqot' in territory in the form of industrial-scale forestry, which relies on fossil fuel consumption and strips the landscape of its full climate mitigating potential.<sup>62</sup>

On the other hand, Canada has begun to formally acknowledge the disproportionate effect of the climate crisis on Indigenous Peoples, echoing the language of vulnerability frequently used at the United Nations.<sup>63</sup> In its first ever judgment squarely addressing climate change, the Supreme Court cited the 'profound effects on Indigenous peoples' as part of its reasoning for upholding federal carbon pricing legislation in the face of what might otherwise be provincial jurisdiction.<sup>64</sup> However, such policies and decisions remain fundamentally centred on assumptions of Indigenous vulnerability and marginalization. The Court's constitutional judgment in this case grappled explicitly with questions of jurisdiction, and yet mention of Indigenous jurisdiction was nowhere to be found. Indigenous rights and references to Section 35 were also absent. Instead, Indigenous Peoples were referenced only as vulnerable victims of climate change and passive recipients of climate action taken by the Canadian state.

This narrative is paralleled by a trend of nominally channelling Indigenous knowledge into state-led initiatives. The Canadian Net-Zero Emissions Accountability Act,<sup>65</sup> for example, requires the Minister of the Environment to take into account Indigenous knowledge at various points, but again, there is no mention of Indigenous jurisdiction, law or governance. In a similar vein, BC's greenhouse gas accountability legislation does not mention Indigenous Peoples but for a requirement of representation on an advisory committee.<sup>66</sup>

Acknowledging the vulnerability of Indigenous Peoples and identifying the relevance of their knowledge is better than erasure or outright criminalization of those

60. See ES Cameron, 'Securing Indigenous Politics: A Critique of the Vulnerability and Adaptation Approach to the Human Dimensions of Climate Change in the Canadian Arctic' (2012) 22(1) *Global Environmental Change* 103–14; D McGregor, 'Indigenous Knowledge Systems in Environmental Governance in Canada' (2021) 5(1) *KULA: Knowledge Creation, Dissemination, and Preservation Studies*, available at <<https://doi.org/10.18357/kula.148>> accessed 12 May 2025.

61. See S Pasternak and I Ceric, "'The Legal Billy Club': First Nations, Injunctions, and the Public Interest' (2023) 1(1) *TMU Law Review* 7–31. This is not unique to Canada. See N Rogers, 'Climate Violence and the Word' (2023) 14(2) *Journal of Human Rights and the Environment* 144–68.

62. WR Moomaw, SA Masino and E Faison, 'Intact Forests in the United States: Proforestation Mitigates Climate Change and Serves the Greatest Good' (2019) 2(27) *Frontiers in Forests and Global Change* 3–5, available at <<https://www.frontiersin.org/journals/forests-and-global-change/articles/10.3389/ffgc.2019.00027/full>> accessed 12 May 2025.

63. Lindroth and Sinevaara-Niskanen, *Global Politics and Its Violent Care for Indigeneity* (n 52) 61.

64. *References re Greenhouse Gas Pollution Pricing Act*, 2021 SCC 11 [206].

65. SC 2021, c 22.

66. See *Greenhouse Gas Pollution Pricing Act*, SC 2018, c 12, s 186, Preamble; *Greenhouse Gas Reduction Targets Amendment Act* 2018, SBC 2018, c 32, s 1.

defending their territories. But such acknowledgments contain only minimal, tacit admission of the responsibility of colonial laws and policies for bringing about this vulnerability in the first place. Instead, the colonial state is assumed to be an absolute authority, in charge of defining the crisis and supplying the solution. The suggestion that state jurisdiction need only be applied more equitably simply bolsters the prevailing dominance of state authority and perpetuates ongoing dispossession of Indigenous lands and jurisdiction. Ultimately, on the issue of Indigenous jurisdiction, dominant narratives of the climate crisis provide little remedy.

### 3.2 Emergency

The 2017 wildfire, as a specific instantiation of the climate emergency, is one in a series of emergencies experienced by the T̓silhqot'in since colonization. In describing the resilience of the T̓silhqot'in as a people, Chief Francis Laceese observes that they seem to move from one emergency to the next.<sup>67</sup> Despite these very real lived experiences, the story of Indigenous Peoples in scholarly literature about emergency powers has been one of erasure. Much of this literature has traditionally focused on political emergencies (war, insurrection and other threats to national security) and on the role of emergency powers in liberal democracies.<sup>68</sup> But as governments worldwide increasingly declare states of emergency in response to extreme floods, storms, droughts and fire, the notion of climate emergency has gained traction in mainstream law, policy and theory.<sup>69</sup> Yet as Luft observes, environmental disasters should also be an important site for Indigenous studies because disaster 'happens in the medium of land, water and air, which is the original medium of oppression, or colonization, for Native people'.<sup>70</sup>

Indeed, the role of race and colonialism in the concept of emergency rule is significant if not outright constitutive. Contrary to the conventional Western emphasis on the exceptional, temporary nature of emergency powers, most Indigenous Peoples have experienced emergency rule as an ongoing tool of governance – the actual rule, not the exception.<sup>71</sup> It is precisely colonial states of 'exception' that enabled the creation of legal regimes that legitimized occupation, dispossession and racialized violence.<sup>72</sup>

Canadian law created a permanent state of exception in 1876 through the Indian Act, entrenching an explicitly racialized and discriminatory regime that governs all facets of First Nations life, from 'cradle-to-grave', with no end date.<sup>73</sup> As paternalistic

67. T̓silhqot'in National Government, 'Learning 2: *T̓silhqox biny ts'eman*' in *T̓silhqox Landslide: A Series of Learnings for T̓silhqot'in Governance* <<https://tsilhqotin.ca/publications/tsilhqox-landslide-a-series-of-learnings-for-tsilhqox-governance-learning-2-tsilhqox-biny-tse-man/>> accessed 12 May 2025, 4.

68. See important (but limited) works by NC Lazar, *States of Emergencies in Liberal Democracies* (CUP, Cambridge 2009); O Gross and F Ní Aoláin, *Law in Times of Crisis* (CUP, Cambridge 2009); K Loevy, *Emergencies in Public Law* (CUP, Cambridge 2016).

69. J Stacey, 'The Public Law Paradoxes of Climate Emergency Declarations' (2022) 11(2) *Transnational Environmental Law* 291–323.

70. R Luft, 'Governing Disaster: The Politics of Tribal Sovereignty in the Context of (Un) natural Disaster' (2016) 39(5) *Ethnic and Racial Studies* 802–20, 804.

71. N Hussain, *The Jurisprudence of Emergency: Colonialism and the Rule of Law* (University of Michigan Press, Ann Arbor, MI 2003); J Reynolds, *Empire, Emergency and International Law* (CUP, Cambridge 2017) 38.

72. *ibid* Reynolds.

73. M Morden, 'Theorizing the Resilience of the Indian Act' (2016) 59(1) *Canadian Public Administration* 113–33.

as legislation can get, the Indian Act nonetheless inadvertently recognizes the distinct legal and political character of Indigenous Peoples by holding them apart from – as an exception to – state legality.<sup>74</sup>

As Indigenous Peoples and Canada work to untangle the Indian Act,<sup>75</sup> scholarship on the colonial use of emergency powers continues to resonate in the contemporary context. Jurisdictional complexity in Canadian law and policy creates a ‘grey hole’<sup>76</sup> for First Nations, who are positioned both inside and outside the Canadian emergency management system, often resulting in the worst of both worlds. Within Canadian law, emergency management falls under provincial jurisdiction, while on reserve it is a matter of federal and band jurisdiction. But Canada contracts out emergency management services on reserve to provinces and third-party organizations.<sup>77</sup> In most instances, these are wildly inadequate,<sup>78</sup> setting the stage for extreme vulnerability to the next threat. Moreover, these arrangements are organized in grey policy spaces, as Canadian emergency management legislation largely ignores Indigenous Peoples. The federal Emergencies Act<sup>79</sup> does not mention Indigenous Peoples, and until new legislation was enacted in 2023, neither did BC’s long-standing Emergency Program Act.<sup>80</sup> In this way, emergency law and policy ensnare Indigenous Peoples in Canadian emergency management systems, bringing communities into the fold while depriving them of the full rights and benefits that come with that system.

The dynamics of exceptionalism and emergency are especially visible in the T̓silhqot’ in history of colonization and resistance. For the T̓silhqot’ in, as for many other Indigenous Peoples, public health has been both an impetus for and a mechanism of emergency rule. In 1862, an epidemic of smallpox, which historical records indicate may have been deliberately introduced by settlers into First Nations communities,<sup>81</sup> killed an estimated two thirds of the T̓silhqot’ in population.<sup>82</sup> In addition to catastrophic

74. HK Stark, ‘Criminal Empire: The Making of the Savage in a Lawless Land’ (2016) 19(4) *Theory & Event*, available at <<https://muse.jhu.edu/article/633282>> accessed 12 May 2025; S Collis, ‘W(h)ither the Indian Act? How Statutory Law Is Rewriting Canada’s Settler Colonial Formation’ (2021) 112(1) *Annals of the American Association of Geographers* 167–83.

75. D Beazley, ‘Decolonizing the Indian Act: No One Likes It So Why Is It So Hard to Change?’ (Canadian Bar Association, 18 December 2017) <<https://nationalmagazine.ca/en-ca/articles/law/in-depth/2017/decolonizing-the-indian-act>> accessed 12 May 2025. See also M-E Kelm and KD Smith, *Talking Back to the Indian Act: Critical Reading in Settler Colonial Histories* (University of Toronto Press, Toronto 2018); M Aquash, ‘First Nations in Canada: Decolonization and Self-Determination’ (2013) 19(2) *In Education* 120, available at <[https://www.researchgate.net/publication/351147371\\_First\\_Nations\\_in\\_Canada\\_Decolonization\\_and\\_Self-Determination](https://www.researchgate.net/publication/351147371_First_Nations_in_Canada_Decolonization_and_Self-Determination)> accessed 12 May 2025.

76. D Dyzenhaus, ‘*Schmitt v Dicey*: Are States of Emergency Inside or Outside the Legal Order?’ (2008) 27 *Cardozo Law Review* 2005–40.

77. This happens through bilateral service provision agreements to which the Indigenous communities are not parties, do not consent and are not consulted on.

78. Auditor General of Canada, *Report 8: Emergency Management in First Nations Communities–Indigenous Services Canada* (2022) <[https://www.oag-bvg.gc.ca/internet/docs/parl\\_oag\\_202211\\_08\\_e.pdf](https://www.oag-bvg.gc.ca/internet/docs/parl_oag_202211_08_e.pdf)> accessed 12 May 2025.

79. RSC 1985, c 22 (4th Supp).

80. RSBC 1996, c 111.

81. T Swanky, *The Smallpox War against the Haida* (Dragon Heart Enterprises, Canada 2023).

82. E Feltes, J Stacey and C Verhaeghe, *Dada Nentsen Gha Yatastfg: T̓silhqot’ in in the Time of Covid* (T̓silhqot’ in National Government, 2021) <<https://tsilhqotin.ca/publications/dada-nentsen-gha-yatastfg-covid-19-report/>> accessed 12 May 2025.

consequences for T̓silhqot'in families and culture, this crisis also set the stage for an altogether different but related one: the T̓silhqot'in War. In 1864, a crew assembled by private gold rush investors attempted to build a road through T̓silhqot'in territory. In the course of ongoing disputes between settler roadworkers and the T̓silhqot'in, a roadworker threatened to deliberately infect the T̓silhqot'in with smallpox. In the wake of the disease's recent devastation on the Nation, such a threat was not to be taken lightly. It was the final straw that led the T̓silhqot'in Nation to enact its own emergency response. T̓silhqot'in warriors attacked and killed the road crew and surveilled their territory to prevent settlers from entering their land. Eventually, colonial officials made a peace offering and invited the T̓silhqot'in war chiefs to peace talks. When the war chiefs arrived in good faith, they were arrested, convicted of murder and hanged.<sup>83</sup>

This history has continuing repercussions. As Chief Roger William poignantly describes:

Today, if you lose a person, it's hard on the community, especially the family. Imagine 1862—your whole Nation is impacted, and then two years later, it's the T̓silhqot'in War ... it is so deeply ingrained because of how we were treated from the smallpox to the T̓silhqot'in war to the Indian Act to the residential school. Many leaders say we've got a lotta arrows in our back.<sup>84</sup>

His words not only highlight the overlapping nature and interconnectedness of these historical emergencies but also underscore colonial state power as the throughline to present-day trauma within the Nation.

When the BC government declared a state of emergency in response to the wildfires in 2017, the situation was primed to extend the colonial overreach that had begun with emergencies generations before. The province's state of emergency was treated as clearing the land of 'ordinary' laws, including Section 35, and ushered in cadres of new bureaucrats, triggering deep-seated colonial assumptions about Indigenous Peoples being vulnerable subjects of state management.<sup>85</sup> Tribal Chair Chief Joe Alphonse testified: 'the fires this summer were never a threat to our community. The bureaucracy and the governments ... were [the] threat'.<sup>86</sup> Each of the five states of emergency that were eventually declared between 2017 and 2021 gave the executive branch sweeping powers derived from wartime emergency legislation, erasing Indigenous jurisdiction<sup>87</sup>

83. This history is concisely recounted in Prime Minister Justin Trudeau's statement on the exoneration of the T̓silhqot'in war chiefs (26 March 2018) <<https://youtu.be/izLNDPqm-dys?si=wJBZiXT3QvatwOul>> accessed 29 March 2025. The Premier of British Columbia also apologized to the Nation and exonerated the chiefs in 2014.

84. R William, 'When Smallpox Hit Our People' in L Weir and Chief R William (eds), *Lha Yudit'ih: We Always Find a Way* (Talonbooks, Canada 2023) 22; R William, 'Arrows' in L Weir and Chief R William (eds), *Lha Yudit'ih: We Always Find a Way* (Talonbooks, Canada 2023) 55.

85. Feltes, Stacey and TNG (n 6). See also C Kirk, 'The Sound of Silence: First Nations and British Columbia Emergency Management' (LLM thesis, University of Saskatchewan 2015) 12–13, who helpfully characterizes this lack of rights recognition as the 'obligation gap' in emergency management.

86. House of Commons, Standing Committee on Indigenous and Northern Affairs, *Evidence*, 42-1, no 85 (23 November 2017) at 1110.

87. An independent review of the 2017 wildfires made many recommendations on Provincial-First Nations relations, including the need to establish First Nations as 'true partners' in emergency management and to recognize First Nations' jurisdiction over emergencies in their traditional territory. See G Abbott and M Chapman, 'Addressing the New Normal: 21<sup>st</sup>-Century Disaster Management in British Columbia' (Report and Findings of the BC Flood and

and entangling First Nations in Canadian emergency management systems that undermined the ability of nations to protect themselves.<sup>88</sup> Year after year, these states of emergency snapped state officials back into old colonial habits.<sup>89</sup>

The climate emergency thus has its roots in techniques of colonial oppression: erasure, marginalization and dispossession of lands and jurisdiction. Exposing the colonial drivers of state policy and practice is critical work, often overlooked in the rush to frame climate change as an emergency.<sup>90</sup> But this critique is, on its own, incomplete. We must also understand Indigenous responses to the climate emergency, resistance to colonial measures, and, importantly, how inherent rights and jurisdiction – rooted in different relationships to land and one another – lead to fundamentally different pathways through the climate crisis.

#### 4 INDIGENOUS RESISTANCE AND RESURGENCE

Speaking from his Anishinaabe perspective about colonization, Lawrence Gross writes: ‘Native Americans have seen the end of their respective worlds . . . Just as importantly, though, Indians survived the apocalypse’.<sup>91</sup> At times, existential threats have prompted Indigenous Peoples to declare their own states of emergency. In 1980, the Union of BC Indian Chiefs declared a state of emergency in response to Canada’s casual erasure of Indigenous jurisdiction in its plan to patriate and amend the Constitution.<sup>92</sup> Countless other states of emergency have been declared by Indigenous communities across the country in response to devastating colonial policies: states of emergency for drinking water, food security, youth suicide and toxic drug deaths. These declarations of local emergency by Indigenous governments are pleas to access support and resources from other governments, but they are frequently ignored.<sup>93</sup>

In 2019, the Assembly of First Nations declared a climate emergency, recognizing that ‘the climate crisis constitutes a state of emergency for our lands, waters, animals and peoples’.<sup>94</sup> In 2021, BC Regional Chief Terry Teegee elaborated further: ‘[T]he

Wildfire Review, 2018) Recommendations 1–5 <<https://www2.gov.bc.ca/assets/gov/public-safety-and-emergency-services/emergency-preparedness-response-recovery/embc/bc-flood-and-wildfire-review-addressing-the-new-normal-21st-century-disaster-management-in-bc-web.pdf>> accessed 12 May 2025.

88. Auditor General of Canada (n 78).

89. Feltes, Stacey and TNG (n 6).

90. Martinez and others (n 57) 142. See also JM Bacon, ‘Settler Colonialism as Eco-social Structure and the Production of Colonial Ecological Violence’ (2019) 5(1) *Environmental Sociology* 59–69; Callison (n 39).

91. L Gross, *Anishinaabe Ways of Knowing and Being* (Routledge, London 2016) 33.

92. Union of BC Indian Chiefs (UBCIC), ‘State of Emergency: Trudeau’s Constitution Would Wipe Out Aboriginal Rights’ (1980) 3(7) *Indian World* 4. See also SA Nickel, *Assembling Unity: Indigenous Politics, Gender, and the Union of BC Indian Chiefs* (UBC Press, Canada 2019) 151.

93. A Woods, ‘A First Nations Cry for Help Gets Little Government Attention’ *Toronto Star* (25 April 2016); SM Wiebe, ‘Reframing a Community Crisis: An Intersectional Discourse Analysis of Media Responses to State of Emergency Declarations in Attawapiskat’ (2024) 19(1) *Critical Policy Studies* 137–55.

94. Assembly of First Nations, ‘Study on “An Act Respecting Transparency and Accountability in Canada’s Efforts to Achieve Net-Zero Greenhouse Gas Emissions by the Year 2050 (Bill C-12)”’ (Submission to the House of Commons Standing Committee on Environment and Sustainable

ongoing repercussions of human-caused climate change ... threaten our existence'.<sup>95</sup> Robert Phillips of the First Nations Summit added that 'it's time for First Nations to lead the work required to protect our communities for our future generations'.<sup>96</sup>

Indigenous expertise – the experience of living amidst ongoing crisis in a dramatically changing world – is the focus of this section of the present article. Here we describe how the T̓silhqot'in enact concurrent strategies of resistance and resurgence in the face of the climate crisis.

#### 4.1 Resistance

As Simpson and many others note, Indigenous resistance in North America spans more than 400 years. In many ways, survival – physical, cultural, legal and political – is an enduring act of resistance.<sup>97</sup> Ongoing practices of resistance are grounded in specific communities and their distinctive relational contexts.<sup>98</sup> Writing about Indigenous and racialized communities in the Global South, John Reynolds observes that resistance to emergency legislation has often been 'part of a principled opposition' to the violence of colonial rule and, where successful, this resistance has resulted in 'a loosening of the structures of oppression'.<sup>99</sup> The potential, then, is for Indigenous resistance to 'bring about a real state of emergency for centres of institutional power, and [thus] a potential springboard towards the radical transformation of local and global governance structures'.<sup>100</sup>

Saptarishi Bandopadhyay describes how, through an emergency, the state works to reproduce itself in a way that manages and controls the perception and experience of the emergency (and in so doing re-entrenches its own authority).<sup>101</sup> But as Corey Snelgrove and Matt Wildcat explain in a different context, the 'reproduction of colonial power is never guaranteed'.<sup>102</sup> Since emergencies are moments when the jurisdictional apparatus of the state is under strain, emergencies are especially important opportunities for effective Indigenous resistance. Considered from these critical perspectives, Indigenous responses to emergency offer entirely different approaches than do frames of vulnerability, marginalization and supplemental knowledge. Instead, Indigenous scholars and leaders emphasize responses that are dynamic, context-specific and

Development, 17 May 2021) <<https://www.ourcommons.ca/Content/Committee/432/ENVI/Brief/BR11355346/br-external/AssemblyOfFirstNations-e.pdf>> accessed 12 May 2025.

95. UBCIC, 'FNLC Calls for a State of Emergency' (n 3).

96. *ibid.*

97. *ibid.* 15.

98. S Hunt/Tl̓alilila'ogwa and LB Simpson, 'Thinking through Resurgence Together: A Conversation' in H Kiiwetinepinesiiik Stark, A Craft and HK Aikau (eds), *Indigenous Resurgence in an Age of Reconciliation* (University of Toronto Press, Toronto 2023). See also E Brink, AM Vargas Falla and E Boyd, 'The Law of the Four Poles: Legal Pluralism and Resistance in Climate Adaptation' (2025) 59 *Law & Society Review* 50–81.

99. Reynolds (n 71) 284.

100. *ibid.* 287.

101. S Bandopadhyay, *All Is Well: Catastrophe and the Making of the Normal State* (OUP, Oxford 2022). Disasters, in his view, are not 'governed' or 'managed', which assumes authority; they are subjects of 'conservation'.

102. C Snelgrove and M Wildcat, 'Political Action in the Time of Reconciliation' in Kiiwetinepinesiiik Stark, Aimée Craft and Hōkūlani K Aikau (eds), *Indigenous Resurgence in an Age of Reconciliation* (University of Toronto Press, Toronto 2023) 161.

relational, resisting the assumed authority of state emergency systems through the exercise of Indigenous responsibilities.

T̓silhqot'in experiences with fire offer a complex and nuanced example of just this. During and after the 2017 wildfires, the T̓silhqot'in resisted. They resisted the unlawful application of a provincial evacuation order, as well as colonial threats to apprehend T̓silhqot'in children.<sup>103</sup> They resisted using provincial evacuation centres, which mirror the institutionalized settings of residential schools, instead relying on their own evacuation measures.<sup>104</sup> They resisted RCMP evacuation roadblocks by relying on detailed knowledge of back roads.<sup>105</sup> T̓silhqot'in fire crews even resisted orders from provincial fire chiefs to stand down, in one instance breaking rank to fight fires all night, saving homes and infrastructure in the community of Yunešit'in.<sup>106</sup> And in so doing, they resisted the trope of Indigenous vulnerability widely found in research on and responses to the climate crisis.

Their resistance was grounded in T̓silhqot'in experiences with wildfire and their own inherent jurisdiction in relation to the lands and each other. As Tribal Chair Chief Joe Alphonse describes:

We have a long history of fighting fires. We live in the T̓silhqot'in. We're in a fire zone. This isn't going to be the last fire that my community is ever going to face. ... Generation after generation, we learn how to deal and how to look for it.<sup>107</sup>

All six T̓silhqot'in communities activated their own emergency responses, with operation centres that attended to the specific needs of their differently situated communities. Community members monitored the fires and suppressed new fires in remote locations.<sup>108</sup> The Nation produced its own fire maps, which were so detailed and timely that both T̓silhqot'in and non-T̓silhqot'in locals relied on them. The T̓silhqot'in resisted by not assuming that BC or Canada would supply solutions. They worked through the jurisdictional grey zones generated by BC and Canada's emergency management processes. They pushed back against colonial assumptions, sometimes undertaking significant risks to protect their land and people.<sup>109</sup>

In the immediate aftermath of the fires, the T̓silhqot'in National Government compelled the Canadian state to recognize its leadership by negotiating the first agreement of its kind in Canada. The Collaborative Emergency Management Agreement (2018, renewed in 2022) represents a remarkable coming together of three orders of government (BC, Canada and T̓silhqot'in), committing to full collaboration in support of T̓silhqot'in jurisdiction in emergency management. The Agreement was signed on the heels of Canada's long-overdue exoneration of the T̓silhqot'in chiefs murdered during the T̓silhqot'in War,<sup>110</sup> opening the door to new relationships grounded in trust and

103. We learned that the RCMP had taken preparatory steps by having one Councillor – without her knowing the intention – identify which houses had children occupants. Verhaeghe, Feltes and Stacey (n 11) 67.

104. *ibid* 6, 50, 58.

105. *ibid* 59.

106. *ibid* 55.

107. Evidence to Standing Committee on Indigenous and Northern Affairs (n 86).

108. Xení Gwet'in members protected Teztan Biny (Fish Lake). Verhaeghe, Feltes and Stacey (n 11) 85.

109. Feltes, Stacey and TNG (n 6) 16.

110. Exoneration occurred in the House of Commons in March 2018. See Trudeau's 2018 exoneration statement (n 83). CEMA was signed the following month. See Indigenous Services



communication. In the Agreement, the T̓silhqot'in are acknowledged as experts, true partners and leaders; assumptions of vulnerability and supplemental knowledge are nowhere to be found. Instead, BC and Canada express their desire to learn together with the T̓silhqot'in.<sup>111</sup> The three parties articulate reciprocal obligations to work respectfully with one another and commit to coordinated decision-making.<sup>112</sup> As such, the Agreement displaces the automatic imposition of Canadian state authority in T̓silhqot'in territory and formalizes the resistance of the T̓silhqot'in people.<sup>113</sup>

## 4.2 Resurgence

In the T̓silhqot'in language, '*Nagwedik'an Gwaneš gangu ch'inidzed ganexwilagh*'. The fires awakened us. This statement, which is the title of the T̓silhqot'in National Government's wildfire report,<sup>114</sup> expresses a sense of activation and renewal that has been broadly theorized as Indigenous *resurgence*. Indigenous scholars stress that resurgence is not an abstract concept but rather a description of the deep, pragmatic and relational work by Indigenous Peoples to recover, revitalize and reinstate Indigenous languages, education, laws, cultural practices and political self-determination on their own terms. As Russell Myers Ross, former Chief of Yunešit'in, explains: 'we're just trying to re-invigorate something that's always within us'.<sup>115</sup> And as Leanne Betasamosake Simpson writes in her Anishinaabe context:

We need to be able to articulate in a clear manner our visions for the future, for living as *Indigenous Peoples* in contemporary times ... . We need to do this on our own terms, without the sanction, permission or engagement of the state, Western theory or the opinions of Canadians. In essence, we need to not just figure out who we are; we need to re-establish the processes by which we live who we are within the current context we find ourselves.<sup>116</sup>

One way to understand resistance and resurgence in the emergency context is that resistance practices push back against questions about *who* gets to decide, while resurgence is about *how* we should act.<sup>117</sup> At times, these concepts work together; indeed, resurgence can be a powerful and vital form of resistance, even if the point is not

Canada, 'Canada, British Columbia and the T̓silhqot'in Nation Announce Signing of Tripartite Collaborative Emergency Management Agreement' (Press release, 14 April 2018) <<https://www.canada.ca/en/indigenous-services-canada/news/2018/04/canada-british-columbia-and-the-tsilh-qotin-nation-announce-signing-of-tripartite-collaborative-emergency-management-agreement.html>> accessed 12 May 2025.

111. *ibid* Indigenous Services Canada press statement.

112. Collaborative Emergency Management Agreement (CEMA) (n 17) art 1.c.

113. This is not a quick fix, to be sure. Rather, it is framework for continuing to shift the relationships between the T̓silhqot'in and the Canadian state. For the challenges that emerged during the early stages of the COVID-19 pandemic in spite of the Collaborative Emergency Management Agreement, see Feltes, Stacey and Verhaeghe (n 82); Feltes, Stacey and TNG (n 6).

114. Verhaeghe, Feltes and Stacey (n 11).

115. Gathering Voices Society, 'Fighting Fire with Fire: Rebuilding the Art of Indigenous Fire Keeping' (Video, 2019) 2:54 <<https://www.gatheringvoices.com/partnerships-and-projects/indigenous-fire-stewardship-program>> (accessed 12 March 2025).

116. Simpson, *Dancing on Our Turtle's Back* (n 12) 17.

117. See, for instance, G Christie, 'Indigeneity and Sovereignty in Canada's Far North: The Arctic and Inuit Sovereignty' (2011) 110(2) *South Atlantic Quarterly* 329–46, on resisting second-wave colonialism, which closes off possible futures and imagination through definitions and normative frames (e.g., sovereignty).

to directly confront the state. The resurgence of Indigenous jurisdiction *refuses* state power, as Mohawk Audra Simpson theorizes, by simply defaulting to Indigenous authority instead.<sup>118</sup> But legal scholarship on emergencies undermines the work of resurgence by fixating on the *who* question first and foremost – who gets to decide what is an emergency and how best to respond.<sup>119</sup> Emergency management literatures also focus on roles and responsibilities, seeking out clear divisions of labour in order to foster coordinated and timely action.<sup>120</sup> But as YELKATTE Robert Clifford, who draws from WSÁNEĆ laws, reminds, ‘by becoming too focused on who gets to do what, we may inadvertently lose sight of what our responsibilities ... entail’.<sup>121</sup>

This sense of responsibility was the impetus for two of the six T̓silhqot’in communities to launch a sustained fire stewardship program in the wake of the wildfires:<sup>122</sup> ‘We didn’t want to have it happen again. ... This was an opportunity to relive what our ancestors have been doing for hundreds of years ... and also mitigate future disasters’, former Yunešit’in Chief Russell Myers Ross explains.<sup>123</sup>

T̓silhqot’in burns ‘activate the landscape’.<sup>124</sup> In the early spring, when fire risk is low, the dead grass burns away slowly, revealing fresh green growth underneath. The practice has also activated the *deni* (the T̓silhqot’in people) and their responsibilities to the *nen* (land). Since 2019, the Yunešit’in and Xeni Gwet’in communities have been applying fire to the land, employing their own language, ceremony, protocols and social values.<sup>125</sup> They have established multiple, overlapping research projects to document and analyse their results, including impacts on carbon management, inventory of vegetation, return of wildlife, knowledge transfer and community well-being.<sup>126</sup> These records build the case for what T̓silhqot’in people already know to be right relationships with their land.

These efforts are a powerful example of *how* to act in the face of climate emergency. Participants in the fire stewardship programs articulate their work as a revitalization of T̓silhqot’in law. They speak of a commitment to bringing back ‘traditional laws’ and the ‘law of the land’ as motivation.<sup>127</sup> Importantly, they do not see this resurgence of fire law in isolation. Instead, it is about ‘advancing a holistic land stewardship approach encompassing their whole territory ... [to] restore the health of the land’.<sup>128</sup> Fire,

118. A Simpson, *Mohawk Interruptus: Political Life across the Borders of Settler States* (Duke UP, Durham, NC 2014).

119. For detailed discussion of this scholarship, see Loevy (n 68).

120. N Kapucu, T Arslan and F Demiroz, ‘Collaborative Emergency Management and National Emergency Management Network’ (2010) 19(4) *Disaster Prevention and Management* 452–68.

121. RY Clifford, ‘WSÁNEĆ Legal Theory and the Fuel Spill at SELEKTEŁ (Goldstream River)’ (2016) 61(4) *McGill Law Journal* 755–93, 787.

122. While initial plans were laid prior, the 2017 wildfires dramatically underscored its need.

123. Quoted in A Follett Hosgood, ‘Ancient Fire Prevention Practices, Reignited’ *The Tyee* (Vancouver, 16 May 2022).

124. Gathering Voices Society video (n 115) 1:21 (Victor Steffenson).

125. W Nikolakis and RM Ross, ‘Lighting the Path Forward: Understanding Social Value from Indigenous Fire (*Qwen*) Stewardship’ in W Nikolakis and R Moura da Veiga (eds), *Social Value, Climate Change and Environmental Stewardship: Insights from Theory and Practice* (Springer International, Cham 2023) 105. ‘The T̓silhqot’in word for fire translates to “lightening the load off the land,” an Elder tells the group’: Boutsalis (n 42).

126. See the ‘Partnerships + Projects’ webpage from the Gathering Voices Society <[www.gatheringvoices.com/partnerships-and-projects](http://www.gatheringvoices.com/partnerships-and-projects)> accessed 10 April 2025.

127. Nikolakis and others (n 19) 979.

128. *ibid.*

then, is a critical piece of what is ultimately a territorial, jurisdictional and, indeed, sovereign, resurgence.

Despite the sense of partnership surrounding the Collaborative Emergency Management Agreement, the provincial government has sent mixed messages with respect to the T̓silhqot'in fire stewardship program. Since 2021, the British Columbia Wildfire Service (BCWS) and the T̓silhqot'in have experimented with collaborative burns on 'Crown' lands.<sup>129</sup> Yet communities are expected to provide burn plans for provincial approval – a bureaucratic process that is rarely completed during the window when conditions are safe to apply fire to the land.<sup>130</sup>

Reforms under the Wildfire Act<sup>131</sup> could support Indigenous-led fire stewardship across the province, yet the risk remains that minor reforms would simply insert Indigenous fire knowledge into colonial governance structures. As Martinez and others argue, 'respect for Indigenous fire sovereignty – not only Indigenous fire knowledge – is essential for actualizing just fire futures'.<sup>132</sup> Any genuine reform must begin from a recognition of First Nations' inherent jurisdiction and authority to enact their own stewardship laws.<sup>133</sup> At the constitutional level, for Indigenous Peoples to have a right to steward fire according to their own sovereignty would require a reorientation of Section 35 beyond the practice of specific cultural activities to address the jurisdictional dimensions of rights. On this front, recent developments in Section 35 litigation show tentative promise.<sup>134</sup>

Given this confluence of legal developments and the stakes of the climate emergency, Canadian law may well align in new ways with the resurgence of Indigenous jurisdiction. However, as Dene political theorist Glen Coulthard argues, tactical engagement with the legal and political systems of the Canadian state must be grounded in 'Indigenous normative lifeways'. It is only through the 'refashioning of the best of Indigenous legal and political traditions', he writes, that Indigenous Peoples 'have a hope of surviving our strategic engagements with the colonial state with integrity'.<sup>135</sup> Through acts of resistance and resurgence during and after the 2017 wildfires, the T̓silhqot'in have harnessed the aspects of their deep-rooted legal and political traditions that are attuned to governing through crisis and change.

129. Nikolakis and Ross, 'Lighting the Path Forward' (n 125) 108. In describing this partnership, Nikolakis and Ross also note that Crown lands – i.e., public land controlled by federal or provincial governments – are 'contested lands'.

130. Hoffman and others (n 44).

131. SBC 2004, c 31; Wildfire Regulation, BC Reg 38/2005 s 23.1. This reform partially implements recommendations made by the independent review that was initiated by the province after the 2017 wildfires. See Abbott and Chapman (n 87) 96–97 (Rec 75/Strategic Shift #9).

132. Martinez and others (n 57) 144.

133. BC's new emergency management legislation (2023) attempts to align with the UN Declaration on the Rights of Indigenous Peoples. However, it falls short of embedding free, prior, and informed consent as the new decision-making norm: J Stacey, 'Confronting Modern Disaster? British Columbia's New Emergency and Disaster Management Act' (2025) 57(2) UBC Law Review 615–50.

134. See *Reference re An Act* (n 34); *R c Montour* 2023 QCCS 4154.

135. GS Coulthard, *Red Skin, White Masks: Rejecting the Colonial Politics of Recognition* (University of Minnesota Press, Minneapolis, MN 2014) 179.

## 5 CONCLUSION

Strategies of resistance and resurgence of Indigenous laws and jurisdiction challenge the dominant narratives of Indigenous Peoples as vulnerable or marginalized subjects of climate change and emergencies. Appreciating the climate emergency as a layer of colonialism points to both the long histories of Indigenous resistance to existential threats and the rich futures of Indigenous Peoples rooted in their own relational responsibilities. The T̓silhqot̓in Nation's recent experiences with fire draw attention not only to the role of resistance and resurgence in the climate emergency but also to the ways that emergency responses can be a conduit for better relations with settler governments and with the land. T̓silhqot̓in fire stewardship, as an instantiation of T̓silhqot̓in jurisdiction, helps to dig us all out of the climate crisis while also attending to its colonial roots and decolonizing its responses.

## DISCLOSURE STATEMENT

The authors have a long-standing T̓silhqot̓in-led research partnership. TNG represents the six T̓silhqot̓in communities to advance their right to self-determination. Myers Ross is employed as a fire practitioner with the Gathering Voices Society, an Indigenous-led NGO that facilitates environmental stewardship programs to empower Indigenous Peoples to directly address ecological degradation and create sustainable livelihood opportunities for community members. Stacey, Feltes and Myers Ross also have Law Foundation of British Columbia funding to support the revitalization of T̓silhqot̓in fire stewardship laws with the Gathering Voices Society.

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