

INDIGENOUS LEGAL ORDERS AND THE COMMON LAW
PAPER 6.2

Weaving Together Our Future: The Interaction of Haida Laws to Achieve Respectful Co-Existence

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WEAVING TOGETHER OUR FUTURE: THE INTERACTION OF HAIDA LAWS TO ACHIEVE RESPECTFUL CO-EXISTENCE¹

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I. Part I: Introduction

When we are faced with the task of identifying the relevant indigenous laws and key principles that arise from indigenous peoples, we must turn to oral histories and in particular, origin stories.²

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- 1 *gid7ahl-Gudsllaay lalaxaaygans*, Terri-Lynn Williams-Davidson, White Raven Law Corporation. The author thanks Stuart Rush, QC for his helpful comments and support with this paper, and the Council of the Haida Nation for their inspiring nation-building approach to reconciliation.
- 2 A beautiful example of how oral histories can shape dispute resolution mechanisms is the Navajo Peace-Making process. At Window Rock, Arizona, Phil Bluehouse explained the origin stories, and the fact that first came sound, then light, and so on. He explained that the word for “Hello” in Navajo is “*yah'teh*” meaning “piercing the universe,” and is a constant reminder that every thought and word ‘pierces the universe,’ has consequences and brings about change.

In the Haida Nation there are three kinds of oral histories: (1) *K'aygaanga* or *K'aygaang* which describes origin stories, before human beings inhabited this realm; (2) *K'ayaagang* or *K'iyaagang* which are lineage histories that generally follow *K'aygaanga*; and (3) *gi'ablGalaang* or *gya.ablaang* which describe more recent events.³ In this paper, I will provide examples of oral traditions and the art of the Haida Nation that have guided the interaction of Haida laws in the process of reconciliation.

II. Oral Traditions

A. Origin Stories Define the Shape of Indigenous Laws

Beginning with one small, but significant moment in the Raven Travelling series—the epic oral histories of the Haida Nation—Raven was circling the place that would become Haida Gwaii.⁴ In the ocean near Ninistints near the southwestern tip of Haida Gwaii, Raven saw a reef with supernatural beings heaped together. There was not enough land for all of them, and the strongest ones were on the reef, and weaker ones clung to the stronger. They were without structure as if they did not have backbones. From here, Raven continues in his travels, eventually creating Haida Gwaii and the mainland, and bringing light to the world, and other items of value to human beings.⁵

In the above oral history, we learn a fundamental law for the Haida Nation: we are nothing without the land. The land and ocean define who we are, and if the land and sea changes, we change.⁶ While this is a fundamental law common to many indigenous peoples, it is especially instructive to the Haida Nation since this was the first account of Haida Gwaii before we inhabited these islands more than 10,000 years ago. All future laws flow from this law. In more recent times, the Haida Nation constructed a governance structure (described in the next section) that ensures that this fundamental law is respected.

When we look to other principles arising from the Raven Travelling *K'aygaanga*, we see that Raven's 'travels' involve constantly striving to balance what he would like to be with his true character. For instance, Raven would like to demonstrate the characteristics of those who are "*yah Gid*" (one worthy of respect) by eating little, thereby keeping food for others, but instead he is insatiable and avaricious. Therefore, we learn that our personal journey and challenge is one of striving to find balance in our lives—between greed and benevolence, ego and selflessness. As an indigenous nation, our challenge is to strive to achieve a sustainable and respectful co-existence with both the land and sea as well as with new settlers to our territories.

The lineage and more recent histories are also instructive for dreaming our future, the topic of this panel at this conference.

3 See Enrico, J., *Skidegate Haida Myths and Histories* (Queen Charlotte Islands Museum Press: Skidegate, 1995), at 4. This reference includes the southern and northern dialects for each word, but for ease of reference the southern word will be used throughout this paper.

4 "Islands of the People," previously known as the Queen Charlotte Islands, British Columbia, Canada.

5 See Swanton, J.R. *The Jesup North Pacific Expedition: Contributions to the Ethnology of the Haida*, (E.J. Brill: New York, 1905) and other publications in that series, and Enrico, J., *Skidegate Haida Myths and Histories* (Queen Charlotte Islands Museum Press: Skidegate, 1995).

6 The current President of the Haida Nation, Guujaaw, has embodied and respected this law so well that it could be viewed as his personal manifesto.

B. K'ayaagang and gi'ahlGalaang: Lineage and More Recent Histories

The Haida Nation resides at the edge of Canada, on the islands of Haida Gwaii. The original Haida name for Haida Gwaii means “Bringing out of Concealment from the Supernatural Beings.” This means, that our islands came into this realm when *xaaydaGaay* began occupation of these islands. At that juncture in our history, it became important to articulate our laws. Elders tell us that representatives of all clans gathered on a mountain to define all the laws necessary for our existence with each other and with Haida Gwaii.⁷

One of the areas where we have also needed to apply our laws is in our relationship with the Crown. The Haida were involved and lead⁸ the Indian Land Rights movement culminating in the 1920s and the development of the Native Brotherhood in the 1930s. In this time period, people who were *yabGid*—those raised to be leaders—became community leaders and Band Council chiefs.⁹ These leaders followed traditional protocols and worked with elders and hereditary chiefs to govern village matters.

In 1969, my paternal grandfather, the Hereditary Chief of Skidegate made a speech that created the roots for the formation and operation of a new national governance institution, the Council of the Haida Nation. In this speech, Chief Louis Collinson made reference to the strength that trees gain from their neighbours and their intertwined roots, and made an analogy to the people and communities of Haida Gwaii.¹⁰ The teaching from Chief Skidegate was that our strength and power comes from working together, including with those who have set down roots in Haida Gwaii more recently and have become part of the Haida Gwaii landscape.

This teaching flows from two sources. The first is the potlatch laws of the Haida Nation, which requires clans, hereditary chiefs and high ladies to seek reconciliation with other clans and individuals in the planning of a potlatch. Without that advance reconciliation, people might not attend, or might challenge the work being done at the potlatch. In fact, there is a word in the Haida language for how one conducts oneself leading up to a potlatch.

The second source is found in the Haida language itself which provides clear portals into governing principles and indigenous laws. For instance, the word in the Haida language for Haida people is “*xaaydaGaay*,” or “*Xaadee*,” which means, simply, people. This word does not differentiate between species or races of people. In fact, words used to describe other people (such as forest peoples, or ocean peoples, or other nations of peoples) have *xaaydaGaay* as a root word. The acceptance that we are all people who share common concerns and a common future led CHN to build bridges with settlers to Haida Gwaii along with building alliances with others.¹¹ This approach is consistent with the mandate and responsibilities of CHN which include “promoting peaceful co-existence with other people and governments.”¹² This history of building bridges is discussed next.

7 Diane Kathleen Brown, personal communication.

8 Alfred Adams was the president of the Allied Tribes.

9 *gidansda*, Chief Skedans, Percy Williams, personal communication.

10 “People are like Trees, and groups of people are like the Forests. While the Forests are composed of many different kinds of trees, these trees intertwine their roots so strongly that it is impossible for the strongest winds which blow on our Islands to uproot the Forests. For each Tree strengths its neighbour, and their roots are inexplicably entwined. Just as one Tree standing alone would soon be destroyed by the first strong wind which came along, so is it impossible for any person, any family, or any community to stand against the troubles of this world.”

11 Personal communication from Miles Richardson, previous President of the Haida Nation, relaying the insight he learned from the late Bill Reid about “*xaaydaGaay*.”

12 See Article 8, section 6: “CHN shall promote a peaceful co-existence with other people and governments without compromise to the objectives of the Haida Nation.”

C. Raven's Journey Through the Council of the Haida Nation

I. Mandate and Governance Structure

The Council of the Haida Nation ("CHN") was created to address Haida Title and Rights, and to protect the land, sea and culture. This mandate is set out in the Constitution of the Haida Nation:

The Haida Nation is the rightful heir to Haida Gwaii. Our culture is born of respect; and intimacy with the land and sea and the air around us. Like the forests, the roots of our people are intertwined such that the greatest troubles cannot overcome us. We owe our existence to Haida Gwaii. The living generation accepts the responsibility to insure that our heritage is passed on to following generations. On these islands our ancestors lived and died and here too, we will make our homes until called away to join them in the great beyond.¹³

The governance structure set out in the Haida Nation's Constitution is what may be described as an inverted governance structure, with the land at the top. Immediately below are the citizens of the nation who hold the law-making authority. CHN is not a Tribal Council or a Band Council; its authority is not derived from the Government of Canada. It is not a society, governed by provincial or federal society law. Its authority is derived from the land itself—just as Raven instructed in the *K'aygaanga* at the beginning of the paper.

When CHN was formed, it was decided to utilize existing governance bodies: the two Indian Act Band Councils¹⁴ and the Hereditary Chiefs Council.¹⁵ The CHN incorporates Band Councils even though they are a governance structure of the colonizers because they serve village and social functions, thereby leaving CHN to address broader Aboriginal Rights and Title matters and work towards the self-sufficiency and sovereignty of the Haida Nation.

2. CHN's Work

CHN's first order of business was the same as Raven's struggle in the Raven Travelling series: to face down greed, seek to control it and bring balance to the distribution of the benefits of Haida Gwaii and her natural resources. Given the damage wreaked by unsustainable resource extraction from Haida Gwaii, it was critical to restore balance and utilize any and all tools to fulfill CHN's mandate.

In the Raven travelling series Raven often transforms into a being that enables him to achieve his goals. For instance in the *K'aygaanga* where Raven brings light to the world, Raven transformed into a hemlock needle, and from there into a human seed, to be born as the grand-child of the Chief that was the keeper of the Sun and Moon. As a baby and child, Raven maintained his innate characteristics of insatiability and need for constant entertainment; in other words, he did not lose who he was in this transformation. Yet, without this transformation, Raven could not have brought light to the world.

In the same way, the CHN has used the tools external to our culture to achieve our national mandate. The paramountcy of CHN's mandate to ensure there is land and culture intact for future generations has required no less. CHN has been meticulous in ensuring that all steps are made under Haida authority and jurisdiction, such as land designations, tenures, and Agreements with the Crown. This approach has enabled CHN to make significant progress towards reconciliation without compromise to any objectives of the CHN. The next two sections briefly describe CHN's reconciliation efforts.

13 See: <http://www.haidanation.ca/Pages/CHN/Constitution.html>

14 Article 12 Village Councils, Haida Nation Constitution, sets out the authority of and relationship with the Village Councils.

15 Article 13 Village Councils, Haida Nation Constitution, sets out the authority of and relationship with the Hereditary Chiefs Council.

III. Interaction of Haida Laws to Achieve Reconciliation on the Land and Near Shore

A. History of Reconciliation for the Council of the Haida Nation

CHN's journey of reconciliation began in 1980 with land designations to protect areas of cultural, environmental, and historic importance.¹⁶ Grass-roots reconciliation efforts began over 25 years ago, when there was increased pressure to log the South Moresby area in Haida Gwaii. In 1985, the CHN designated the terrestrial and marine area as a "Haida Heritage Site," called Gwaii Haanas, and engaged in direct action at Lyell Island to protect this biologically and culturally unique area. It was during that time that the Haida started down the path of reconciliation. The Haida built a traditional longhouse at Windy Bay and invited non-Haida loggers to attend a feast for the opening of the longhouse. Fostering connections with all peoples, over the years the CHN has developed relationships with environmental organizations and the surrounding non-aboriginal communities to examine and develop solutions regarding on-going resource development in Haida Gwaii, beginning with the Gwaii Haanas area.

A Memorandum of Understanding was signed in 1987, and a co-management agreement in 1993.¹⁷ The Gwaii Haanas Agreement led to formal protection of one-quarter of the land-base of Haida Gwaii, jointly and cooperatively managed by an Archipelago Management Board ("AMB"). The AMB is comprised of equal membership from the CHN and the Government of Canada, and operates by consensus.¹⁸ It is important to highlight that the Gwaii Haanas Agreement specifically sets-out the divergent viewpoints of the parties to the agreement regarding sovereignty and title, yet agree to work together to manage the area. This approach has guided the approaches to future agreements.

The CHN has formalized working relationships with local communities in Protocol Agreements.¹⁹ One of the first protocols was signed with the village of Port Clements, which was the logging community most affected by the logging challenged in the *Haida* case.²⁰ The village of Port Clements, in an unprecedented move in Canadian litigation, intervened in favour of the Haida Nation before the Supreme Court of Canada.

Following the Supreme Court of Canada's decision in the *Haida* case, in 2005, the Province of BC replaced the tree farm licence at issue in that litigation contrary to the Supreme Court of Canada's directions. The Haida engaged in direct action, joining forces with loggers and local communities of Haida Gwaii in an initiative called "Islands Spirit Rising." The threat of future court application together with the direct action resulted in further negotiations, lead to a Memorandum of

16 The first such designation was *Duu Guusd* Tribal Park.

17 The Gwaii Haanas Agreement can be found at: <http://www.pc.gc.ca/eng/pn-np/bc/gwaiihaanas/plan/plan2/a.aspx>

18 The area was formally protected as a National Park Reserve. For further information, see: <http://www.pc.gc.ca/eng/pn-np/bc/gwaiihaanas/index.aspx>, where in the page "History of Gwaii Haanas" it is described as providing "a model of a respectful relationship between human beings and the earth. It is a place where people can learn about a way of life where humans are part of nature, where they can experience Haida culture and respect sacred and spiritual values. Traditional activities continue to take place here as part of the living and evolving culture of the Haida."

19 The various Protocol Agreements are with the village of Queen Charlotte City (see: http://www.haidanation.ca/Pages/Agreements/PDF/Protocol_QCC.pdf); Skeena Queen Charlotte Regional District (see: http://www.haidanation.ca/Pages/Agreements/PDF/Protocol_Reg_Dist.pdf); and the town of Masset and Port Clements (see: http://www.haidanation.ca/Pages/Agreements/PDF/Protocol_Communities.pdf).

20 *Haida Nation v. British Columbia (Minister of Forests)*, 2004 SCC 73, [2004] 3 S.C.R. 511, hereinafter the *Haida* case.

Understanding²¹ and an interim revenue sharing agreement of \$5 million.²² The Haida forged a consensus with the local non-aboriginal communities, the Province of BC, and the logging companies, through a unique jointly-hosted Haida-BC land-use planning process.²³ This process resulted in a Strategic Land-Use Plan Agreement in 2007, which resolved all immediate land use issues at the strategic, landscape level, including addressing the high rate of logging, ecosystem based management, and protection of key cultural and environmental values. The Land Use Plan protects 74% of the coastline and the near shore areas, marbled murrelet nesting sites, cedar areas, stream-side forest habitat important to salmon and bears, and bear dens. In 2009, the Province of BC made conservancy designations that ultimately resulted in the total protection of 52% of the land base of Haida Gwaii, or about 500,000 ha.²⁴ The area of these conservancies corresponds with land areas that the Haida designated as “Haida Protected Areas,” with the result that all such areas established since 1980 are now also protected under provincial or federal legislation.²⁵

The final designation of the conservancies coincided with the conclusion of the negotiation of a Reconciliation Protocol which is described next.

B. Kunst’aa Guu – Kunst’aayah Protocol: First Steps for Reconciliation

Once the land, near shore and resources were formally protected, the negotiations focused on how to manage these areas. In December 2009, the Haida and BC entered into a protocol for shared and joint decision-making at both the operational and strategic level (the “Protocol”), which is summarized below.

I. Overview

The Protocol is intended to take a preliminary step towards reconciling Haida Title and Crown Title, and begin to establish a mechanism for joint management of land and resources. The Protocol sketches out a framework for decision-making,²⁶ provides for implementation costs,²⁷ with implementation details addressed in an implementation plan that is now well-underway.

The Protocol also captured the intention of the parties to negotiate further agreements, including a carbon offset agreement, and forest tenures (120,000m³ and \$10 million to acquire Block 6 of TFL39, the tenure at issue in the *Haida* case), both of which have been ratified and are being implemented.

21 See: http://www.haidanation.ca/Pages/Agreements/PDF/Letter_of_Understanding.pdf

22 While BC entered into this agreement under the *Forest and Range Practices Act*, the Haida did not follow BC’s template formulae for revenue sharing benefits and tenures, nor would the Haida agree that the agreement would constitute accommodation and agree to not bring any future legal challenges regarding logging in Haida Gwaii.

23 This land use planning process is different than other land use planning processes led by the Province of BC, as the Haida Nation co-chaired the process. The plan was guided by a Haida Land Use Vision entitled “Haida Gwaii *Yab’gundang*: Respect for this place.”

24 The agreement and a map of the areas can be found at: http://www.haidanation.ca/Pages/Programs/Land_Use_Planning/PDF/StrategicLandUseAgre/HGstrategicDec_07.pdf. The land use areas designated in September 2009 as conservancies sets aside “land for the protection of its biological diversity, natural environments and recreational values, and the preservation and maintenance of First Nations’ social, ceremonial and cultural uses.” This 52% includes land jointly designated as the Gwaii Haanas Haida Heritage Site and the Gwaii Haanas National Park Reserve.

25 Including the Gwaii Haanas area, the map of the new protected areas is found at: <http://www.haidanation.ca/Pages/Splash/Documents/culturalsites.pdf>

26 See Schedule B for more details about this framework.

27 \$200,000 upon signing the Protocol and \$600,000 a year for 5 years beginning April 1, 2010.

The Protocol expresses an intention to enhance Haida socio-economic well-being, and while the actual development of that “approach” is beyond the scope of this Protocol, Haida Child and Family Services, working with CHN have started development of this plan.

The Province of BC committed to undertake legislative amendments to enable a new decision-making structure between the Parties since existing provincial legislation does not permit shared or joint decision-making.

2. Reconciliation of Titles

The right of the Haida Nation to proceed under Haida jurisdiction is made clear in the Protocol.²⁸ The Protocol does not concede the Province’s Title or jurisdiction—which has yet to be established and is part of the Haida’s Aboriginal Title case.²⁹ Rather the Protocol opens with the Gwaii Haanas approach of setting out both Parties’ assertions of jurisdiction and then proceeds to recognize and build upon the common ground between the Parties.

The Haida and BC intend this Protocol to be a first step along the path of reconciliation: it begins with joint and shared decision-making in four kinds of strategic decisions, with the flexibility to add new areas later. The Protocol acknowledges that the Parties will use their best efforts to reach agreement by consensus and to demonstrate the necessary political will and commitment to achieve joint decision-making. Both Parties commit to working together to arrive at the best decisions for the lands and resources of Haida Gwaii.

In June 2010, the Province of BC passed legislation to implement the Protocol.³⁰ In September 2010, the Haida passed their first piece of legislation to bring the management bodies into effect. In December 2010, BC’s Land Use Objectives Orders were legally established.³¹

The Protocol has been implemented over the last two years and the most significant joint-decision was the setting of the Allowable Annual Cut for Haida Gwaii³² by the Haida Gwaii Management Council earlier this year.³³

3. Concluding Remarks Regarding the Protocol

The Haida intend that the *Kunst’aa guu – Kunst’aayah* Protocol will: (a) provide a tangible example of reconciliation of broad, territorial Aboriginal Title; and (b) further develop the capacity of the CHN and BC to better manage Haida Gwaii and jointly gain hands-on experience of working together. The *Kunst’aa guu – Kunst’aayah* Protocol, is not intended to be a final agreement or even a final vision of how Haida Gwaii will be managed into the future. *Kunst’aa guu* and *Kunst’aayah* means “The Beginning” in the Haida language, and this name was chosen to reflect that this is a first step towards developing a long-term Reconciliation Agreement.

The next section examines nascent progress with reconciliation of the marine areas of Haida Gwaii.

28 See recital “E,” and section 6.3.

29 *The Council of the Haida Nation and Guujaaw et al. v. Her Majesty the Queen in Right of the Province of British Columbia and The Attorney General of Canada*, BCSC Action No. L020662.

30 See: http://www.bclaws.ca/EPLibraries/bclaws_new/document/ID/freeside/00_10017_01

31 The Land Use Orders and Schedules are found at:
<http://ilmbwww.gov.bc.ca/slrp/lrmp/nanaimo/haidagwaii/index.html>

32 For the environmentally and economically harvestable area on Haida Gwaii, which excludes all established protected areas, private land, Indian Reserves and Municipalities.

33 For more info about the Haida Gwaii Management Council, see the website:
<http://www.haidagwaiimanagementcouncil.ca/index.html>

IV. Reconciliation Over Marine Areas

When the Gwaii Haanas Agreement was ratified in 1993, the Haida and Canada committed to also establish a corresponding marine component. The Gwaii Haanas Marine Agreement was ultimately ratified in 2010, when Canada protected the marine area as a National Marine Conservation Area Reserve.³⁴ Activities prohibited in a National Marine Conservation Area include ocean dumping, dredging and non-renewable resource extraction including oil drilling—especially critical as there are sponge reefs in deep trenches in the middle of Hecate Strait that are thousands of years old and not found anywhere else in the world.

The Gwaii Haanas Marine Agreement built upon an earlier agreement for the *sGaan Kingblaas*³⁵ (Bowie Seamount) area located 180 km west of Haida Gwaii. The Haida had earlier designated *sGaan Kingblaas* as a Haida Heritage Site, and both Parties protected the submarine volcano in a Memorandum of Understanding in April 2007.³⁶ Canada established *sGaan Kingblaas* as a marine protected area under the *Oceans Act* in April 2008.³⁷

These marine agreements resulted from a marine planning process that began in Haida Gwaii in 2006. The CHN established a Haida Marine Work Group, comprised of representatives from Haida government, Hereditary Chiefs and the Haida public, to lead marine planning in Haida Gwaii waters. The work group articulated the essence of “Haida ethics and values” for marine use planning, which are set out below:

- *gina waadluxan*, which means that everything depends on everything else—or interconnectedness;
- *yahguudang*, or *yakguudang*, which means respect;
- ‘*Laa guu ga kanhlins*, which means responsibility;
- *isda ad diigii isda* which means reciprocity;
- *gina k’aadang, nga gii uu tl’ k’anguudang* seeking wise council—which embraces not only the wisdom of the elders but also scientific knowledge and that generated by environmental organizations; and
- the application of *giid tll’juus* and the Haida proverb “the world is as sharp as the edge of a knife” which teaches the principle of balance.³⁸

These values underpin Haida laws and are reflected in them.

Finally, a Haida Marine Traditional Knowledge Study was completed over three years and involved many interviews of mostly elders. This study documented Haida knowledge, occupancy and use of the waters surrounding Haida Gwaii. Results of that work are summarized in three volumes and include a

34 The Gwaii Haanas Marine Agreement can be found at:
<http://www.haidanation.ca/Pages/Splash/Documents/GHMarineAgreement.pdf>

35 *sGaan Kingblaas* means “Supernatural Being Looking Outwards,” as the Haida view this seamount as a supernatural being that is revealed with the tides. This seamount is rich with sealife and is a well-known area to Haida fishermen. For technical information about this area, see:
<http://www.pac.dfo-mpo.gc.ca/oceans/protection/mpa-zpm/bowie/index-eng.htm>

36 For the MOU, see: http://www.pac.dfo-mpo.gc.ca/oceans/protection/mpa-zpm/bowie/docs/Bowie%20MOU_Apr18_07_signed_version.pdf

37 See: <http://laws-lois.justice.gc.ca/eng/regulations/SOR-2008-124/>

38 This proverb comes from an oral history that tells of a man walking along a small raised surface of only a few inches. He fell off that surface to his death. The elders explained that our existence is like walking the edge of a knife, where a slight imbalance can cause a fall off the edge to our death.

map called the “Ocean and Way of Life.” The map shows the marine species and seabirds that are important to the Haida, a fraction of Haida place names, as well as Haida designs to symbolize supernatural beings that live in Haida Gwaii waters. This map is attached in Appendix A, as it provides an excellent visual representation of how oral histories and resource use can blanket ocean spaces.

V. Weaving Our Future

In many ways, the process of reconciliation that the CHN has embarked upon is embodied within Haida weavers’ knowledge of traditional robes worn by Haida Chiefs and other Chiefs of the Pacific Northwest Coast. An example of such weaving is a *naxiin*, or Chilkat blanket, contained in Appendix B to this paper.³⁹

Naxiin contain parallel borders around a central design element. The borders and each design element are actually separate weavings that are joined together through weaving techniques⁴⁰ that physically interlock the weaving elements and create structural strength in the weaving. Appendix 2 contains illustrations of one technique for joins between the borders. These illustrations show that the interlocking nature of these borders is hidden by at least four braids that weave over and through the two borders, but is apparent on the back side of the weaving.

These borders are a tangible representation of weaving together paths of co-existence. Rather than two parallel lines that do not touch and which might have worked for early treaties in other areas of North America,⁴¹ this metaphor⁴² demonstrates that it is possible for two legal traditions to co-exist in a manner that permits each nation’s laws, traditions and languages to continue intact, but yet for two nations to interact sufficiently for co-existence. Our challenge is to find the ways for these two legal traditions to interlock to create lasting strength for respectful co-existence.

CHN’s reconciliation efforts can be understood by this analogy by the *naxiin* borders. The Haida have maintained their own legal traditions, institutions and land designations, yet found an interim way to jointly manage the land and sea with the Federal and provincial Crown. During this reconciliation process the Haida have not sought recognition of Haida title and jurisdiction. As the holder of the responsibilities that accompany those rights they must be exercised rather than waiting for recognition, otherwise the land and sea would have been lost to us and all future generations.

However, recognition must eventually be addressed in any reconciliation process. Recognition has not been achieved because of systemic barriers to transformation of the legal landscape, which are discussed in the next section.

39 Appendix 2 is taken from Samuel, S., *The Chilkat Dancing Blanket* (Pacific Search Press: Seattle, 1982). There are two kinds of robes worn, including Raven’s Tail robes. See Samuel, C., *Raven’s Tail* (Black Crow Books: Victoria, 2012).

40 There are three weaving techniques to weave together sections of weavings: dovetail join, the interlock join and the drawstring join. While all interlock the panels, the dovetail join, illustrated in Appendix 1 to this paper, best illustrates this proposed model for reconciliation. Appendix 2 is taken from Samuel, S., *The Chilkat Dancing Blanket* (Pacific Search Press: Seattle, 1982).

41 Here, I refer to the very early treaties that were documented in two-row wampum belts.

42 In Haida Gwaii and the Northwest Coast, traditionally weaving was done by women. It is apt that weavers’ knowledge lead the future, especially when we consider the words of an ancient Haida song: “Sisters and Aunties, together, we are smiling now because the Power of the Shining Heavens is your boss.” Woven robes have been used in other instances to document treaties in the Northwest Coast, such as one between the Haida and the Tsimshian nations, as reknown weaver and elder Delores Churchill has explained in a personal communication.

VI. Blocks to Transformation

Although courts have indicated that negotiations and reconciliation are preferred over litigation, much of litigation in Aboriginal law in Canada has not focused on reconciliation. This is a result of the lack of recognition of aboriginal rights. The barriers to recognition are:

- A blatant non-recognition of our existence.⁴³ Yet, the elders ask “Who else was here in 1846?” Our oral histories, songs, place names and art⁴⁴ blanket our territories and document our long-standing prior existence. It is extremely difficult to build the trust necessary for reconciliation with these positions underlying negotiations and present in Crown Statements of Defence.
- There is little or no assistance for the documentation and preservation of oral traditions. Given the systemic barriers to First Nations to become economically self-sufficient, coupled with little funding available to libraries in general, more support should be given for the protection of Aboriginal oral traditions so that the Supreme Court of Canada’s direction to give equal weight to oral traditions is not made meaningless. At the very least, when the Crown requires litigation to be put into abeyance to give space for negotiations, they should also commit to cost-sharing and assistance with deposition of elders’ knowledge.⁴⁵ It is very likely that the success of First Nation’s reconciliation efforts is directly proportional to the extent of preservation and protection of oral traditions.
- The failure to recognize the expertise of the elders to maintain and transmit oral traditions. The keepers of these traditions were qualified to share them otherwise they would not have endured. It is also necessary for the court to acknowledge the impact of colonization upon the transmission of this knowledge, such as those instances where it has temporarily passed through and been preserved through non-native hands.⁴⁶
- An unwillingness to acknowledge the resilience, knowledge and capabilities of First Nations to manage land, waters and resources and to develop political institutions to govern in a new legal landscape. Indigenous peoples are living, developing people, who strive—just as the rest of Canadians—to find the best way to organize ourselves politically, to live with each other, to manage human interactions with the land, waters and resources, and to preserve our unique cultures.

The existence and perpetuation of above barriers prevent true reconciliation. Recognition of Aboriginal rights and title might be seen as the braids in the *naxiin* robes which “finish” the interlocking joins of two legal traditions. Without this weaving together of legal traditions, we will

43 Aboriginal Title and Rights litigation often must face this Crown position. An example is contained in the pleadings for the Haida Title case.

44 The Haida Nation’s earliest formal statement about the role of art was made to the Royal Commission on Indian Affairs in 1913. Statements were made by leaders from both communities and covered many areas. Amos Russ told the commission: “You can see right around the Island there are villages and villages and you can see our Totem poles which are the same to us as the white men’s pre-emption stakes are to them.”

45 This was done in the former Abeyance Agreement for the Haida Nation’s Title Case, which is no longer in abeyance.

46 For instance, the Jesup North Pacific Expedition and John R. Swanton recorded oral histories and the songs of the Haida Nation which are still told and sung by elders who did not read English, such as the *Gak’yaals K’iiGawaaay* lullaby songs that centurion Susan Williams was still singing—word for word—in the 1960s.

not create new legal landscapes as proposed by the Honourable Chief Justice Finch.⁴⁷ The above barriers must be removed so that the honour of the Crown can be fulfilled and true reconciliation achieved.⁴⁸

VII. Concluding Remarks about the Application of Haida Laws

The CHN has fostered transformation, including temporary states of transformation. We learn from Haida art and songs that sometimes transformation involves partial states of transformation.⁴⁹ Often poles contain figures that are half human and, for instance, half Thunderbird. The “Eagle Spirit” dance depicts the power of a human being that is partially transformed into an eagle.⁵⁰ For the CHN, the application of this law has meant utilizing any tools that will help take us closer to our objectives—even if they are not perfect in form, and even if they are part of another’s culture—such as drawing lines on maps, creating land use zones, and engaging in land use planning and joint management with BC and Canada. In a real sense, the Haida, BC and Canada have entered into states of partial transformation, with more work to do to achieve complete transformation.

The history of the Haida People is much like creating art, and the central elements of that artform. One of those elements is called *kuugan jaad*, or Mouse Woman. In *K’aygaanga* and *K’ayaagang*, Mouse Woman is a powerful force to be reckoned with.⁵¹ In Haida art, she is a being that an artist creates consciously or unconsciously.⁵² Similarly, the Haida apply Haida laws consciously and unconsciously because they too are an innate part of our identity. CHN’s journey to reconciliation has consciously and unconsciously incorporated our laws into our governance structures, decision-making and relationships with others.

Through the reconciliation process we remember Raven’s journey of transforming this realm into what it is today. Raven’s name was *nang kilsdlaas*. This name means “He whose voice was obeyed,” for all that Raven said or intended came to be (albeit some events occurred through happenstance and mistakes). Likewise, if we are to achieve reconciliation we must shift the focus to articulating our core values and principles, then work to build those principles and the laws that portray them into all that we are and into our vision for a collective future. The work of transforming that vision into a reality is slow—and like Raven we may make mistakes along the way—but we must always keep our eye on the goal of transforming and creating new legal landscapes. It is imperative to take the time to develop sufficient trust in the power of transformation to achieve a destination that allows our laws to take care of the land, culture, and economy—and for CHN, the neighbouring non-Haida communities. And, finally, we must always, always, keep in mind who we would like to be and where we would like to be, but also acknowledge where we are now in our relationship with the Crown.

47 The Honourable Lance Finch, Chief Justice of British Columbia. “The Duty to Learn: Taking Account of Indigenous Legal Orders in Practice.” Paper presented at the Indigenous Legal Orders Continuing Legal Education conference, Vancouver, B.C., November 15-16, 2012, at para. 39.

48 *Ibid.*, at para. 37.

49 Readers are encouraged to view the upcoming exhibition at (and publication of) the Vancouver Art Gallery showcasing the work of Haida artist Charles Edenshaw. Charles’ three-dimensional pieces in particular show beings in states of half or partial transformation.

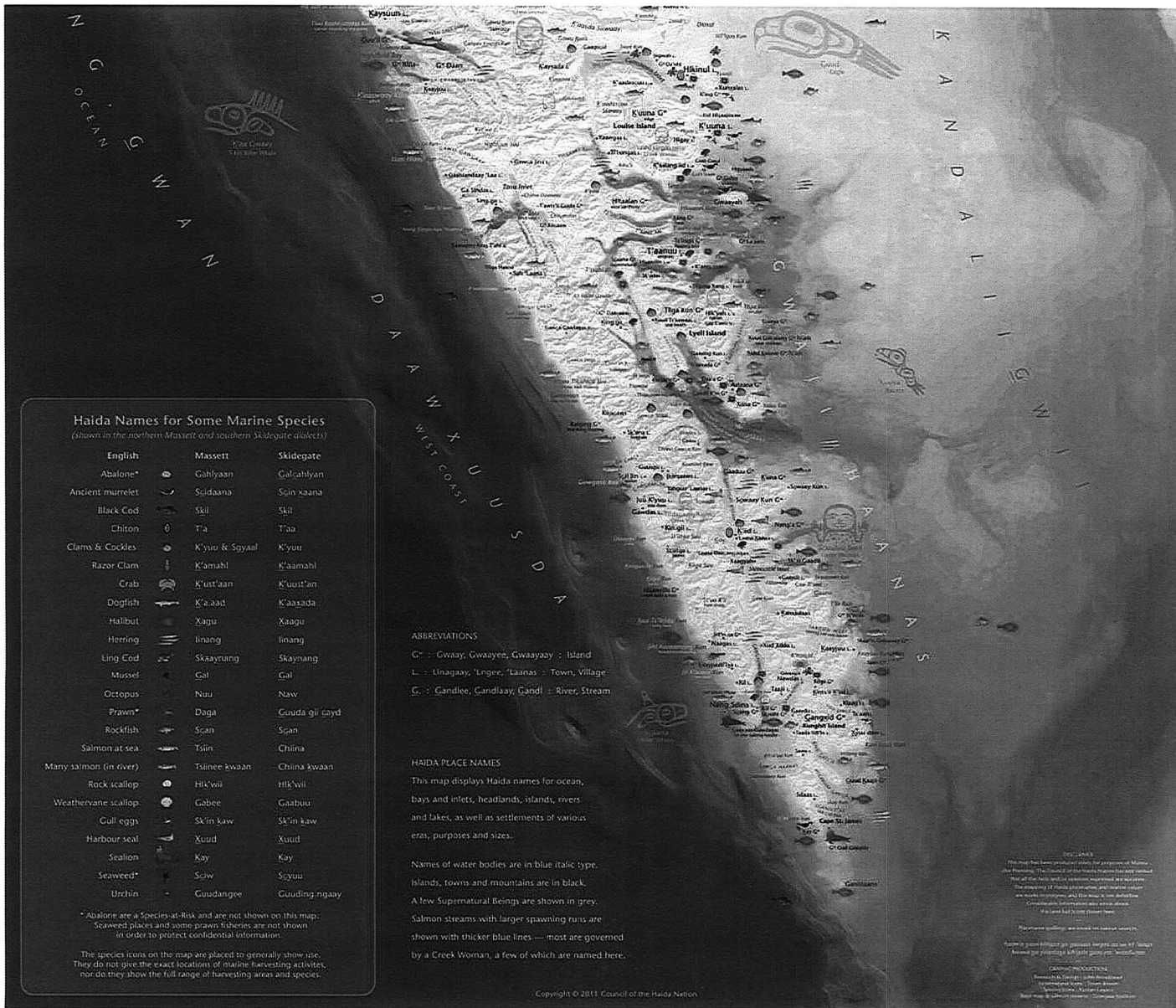
50 In fact, the power was so great, that when Robert Davidson completed his first eagle spirit mask he hid it away for a year, only showing it to trusted friends.

51 Mouse Woman was one of the two beings that could approach Foam Woman, the supernatural ancestress of the Haida people who are part of the Raven clan. Each time Foam Woman blinked her eyes, she became smaller and smaller in size to her present size. Thereafter, Mouse Woman appears in *K’aygaanga* helping humans along in their journey with their interactions with the supernatural beings.

52 Personal communication from Robert Davidson, for whom the author is grateful for the understanding of *kuugaan jaad* and her role in Haida art. For more information about *kuugaan jaad*, see an upcoming publication from the Vancouver Art Gallery about Charles Edenshaw.



VIII. Appendix A—Map: Ocean and Way of Life

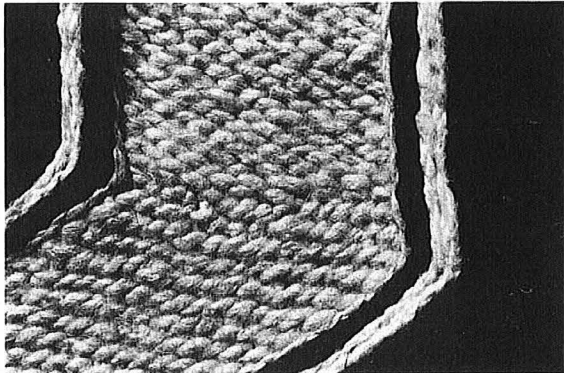


IX. Appendix B—The Chilkat Dancing Blanket⁵³

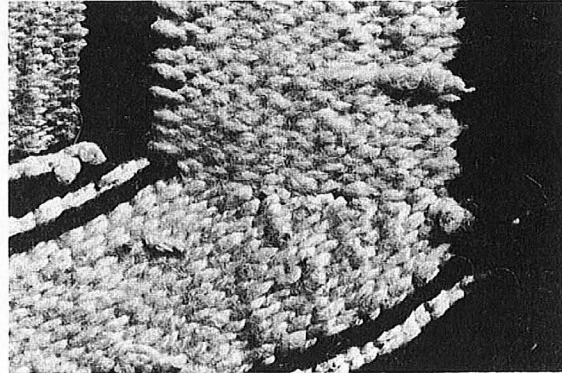
A Chilkat Dancing Blanket:



Detail of the parallel borders and the joins in the weaving:



408. *The diagonal weft join in the yellow border (CS)*



409. *The back of the join (CS)*

53 Excerpts from C. Samuel, *The Chilkat Dancing Blanket* (Pacific Search Press: Seattle, 1982), pp. 82, 189. Reproduced with the permission of the author.