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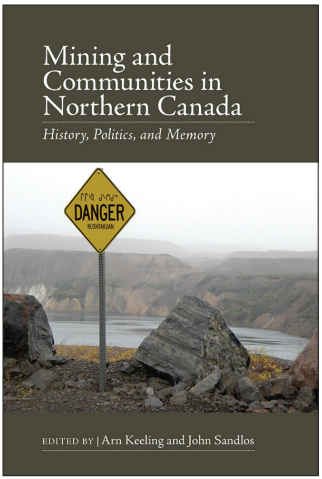

MINING AND COMMUNITIES IN NORTHERN CANADA: HISTORY, POLITICS, AND MEMORY

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Privatizing Consent? Impact and Benefit Agreements and the Neoliberalization of Mineral Development in the Canadian North

Tyler Levitan and Emilie Cameron

This chapter considers the extent to which impact and benefit agreements (IBAs)—agreements between indigenous communities and mining companies that seek to extract resources from their traditional territories—relate to broader processes of neoliberalization in Northern Canada.[1] Although IBAs have been a focus of scholarly inquiry for some time, scholars have not yet explicitly theorized IBAs in relation to the broader political-economic context within which they unfold, or in relation to the neoliberalization of resource and indigenous governance in Canada.[2] Drawing on interviews and participant observation in the Northwest Territories (NWT), analysis of federal and territorial policy, and a critical review of various academic literatures, we consider the ways in which IBAs relate to these broader formations.[3]

We begin with a brief overview of IBAs and the history of their development in the Canadian North. Next, we discuss key insights into processes of neoliberalization in Canada, with an emphasis on the ways in which relations between indigenous peoples, corporations, and the state are being reconfigured. With these insights in mind, and drawing on our research in the NWT, we outline some of the ways in which IBAs might relate to processes of neoliberalization, including their role in removing barriers to accumulation of capital, privatizing the federal duty to consult and to accommodate indigenous peoples in regard to development on their lands, and naturalizing market-based solutions to social suffering. We conclude with some thoughts on the implications and limitations of these findings.

IBAs: OVERVIEW

IBAs are a relatively new component of the northern resource governance regime, having emerged only in the late 1980s and early 1990s.[4] Since then, IBAs have become a standard component of mineral development in the Canadian North; they are a de facto requirement for corporations interested in developing mines within the traditional territories of northern indigenous groups and have been negotiated in relation to every major mine proposed or developed since the late 1990s.[5] For indigenous communities, IBAs typically include provisions for employment quotas, skills training and other educational benefits, contracting and joint venture opportunities, financial compensation, environmental mitigation-related measures, and even culture-related benefits.[6] Industry proponents, for their part, secure good working relations with indigenous communities and enhance their "social licence to operate"—but they also, it should be noted, frequently negotiate clauses prohibiting public critique of the company and any form of protest against the mine on the part of indigenous community members, as well as other measures to secure ongoing consent.[7] It is typically industry proponents, moreover, that insist on the confidentiality of IBAs, although indigenous signatories have also advocated for and defended the confidentiality of IBAs. As such, the details of the range of impact-benefit agreements signed in the

North are not in the public domain, and are sometimes not made public even to members of signatory communities, and thus much of the literature on IBAs comments on the agreements in general terms.

Indeed, what distinguishes IBAs from other components of resource governance in the North (such as mining codes, Crown land regulations, environmental impact assessment processes, comprehensive land claim agreements, various forms of licensing, and so on) is their bilateral and private nature: they are typically signed between an industrial proponent and an indigenous government, with no direct involvement by federal or territorial government representatives or agencies, and no public policy framework guiding their negotiation, terms of reference, or implementation. The first IBAs signed in the North, as part of the development of the Ekati diamond mine in the NWT, remain the first and only IBAs in which government[8] played a formal role, insofar as Indian and Northern Affairs (INAC[9]) mandated that "satisfactory progress"[10] be made in negotiations regarding the realization of benefits and the mitigation of impacts for indigenous communities affected by the Ekati mine within a sixty-day period in 1996. INAC itself did not participate in the negotiations. Since then, despite numerous calls for a comprehensive federal policy to guide IBAs in the region, INAC (now Aboriginal Affairs and Northern Development Canada, or AANDC) has issued no such guidelines, and appears not to be actively pursuing the matter.

There is a relatively robust literature on IBAs, some of which emphasizes the practical benefits of IBAs for Aboriginal communities[11] and some of which raises concerns about the broader power relations shaping IBA negotiation and implementation.[12] Caine and Krogman argue, for example, that IBA researchers have thus far been insufficiently attentive to the ways in which power infuses not only the negotiation and implementation of IBAs, but also the broader social, political, and institutional context within which they have come to make sense. Their findings echo and extend concerns articulated in the late 1990s, when scholars first began to comment on IBAs after the federal government mandated the negotiation of IBAs for the Ekati diamond mine.[13] Since then, as IBAs have become an established part of the northern resource governance regime, research has tended to focus more on the extent to which IBAs enhance

the equitability, sustainability, and benefits of mining than on critiques of the political-economic conditions under which they have emerged.[14]

Perhaps because IBAs do not formally and directly involve any government ministries, the role of the state in the development and implementation of IBAs has not been a primary focus of the literature. IBAs are frequently referred to as "supraregulatory,"[15] for example, and their role in northern resource extraction is primarily considered as a supplement or alternative to state regulations, policies, and practices. While Isaac and Knox[16] note that, ultimately, IBAs are subject to contract law and may well be tested by the judicial system, in general it is the *absence* of the state from IBA negotiation and implementation that tends to be noted by scholars. The implications of that absence have been probed by a number of authors. Prno and Slocombe understand IBAs as evidence of the emergence of "local communities" as "particularly important governance actors" in northern resource extraction, arguing that "conventional approaches to mineral development no longer suffice for these communities, who have demanded a greater share of benefits and increased involvement in decision making."[17] In such formulations, less state is good for local communities, insofar as the state has been understood as a barrier to community involvement in governing extractive activity. Others have been much more critical of the lack of active state involvement in this dimension of resource governance, both in relation to the imposed sixty-day timeline with respect to the Ekati IBAs and more broadly around the question of federal fiduciary responsibilities.[18]

In the wake of the government's ad hoc position with respect to Ekati, for example, a comprehensive discussion paper was prepared by Steven Kennett for the Mineral and Resources Directorate of the Department of Indian Affairs and Northern Development (DIAND) outlining a range of policy options that might clarify the government's position in relation to IBAs.[19] The report found that IBAs were already seen "as a *de facto* regulatory requirement" in the North because of DIAND's role in the Ekati process, but also because DIAND provided informal advice to mining companies and funding to indigenous organizations that were negotiating IBAs. But, because the negotiation and implementation of IBAs "lacks the procedural and substantive parameters normally associated with regulation," Kennett argued, "the roles of mining companies,

aboriginal organizations and government are not properly defined and some inappropriate off-loading of responsibilities by government is occurring." Kennett also noted issues with identifying communities that were eligible to negotiate IBAs and the emergence of "marked inequalities" and "tensions" between communities who secure varying benefits under bilateral, confidential negotiations. He urged DIAND to develop a more comprehensive, reasoned policy on IBAs, a recommendation that, almost fifteen years later, has yet to be taken up.

Although it has not been studied in-depth, there is a distinction made in the literature between IBAs signed by communities with settled land claims and those whose territorial claims remain unresolved. Many comprehensive land claim agreements (CLCAs) include language around IBAs, and all CLCAs formally clarify surface and subsurface land rights within a given territory. To varying extents, CLCAs also clarify and establish the broader regulatory regime through which mineral development will be assessed. In regions where land claims have been settled, IBAs are thus often framed as one among several mechanisms whereby an indigenous community can obtain benefits from extraction. In communities without settled claims, however, IBAs may be one of the only means through which an affected community can realize limited benefits from extraction on their lands. Thus, Galbraith notes that respondents in her study "cynically" argued that "IBAs are like historical treaties between aboriginal groups and the federal government . . . these agreements stem from government and developers' interest in clarifying the legal rights of aboriginal people and aim to limit these rights with respect to the diamond mine development."[20] But while IBAs may act as a kind of substitute for treaties and land claims in regions where CLCAs have yet to be finalized, the conditions under which indigenous communities negotiate IBAs are vastly different than the conditions under which comprehensive land claims are negotiated. Because the federal government has provided "no principled basis for determining eligibility to negotiate IBAs in areas of unsettled land claims or where project impacts cross settlement area boundaries," and because development projects can proceed whether or not an IBA has been signed, mining companies are to some extent free to decide which communities they will negotiate with, and can threaten to terminate negotiations at any time.[21] Although it is part of the Akaitcho

Dene Nation (which has not yet signed a CLCA), for example, Deninu Kue (Fort Resolution, NWT) was left out of the IBA process for the Snap Lake mine despite arguing that their traditional territory would be greatly impacted, even while other Akaitcho communities were consulted.[22]

To the extent that the discovery of promising mineral deposits on indigenous lands has historically motivated governments to settle comprehensive land claims, moreover, IBAs may actually slow progress on CLCA negotiations, insofar as corporate and state interests in securing indigenous consent for specific developments are satisfied by IBAs. Indeed, Gogal et al. advise developers negotiating IBAs with Aboriginal groups who have not signed comprehensive land claim agreements to include "a covenant to the effect that the Aboriginal group will not advance any land claim that will negatively impact or impede the project."[23] In such cases, IBAs would seem to function not merely as temporary measures to ensure consent to a proposed development while CLCAs are under negotiation, but rather as explicit deterrents to the pursuit of comprehensive claims.

O'Faircheallaigh has made the important observation that while IBAs can offer clear and substantial benefits for participating indigenous communities, "they also have implications beyond the contractual relationship they create between a developer and a community that must be addressed if their contribution to community development is to be maximized."[24] IBAs, he argues, effectively curtail the "two powerful weapons" indigenous groups have historically used to intervene in the assessment and development of extractive projects on their lands: a) formal engagement in various legal and regulatory processes (such as environmental impact assessment hearings, court challenges, and so on) and/or direct action aimed at halting a project; and b) "the ability to embarrass government politically by using the media to appeal to its constituents."[25] Both "weapons" are contractually limited or prohibited by various clauses typical of IBAs.

In sum, the literature on IBAs has thus far established that the lack of federal policy and regulation with respect to the negotiation and implementation of IBAs has a range of repercussions for indigenous communities, that IBAs are functioning as a kind of substitute for the discharge of duties that have typically been the responsibility of the federal Crown

(and, in many cases, remain Crown responsibilities), and that IBAs contain clauses that are themselves changing the relationship between indigenous peoples and the state. Thus far these shifts have been noted and critiqued by IBA scholars but have not yet been theorized in relation to broader shifts in resource and indigenous governance in Northern Canada, and particularly in relation to processes of neoliberalization.

NEOLIBERALISM AND INDIGENOUS PEOPLES IN CANADA

Although neoliberalization is commonly understood to involve a retrenchment of the welfare state, deregulation, and privatization, and its proponents frequently appeal to the notion of an excessive and overextended state to rationalize the rollback of various programs and services, it is crucial to note that such shifts do not represent the disappearance of the state so much as its restructuring.[26] Thus, "neoliberalization" typically involves the "rolling back" of traditional state functions and the subsequent "rolling out" of different state functions, policies, and practices that serve to deepen institutional linkages with globalized capital. As Peck observes, through the "rolling back" of the state, the state per se is not being hollowed out; what is being hollowed out is "a historically and geographically specific institutionalization of the state, which in turn is being replaced, not by fresh air and free markets, but by a *reorganized* state apparatus."[27]

The "rolling out" of the state, Peck argues, is characterized, in part, by non-governmental entities or third parties taking on some of the responsibilities and assets previously held by the state. In practice, neoliberal adjustments tend to "purge the system of obstacles to the functioning of 'free markets'; restrain public expenditure and any form of collective initiative; celebrate the virtues of individualism, competitiveness, and economic self-sufficiency; abolish or weaken social transfer programs while actively fostering the 'inclusion' of the poor and marginalized into the labour market, on the market's terms."[28] Over the last several decades, such adjustments have been documented in a number of jurisdictions, including Canada where, according to Albo, although

identifiable much earlier, neoliberal ideology and policies came to dominate by the 1990s, regardless of the party in power.[29] We pay particular attention here to the commentary on how processes of neoliberalization have reshaped indigenous governance in Canada.

If there is any realm where a reorganization of state practices and functions might be welcomed in Canada, including by many indigenous leaders and communities, it is in the realm of indigenous–state relations. For indigenous peoples across Canada, the welfare state has been associated with some of the most egregious and illegitimate interventions into their lives, including residential schooling, the apprehension of indigenous children through child welfare systems, the promotion of Band governments over traditional forms of governance, the exertion of various forms of control over wildlife, hunting, health, education, and justice, ongoing amendments to the Indian Act, extraction of natural resources from indigenous lands, and other colonial policies and practices.[30] Opposition to the state, and identification of the colonial dimensions of state intervention into the lives of indigenous peoples, has thus been central to anticolonial and self-determination movements over the past several decades.[31] It should come as no surprise, then, that the devolution or dismantling of certain state functions and policies has been welcomed by some indigenous communities, who see rejection of the colonial state and the assertion of indigenous sovereignty as a cornerstone of self-determination.

Perhaps because of the resonance between indigenous challenges to state jurisdiction over their lands and lives and neoliberal rhetoric about the merits of "less state" and freedom from state intervention, several authors have identified a kind of convergence between neoliberal ideologies and indigenous self-determination movements. Thus, Slowey and MacDonald argue that neoliberal and indigenous critiques of the Canadian welfare state share the same disdain for the paternalism that both claim are endemic to the welfare state and the ways in which excessive state oversight impedes autonomy and self-determination.[32] The devolution of federal and provincial authority over indigenous education and child welfare to indigenous governments in various jurisdictions in Canada, for example, can be understood as both an off-loading of state responsibilities and a form of redress for colonial dimensions of state

control over indigenous children and families.[33] While Slowey acknowledges that "the assumptions guiding federal policy and activity may not reflect First Nations concepts of self-determination," federal interest in devolving responsibilities to indigenous governments, she argues, "still facilitates the realization of First Nation's goals of economic self-reliance and jurisdictional autonomy."[34]

We are skeptical of this apparent convergence of interests, and follow scholars who insist that indigenous and state interests in neoliberal times are informed by distinctly different histories, material circumstances, and political commitments. Although the notion that there should be "less state" meets the objectives of some indigenous communities under some circumstances, indigenous communities, organizations, leaders, scholars, and activists across the country (including Northern Canada) consistently argue that the state's failure to meet its obligations and commitments undermines their well-being. The Idle No More movement that arose, in part, in response to federal omnibus bills aiming to weaken environmental legislation and "streamline" government, citizen, indigenous, and corporate involvement in various dimensions of resource governance, called for the implementation and enforcement of treaty and non-treaty relationships, and aimed to hold the federal government to account for its failure to meet its constitutional, fiduciary, treaty, and land claims obligations.[35] The movement explicitly rejected the notion that "less state," or the retreat of the state, responds to the demands of indigenous peoples in Canada.

Furthermore, while understandings of indigenous self-determination vary across and within the diverse indigenous communities impacted by resource development in Canada, the United Nations Declaration on the Rights of Indigenous Peoples not only delineates a range of indigenous rights (including the right to self-determination; the right to free, prior, and informed consent about any activities that might impact indigenous territories; and the right to determine land and resource use), it also emphasizes the role of the state in ensuring such rights are upheld and respected.[36] Asserting and enacting self-determination, in other words, can include holding the state accountable for its activities and obligations. There is an important distinction to be made between reorganizing the

state to meet these obligations and reorganizing the state to further the interests of mining corporations.

Indeed, a number of scholars have expressed skepticism about the potential for neoliberal policies and practices to support indigenous self-determination and indigenous rights. Dempsey et al. argue, for example, that the neoliberal push to expand private property rights on First Nations reserves is based on a shallow idea of "equality" that assumes that equality with white settler society can only be experienced when Western notions of property are institutionalized, a notion that "is made possible only by a complete bracketing of historical geographies of dispossession."[37] The language of self-reliance and responsibility "hijacks" notions of self-determination, they argue, leaving First Nations with the opportunity to "self-determine within the narrow confines that are stipulated by the white capitalist elite."[38] Papillon points to the contradictory effects of neoliberalization in indigenous communities, arguing that it represents a new form of cultural and economic colonization insofar as it promotes resource extraction in indigenous territories and restricts the sovereign control of communities over affected lands.[39] MacDonald similarly observes that "[n]eoliberal manifestations of indigenous autonomy or self-government are . . . vulnerable to criticisms launched against practices of privatization. These practices include a variety of policies that promote shifting contentious issues out of the public sphere, thereby limiting public debate and collective—that is, state—responsibility."[40] Finally, Kuokkanen challenges Slowey's contention that neoliberal shifts in indigenous–state relations reduce dependency. In the case of the Mikisew First Nation, she argues that while the nation's dependency on "the government might have decreased to some extent, it has only created a new dependency on corporations exploiting the natural resources in the Mikisew territory."[41] As Kuokkanen makes clear, the retreat of the state is often accompanied by an intensification and acceleration of corporate involvement in indigenous lands and governance.

It is by no means certain, then, that indigenous peoples are better placed to advance their interests through the forms of privatization, marketization, and individualization that underpin processes of neoliberalization in Canada, even while the retreat of the state from certain dimensions of indigenous peoples' lives has been welcomed by some. Howlett et

al. thus call for research that engages the "not-so-positive implications for Indigenous peoples" of neoliberal reforms in order to develop a more comprehensive picture of the ways that neoliberalization exacerbates "the inequalities that already exist for Indigenous peoples."[42] But just as there is a danger of overemphasizing the benefits of neoliberal reforms, we share Feit's concern about simplistic analyses that cast indigenous peoples as either naive victims of neoliberalization or active opponents, and echo his emphasis on the importance of nuanced, contextualized accounts of contemporary shifts in indigenous, state, and corporate relations.[43]

IBAs AND THE NEOLIBERALIZATION OF RESOURCE AND INDIGENOUS GOVERNANCE

How might we understand IBAs, then, in relation to processes of neoliberalization in Canada? As noted, IBAs have not been explicitly theorized in relation to neoliberalism in Canada, although scholars have identified a number of issues associated with IBAs that might productively be read as manifestations of neoliberal processes and policies.[44] We consider, here, the ways in which IBAs relate to neoliberal processes of marketization, privatization, and individualization in the Canadian North, and to broader state interests in ensuring that large-scale, industrial resource extraction proceeds in the region. Drawing on interviews conducted with indigenous leaders, government representatives, consultants, and lawyers involved in the negotiation, implementation, and regulation of IBAs in the Northwest Territories, as well as on a review of key documents that have shaped the evolution (or lack thereof) of federal policy on IBAs over the past ten to fifteen years, we argue that the emergence of IBAs as a key dimension of resource governance in the North since the late 1990s has advanced neoliberal objectives in the region, which we understand to include the removal of barriers to accumulating capital; the privatization of state assets, functions, and services; and the promotion of market-based solutions for various social, economic, environmental, and political struggles.[45] These shifts are made to make sense through neoliberal discourses emphasizing entrepreneurial, individualized understandings of citizenship and social life.

Although it is possible to identify processes of neoliberalization operative both within and beyond the Canadian North, we follow Hayter and Barnes in refusing to assume "neoliberalism's hegemony" in this study.[46] We do not begin with the assumption that the Canadian North is wholly shaped by processes of neoliberalization, nor do we argue that IBAs are themselves a primarily neoliberal phenomena. To make such claims would require much more attention to the specific geographies of neoliberalization in the region, and a more thorough study of the ways in which IBAs articulate with other institutional, historical, and political processes. Our analysis is both more preliminary and more schematic. We aim here to bring understandings of neoliberalism to bear on the study of IBAs in order to sharpen our analysis of precisely what IBAs *do*, and draw attention to the ways in which IBAs are both emblematic of and contribute to shifting relations between indigenous peoples, mining corporations, and the state.

Removal of barriers

If, in the 1970s and 1980s, northern indigenous peoples were understood by government and industry to be formidable and effective "barriers" to the development of industrial resource extraction in the region, to what extent do IBAs assist in the removal of such barriers? As discussed, IBAs contain features that act as explicit deterrents to community-level resistance, such as non-compliance provisions. Indeed, from an industry perspective, part of the purpose of IBAs is to ensure that there will be no interruptions to the project, and that there is certainty that the community (or at least its leadership) has consented to the development and will allow it to go forward without any hindrances. Non-compliance provisions—contained within a legally binding IBA—serve as what Caine and Krogman refer to as a "gag order,"[47] whereby indigenous groups cannot voice concerns in light of new information as the project proceeds. Along with confidentiality clauses that limit a community's capacity to seek allies by releasing details of the agreement that may assist in creating campaigns of public support and political pressure, non-compliance provisions are tools used by industry to mitigate the risk of indigenous resistance, which has historically been a significant barrier to the

accumulation of capital through the extraction of natural resources in Canada.[48]

Securing indigenous consent for a given project through an IBA, whether or not it is accompanied by non-compliance and confidentiality clauses, and whether or not that consent is meaningful, informed, and legally binding,[49] is also an enormously efficient, cost-effective, and rapid means of addressing the single largest threat indigenous peoples have historically posed to resource development in Canada: their capacity to assert unceded claims to a given piece of land. Negotiations of comprehensive land claims, which themselves aim (from the federal perspective) to clarify surface and subsurface land rights, are vastly more expensive[50] and time consuming, and do not directly secure a developer's legal or social licence to develop a given project. As we detail in the following section, moreover, to the extent that IBAs are viewed as de facto (if not de jure) satisfaction of the Crown's duty to consult and accommodate indigenous peoples with respect to actual or potential infringement of their rights to a given territory, they act as particularly potent removals of barriers to capital accumulation in the region. In Nunavut, efforts to challenge the development of a proposed uranium mine have been thwarted, in part, by assertions that the land claims corporation (Nunavut Tunngavik Incorporated) has contractual obligations to proceed with its approval of the project, regardless of dissent among beneficiaries and the fact that environmental assessment processes are ongoing.[51] Here, the lack of clarity around what constitutes adequate, legitimate, and appropriate consultation for proposed resource development is acutely felt, and raises the question of whether bilateral agreements between developers and indigenous organizations can undermine public review and assessment processes.

Privatization

The privatization of state assets, functions, and services is considered a hallmark of neoliberal ideology and practice. IBAs, we argue, can be understood as a means by which the Crown's duty to consult and accommodate indigenous peoples is privatized. The duty to consult and accommodate rests solely with the Crown; as established through *Haida Nation*

vs. British Columbia,[52] the Crown is required to consult and accommodate indigenous peoples in Canada whenever their traditional rights may be infringed upon by resource development. From a legal standpoint, the Crown can delegate procedural aspects of this duty—third parties, for example, can work to determine real or potential infringement of Aboriginal rights and title with respect to a particular mineral development project.[53] Third parties are under no legal obligation to consult with and accommodate Aboriginal peoples, however, as that obligation is assumed entirely by the Crown. But as Fidler and Hitch observe, in practice, governments increasingly operate as though the Crown's duties have been effectively relieved through IBAs, insofar as a signed IBA is taken as evidence that the indigenous nation or community in question has been both consulted and accommodated in relation to a proposed resource extraction project.[54] This observation is widely shared by government, legal, and indigenous sources interviewed as part of this research, and corroborated by corporate sources.[55] As a consultant working in the indigenous governance sector put it, the Crown's approach is:

> instead of being active, being more passive but watching and monitoring. I think they hold their nose over what IBAs are, but also part of them likes the fact that they're being done because it sort of gets them off the hook for taking care of their consultation and accommodation responsibilities. The company's going to do it and get the First Nation to sign; then really the Crown can sort of wash its hands and say "consultation and accommodation accomplished. Problem solved. We don't have to get involved. Someone else has solved it for us."[56]

Indeed, the process of consulting and accommodating indigenous governments for every potential infringement of Aboriginal rights and title is extremely cumbersome for the state, and there is certainly a financial incentive for the state to delegate this duty to the private sector. A lawyer who has been involved with IBA negotiations in British Columbia and in the North observed, moreover, that "savvy" mining companies endeavour to include language in their IBAs that specifically characterizes the IBA as satisfying the Crown's duty to consult and accommodate.[57] Such language would not likely hold up in court,[58] but it demonstrates the

extent to which a historically defined relationship between the state and indigenous peoples has been delegated to the private sector. Similarly, Gogal et al. advise developers pursuing IBAs to keep the Crown informed "of the substance of the negotiations" and ensure the Crown "is satisfied with the level of consultation, and, if possible, signs off on the IBA" to protect against future challenges to the legitimacy of the IBA as satisfying the Crown's duty.[59] The Crown and the courts have justified the delegation of procedural aspects of consultation and accommodation to industrial proponents partly because the proponent is most familiar with the details of a proposed development project and is in a "financial position to offer mitigation and other benefits."[60] But as a high-ranking AANDC employee rightly observed, "if we want this to be an effective part of our duty—the Crown's duty to consult—then we need to know what's in them,"[61] and confidentiality provisions precisely delimit such knowledge.

The de facto satisfaction of the Crown's duty to consult and accommodate has been rationalized, in part, through neoliberal discourses of efficiency and enhanced individual agency. Crown–indigenous relations that have historically (and constitutionally) been framed in terms of rights and responsibilities are being shifted to the private sector in the name of cost effectiveness, timeliness, efficiency, and the enhancement of local or indigenous agency. Indeed, AANDC not only appears to see itself as appropriately absent from IBA negotiations, but when asked about the unequal playing field within which IBAs are negotiated, a high-ranking AANDC employee responded:

> You can't say to a company "you will have less lawyers than these guys. You will look out for their interests." This is a naturally evolving equilibrium here. It's a free economy. Like I said, if you were living in Russia or China or in a communist system—there has to be some sort of a free market that the system itself establishes its rule.[62]

Here, neoliberal discourses of a "free market" economy are invoked to justify the negotiation of agreements between multinational corporations and indigenous communities, "stakeholders" with vastly different legal and consulting resources at their disposal. Cognizant of the risks of

IBA negotiations being (or appearing to be) one-sided, Gogal et al. advise developers to include provisions indicating that the negotiations have not been coerced, and even to provide funding to an indigenous group to assist with securing independent counsel and consulting assistance. The authors go on to suggest that, faced with both the practical requirement to negotiate IBAs and the lack of certainty about whether IBAs can secure legally enforceable, ongoing access to a given territory (what they term "a problem that has no clear answer"), "building meaningful business partnerships" with indigenous groups "may be the best solution."[63] Here, business partnerships are not just ideologically sensible but also a profoundly practical and efficient solution to the "problem" of unresolved indigenous territorial claims.

Although AANDC sources frame IBA negotiations as appropriately regulated by a "free economy," not all stakeholders are satisfied with the government's lack of involvement in this dimension of resource governance in the North. As an indigenous negotiator in the BHP-Ekati IBA negotiations pointed out:

> Government shouldn't just wash their hands. They have a fiduciary obligation which clearly states that when Aboriginal peoples are in a situation that requires certain resources, to ensure that there's a fair treatment of their citizens in their own territory, and that they're there to ensure that things are done properly and that industry isn't just ramrodding whatever they want through with Aboriginal people in their own homeland. So it's a concern.[64]

Here, the ongoing failure of the federal government to develop a policy on IBAs becomes particularly significant. When asked in an interview whether he was aware of any follow-up to his 1999 report, Steven Kennett commented that he "handed it off to them; they thanked me very much. I think there were a few comments from people, but when I stopped tracking this issue a long time ago, there was no indication they would do anything."[65] A broad review of northern regulatory systems commissioned by DIAND in 2008 specifically recommended that the "federal government should give priority to developing an official policy on the purpose, scope and nature of Impact Benefit Agreements in the North,"[66] but this,

too, appears not to have resulted in meaningful action. Interviews with both Government of the Northwest Territories (GNWT) and AANDC employees confirm that there has been no apparent movement on the IBA file.[67] Meanwhile, as Gogal et al. observe, although "once seen as the Crown's fiduciary obligation, the duty to consult has now shifted to the developer,"[68] even if in legal terms it remains wholly and clearly the responsibility of the Crown.

Market-based solutions to social problems

The past decade has seen a marked rise in discourses of indigenous entrepreneurialism and market-based understandings of indigenous–state relations and indigenous economic, social, and cultural well-being. From treatises (and, more recently, proposed federal legislation) advocating the privatization of reserve lands to celebrations of indigenous–corporate joint ventures and indigenous-run corporations, it has become increasingly common to associate the aims of increased well-being, independence, autonomy, and self-determination with involvement in capitalist labour, property, and investment markets.[69] As a number of scholars have made clear, these shifts are highly affiliated with neoliberalism.[70]

IBAs, we would argue, are consistent with such shifts. Not only do they promote market-based solutions to various social, economic, and political problems, but in a time of reduced federal spending on social transfer programs, as well as a lack of spending on infrastructure needed in northern, predominately indigenous communities, the benefits resulting from contracts with mining companies have in many ways replaced the traditional role of the state in providing for these vital services and infrastructural needs.[71] While the state continues to provide subsidies to the private sector,[72] private industry is becoming the primary point of contact for some indigenous communities regarding the impacts and benefits of extraction. Industry is increasingly involved in the provision of social, environmental, and cultural services and benefits in the North, as well as in the development of roads, airports, and other physical infrastructure, and in monitoring and assessment processes.

Indeed, as a number of scholars have observed, indigenous signatories aim to use IBAs to extract benefits that they have repeatedly failed to

secure from federal and territorial governments.[73] But while government is often—and rightly—blamed for creating many of the conditions under which northern indigenous peoples experience social, economic, cultural, and political suffering,[74] and while *less* government intrusion into the lives of indigenous peoples is often demanded by indigenous communities, the obligation of the state to redress colonial policies and practices, to honour historical treaties and contemporary claims, and to provide adequate health, educational, judicial, and other services is also emphasized by northerners. To the extent that IBAs act as market-based proxies for satisfying obligations that would otherwise be the responsibility of the state, they are in line with a broader neoliberalization of indigenous–state relations in Canada, and they fortify the notion that jobs and cash will resolve the structural, systemic, historically informed struggles faced by northern indigenous peoples.

Consider, for example, the preponderance of employment quotas, job-training programs, and other educational and employment benefits in IBAs. The federal government has aimed to integrate northern indigenous peoples into the wage labour market for decades,[75] but thus far the educational system has not been intimately tied to particular industrial requirements. IBAs act as a mechanism for integrating public education with the employment needs of mining companies, which in communities with severely restricted employment and educational opportunities can significantly shape available options. Concerns have been raised by northerners that the explicit reorientation of educational and training programs to support industry needs will further restrict the development of a professional class in northern communities, and entrench the racialized division of labour already documented at northern mine sites, where indigenous peoples predominantly work as labourers, and non-indigenous, transient workers occupy professional, skilled managerial roles.[76] But within market-based assessments of indigenous well-being, an increase in waged work of any kind is seen as a measure of success, even though mine work is linked to increased rates of sexually transmitted infections (STIs), substance abuse, and family violence, and even though mines themselves pose risks to land-based economies.[77] Indeed, when asked about the role of IBAs in the contemporary North, a former NWT politician characterized IBAs as "business agreement[s]

between one company and another"[78] and emphasized the capacity for IBAs to provide "tools" to facilitate the integration of indigenous peoples into the labour market. Here, the historical lack of indigenous involvement in waged work is framed as a matter of missed opportunity and lack of capacity, not as a conscious choice to engage in land-based and mixed economies, and not as a function of colonial histories of education and employment in the North.

Unlike Crown obligations to indigenous peoples, which predate the formation of the Canadian state and are grounded in a larger nation-to-nation framework (as well as being reaffirmed in the Constitution and clarified in case law), the obligations of developers are reduced to their delineation in the IBA itself and are ultimately subject to contract law. This distinction is most acutely felt in regard to designating responsibility for ongoing, unplanned, or significant impacts. In discussing the ways in which IBAs intersect with environmental assessment processes, Gogal et al. note that environmental assessment "deals with mitigation of planned or known environmental effects," not long-term, unforeseen, or otherwise complex impacts. While IBAs "often include mitigation or remedial measures over and above those commitments made during the environmental assessment process," the authors warn that "Aboriginal groups will often want to negotiate through an IBA additional compensation for unplanned events or effects that are more significant than planned. Negotiation of such provisions should be approached with caution so as to avoid a 'bottomless pit' of compensation."[79] If, in fact, developers are securing measures to ensure they are not liable for a "bottomless pit" of compensation, and if the Crown is functioning as though IBAs satisfy their duty to consult and accommodate, it remains unclear who will address these more complex dimensions of extraction. As an indigenous IBA negotiator observed, although he is satisfied with the IBAs that he has been involved in, "IBAs [are] a quick fix. It's not going to solve our problems. I think it's going to make more problems for us in the future."[80] These "future problems," he noted, will arise when mines close and the retreat of government from key services and programs—justified, in part, because of IBAs—will be most acutely felt.

Finally, while the services, quotas, training programs, contracting, partnerships, and joint venture opportunities negotiated through IBAs

are frequently framed as novel opportunities that enable a kind of latent entrepreneurialism to flourish in indigenous communities, and while the federal government has explicitly supported such developments,[81] it would seem that such "flourishing" also becomes a justification for government clawbacks. According to an indigenous leader from the Northwest Territories, the federal and territorial governments have encouraged the proliferation of IBAs in order to reduce their spending in indigenous communities:

> There's no doubt that [the government] encourage[s IBAs] because it lessens the pressures on their social purse strings . . . If you totally just go on the social purse, which is what all governments look at—it's to ensure you have the basic requirements of survival—but IBAs are a little bit different because it becomes a benefit. Governments will try to claw back on those benefits any time, every chance they get.[82]

Indeed, following the signing of IBAs regarding the Ekati mine, the GNWT began clawing back income support payments to welfare recipients from communities that were signatories to these agreements.[83] After nearly ten years of protest, the territorial government finally decided to allow up to $1,200 in IBA-related "gifts" to be received without affecting income support payments.[84] The clawbacks themselves resulted in minimal cost-saving for the GNWT, and it would seem that they were as much about reframing the terms of indigenous–government relations as about the savings themselves. According to O'Faircheallaigh, fear of government clawbacks motivates some indigenous signatories to keep the content of IBAs confidential.[85]

In sum, viewed through the lens of neoliberalism, several dimensions of IBA policy, negotiation, and implementation can be theorized in terms of broader political-economic shifts in indigenous and resource governance in the North. IBAs contribute to the removal of barriers to accumulation in the region, effectively privatize the federal duty to consult and accommodate indigenous peoples, and both facilitate and validate the development of market-based solutions to the historically-rooted, structural, and systemic challenges that confront northern indigenous peoples.

DISCUSSION AND CONCLUSION

Studies of neoliberalism have been subject to several important critiques. As some critics observe, the term "neoliberalism" has come to be associated with any and all shifts in social, economic, political, and environmental relations. According to Barnett, neoliberalism has become a catch-all term, a "consolation" for the Left, which actually "compound[s] rather than aid[s] in the task of figuring out how the world works and how it changes."[86] Indeed, just as it has become standard to invoke processes of neoliberalization in a wide range of studies of social, political, and economic restructuring, it has also become standard to acknowledge that the term itself can lack both conceptual clarity and analytical purchase. Furthermore, as Feit argues, many studies of neoliberalism provide simplistic analyses that cast indigenous peoples as either naive victims or active opponents rather than as empowered subjects facing complex choices.[87]

We are sympathetic to these critiques, and are reluctant to attribute the historically and geographically specific shifts in resource governance and indigenous–state relations in the North entirely to processes of neoliberalization. We note, for example, that far from being passive victims of a retreating, neoliberalizing state, some northern indigenous leaders and governments have in many ways *pushed* the federal government out of various dimensions of resource governance, insisting that that the state has no jurisdiction over resource development on indigenous lands. The responsibility to negotiate impacts and benefits related to resource development has not so much been downloaded onto indigenous communities by the federal government, these leaders insist, but rather indigenous peoples have asserted jurisdiction over what was always their responsibility, and in this sense, IBAs must be understood as a hallmark of self-determination.[88] While some of the benefits, services, and infrastructure northern indigenous peoples are securing through IBAs have previously been provided by the state, moreover, many have not; the most successful and comprehensive IBAs are celebrated for their capacity to bring meaningful benefits to northerners, benefits that governments have repeatedly failed to provide.

Furthermore, the historic timeline taken up in so many studies of neoliberalization, in which neoliberal ideologies begin to emerge in the 1970s in the United States and United Kingdom, and come to flourish by the 1990s in these and other jurisdictions, is an awkward fit in Northern Canada. Although one can certainly identify forms of state retrenchment in Northern Canada over the last several decades, lack of federal involvement in the region is anything but novel. The rapid expansion of state services in the North in the post–WWII era was an historical anomaly, insofar as previous governments had aimed to minimize federal involvement in the lives of indigenous northerners and ensure that they maintained land-based livelihoods (except, of course, in areas where the state aimed to extract natural resources). Indeed, as indigenous northerners are keenly aware, the state has quite happily engaged in both "laissez faire" and "aidez faire" policies for centuries, from the days of the fur trade (when a corporation, the Hudson's Bay Company, was permitted to govern Rupert's Land as it saw fit, so as to maximize fur trade profit) through to the granting of oil, gas, and mineral leases to corporations without regard to indigenous rights and claims. A state that promotes the interests of capital, seeks to limit its involvement in the lives of its citizens, and works to enrol its citizens in market-based, individualized, and privatized forms of life is nothing new to indigenous northerners.

What is new, we suggest, is the ways in which a neoliberal reorganization of the state is being framed as consistent with northern indigenous self-determination, and the alleged consensus that "less state" represents a win-win-win situation for indigenous communities, corporations, and the state. According to such framings, it is precisely around the notion of "less state" that indigenous peoples, mineral developers, and neoliberal governments find agreement. But as Peck and others have made clear, neoliberalization involves not so much *less* state as a *different* state, one organized to more fully accommodate the needs of capital, and one that relies upon its citizens to enact entrepreneurial, individualized forms of self-governance and self-regulation. Although framed as a morally and politically appropriate shift away from paternalism, the neoliberalization of indigenous–state relations and state involvement in northern resource extraction risks ushering in new forms of dependency, even while it is

rightly celebrated by indigenous northerners as a rejection of long-standing, deeply colonial relations. As Kuokkanen observes:

> In attempts to break the cycles of dependency, poverty and dire socioeconomic circumstances in their communities, many indigenous groups and institutions have, as a part of their self-governance efforts, embarked on the path of neoliberal economic development which has often meant further exploitation of the natural resources in their territories, now in the form of joint ventures and in partnerships with corporations. What is surprising in these contemporary political efforts is that very little attention has been paid to the economic processes that played a significant role in creating dependency historically or linking the historical dependency creation to the contemporary forms of dependency on corporations and their conditions for partnerships which may include restructuring key institutions in indigenous communities.[89]

Indeed, while a rejection of state paternalism and an assertion of jurisdiction over land and livelihoods underpins many northern indigenous peoples' support for resource governance mechanisms like IBAs, it is far from clear that these mechanisms will result in precisely what they aim at: meaningful, long-term, effective control over development on indigenous lands.

Our intention in raising questions about IBAs and their affiliation with processes of neoliberalization, then, is not to condemn IBAs as components of northern resource governance. Indigenous signatories are acutely aware of the vulnerabilities of their communities to the whims of capital, and many framed their negotiation and signing of IBAs not as a panacea, but as an effort to secure needed (if limited) benefits and to assert control over a portion of resource development. Many indigenous groups redirect IBA monies toward community initiatives in an effort to ensure that IBAs do not simply work to "get you into the wage economy, and turn you from an Indian to a Canadian," but also help to "maintain your identity, your language, your culture."[90] We concur with Feit that insufficient attention has been paid to the diversity of relations between indigenous peoples and various neoliberal practices and shifts; identifying

the neoliberal dimensions of IBAs does not imply that indigenous signatories have uniform relations, experiences, or interests in these agreements.[91] Our concern, here, has been with the broader political-economic work that IBAs perform, and their role in both facilitating and naturalizing significant shifts in indigenous–state relations and resource governance in the Canadian North. To the extent that IBAs remove barriers to capital accumulation; privatize federal duties and responsibilities; naturalize market-based solutions to social, political, economic, cultural, and environmental struggles; and delimit the capacities for members of signatory communities to assess proposed developments or to express concern and dissent, the framing of IBAs as expressions of convergence between indigenous, corporate, and state interests must be challenged.

In conclusion, then, the neoliberalization of northern resource governance and indigenous–state relations, as manifested in IBAs, gives us reason to echo Caine and Krogman's "healthy suspicion" that IBAs do what they claim to do, and that they are, in fact, the best available tool for ensuring that indigenous northerners secure benefits and minimize the impacts of extraction on their lands, particularly in regions without settled comprehensive claims.[92] When compared to past practices, where indigenous peoples gained almost no benefits from extraction on their lands, IBAs surely represent an improvement. But this improvement must be weighed against concerns that IBAs are merely a "quick fix"[93] whose primary function is to secure consent for projects with significant long-term effects and that IBAs absolve the Crown of its responsibility to consult and accommodate indigenous peoples, silence potential critics of mining development, delay resolution of comprehensive land claims, and naturalize individualized and entrepreneurial forms of citizenship and community. Viewed in this light, Caine and Krogman's healthy suspicion is thoroughly warranted.

ACKNOWLEDGMENTS

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NOTES

1 This chapter is a based on a journal article recently published by Emilie Cameron and Tyler Levitan entitled "Impact and Benefit Agreements and the Neoliberalization of Resource Governance and Indigenous–State Relations in Northern Canada," *Studies in Political Economy* 93 (2014): 23–50.

2 But see Cathy Howlet et al., "Neoliberalism, Mineral Development, and Indigenous People: A Framework for Analysis," *Australian Geographer* 42, no. 3 (2011): 309–23, for an analysis in the Australian context.

3 Twenty-one interviews were carried out between August and December 2011. Although we cannot guarantee anonymity, we have attempted to maintain the anonymity of research participants, as stipulated by the *Carleton University Research Ethics Board.*

4 Steven Kennett, *Issues and Options for a Policy on Impact and Benefit Agreements for the Northern Territories* (Calgary: Canadian Institute of Resource Law, 1999), identifies the signing of the Strathcona Sound/Nanisivik Agreement in 1974 as the first impact and benefit agreement in the North. It was an agreement between the federal government and Mineral Resources International Ltd., however, and involved little to no consultation with Inuit [see Chapter 10, this volume, and Tee W. Lim, "Inuit Encounters with Colonial Capital: Nanisivik – Canada's First High Arctic Mine" (MA thesis, Institute of Resources and Environmental Sustainability, UBC, 2013)]. The agreements negotiated in relation to the Ekati diamond mine thus represent the first IBAs in the North that did not involve government negotiators or signatories and that were directly negotiated by indigenous signatories. Not surprisingly, indigenous leaders celebrated this assertion of jurisdiction over their own affairs (I-4), even while they were critical of the federal government's sixty-day timeline mandate and the lack of funds made available to support negotiations.

5 "IBA Research Network," accessed November 30, 2012, http://www.impactandbenefit.com/IBA_Database_List/; NRCan, "Agreements between Mining Companies and Aboriginal Communities or Governments," accessed February 4, 2014, https://www.nrcan.gc.ca/mining-materials/aboriginal/14694.

6 Ginger Gibson and Ciaran O'Faircheallaigh, *IBA Community Toolkit: Negotiation and Implementation of Impact and Benefit Agreements* (Toronto: Walter and Duncan Gordon Foundation, 2010).

7 Jason Prno and Scott D. Slocombe, "Exploring the Origins of 'Social License to Operate' in the Mining Sector: Perspectives from Governance and Sustainability Theories," *Resources Policy* 37, no. 3 (2012): 346–57; Ken Caine and Naomi Krogman, "Powerful or Just Plain Power-Full? A Power Analysis of

Impact and Benefit Agreements in Canada's North," *Organization & Environment* 23, no. 1 (2010): 76–98; Gibson and O'Faircheallaigh, *IBA Community Toolkit*.

8 We use "government" in this chapter to refer to the specific governmental ministries or institutions in question (e.g., the federal Ministry of Aboriginal Affairs and Northern Development) and "state" to refer to the broader political, legal, military, police, and administrative institutions though which the interests of capital are maintained. Following Rianne Mahon, we emphasize the relative autonomy of the administrative apparatus of government in the development of public policy and do not conceptualize government ministries or bureaucrats as directly and uniformly implementing policy that uniquely serves particular interests (Rianne Mahon, "Canadian Public Policy: The Unequal Structure of Representation," in *The Canadian State: Political Economy and Political Power*, ed. L. Panitch (Toronto: University of Toronto Press, 1977), 165–98. We do, however, begin with the assumption that the Canadian state has a long-standing and ongoing interest in large-scale resource extraction in the Canadian North in particular and in capitalist economic development in general.

9 The federal ministry charged with "Indian affairs" and northern development has changed names several times over its history. Interviewees and publications cited in this study refer, variably, to INAC, DIAND (Department of Indian Affairs and Northern Development, in use after 1966), and AANDC (Aboriginal Affairs and Northern Development Canada, the name in place since 2011).

10 CIRL, *Independent Review of the BHP Diamond Mine Process* (Calgary: 1997), 15.

11 Lindsay Galbraith, Ben Bradshaw, and Murray Rutherford, "Towards a New Supraregulatory Approach to Environmental Assessment in Northern Canada," *Impact Assessment and Project Appraisal* 25, no. 1 (2007): 27–41; Jason Prno, "Assessing the Effectiveness of Impact and Benefit Agreements from the Perspective of their Aboriginal Signatories" (MA thesis, University of Guelph, 2007).

12 Caine and Krogman, "Power Analysis of Impact and Benefit Agreements"; Gibson and O'Faircheallaigh, *IBA Community Toolkit*.

13 Caine and Krogman, "Power Analysis of Impact and Benefit Agreements"; Janet Keeping, "Local Benefits and Mineral Rights Disposition in the Northwest Territories: Law and Policy," in *Disposition of Natural Resources: Options and Issues for Northern Lands*, eds. Monique Ross and John Owen Saunders (Calgary: Canadian Institute of Resources Law, 1997); Kennett, *Issues and Options*; Kevin O'Reilly and Erin Eacott, "Aboriginal Peoples and Impact and

Benefit Agreements: Summary of a National Workshop," *Northern Perspectives* 25, no. 1 (1999).

14 Prno, "Assessing the Effectiveness"; Prno and Slocombe, "Exploring the Origins of Social License"; for a critique of this trend in the literature, see Caine and Krogman, "Power Analysis of Impact and Benefit Agreements."

15 See Galbraith, Bradshaw, and Rutherford, "Towards a New Supraregulatory Approach."

16 Thomas Isaac and Anthony Knox, "Canadian Aboriginal Law: Creating Certainty in Resource Development," *University of New Brunswick Law Journal* 53 (2004): 3–42.

17 Prno and Slocombe, "Exploring the Origins of Social License," 354.

18 Janet Keeping, *Thinking about Benefits Agreements: An Analytical Framework*, prepared for Canadian Arctic Resource Committee, 1998; O'Reilly and Eacott, "Aboriginal Peoples and Impact and Benefit Agreements"; Kennett, *Issues and Options*.

19 Kennett, *Issues and Options*.

20 Lindsay Galbraith, "Understanding the Need for Supraregulatory Agreements in Environmental Assessment: An Evaluation from the Northwest Territories, Canada" (MA thesis, Simon Fraser University, 2005), 75–76.

21 Kennett, *Issues and Options*, ix.

22 Ginger Gibson, "Negotiated Spaces: Work, Home, and Relationships in the Dene Diamond Economy" (PhD diss., University of British Columbia, 2008); Tyler Levitan, "Impact and Benefit Agreements in Relation to the Neoliberal State: The Case of Diamond Mines in the Northwest Territories" (MA thesis, Carleton University, 2012); see also Ellen Bielawski, *Rogue Diamonds: Northern Riches on Dene Land* (Seattle: University of Washington Press, 2003) for a discussion of similar issues in relation to the Ekati mine. Interviewees allege that, although the federal government is not formally involved in regulating IBA negotiations, there is "cooperation between industry and government to determine who should get an IBA . . . I think government had some influence in terms of telling industry, 'Ya OK. You wanna leave them out? We won't squawk about it. We're not going to protest'" (I-4).

23 Sandra Gogal, Richard Reigert, and JoAnn Jamieson, "Aboriginal Impact and Benefit Agreements: Practical Considerations," *Alberta Law Review* 43, no. 1 (2006): 156.

24 Ciaran O'Faircheallaigh, "Aboriginal – Mining Company Contractual Agreements in Australia and Canada: Implications for Political Autonomy and Community Development," *Canadian Journal of Development Studies* 3, nos. 1–2 (2010): 74.

25 Ibid., 76.

26 Jamie Peck and Adam Tickell, "Neoliberalizing Space," *Antipode* 34, no. 3 (2002): 380–404; Leo Panitch and Sam Gindin, *The Making of Global Capitalism: The Political Economy of American Empire* (London: Verso, 2012).

27 Jamie Peck, "Neoliberalizing States: Thin Policies/Hard Outcomes," *Progress in Human Geography* 25, no. 3 (2001): 447.

28 Ibid., 445.

29 Greg Albo, "Neoliberalism, the State, and the Left: A Canadian Perspective," *Monthly Review* 54, no. 1 (2002): 46–55.

30 See, for instance, T. Alfred, *Peace, Power, Righteousness: An Indigenous Manifesto* (Don Mills, ON: Oxford University Press, 1999); S. de Leeuw, M. Greenwood, and E. Cameron, "Deviant Constructions: How Governments Preserve Colonial Narratives of Violence and Mental Health to Intervene into the Lives of Indigenous Children and Families in Canada," *International Journal of Mental Health and Addiction* 8 (2009): 282–95; P. Kulchsyki and F. Tester, *Kiumajut (Talking Back): Game Management and Inuit Rights 1900–1970* (Vancouver: UBC Press, 2007); V. Satzewich and T. Wotherspoon, *First Nations: Race, Class, and Gender Relations* (Regina: Canadian Plains Research Centre, 2000).

31 Alfred, *Peace, Power, Righteousness*; Dene Nation, "Dene Declaration," in *Dene Nation: The Colony Within*, ed. M. Watkins (Toronto: University of Toronto Press, 1975); P. Nadasdy, *Hunters and Bureaucrats: Power, Knowledge, and Aboriginal–State Relations in the Southwest Yukon* (Vancouver: UBC Press, 2003).

32 Gabrielle Slowey, *Navigating Neoliberalism: Self-Determination and the Mikisew Cree First Nation* (Vancouver: UBC Press, 2008); F. MacDonald, "Indigenous Peoples and Neoliberal 'Privatization' in Canada: Opportunities, Cautions, and Constraints," *Canadian Journal of Political Science* 44 (2011): 257–73.

33 See MacDonald, "Indigenous Peoples."

34 Slowey, *Navigating Neoliberalism*, 53.

35 See, for example, "Idle No More (INM)'s Canadian Concerns," *Indigenous Policy Journal* 24 (2013).

36 United Nations Declaration on the Rights of Indigenous Peoples, G.A. Res. 61/295, Annex, U.N. Doc. AIRES/61/295 (Sept. 13, 2007).

37 J. Dempsey, K. Gould, and J. Sundberg, "Changing Land Tenure, Defining Subjects: Neoliberalism and Property Regimes on Native Reserves," in *Rethinking the Great White North: Race, Nature, and Whiteness in Canada*, eds. A. Baldwin, L. Cameron, and A. Kobayashi (Vancouver: UBC Press, 2011), 4.

38 Ibid., 26; see also S. Pasternak, "How Capitalism Will Save Colonialism: H. De Soto, the Settler Colony of Canada, and the Privatization of Reserve Lands"

(paper presented at the Association of American Geographers Conference, New York, NY, February 25, 2012).

39 M. Papillon, "Les peuples autochtones et la citoyenneté: quelques effets contradictoires de la gouvernance néolibérale," éthique publique 14 (2012).

40 MacDonald, "Indigenous Peoples," 258.

41 R. Kuokkanen, "From Indigenous Economies to Market-Based Self-Governance: A Feminist Political Economy Analysis," *Canadian Journal of Political Science* 44 (2011): 285.

42 C. Howlett, M. Seini, D. Mcallum, and N. Osborne, "Neoliberalism, Mineral Development, and Indigenous People: A Framework for Analysis," *Australian Geographer* 42 (2011): 320.

43 H. Feit, "Neoliberal Governance and James Bay Cree Governance: Negotiated Agreements, Oppositional Struggles, and Co-governance," in *Indigenous Peoples and Autonomy: Insights for a Global Age*, eds. M. Blaser, R. de Costa, D. McGregor, and W. Coleman (Vancouver: UBC Press, 2010), 49–79.

44 Keeping is skeptical of the breadth of IBAs, arguing that benefits such as adult education for basic literacy should be provided by the state rather than industry, and arguing that IBAs are consistent with government retrenchment at all levels ("Local Benefits," 205). Sosa and Keenan have hinted at the neoliberal nature of IBAs as well, pointing out that "[i]n the context of government cutbacks to social programs and environmental regulation, the wide scope of these agreements and the reduced government role in their negotiation and execution has led to criticism that IBAs are a form of government downloading that sees companies act as welfare providers and communities as environmental watchdogs" [Irene Sosa and Karyn Keenan, "Impact Benefit Agreements between Aboriginal Communities and Mining Companies: Their Use in Canada" (Calgary: Canadian Environmental Law Association, 2001), 9]. Caine and Krogman ("Power Analysis of Impact and Benefit Agreements") make similar observations, as does O'Faircheallaigh ("Aboriginal – Mining Company Contractual Agreements"). None, however, have explicitly conceptualized IBAs in relation to processes of neoliberalization.

45 See Noel Castree, "From Neoliberalism to Neoliberalisation: Consolations, Confusions, and Necessary Illusions," *Environment and Planning D* 38 (2006); Wendy Larner, "Neo-liberalism: Policy, Ideology, Governmentality," *Studies in Political Economy* 63, no. 1 (2000); Peck and Tickell, "Neoliberalizing Space."

46 Roger Hayter and Trevor Barnes, "Neoliberalization and Its Geographic Limits: Comparative Reflections from Forest Peripheries in the Global North," *Economic Geography* 88, no. 2 (2012): 198.

47 Caine and Krogman, "Power Analysis of Impact and Benefit Agreements," 86.

48 Gibson and O'Faircheallaigh, *IBA Community Toolkit*.

49 IBAs have not yet been tested in the courts, and although some companies go so far as to include language stating the IBA satisfies the Crown's duty to consult and accommodate, this is unlikely to be proven in a court challenge (I-10; Isaac and Knox, "Canadian Aboriginal Law").

50 As O'Reilly and Eacott note ("Aboriginal Peoples and Impact and Benefit Agreements"), the community of Lutselk'e, NWT, was provided by INAC with only $7,500 to support their IBA negotiations with BHP in relation to the development of the Ekati mine, a grossly insufficient amount to allow for the necessary background research, translation, community consultation processes, and various legal and other demands.

51 Warren Bernauer, "Uranium Mining, Primitive Accumulation, and Resistance in Baker Lake, Nunavut: Recent Changes in Community Perspectives" (MA thesis, University of Manitoba, 2011); Nunavummiut Makitagunaraningit, "Discussion Paper – Kiggavik Draft Socioeconomic Impact Statement," June 2012, accessed November 10, 2012, http://makitanunavut.files.wordpress.com/2012/06/makita-socioeconomic-discussion-paper.pdf.

52 Haida Nation v. British Columbia (Minister of Forests), 2004, S.C.J. No. 70.

53 Gibson and O'Faircheallaigh, *IBA Community Toolkit*, 30.

54 Courtney Fidler and Michael Hitch, "Used and Abused: Negotiated Agreements" (paper presented at the "Rethinking Extractive Industry: Regulation, Dispossession and Emerging Claims" conference, York University, Toronto, 2009).

55 See Northern Regulatory Improvement Initiative, Submission by the Northwest Territories and Nunavut Chamber of Mines, the Prospectors and Developers Association of Canada, and the Mining Association of Canada to Neil McCrank, 2008.

56 I-1.

57 I-10.

58 Isaac and Knox, "Canadian Aboriginal Law."

59 Gogal, Reigert, and Jamieson, "Practical Considerations," 156.

60 Ibid., 133.

61 I-2.

62 I-5.

63 Gogal, Reigert, and Jamieson, "Practical Considerations," 156, 157.

64 I-4.

65 Stephen Kennett, pers. comm., December 14, 2011.

66 Neil McCrank, *Road to Improvement: The Review of the Regulatory Systems across the North* (Ottawa: Minster of Public Works and Government Services Canada, 2008), 21.

67 I-7; I-2; I-5; see also Government of the Northwest Territories, *Approach to Regulatory Improvement*, March 2009.

68 Gogal, Reigert, and Jamieson, "Practical Considerations," 157.

69 Pasternak, "How Capitalism Will Save Colonialism."

70 Ibid.; Dempsey, Gould, and Sundberg, "Changing Land Tenure"; Kuokkanen, "From Indigenous Economies"; Slowey, *Navigating Neoliberalism*.

71 We note, however, that the state has often failed to provide the very services and infrastructure that indigenous peoples are attempting to secure through IBAs. To suggest that the federal government is "retreating" from various forms of service provision in the North would be to imply that the state did, at one point, provide adequate services and infrastructure, and many northerners would no doubt challenge such a characterization.

72 It is crucial to note that many of the services, programs, and infrastructure associated with IBAs remain heavily subsidized by government, but they are framed as either wholly private or as public-private partnerships. See Levitan, "Impact and Benefit Agreements in Relation to the Neoliberal State."

73 Courtney Fidler and Michael Hitch, "Impact and Benefit Agreements: A Contentious Issue for Environmental and Aboriginal Justice," *Environments Journal* 35, no. 2 (2007): 45–69; Keeping, "Local Benefits and Mineral Rights"; Kennett, *Issues and Options*.

74 Stephanie Irlbacher-Fox, *Finding Dashaa: Self-Government, Social Suffering, and Aboriginal Policy in Canada* (Vancouver: UBC Press, 2009).

75 Frank Tester and Chris Flannelly, "The Rankin File: Public Responsibility, Private Provision, and Health Care at the Edge of the Canadian Liberal Welfare State" (paper presented at the ArcticNet Annual Scientific Meeting, Ottawa, Ontario, December 14–17, 2010); John Sandlos and Arn Keeling, "Claiming the New North: Mining and Colonialism at the Pine Point Mine, Northwest Territories, Canada," *Environment and History* 18, no. 1 (2012): 5–34.

76 Emilie Cameron and Warren Bernauer, "Accumulation, Dispossession, and Self-Determination: Wage Labour and the Expansion of Industrial Resource Extraction in Nunavut" (paper presented at the Association of American Geographers conference, New York, NY, February 26, 2012); Lindsay A. Bell, "Economic Insecurity as Opportunity: Job Training and the Canadian Diamond Industry," in *Humanizing Security in the Arctic*, eds. Michelle Daveluy, Francis Lévesque, and Jenanne Ferguson (Edmonton: Canadian Circumpolar Institute, 2011), 293–304.

77 Nunavummiut Makitagunaraningit, "Discussion Paper"; Ginger Gibson and Jason Klinck, "Resilient North: The Impact of Mining on Aboriginal Communities," *Pimatisiwin: A Journal of Aboriginal and Indigenous Community Health* 3 no. 1 (2005): 115–39.

78 I-5.

79 Gogal, Reigert, and Jamieson, "Practical Considerations," 139.

80 I-6.

81 NWT and Nunavut Chamber of Mines, *Sustainable Economies: Aboriginal Participation in the NWT Mining Industry, 1990–2004* (Yellowknife, NWT: 2004).

82 I-12.

83 Nathan VanderKlippe, "GNWT Reconsiders Clawbacks," *Northern News Service*, October 23, 2002, accessed November 30, 2012, http://www.nnsl.com/frames/newspapers/2002-10/oct23_02claw.html.

84 CBC, "NWT Announces Income Support Changes," August 2, 2007, accessed November 30, 2012, http://www.cbc.ca/news/canada/north/story/2007/08/02/nwt-income.html?ref=rss.

85 O'Faircheallaigh, "Aboriginal – Mining Company Contractual Agreements."

86 C. Barnett, "Critical Review: The Consolidations of 'Neoliberalism,'" *Geoforum* 36 (2005): 7, 10. See also R. Hayter and T. Barnes, "Neoliberalization and Its Geographic Limits: Comparative Reflections from Forest Peripheries in the Global North," *Economic Geography* 88 (2012).

87 Feit, "Neoliberal Governance."

88 I-15.

89 Kuokkanen, "From Indigenous Economies," 291.

90 I-8. Interview with indigenous leader and former IBA negotiator (September 2011), taperecorded, Behchoko, NWT.

91 Feit, "Neoliberal Governance."

92 Caine and Krogman, "Power Analysis of Impact and Benefit Agreements," 78.

93 I-6.