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Differentiating indigenous citizenship:

Seeking multiplicity in rights, identity, and sovereignty in Canada

ABSTRACT
In this article, I examine how citizenship has been legally differentiated and conceptually reconfigured in recent treaty negotiations between the Nisga'a First Nation, the provincial government of British Columbia, and the Canadian federal government. The Nisga'a have sought a form of differentiated citizenship in Canada on the basis of rights that flow from their relationship to their lands and their identity as a political community. They have challenged the state as the sole source of rights and achieved a realignment in the relationship between their rights as aboriginal people, Canadian citizenship, and the Canadian state. [*citizenship, aboriginal rights, sovereignty, nation-state, Nisga'a, Canada*]

Citizenship has undergone considerable transformation since its inception as a legal identity linked with rights and membership in a nation-state. Globalization, migration, the displacement of persons, and the rise of identity politics in multicultural conditions have all contributed to the development of transnational, postnational, layered, and differentiated forms of citizenship through which people simultaneously experience and claim differing sets of rights and forms of belonging (Beiner 1995; Habermas 1992; Kymlicka and Norman 1995; Ong 1996, 1999; Rosaldo 1994, 1997; Soysal 1994; Turner 1990). *Differentiated citizenship* refers to the legal entitlement of particular groups to different rights in addition to the individual rights common to all citizens of a polity (Young 1995). Although uniform rights are popularly associated with democratic equality, scholars and activists have advocated for differentiated citizenship on the principle that the common rights of citizenship do not accommodate the needs of minorities or the legal and political rights of indigenous people (Kymlicka 1995:26; Young 1995). Indigenous peoples' struggles with citizenship are unique in this regard. Although these peoples have long histories of exclusion from citizenship in places such as Canada and the United States, their political goals have always been about more than equal access to the rights of other citizens. Their self-identification as members of nations with rights of self-government distinguish their demands from those of other minorities and require legal solutions that enable the existence, within a state, of rights in and allegiances to separate political communities (Ramirez 2007).

In this article, I examine how one indigenous group negotiated and defended a form of legally and conceptually differentiated citizenship in Canada. I do this through an analysis of how the people of the Nisga'a First Nation struggled for recognition of their aboriginal rights, including the ability to control their membership criteria and call themselves "citizens of the Nisga'a nation," during recent treaty negotiations with the federal and provincial governments. The Nisga'a have spent more than a century seeking recognition of their aboriginal rights and title through a treaty. Their territory lies along the Nass River valley in northwestern British Columbia, where they historically fished, hunted, and traded the rich resources provided by the river and its watershed. In 1998, their negotiations

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with the provincial and federal governments finally resulted in the Nisga'a Final Agreement, also known as the Nisga'a treaty. The treaty came with a CAN$190 million cash settlement and makes the Nisga'a owners in fee simple of 2,000 square kilometers of land.[1] It includes a guaranteed allocation of Nass River salmon, amounting to approximately 26 percent of the total allowable catch, a set of wildlife harvesting entitlements, and rights to all surface and subsurface resources, including timber and minerals, on treaty lands.[2]

The treaty is a precedent in British Columbia because it is the first treaty made in that province after more than a century of provincial government refusal to acknowledge that aboriginal people had rights to land. Nationally, it is the first to include recognition of the right to self-government as a treaty right per se; this is particularly significant because treaty rights in Canada receive constitutional protection and cannot be revoked by successor governments. At the Nisga'a's insistence, the treaty also goes beyond the language of "member" or "participant" used in other modern treaties and identifies the Nisga'a as citizens of the Nisga'a nation.

Anthropologists have theorized citizenship as a status whose criteria subaltern peoples challenge and contest as they move toward full, rather than second-class, membership in states (Ramirez 2007; Rosaldo 1994, 1997). Scholars have also theorized citizenship as a category through which people are disciplined into particular kinds of subjects even as they struggle with the terms of their belonging (Ong 1996, 2006; Rose and Novas 2005). Nisga'a have fought to redefine their citizenship so that it reflects their rights, culture, and political goals in Canada. At stake is how much they have been able to evade being disciplined by normative criteria of belonging in the process (Ong 1996:738). In the pages that follow, I argue that Nisga'a have challenged the hegemonic norms of citizenship for aboriginal people in Canada by refusing to equate their Canadian citizenship with the elimination of their aboriginal rights and identities. They have sought an indigenous differentiated citizenship on the basis of rights that flow from their relationship to their lands and their status as a preexisting political community. In this respect, they have disrupted the state as the sole source of rights and realigned the relationship between their rights as aboriginal people and their relationship with the Canadian state. The Nisga'a's struggle to invest citizenship with multiple content and legal rights also shows, however, that although citizenship is a useful focal point for subaltern groups trying to renegotiate their relationships with states, it is fraught with hegemonic ideals of equality linked with universal rights and modernist subjectivities that can impede the political aspirations of those groups. Nisga'a have challenged the legal, political, and cultural criteria of their participation in Canada and continue to emphasize communal values and kin-based forms of belonging in their communities. These emphases sit, however, in uneasy juxtaposition with the individualistic, market-oriented entrepreneurialism by which Nisga'a citizenship and ability to be self-governing continue to be judged.

This article is based on interviews and participant-observation I conducted in Ottawa, when the treaty bill was being debated in the Canadian Parliament, in Vancouver, home to the Federal Treaty Negotiating Office, and in the Nass River valley. In Ottawa, I met and gained familiarity with a small community of negotiators and bureaucrats working to get the treaty through the House of Commons and Senate. The Nisga'a and the provincial and federal governments each had a treaty negotiating team. The provincial and federal teams were made up of employees from various government departments, including the Departments of Indian Affairs and Justice, as well as external consultants working on contract. Many members of the federal team worked out of the Federal Treaty Negotiating Office headquarters in Vancouver. The Nisga'a team included elected members of the Nisga'a Tribal Council, tribal-council employees, and at least one non-Nisga'a lawyer. In the Nass, I talked with Nisga'a treaty negotiators as well as community members, elders, and others not directly involved in treaty negotiations. Of the approximately 5,500 Nisga'a, half live in the villages of New Aiyansh, Gitwinksihlkw, Laxgalts'ap, and Gingolx on Nisga'a lands (see Figure 1). The rest live and work in towns and cities outside the Nass valley, including Terrace, Prince Rupert, and Vancouver. When the treaty came into legal effect on May 11, 2000, I was staying in New Aiyansh. My most recent trip to the Nass occurred in 2007.

Citizenship and aboriginal people in Canada: A history of exclusion

Aboriginal people have long experienced Canadian citizenship as something they could only acquire by giving up their aboriginal identities and assimilating into nonaboriginal society (Battiste and Semaganis 2002; Johnston 1993). After Canada became a country in 1867, politicians, administrators, and missionaries argued that aboriginal people had to become "civilized" before they could take on the rights and responsibilities of citizenship, including the franchise and the ability to own property. The government also drafted special legislation, known as the Indian Act, through which it made aboriginal people wards of the state and authorized itself to administer all aspects of their lives (Fiske 1995). It did this on the principle that aboriginal people were not yet competent subjects and had to be protected until they were assimilated into mainstream society, after which they would no longer need special oversight. When an aboriginal person was enfranchised, he or she was removed from the Indian Act register and ceased to have any legal status as an Indian. Although assimilation was the stated goal, in actuality, the Indian Act facilitated the ongoing supervision of

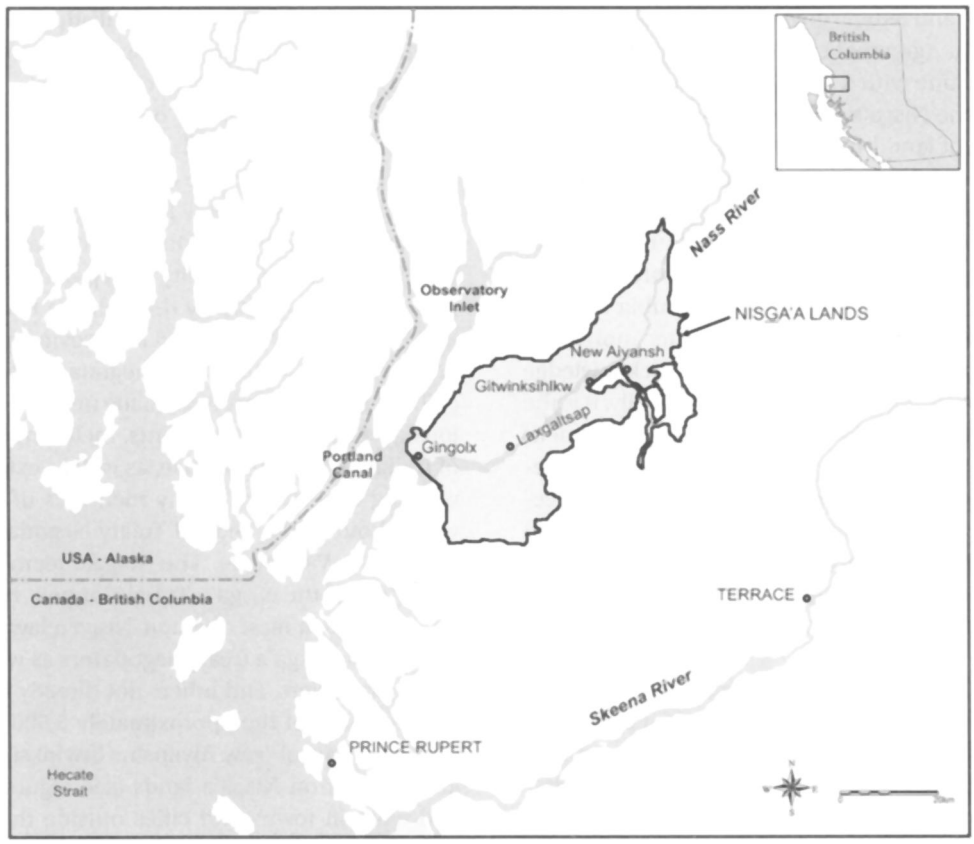

Figure 1. Map of Nisga'a territory.

aboriginal people as a racially segregated population, marking their externality from the nation and separation from the rights and duties of Canadian citizenship.

Civil and political rights did eventually become available to aboriginal people in Canada without the explicit condition that they give up their aboriginal identity and separate status, in part through indigenous activism and incremental amendments to the Indian Act. Aboriginal people continue, however, to struggle against hegemonic criteria of belonging linked with a normative white identity as well as for recognition of their rights to land and self-government (Johnston 1993). This struggle has a distinctive history in British Columbia because of the absence of treaties in that province. In most of the rest of Canada, the federal government made treaties with First Nations. The government made these treaties on the principle that aboriginal people had a form of title, even though its main goal was to secure the legal surrender of this title in exchange for a set of treaty rights and small land allotments set aside for aboriginal use. Before retiring in 1864, the first governor of British Columbia made a few treaties covering a small amount of territory on Vancouver Island but did not pursue treaty making elsewhere in the province (Tennant 1990:19). By the time British Columbia joined Canada in 1871, its politicians were increasingly resistant to the idea that aboriginal people had any rights to land at all. Settlers and politicians alike constructed the province as an empty and unencumbered space prior to the arrival of white civilization. They argued that lands might be set aside as reserves for First Nations but only as "gifts" from the Crown and not in recognition of prior aboriginal ownership (Tennant 1990:40–41).

These were the attitudes of the provincial surveyors who landed near the former village of Gitlakdamix to cut reserves for the Nisga'a in 1888. Israel Sgat'iin, a well-known *sim'oogit* (hereditary chief) of the Wolf tribe, sent them away at musket point. Within a few years, however, Nisga'a lands had been surveyed, and Nisga'a up and down the river were left with small reserves within what had been their much larger territories. Nisga'a then spent years lobbying federal and provincial governments for a treaty that would recognize their right to the land they knew to be theirs by virtue of ancestral inheritance. Other First Nations in British Columbia were equally active in this struggle, consistently arguing that they had never surrendered title to lands that were now farmed, logged, and mined by nonnatives. In the face of continued provincial denial of aboriginal title and the steady depletion of natural resources in their territories,

the Nisga'a broke with other First Nations in the province and took their case to the British Columbia Supreme Court in 1969. The risk they took was that a negative ruling would make it impossible for any other First Nation to get political recognition of aboriginal title in British Columbia, a risk that loomed large when they lost their case in the Supreme Court and then again in the British Columbia Court of Appeal. In 1973, they took their case, known as *Calder v. the Attorney General of British Columbia,* to the Supreme Court of Canada.

The ruling on this case was and continues to be a landmark in aboriginal-rights jurisprudence in Canada (Asch 1999). Six of the seven Supreme Court justices found that the Nisga'a had aboriginal title in the past. Three ruled that this title was extinguished by the assertion of Crown sovereignty, and three ruled that it was not. The seventh justice cited a technicality and abstained, creating a split ruling on extinguishment. The judgment in *Calder* affirmed that the Nisga'a had aboriginal title in the past and suggested that aboriginal title still existed for the Nisga'a and others who had not surrendered any of their territorial rights to Canada in a treaty. The federal government quickly established a Comprehensive Claims Policy to deal with land claims where treaties had not been made, including British Columbia, the Yukon, Quebec, and Newfoundland and Labrador. All claims negotiated since then are known as "modern" treaties or land-claims agreements. The federal government also began negotiating with the Nisga'a. The province of British Columbia did not join these negotiations until 1991. By this time, conflict between First Nations and logging companies had become so disruptive that even those politicians and businesspeople who had refused to acknowledge the existence of aboriginal title in British Columbia after *Calder* began to realize that the provincial economy depended on settling aboriginal claims (Blackburn 2005).

Debating differentiated citizenship

After the Nisga'a and federal and provincial governments signed the final agreement in 1998, it had to be approved by a majority of Nisga'a voters and ratified by the provincial and federal legislatures. This took two years. The political parties who supported the treaty held majorities in both governments but were vigorously opposed by other parties who argued that the treaty threatened the legal and political unity of Canada, cost too much in land and cash, and contradicted the democratic principle of equality before the law (Blackburn 2007). Some First Nations argued the opposite position, which was that the treaty did not provide enough land, rights, or self-governing power to the Nisga'a. In British Columbia, anxiety around the treaty was particularly high because approximately fifty other treaties were to follow. The provincial opposition party did everything it could to block ratification, including launching a challenge in the British Columbia Supreme Court, arguing that the treaty's self-government provisions violated the distribution of powers allowed for in the Canadian constitution. The Nisga'a's lawmaking and self-governing authority, including authority over citizenship, were also heated issues at the federal level. The treaty refers to Nisga'a "citizens," defines a Nisga'a citizen as "a citizen of the Nisga'a Nation as determined by Nisga'a law," and sets out criteria of enrollment that are based on ancestry (Canada et al. 1998:10). In the Senate, this terminology and the powers the Nisga'a would have to control their citizenship criteria served as an entry point for discussion about the meaning of citizenship and the merits of a common versus a differentiated one for national identity, sovereignty, equality, and social cohesion.

Bills are first introduced in the Senate chamber and then sent to committees, where senators question witnesses on the strengths and weaknesses of the proposed legislation. They are then returned to the Senate for final debate and vote. Senators ultimately passed the treaty bill but not without worrying that the treaty would weaken Canada by foregrounding a heterogeneity in rights, sentiments, and political identification that would make the country politically less stable and conceptually more difficult to imagine. One senator wondered why the words *citizen* and *citizenship* had to be used at all, arguing that they "give the impression that native people are leaving the country or somehow have different or special rights that may supersede the rights of the rest of us." In the Senate Committee on Aboriginal Affairs, this senator opined that Canadians "want to be equal" and "to be treated fairly and justly in this land. There is the feeling that 'citizen' conjures up some special rights in a way that diminishes others in the citizenship category. If they are citizens of Nisga'a, are they still citizens of Canada? That is what I am being asked."[3] Others worried the treaty created a form of dual citizenship that would fragment the political cohesion and social unity a common citizenship should foster. People "are struggling to find some unity in Canada" one senator said, in a veiled reference to the threat of Quebec secession. "We rally around symbols of citizenship."[4] Another described citizenship as the country's highest honor and cautioned against introducing any duality into a term of such legal and symbolic significance. A nonaboriginal witness from a right-wing think tank similarly argued that aboriginal people should not have different rights than other Canadians because this "will work against concepts of Canadian citizenship for the polity as a whole" and "undermine all common Canadian citizenship values."[5]

As citizens of the Nisga'a nation, Nisga'a do have "different or special rights" that other Canadians do not, including rights to self-government and land. This is the point of differentiated citizenship for aboriginal people; the differentiation rests on the principle that aboriginal rights are

inherent and temporally prior to the rights of nonaboriginal Canadians. The Nisga'a's pursuit of this differentiation and their use of the word *citizen* to label themselves challenge the public expectation that citizenship means equal rights; they also challenge the expectation that universality in rights is part of the social contract whereby citizens have equal entitlements and responsibilities in a shared or common community (Ignatieff 1995:70; Ong 2006). Senators are clearly well aware of this expectation. From the perspective of the Nisga'a, however, the notion that citizenship means equality in rights and treatment masks their historical experiences of discrimination, both before and after they attained the formal rights of Canadian citizenship. In their experience, equality and inclusion in Canada have been most notable in their absence, and their appropriation of the term *citizen* involves a critique of such exclusions. Their challenge is to keep and build on the word and some of what it stands for in liberal political theory while investing citizenship with meaning specific to an indigenous politics and indigenous resistance.

The Nisga'a who testified to the Senate committee argued that *citizen* was the best word to signal their affiliation with the political community that is the Nisga'a nation. They did not deny that the treaty meant they had different rights but hastened to say that they sought a differentiated citizenship within Canada. Many indigenous people think of themselves as dual citizens in ways that combine belonging to their aboriginal nations and the larger states in which they live (Biolsi 2005:251; Ramirez 2004:401). In the committee hearings one Nisga'a negotiator said,

> We do not understand why anyone would object to the use of the term "citizen" to refer to the members of the Nisga'a nation. No doubt, if we had agreed to describe ourselves merely as members there would have been little or no objection. We believe that the correct word to describe someone who belongs to a nation is "citizen." We wish to affirm, not deny, our existence as the Nisga'a nation, a nation that is within Canada.[6]

Their lawyer added to this argument, saying that to deny the Nisga'a the ability to use *citizen* was to deny "their existence as a nation, as a nation within Canada." At stake, he said, was not dual citizenship in the international-law sense but, rather, recognition that the Nisga'a belonged to a unique form of political community. He and others explained that, although members belonged to voluntary organizations, like clubs and even the Senate itself, this did not suggest a political identity in the way that *citizen* did.[7] The Indian Act also identifies aboriginal people as "members" of bands, and Nisga'a refused to repeat this terminology. "Band member," one negotiator told me, "meant there's no such thing as self-definition. You were defined by legislation, which was the Indian Act. It relegated you to status as a member of a band in a confined reserve."

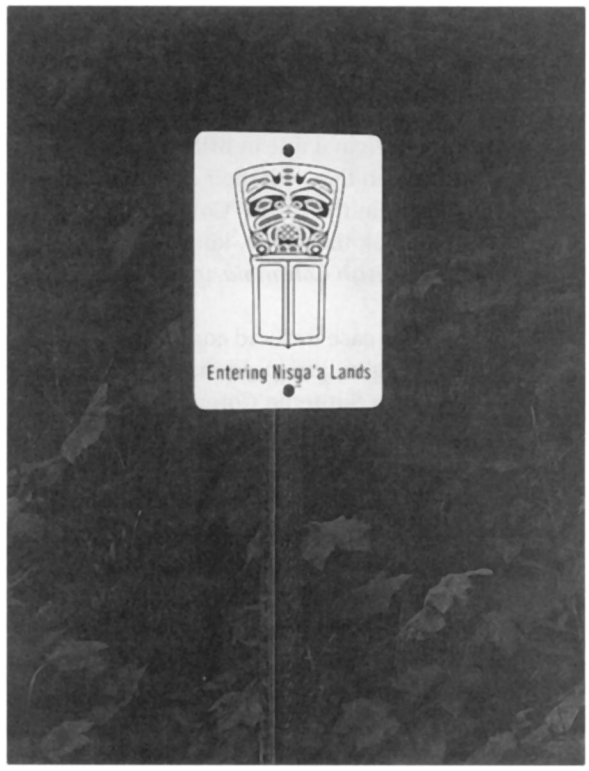

Figure 2. Nisga'a lands signpost. Photo by C. Blackburn.

Nisga'a are drawing heavily on the linkage in liberal theory between citizenship and the modern nation-state to say that they were politically independent, self-governing people prior to the arrival of settlers (Hall and Held 1989:173; Turner 1993:7). They are building on a term of Western, rather than indigenous, political theory to make an argument about their status as a nation. They are also investing *citizen* with the significance of the relationship between their rights and territory. When I asked a Nisga'a negotiator why they had insisted on *citizen,* he said, ruefully, that this really got the right-wingers going but that "the self-description as citizens is really a declaration that we've always had this inherent connection to our land." There was no other term to use "to make that connection." He spoke of how the *huwilp* (sing. *wilp*), the matrilineal kin groups to which all Nisga'a belong, are based on and embody ancestral rights to territory that are distinct from Western forms of property ownership. Aboriginal scholar John Borrows (1999:80) has called indigenous citizenship "landed citizenship" to capture the importance of land to aboriginal peoples' understanding of their rights and identity (see Figure 2). In this respect, the citizenship Nisga'a claim is different from the deterritorialized citizenships that are linked with globalization and contemporary neoliberalism

(Delanty 2000:2; Falk 2000; Ong 2006). Nisga'a introduce duality into Canadian citizenship but do not speak of thin, flexible, or postnational attachments that can be strategically deployed but, rather, of an identity and rights rooted in territory (Lee 2006). In New Aiyansh, a woman who had returned to Nisga'a territory after some years away affirmed this a priori relationship to the land when she said, "I'm a Nisga'a citizen first before I'm a Canadian citizen. We've known all along that we belong here, in this place. If they want to call this country where we are Canada, then I'm also a Canadian citizen."[8]

Citizenship, nationhood, and sovereignty are deeply intertwined and their contemporary rearticulations a focus of much scholarly inquiry (e.g., Hansen and Stepputat 2005; Ong 2006). Whereas Nisga'a link their right to call themselves "citizens" with their status as a nation, politicians wondered if the presence of a group of people with separate rights and calling themselves "citizens of the Nisga'a nation" challenged Canada's sovereignty. Treaty negotiators reassured everyone who asked that the treaty did not weaken the federal government's authority over Canadian citizenship or create an uncontrollable legal duality in the state. One told the Senate committee that he only agreed to the word *citizen* "because of how it is defined in the treaty and because all of the rights that accrue to such a person are specifically stated in the treaty and nothing exists outside of it." He insisted that the powers the Nisga'a have over their citizenship have nothing to do with the power to grant Canadian citizenship and that nothing about Nisga'a citizenship produced dual citizenship in Canada. As he said, "If someone comes to Canada legally and goes onto Nisga'a lands and is made a citizen, whatever the federal law is with respect to that person's ability to remain in Canada remains the law under which he or she is governed. That person has no special rights with respect to Canadian citizenship as a result of that." Nisga'a citizenship, he explained, "relates to their lands, their assets, and living within their territory."[9]

Others were more categorical that Nisga'a citizenship did not threaten Canadian sovereignty. One employee in the federal Department of Indian Affairs responded to my queries about citizenship by saying, "They can call them, you know, coffee cups, but they called them Nisga'a citizens." Flipping through the treaty, she explained, "It says somewhere in here that this is not about nationhood. . . . It's not about the determination of citizenship in Canada, and the Nisga'a citizens are still citizens of Canada as well. They're just also Nisga'a citizens, it's not really a dual passport situation, because a passport, you need a passport to a nation, like to a sovereign nation, and this is not about sovereignty." A member of the federal negotiating team likewise told me that, although *member* would have saved them a lot of trouble, *citizen* did not mean much more than that. He explained that there are limitations to the lawmaking authority Nisga'a will have over their citizenship:

> They can't grant passports or entry into or out of Canada or create citizens or take citizenship away from anybody—Canadian citizenship. They can't do any of that. The word that's used in the Indian Act is member, and that's one significant reason why the Nisga'a, and why we accepted, moving to a different language. . . . And so citizen was used. And I don't know if it was a good use or bad use, I suppose it's academic at this point because that's what it is. But it doesn't mean more than if we had used the word member. . . . It's used in a way that does not in any way imply sovereignty.

Nisga'a do not see *citizen* as implying this much sovereignty either, but they do see the term as doing more than these comments suggest. Citizenship involves "a political identity, an expression of one's membership in a political community" as well as a set of rights (Kymlicka and Norman 1995:301). Nisga'a are using citizenship to signal both of these things, insisting that they have rights as citizens of the Nisga'a nation not because of the racialized difference generated by the state and linked, formerly, with their exclusion but because they belong to a previously existing political community that holds inherent or extraconstitutional rights (Wilkins and Lomawaima 2001). Nisga'a's insistence on these rights and the ability to decide who gets access to them challenges hegemonic practices that locate citizenship in rights that are granted or denied by the state (Gordillo 2006:167). The converse argument, that all Canadians should have the same rights and be governed by the same laws, presumes that Canadians have rights that flow only from their status as citizens of Canada.

The treaty does not create the Nisga'a as sovereigns but it does produce a novel kind of political space in Canada (Biolsi 2005). Nisga'a have decision and lawmaking power over their lands, resources, and cash assets. They do not have exclusive jurisdiction, but they do have paramount jurisdiction—meaning their laws trump federal or provincial laws—in areas relating to Nisga'a government, citizenship, language, and culture. Their self-governing powers make them a unique configuration; they are more than a municipality but less than a province. They are an "aboriginal government," possibly best described as sui generis, a thing in itself.[10] Their right of self-government is written into the treaty and thereby constitutionally recognized as an aboriginal right. In treaty and land claims negotiations before the Nisga'a Final Agreement, the federal government insisted that self-government be negotiated in so-called side agreements. This meant that the self-governing powers of a First Nation were not part of the final treaty, did not receive constitutional protection, and provided the First Nation with a delegated form of authority akin to a municipality. First Nations have been critical of the municipal model

of government for some time; municipalities have jurisdictional authority that is delegated by provincial or federal governments and that can be changed or taken back at any time. Nisga'a negotiators would not accept self-government as a side agreement to the treaty because this would leave them in a similarly vulnerable position and because they refused to accept that their right to self-government could be "given" or "loaned" to them by the Crown, as delegated authority implies.

Genealogies of belonging: Kin or contract in the making of citizens

The treaty's citizenship criteria distinguish between people who live on Nisga'a lands and are Nisga'a citizens and those who may live on Nisga'a lands but may not qualify as Nisga'a citizens. Only Nisga'a citizens are entitled to the treaty rights, to fish, for example, or to participate in self-government by voting in Nisga'a elections. Critics argued that the treaty was a set of race-based rights and railed against the establishment of ethnic enclaves on Canadian soil. Some senators were uncomfortable with the ethical and political implications of having a governing entity within Canada that did not practice universal citizenship. How, they asked, could the Senate sanction the formation of a government that would base its membership, and the ability to vote, on ancestry? Some compared the use of ancestral or "birthright" criteria for Nisga'a citizenship with the government's former use of blood to define who was an Indian. Until 1951, an Indian in Canada was "any male person of Indian blood reputed to belong to a particular band," "any child of such person," and "any woman who is or was lawfully married to such person" (Jamieson 1978:43). Referring to the possibility that the Nisga'a could embarrass the state by repeating its previous legal reification of race through blood, one senator noted that the Indian Act began "a racial blood definition" but that now it was possible to have "this unbelievable paradox that the reprehensible notion of blood in the definition of the Indian Act, which was European and foreign to the aboriginals, may somehow continue on in this treaty."[11]

Blood has a long history in the racialization of aboriginal people in North America but is not a criterion for citizenship in the Nisga'a nation (cf. Biolsi 1995; Halualani 2001). Enrollment in the Nisga'a nation and access to the treaty rights does, however, depend on ancestry. A person may be enrolled, according to the treaty, if he or she can show that his or her mother was Nisga'a and belonged to one of the four Nisga'a *pdeek*, or tribes. Nisga'a are matrilineal in their kinship reckoning. For enrollment purposes, a person's qualifying Nisga'a mother can be on either the maternal or paternal side and as far back as five generations. A person may also be enrolled if adopted by a Nisga'a as a child, even if the person is not aboriginal. A person who is a descendant of either of these categories is eligible for enrollment. Lastly, a person may qualify for enrollment if he or she marries a Nisga'a, is aboriginal, and has been culturally adopted according to Nisga'a cultural adoption protocols. A nonaboriginal person who marries a Nisga'a and is culturally adopted does not qualify for enrollment and citizenship; such persons cannot vote and have no access to the treaty rights. Nonaboriginal people who live on Nisga'a lands for short periods, such as schoolteachers or police officers, cannot become Nisga'a citizens and cannot vote in Nisga'a elections.

Nisga'a defended the link between matrilineal ancestry and citizenship as culturally appropriate and a positive act of self-government. The ability to determine membership is fundamental to indigenous self-determination, particularly because settler governments have so long arrogated this responsibility to themselves (Jaimes 1992). A tribal-council employee who worked on the citizenship criteria explained that they were crafted to reflect Nisga'a cultural practices and to be as distinct from Indian Act definitions as possible, meaning the Indian Act's former blood requirement and its emphasis on tracing Indian status through men. Until 1985 aboriginal women in Canada who married nonaboriginal men lost their legal status as Indians, as did their children, whereas nonaboriginal women who married Indian men acquired Indian status (Jamieson 1977). Now, as this Nisga'a individual explained, "Nisga'a criteria for enrolment *begins* with a person's mother," so even if a person's mother married a non-Nisga'a, that person would still be entitled to enroll. He said this "corrects some hardships" but "also . . . make[s] sure that what happened with the Indian Act never happens again."

It is not surprising that senators read ancestry as blood, given the taken-for-grantedness of blood in Anglo-American kinship reckoning and the linkage governments have made between blood quantum and Indian identity in the law (Turner Strong and Van Winkle 1996). Senators and witnesses who spoke to the committee also worried that the ancestral linkage used in the citizenship criteria precluded universality in rights within the Nisga'a nation. What began as a concern about blood became a discussion about whether the Nisga'a really grasped the commitment to equality, minority rights, and democratic principles that citizenship is supposed to entail. A witness from the organization Citizens Voice on Native Claims argued that the "closed membership society" the Nisga'a wanted went against the grain of the last two centuries of evolution in Western political thought,[12] and the spokesperson from the conservative think tank cited "the evidence of history and all logic and reason and the development of western political thought" to critique the treaty's membership criteria.[13] Senator Grafstein, a Liberal senator from Ontario, was particularly vocal on this issue. He linked universal citizenship

rights with the principles of modern democracy in a way that questioned the Nisga'a's commitment to the latter. He asked the Nisga'a why they did not provide "something that we consider to be important in so-called European style of governance, and that is to establish or entrench minority rights within the institutions."[14] Grafstein raised the twin specters of tribalism and ethnic primordialism, asking if nonuniversal citizenship is "the vision we want for a united Canada with the globe shrinking in the twenty-first century? We have yet to learn the bitter lessons of the twentieth century respecting the clash between ethnicity on the one hand and open citizenship on the other."[15] He said the Nisga'a seem to have wanted to move from a purely "tribal system" to a democratic one but that, with respect to minority rights, they did not go all the way.[16] "A citizen," he declared, "should be a person, without qualification. If he meets an objective standard, he is entitled to vote. . . . That is what citizenship is. . . . In the Nisga'a treaty," however, "people are excluded. You cannot become a Nisga'a citizen . . . unless you are born into the tribe. This sets up . . . a conflicting notion of citizenship."[17]

Nisga'a and federal and provincial negotiators explained that they wanted to safeguard the treaty assets—the land, cash, trees, and fish—for the use and benefit of the Nisga'a. If nonaboriginal people could become citizens and vote in Nisga'a elections, they could influence the management and distribution of those assets. Negotiators also argued that the lawmaking authority of Nisga'a government pertains mostly to Nisga'a citizens, so that nonaboriginal people living on Nisga'a lands are not actually governed very much by the Nisga'a. Most significantly, if nonaboriginal people could enroll under the treaty and be Nisga'a citizens, they would then have access to the treaty rights of the Nisga'a people, rights that are a subset of the aboriginal rights recognized and protected in section 35 of the Canadian constitution. These rights come from aboriginal peoples' presence as self-governing communities before Canada became a country; they are not the universal entitlements of all Canadians (Borrows 2001). When the president of the Nisga'a Tribal Council defended the particularity of Nisga'a rights, he reflected the conviction that the treaty rights and assets are the ancestral inheritance of the Nisga'a people. Using an idiom of kinship that did not resonate well in the Senate, he said,

> By way of comparison, would any one of you seated across the table in this room allow strangers or individuals who stay with you temporarily to decide how your family's internal assets would be handled? Would you do that? That is the problem that faces us: people who come into our communities maybe for a year, two years or three years and then they are gone. . . . Would you allow someone to handle your family's personal assets? I do not think so.[18]

Senator Grafstein's response to this is illustrative: He took issue with the family analogy, and he suggested that the assets in question come from Canada. "These are not family assets," he said. "These are public assets that are held in trust as fiduciaries. What I am talking about here is the right of a citizen to fully participate and vote on matters affecting his life and the area in which he chooses to reside. . . . The right to vote goes to the heart of any right to participate in a civic society."[19] Grafstein wondered why, "having accepted the European notion that you get nationhood or sovereignty and, with that, you get citizenship, then why would you not take the next step which is, under the European thesis, the minority rights entailed in citizenship? In other words, why . . . take two-thirds of the package and not the last third of the package?"[20] Others emphasized the importance of the right to vote to democratic values, calling it "almost biblical" and something "embedded in us." Anything "that discounts that value or blocks it," one witness argued, "is amongst everything else, unconstitutional."[21] The representative from Citizens Voice on Native Claims said that the treaty "establishes a right to vote based on race" and asked how "this racially based right to vote" could "be reconciled with the concept that all Canadians are equal?"[22]

At the point of almost achieving the treaty, the Nisga'a found themselves being criticized for not being modern enough. Implicit in the canonical narrative of modernization is evolution up and away from social groupings and relationships built around kin, custom, or tribe toward autonomy, individualism, and relationships based on modern legal forms, of which contract is preeminent (Coombe 1998; Perry 1995:561; Turner 1993). Senator Grafstein's reference to "tribal systems" and his urging of the Nisga'a to go that "next step" suggest these distinctions. In this trajectory, the modern citizen emerges as "an abstract political subject no longer formally confined by the particularities of birth, ethnicity or gender" (Turner 1990:194). Attachments based on blood, language, or religion are to be replaced by an enlightenment model of modern political participation based "on the idea of an educated, post-ethnic, calculating individual, subsisting on the workings of the free market and participating in a genuine civil society" (Appadurai 1996:142–143).

This placement of the Nisga'a on the margins of modernity is not new but, rather, has long been made in conjunction with the criteria of citizenship and belonging for Nisga'a and other First Nations in Canada. Indeed, it has corresponded with the state's previous exclusion of aboriginal people from citizenship. The Senate debate was another instance in the long conversation about Nisga'a people's suitability as Canadian citizens. It took the form it did because, in their defense of ancestral membership criteria, the Nisga'a suggest that they have not given up the kinds of tribal affiliations that originally marked them as not modern, not yet ready for Canadian citizenship and in need of

assimilation. Although the federal government has repudiated its former policy of assimilation, there remains an expectation that, to be a citizen, one must be recognizably "modern" in the sense of understanding the importance of equality, the rule of law, and upholding the values of democratic society (Ignatieff 1995:55). While Nisga'a defend their right to control their citizenship criteria as an empowering act of self-government, they insist on enacting self-government in ways that complicate the presumed association between evolved, democratic forms of governance and the universality in rights that is supposed to replace particularism (Ignatieff 1995; Young 1995). For their political opponents, this casts doubt on their capacity for self-government and the suitability of the form of citizenship they seek within Canada.

Citizenship and self-government

During the committee hearings, one senator asked if the Nisga'a had a word for *citizen* that could be used instead of the symbolically loaded English one. She speculated that, if there was such a word, there also must be a set of rights and responsibilities that flowed from it.[23] In response, the president of the Nisga'a Tribal Council said,

> It is important for the committee and the rest of the honorable senators who are not present to recognize very clearly that every citizen of our nation today belongs to one of the four major crests that we hold. There is no Nisga'a today that is born who does not belong to one of these four groupings of clans. Everyone fits into our structure. There is no individual standing off to one side who has nowhere to go. You belong. You are born into a lineage. You are born into our nation.[24]

The president did not give an answer about individual rights but about belonging tied to kinship and birth. All Nisga'a are members of one of four exogamous pdeek̲, also called "tribes," including G̲anada (Raven–Frog), Laxgibuu (Wolf–Bear), Gisk̲'aast (Killerwhale–Owl), and Laxsgiik (Eagle–Beaver). The pdeek̲ are identified by their two major crests and constitute the four corner posts of the Nisga'a nation. Each one is composed of matrilineally defined huwilp, or houses. Members of a pdeek̲ are descended from a common ancestor but cannot trace their descent to one woman; members of a wilp, however, can. A wilp is named after its highest-ranking sim'oogit, or hereditary chief. Children belong to the wilp of their mother and have access to territories, known as *ango'oskws,* through this matrilineal affiliation. They also have rights to ango'oskws through their father, who belongs to a different wilp and pdeek̲. A person's father's wilp is that person's *wilksilaks.* People in the same wilksilaks perform specific services for one another throughout life and make important contributions to feasts at one another's marriage and death. In the past, if someone wanted to pass through or hunt, fish, or collect berries on the ango'oskw of another wilp, that person had to ask permission of the sim'oogit. If the person did not and was caught, he or she could be killed or taken into slavery. This seldom happened because people were, on the whole, taught to respect the laws governing trespass and access to territories. People who had no relatives and did not know their origins were *way'aayin,* meaning "not whole" or "not healed," because they had no one to look after them.

In her analysis of cultural citizenship, Aiwha Ong asks "if a minority group can escape the cultural inscription of state power and other forms of regulation that define modes of belonging within states" (1996:738). Ong theorizes cultural citizenship as a disciplinary process that involves making people into particular kinds of subjects within nation-states. Others have formulated cultural citizenship as the attempt by minorities to bring their cultural difference into their participation in mainstream society and institutions (Rosaldo 1994, 1997). Nisga'a have resisted much of the individualizing thrust of state assimilation policies and invest their citizenship in the Nisga'a nation, and, therefore, their citizenship in Canada, with social content that has long been considered inimical to the attributes of modern citizenship. Although they have been subjected to disciplinary intervention on the part of state and church, they continue to value forms of personhood that emphasize kin-based social obligations and collective responsibilities. Nisga'a distinguish this collectivism from the individualism of non-Nisga'a, describing the white world, in particular, as cold and lacking support. "It's harder to be a white person," one man said to me. "The support is not there." He explained how, for him,

> ultimately what it comes down to is, I'm not by myself. I saw this especially when my uncle died. There was a lot of fear when he passed away, because all his responsibilities were ours now. . . . But when I went to our tribal feast and I saw the strength of our house, I knew I wasn't by myself. Halfway through, I knew it was going to be okay. We had lost a significant member but what he taught us was there.

After the Senate debate was over, I attended a stone-moving feast in New Aiyansh. Traditionally, a stone-moving feast is held one year after a person's death. It marks the movement of the headstone from display in front of the house of a relative to the actual gravesite. It is also usually the time when the deceased's Nisga'a name is passed on to a successor. High-ranking names are the property of the wilp and are linked with rights to territory as well as crests, songs, and dances. The host wilp, in this case, the wilksilaks of the person taking on the name, conducts a range

of business during the feast, including giving other names, settling financial accounts, and, occasionally, performing a cultural adoption, known as a "taking in." At the feast I attended, elders from the hosting wilp called a white man who worked for the Nisga'a Tribal Council to the front of the hall to take him into their wilp and pdeek. When I asked a senior woman about the procedure and its significance, she said the person being taken in really wanted to be involved in the community and that, to do so, he had to become part of the tribal system. Once this happens, she explained, "you are part of an extended family. You have obligations to them and share the good times and the sad times. You have to be there for the feasts, doing your part." People who have been taken in and failed in their obligations can be publicly censured, and Nisga'a complained that many nonaboriginal people do not understand how hard it is to fulfill the duties of this particular kind of citizenship.

At the same time that Nisga'a conduct lives that are framed by the obligations that kinship and marriage produce within and across huwilp and pdeek, they often talk about what they have lost as a result of state- and church-sponsored attempts to assimilate them. In so doing, they critically reflect on their production as unfit citizens, according to both their standards and those of the dominant society, by the state apparatuses that have regulated their lives. When Nisga'a talked about their parents' and grandparents' generations, they described lives of hard work, social responsibility, and interdependence within the framework of the wilp and pdeek and linked this way of life with their former practice of self-government. They complained that the younger generations have become too dependent on government assistance. Most blamed the Indian Act, which dates to 1876, and the introduction of welfare in the 1950s for their loss of self-reliance, self-government, and interdependence, saying that, when welfare was brought in, the elders warned them that people would forget how to work. People reserved their most contemptuous comments for the Indian Act, describing it as suffocating, oppressive, destructive, archaic, and regressive and as something that restricted their movement and prescribed what they had to do on a daily, monthly, and yearly basis. "Over time," one woman said, "we became helpless," so that "when the treaty came about and the reality was there for us to be self-governing, lo and behold, our people are a dependent people." She and others spoke of being stuck in an Indian Act mentality and of needing to deprogram themselves so they could become "healthy, thinking people" again.

This talk of dependency is significant because dependency is generally cast as antithetical to the responsibilities of citizenship in capitalist societies (Fraser and Gordon 1997). Those who make claims on the state are judged negatively in relation to those who manage to pull themselves up by their bootstraps. This is not new, but in the current ascendancy of neoliberalism, good citizenship is increasingly defined as the duty of individuals "to reduce their burden on society," to maximize their individual capital and be "entrepreneurs of themselves" (Ong 1996:739). However, although Nisga'a's commentary on their loss of self-reliance brings them into proximity with neoliberal norms of citizenship—standards by which they have been and continue to be adversely judged—they are not just recapitulating a neoliberal rationality in their self-critique. They are commenting on the dilemmas facing them in light of their disciplining out of interdependence and into dependency and on the desirability of the market-oriented, individualistic subjectivity that continues to have disciplinary force, ideologically as well structurally. Nisga'a want to generate wealth on their lands and reduce the economic impoverishment in their communities at the same time that they challenge the norms of wealth and poverty that are dominant in nonaboriginal society, and they worry about what kind of cultural compromises they will have to make given that they are surrounded by nonaboriginal society and institutions. Why, Nisga'a have recently asked me, do we continue to be measured by an external yardstick? The treaty has brought them into discussion not only about eligibility for citizenship but also about what their internal norms of citizenship behavior should be; these debates take place around issues such as whether to move into a system of fee-simple property ownership in their villages, how non-Nisga'a should behave to be taken in, and how to stimulate economic development. At issue is the extent to which, at the point of achieving aboriginal self-government, Nisga'a are required to govern themselves in the neoliberal sense of being self-regulating, self-disciplining individuals.

Conclusion

The Nisga'a's pursuit of differentiated citizenship has important implications for the study of citizenship as a place from which to claim rights, responsibilities, and identities in liberal democracies. This is because Nisga'a have experienced both coercive exclusion and coercive inclusion in and around the category of "citizen" and because of their political objectives. In Canada, aboriginal people were denied the civil, political, and social rights of other Canadians because they were seen as insufficiently civilized, and governments and churches worked to transform them into the kind of individuals who could become citizens. Their contemporary struggles to assert citizenship in their indigenous nations and to define if and how to be citizens of the states they live in are inseparable from these histories. That aboriginal people assert rights to self-government and self-determination makes their legal and political goals distinct from those of other minorities. It also makes their claims more challenging to states, heightening what is at stake in the reconfiguration of the rights, identities, and governing authority connected with citizenship.

At the Senate hearings, one Nisga'a negotiator said, "The word citizen does not have a single fixed meaning in every context in which it is properly used."[25] Stuart Hall and David Held make a similar point when they write that citizenship, "like all key contested political concepts of our time . . . can be appropriated within very different political discourses and articulated to very different political positions" (1989:174). Nisga'a have insisted that they are citizens of Canada through their citizenship in the Nisga'a nation, using the words *citizen* and *nation* purposefully to signal that they are not just one more element in Canada's multicultural mosaic. Although they have struggled for cultural citizenship as the right to be culturally different while belonging to Canadian society (Rosaldo 1994), they have also insisted on a legally differentiated citizenship on the basis of their inherent rights as aboriginal people (Young 1995). Nisga'a have used "citizen" and "nation" as tools of identity and struggle in ways that have challenged the normative force of these concepts; they have also disrupted the relationship between citizenship, nationhood, and sovereignty. They have done this without linking either citizenship or nationhood to sovereignty in its strongest sense, and it is clear that Nisga'a faced considerable limitations in this regard. The treaty detaches Nisga'a nationhood from sovereignty but it also means that Canadian sovereignty is not linked, monolithically, to an undifferentiated citizenry, because Nisga'a bring their rights as Nisga'a citizens into their rights as Canadian citizens.

It is in the interest of aboriginal people to explore all possible reconfigurations of sovereignty and the spaces within it. Nisga'a have created a novel political space within Canada. In the nature of its jurisdiction and source of authority, it is unlike a municipal, provincial, or federal order of government. Their government is distinct and changes the relationship they have with the Canadian state, and Nisga'a welcome their transition from being an Indian Act band to a nation with governmental decision-making abilities that do not require oversight from the Department of Indian Affairs. They rightly celebrate autonomy and self-government but are faced with the difficulty of what that can and should look like now that the treaty is in place. They do this while elements of citizenship, sovereignty, and identity are disarticulated and recombined in multiple contexts around the globe. What it is to be self-governing citizens of the Nisga'a nation will emerge in ongoing contestation and struggle as Nisga'a live the rights the treaty now protects.

Notes

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1. This includes 1,930 square kilometers of former provincial land and 62 square kilometers of former Indian reserve land.
2. For the full text of the treaty, see Canada, British Columbia, Nisga'a Nation 1998. This is the 250-page document that was a common sight during my research and that I have relied on here. An electronic version of the treaty is also available at Indian and Northern Affairs Canada 2004.
3. Senate, *Proceedings of the Standing Senate Committee on Aboriginal Peoples* (hereafter, Senate, *Proceedings*), 36th Parliament, 2nd Session, Issue 3, 16 February 2000.
4. Senate, *Proceedings*, 36th Parliament, 2nd Session, Issue 3, 16 February 2000.
5. Senate, *Proceedings*, 36th Parliament, 2nd Session, Issue 4, 22 February 2000.
6. Senate, *Proceedings*, 36th Parliament, 2nd Session, Issue 4, 22 February 2000.
7. Senate, *Proceedings*, 36th Parliament, 2nd Session, Issue 4, 22 February 2000.
8. This does not mean that Nisga'a citizenship can only be experienced on treaty lands. See Ramirez 2007 for a discussion of how Native Americans remain connected to tribal homelands while living away.
9. Senate, *Proceedings*, 36th Parliament, 2nd Session, Issue 3, 16 February 2000.
10. Senate, *Debates*, 36th Parliament, 2nd Session, Vol. 138, 5 April 2000.
11. Senate, *Debates*, 36th Parliament, 2nd Session, Vol. 138, 10 February 2000.
12. Senate, *Proceedings*, 36th Parliament, 2nd Session, Issue 6, 21 March 2000.
13. Senate, *Proceedings*, 36th Parliament, 2nd Session, Issue 4, 23 February 2000.
14. Senate, *Proceedings*, 36th Parliament, 2nd Session, Issue 4, 22 February 2000.
15. Senate, *Proceedings*, 36th Parliament, 2nd Session, Issue 3, 16 February 2000.
16. Senate, *Proceedings*, 36th Parliament, 2nd Session, Issue 4, 22 February 2000.
17. Senate, *Proceedings*, 36th Parliament, 2nd Session, Issue 3, 16 February 2000.
18. Senate, *Proceedings*, 36th Parliament, 2nd Session, Issue 7, 23 March 2000.
19. Senate, *Debates*, 36th Parliament, 2nd Session, Vol. 138, 6 April 2000.
20. Senate, *Proceedings*, 36th Parliament, 2nd Session, Issue 4, 22 February 2000.

21. Senate, *Proceedings*, 36th Parliament, 2nd Session, Issue 7, 23 March 2000.
22. Senate, *Proceedings*, 36th Parliament, 2nd Session, Issue 6, 21 March 2000.
23. There is no direct translation for *citizen*. A Nisga'a language teacher suggested that *hli gadihl Nisga'a*—meaning "the people of the Nisga'a," or "the Nisga'a people"—might work, but she could not think of anything "that says citizen." She said, in the past, what people were called depended on where they lived on the Nass River.
24. Senate, *Proceedings*, 36th Parliament, 2nd Session, Issue 4, 22 February 2000.
25. Senate, *Proceedings*, 36th Parliament, 2nd Session, Issue 4, 22 February 2000.

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