

*Cis Dideen Kat – When Plumes Rise:
The Way of the Lake Babine Nation*

Jo-Anne Fiske and Betty Patrick

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THE LAKE BABINE NATION comprises a people whose traditional territory includes the drainage basin of the lake in north central British Columbia that bears their name. This book is a study of their laws.

Within the context of the unfolding treaty process and the possibility of enhanced self-government, the two authors, one an anthropologist and the other the chief of the Lake Babine Nation, began with an initial mandate "to investigate the gender implications of traditional law and to consider how greater autonomy [for the Lake Babine Nation] within the Canadian justice system might favourably or unfavourably affect women." This concern with gender relations remained a central theme, but the focus of the project shifted in its early days to reflect the community's agenda, which sought "a study of gender relations and gendered laws ... contextualized within a struggle for decolonization of ancestral territory and the revitalization of traditional government." Understanding the colonial experience – including community dislocations, Indian status, residential schools, reserves, fish and game laws, mineral and timber extraction from traditional territory, missionaries, criminal courts, racism, and the law against the potlatch – was an essential part of the journey towards a just and

increasingly self-governing society where the roles of men and women received equal respect.

At the heart of this book are three chapters describing the procedures, history, and law of the *balhats*, the Babine word for potlatch. The *balhats*, source and site of legal authority for the Lake Babine, is described not as a historical relic but as the central ceremony of a developing legal order that, although beset with challenges to its coherence and relevance, continues to have great significance in interpersonal relations, in the allocation of resources, and in the settlement of disputes within the Babine Nation and between it and other nations, including Canada.

Following this are several chapters that build on some of Fiske's earlier work: they explore the interplay between the colonial legal orders that have successively inserted themselves into the lives of the Lake Babine people and their laws. The authors begin with the Hudson's Bay Company (HBC), whose forts were a presence in Babine territory from the 1820s and which, under the terms of its charter from the Crown, was empowered to dispense British justice. To what degree the strategies and theatre of power deployed by the HBC to control its trading empire reflected either British or First Nations legal norms is still an open question, but

there is no doubt that this first permanent White presence in Lake Babine territory presented new opportunities, eliminated others, and required novel responses from the Babine legal order.

Oblate missionaries, who arrived in the waning years of the fur trade, imposed another legal order. Under a repressive regime known as the Durieu system, missionaries instituted an all-male hierarchy (consisting of church chief, captains, and watchmen) that was charged with governing the moral behaviour of village members. Within the context of continuing social turmoil, some within the Lake Babine Nation remember this community-based surveillance with approval; and, indeed, within an encroaching settler society and its state the Oblates were among the few who defended Babine rights to their traditional territory and resources.

Stipendiary magistrates, Indian agents, and fish and game officers, all emissaries of the state, brought another legal order that not only governed the Babine from a distance but also instituted new hierarchies of power within the community that continue to be disruptive. Hereditary chiefs, whose authority derives from the balhats, now vie with band councillors elected under the Indian Act and supported by the federal Department of Indian Affairs.

The analysis includes an intriguing discussion of an emerging legal pluralism, which involves Canadian courts sometimes using, sometime

rejecting, the customary family law of the Babine and their neighbours in order to determine child custody disputes. However, as the authors warn, "legal pluralism" suggests an equality of legal orders that belies the colonial reality. The economically impoverished communities that comprise the Lake Babine Nation are beset with contradictions, many of them imposed, as they struggle to heal the wounds of a colonial encounter. Any legal pluralism that exists does so within vast power discrepancies not only between the First Nation and the Canadian state but also within the Babine community itself.

Reflecting their initial mandate, the authors return frequently to the questions of gender relations, to the roles of men and women in contemporary Babine society, and to the challenge of establishing legitimate legal structures that respect the values expressed within the balhats — structures that provide space for self-government without institutionalizing the norms of a dominant society and that participate in the creation of a just society.

In grappling with these compelling questions, the authors have produced as detailed and clearly described an analysis of a First Nations legal order, situated within a continuing colonial context, as exists in the literature. It is an enormous contribution not only to the particular community but also to a larger society that is coming to terms, however tentatively, with its colonial past.