

Property, Human Ecology and *Delgamuukw*

by

Thomas Cheney  
B.A., University of New Brunswick, 2010

A Thesis Submitted in Partial Fulfillment  
of the Requirements for the Degree of

MASTER OF ARTS

in the Department of Political Science

© Thomas Cheney, 2011  
University of Victoria

All rights reserved. This thesis may not be reproduced in whole or in part, by photocopy or other means, without the permission of the author.

## Supervisory Committee

Property, Human Ecology and *Delgamuukw*

by

Thomas Cheney  
B.A., University of New Brunswick, 2010

### **Supervisory Committee**

Dr. James Lawson (Department of Political Science)  
**Co-Supervisor**

Dr. James Tully (Department of Political Science)  
**Co-Supervisor**

## Abstract

### Supervisory Committee

Dr. James Lawson (Department of Political Science)

Co-Supervisor

Dr. James Tully (Department of Political Science)

Co-Supervisor

This thesis has two central goals. The first is to theorize the confrontation of Indigenous societies and European settler society as, among other things, a conflict between two opposing conceptions of the human relationship with nature — human ecology. The Western/settler view is that nature is external to humans and instrumental to their development. John Locke’s philosophy provides an excellent example of this type of thinking. In contrast, the world-view of many Indigenous societies is characterized by a sense of ontological continuity between humans and the ecology. The second aim of this thesis is to contribute to ecological political theory by exploring the contrast between these two divergent views of human ecology. It is suggested that this contrast provides a theoretically fertile site for an ecological politics suitable for a post-modern, post-capitalist future. These theoretical observations are grounded in a concrete case study: the *Delgamuukw* legal episode.

## Table of Contents

Supervisory Committee	ii
Abstract	iii
Table of Contents	iv
Acknowledgements	v
Introduction	1
I. Theorizing the Confrontation of Indigenous and Non-Indigenous Societies	7
II. <i>Delgamuukw v. The Queen</i> : Context and Argument	40
III. Locke, Human Ecology, and <i>Delgamuukw</i>	64
IV. Indigenous Society and Human Ecology	89
Conclusion	107
Bibliography	112

## **Acknowledgments**

I would first like to acknowledge and offer thanks to the Coast Salish peoples, on whose traditional territory I have been a guest while carrying out this project.

I wish to extend my tremendous gratitude to my supervisors, James Lawson and James Tully, who have provided no shortage of excellent guidance and support. It has been a great privilege and an honour to be their student. While this project has come to an end, I sincerely hope that our dialogue continues.

Lastly, I would like to acknowledge the Social Sciences and Humanities Research Council of Canada. This thesis was completed with the financial support of a Joseph-Armand Bombardier Canada Graduate Scholarship - Master's.

## Introduction

The contributions of this thesis take as a point of departure the assertion that the environmental catastrophes that loom heavily over late modernity find their root in destructive and unsustainable ecological practices engendered by the capitalist socio-economic form.<sup>1</sup> These practices are justified through narratives and theories that place the ecology in a subordinate position to humans. Many of the philosophies that rationalize the social relations of capitalism also position nature as external to humans and hold that it is instrumental to their development. The value of the ecology, then, is expressed and understood simply in instrumental terms. If ecological political theory is to contribute meaningfully towards practical resolutions to the problems of the present — social, political, as well as environmental — it must acknowledge that such solutions will require new ways of thinking about the ecology itself, and how humans interact with it.

In contradistinction to Western (modern) views and practices, the economic customs of many Indigenous cultures are ecologically benign, or at the very least, far more sustainable than those of the settler culture. I do not mean to essentialize Indigenous peoples or their forms of land-use.<sup>2</sup> Rather, I wish to suggest that located in Indigenous practices are important lessons for those who seek progressive alternatives to capitalist modernity. Many Indigenous cultures use resources with the constant ideal of preserving a sufficient quantity for the seventh generation to follow; an ethic of sustainability and long-term vision is embedded in Indigenous land-use.

---

<sup>1</sup> For example, see John Bellamy Foster, *Marx's Ecology: Materialism and Nature* (New York: Monthly Review Press, 2000). See also Joel Kovel, *The Enemy of Nature: The End of Capitalism or the End of the World?* (New York, Zed Books, 2007).

<sup>2</sup> Pre- and post-contact Indigenous forms of land-use were highly varied. Some were much more sustainable than others. For a nuanced account, see William Cronon and Richard White, "Ecological Change and Indian-White Relations," *Handbook of North American Indians*, ed. William Sturtevant, vol. 4 (Washington: Smithsonian Institution, 1989), 417-429.

Understanding these ecological practices means understanding the ecological philosophies of Indigenous peoples. Broadly, I contend that entrenched in some Indigenous cultures are notions of land-use and human-ecological relationships that are markedly different than those which are prevalent in Western culture. Those living as a part of these Indigenous cultures see themselves not as *above* nature, but rather as a *part* of it. In the worldview of many Indigenous cultures, there is an acute consciousness of human dependence on and deep interconnection with the ecology.

At a general level, then, this thesis aims to make a contribution to ecological political thought by exploring differing conceptions of the human-ecological relationship and suggesting that a contrast of these views provides a theoretically fruitful site, which may prove useful for a post-capitalist society. Concretely, and more specifically, this thesis explores situations in which the divergent notions of human-ecological relations in settler and Indigenous societies have come into conflict. Of course, the entire contact period, from 1492 onward, could reasonably be understood as a prolonged conflict between these two views. However, I focus on one particular, more contemporary example: the legal saga of *Delgamuukw v. British Columbia*, which culminated in a monumental 1997 Supreme Court of Canada decision. I am less interested in the final judgement in this case than I am in the content of the claims made by each side and the popular discourse that the case created. What was at stake in the *Delgamuukw* case was the claim to rightful ownership of the land. The claims made by each side, I contend, were connected to ideas about how the land ought to be used or, rather, about what is the proper way of interacting with nature — human ecology. Thus, an additional goal of this thesis is to demonstrate a connection between expressions of property and notions of human ecology.

Another important context in which this research takes place is that of colonialism and the dispossession of Indigenous land. As mentioned above, the contact period can be understood as a prolonged conflict between these two understandings of land-use and human-ecological relationships. However, the conflict has had a clear dominant side: the settler culture. For centuries, Indigenous people have been systematically dispossessed of their ancestral land and resources. This work asks not how or why this happened (although the question will be dealt with in the literature review) but rather how it was justified. Here the connection between the ideas of how land should be used and who possesses a rightful claim to the land is clear; the discourses of the settler culture hold that because their forms of land-use are more productive, their claims to the land supersede those of the original Indigenous inhabitants. The political theory of John Locke, particularly his ‘doctrine of improvement,’ expresses precisely this notion. My thesis will seek to uncover the Lockean roots of arguments that were used to support settler claims to the land in the *Delgamuukw* case.

This thesis is composed of four chapters. The first is a literature review that examines work that has already been written concerning the causes, mechanisms and justifications for Indigenous dispossession. The second chapter examines the *Delgamuukw* case, with particular attention to the claims to rightful ownership of the land made by each side and as well to popular commentary on the case. The third chapter looks more closely to the settler claims to the land, connecting these arguments to Locke’s philosophy. In the final chapter I examine the other side: Indigenous conceptions of land-use, as expressed by the Gitksan and Wetsuwet’en litigants in *Delgamuukw*.



The literature review examines a variety of the theories of Indigenous dispossession that have previously been developed. The review begins with David Harvey and other critical theorists who understand dispossession as the inevitable outcome of the confrontation between commodity and non-commodity economic formations. These scholars emphasize the material facets of colonialism; they conceptualize it in terms of the dynamics and processes of capital accumulation. Connected to these theorists are those who emphasize the gendered aspects of Indigenous dispossession. Looking to the opposite side, the ideational, the literature review also deals with those scholars who stress the less concrete aspects of dispossession. From these writers I distill answers not to why dispossession occurs, but as to how it is justified. The answers range from myth to narrative to law. Locke is vitally important in this regard, because his political theory provides a powerful justification for the divestment of Indigenous territory.

The second chapter, which focusses on the *Delgamuukw* case, provides the history and context of this legal episode. This chapter connects the causes and significances of the case to the patterns of Indigenous dispossession described in the literature review. More importantly, it describes the arguments for rightful ownership of the land made by each side in the legal conflict. As well, this chapter catalogs the variety of commentaries about rightful claims to the land that arose concerning the case. This second chapter provides a concrete case study, which I use as a base from which to explore the key theoretical issues in the third and fourth chapters.

Chapter three builds on the evidence presented in the previous section to develop what I understand to be the dominant conception of the human-ecological relationship in Western society. To do this, I draw connections between the arguments in favour of settler claims to the land in the *Delgamuukw* case and Locke's political philosophy. I argue that the legacy of

Lockean property theory is evident in this conflict over land rights. Furthermore, these ideas about property and land rights are rooted in a particular (and problematic) conception of how humans ought to interact with the ecology, how they ought to use the land. This chapter demonstrates that this dominant paradigm treats nature as inert matter, which has no real value on its own. Nature must be used, combined with human labour power, to be truly valuable. The ecology is instrumental to human development in this view; it only has value when it is being exploited for the purposes of production. It is separate and distinct from humans.

Chapter four also builds on the empirical observations of the second chapter. In this final section, I describe the conception of human-ecological relations of Indigenous cultures, which is in almost all aspects incommensurable with the Western, Lockean doctrine. Drawing on the arguments for rightful stewardship of the land presented by the Indigenous side in the *Delgamuukw* case, I argue that Indigenous claims are founded on a very different conception of how people should relate to nature. This view understands humans as being fundamentally interconnected with their ecology. It does not see nature as inert material, but as a living, active entity, which has value in itself that is far more than simply instrumental. In this view, nature is not a thing to be controlled, tamed, organized, or dominated.

It is perhaps an ambitious task to combine the themes of Indigenous dispossession and environmental philosophy into a single thesis. The two topics, on the surface, do not seem to fit with one another. But by examining dispossession in terms of a framework of competing notions of human-ecological relations, the colonial process can be understood as an environmental problem as well as a political, social, and moral one. This is not to say that divergent conceptions of the ecology are the causal mechanism in Indigenous dispossession. However, I contend that

examining dispossession in these terms allows a new and different understanding of this serious problem, both historically and presently. Ultimately then, the specific task of my thesis is to develop a novel structure with which to view Indigenous dispossession — as a confrontation between two radically different conceptions of human ecology. More broadly, this research aims to contribute to important discussions about ecological ethics, human-ecological relationships, as well as equitable and sustainable forms of land-use.

## **I. Theorizing the Confrontation of Indigenous and Non-Indigenous Societies**

The purpose of the following is to examine some of the paradigms for understanding the confrontations of Indigenous societies with non-Indigenous ones that have previously been advanced. Thematically, this chapter has two main currents. The first covers those writers who have emphasized the material aspects of Indigenous-settler encounters, while the second looks more closely to the ideational side.

The first sections of this chapter explore the concepts in critical political economy that provide a clearer understanding of the ways in which capital confronts economies that are non-capitalist and how it interacts with them. The ultimate aim is to show that Marx, and Marxist theorists after him including David Harvey, provide useful tools to understand the processes that have led to the dispossession of Indigenous land. Building on the theoretical concepts in Harvey's work on Marx's *Capital*, the subsequent section considers responses to Harvey's work and possible qualifications. Respondents include Bob Jessop, who emphasizes the role of the state in capital accumulation, as well as Nancy Hartsock, who draws attention to the gendered dimensions of capital accumulation and dispossession. Working from a dialectical historical materialist analysis like Harvey, Ellen Meiksins Wood argues that John Locke's philosophy provides an essential window into the origins of capitalism. Finally, several concrete, historical cases are examined, specifically those which illustrate the ways in which capital has historically confronted Indigenous economies in Canada. Cole Harris's offers a treatment of the geographical elements of dispossession; Michael Asch advances a conception of 'articulation'; and Jo-Anne Fiske describes the gendered dynamics of dispossession. These works are both theoretical interventions and reflections upon particular case studies.

The later sections in this chapter look more closely to the supra-material and extra-economic dynamics of European-Indigenous contact. I consider the view of John Sutton Lutz and others that myths and storytelling are just as much part of the dominant settler social formation as they are of Indigenous social formations. As well, I explore John Locke's theory of 'improvement' and its relation to appropriation without consent. On this matter, John C. Weaver describes the historical and legal use of Locke's doctrine of enclosure and dispossession in settler societies. As well, however, legal instruments were employed independently of — at least without direct stated connection to — the doctrine of improvement. One such example is found in Douglas C. Harris's account of fishery laws in British Columbia. The work of James Tully is also considered, as his analysis describes how Locke's political philosophy has been used to justify dispossession. Subsequently, I examine the role of narrative, which was used by Indigenous groups and settlers, to give meaning to encounters. Looking more closely to narrative, and how it was used, sheds light on the dynamics of contact and dispossession. Lutz describes Indigenous-European contact in terms of a confrontation of two sets of myths and narratives. Keith Thor Carlson shows that the disruption of storytelling severs ties to the land in Indigenous culture. Meanwhile, James Lawson argues that cultural interaction requires a dialogical space, in which a multiplicity of narratives can be told and heard. Extending this analysis, Lawson describes the political consequences of recognizing Indigenous narrative. Tully re-emerges at this point to argue that many of the forms of justification considered — and Locke's in particular — rely on deeply flawed understandings of Indigenous land-use and political society.

David Harvey: Value, Rent, Spatial/Temporal Fixes, and Accumulation by Dispossession

In the first volume of *Capital*, Marx describes a key internal contradiction of capitalism: the tendency of the rate of profit to fall.<sup>1</sup> However, Marx acknowledges that capital can overcome the falling rate of profit through what David Harvey calls temporal fixes (in the form of credit and long-term investment) and spatial (geographical) fixes. It is to these problems that the second and third volumes of *Capital* are devoted. Harvey's contribution is to expand upon these often overlooked aspects of Marx's analysis of capital. Harvey defines three levels to the crises of capital: first-cut crises, which are basically the contradictions of the falling rate of profit; second-cut crises, which are temporal and financial in nature; and third-cut crises, which are geographical. Each type of crisis has a specific set of 'fixes,' mechanisms that allow capital to overcome the crisis. Central to a materialist understanding of Indigenous dispossession is an account of what Harvey calls spatial fixes.

Harvey's concept of a 'spatial fix' refers to the many forms of spatial transformations and geographical extensions that manage the tendencies toward crisis that are fundamental to the process of capital accumulation.<sup>2</sup> Harvey holds that Marx's conception of how the crises of capital accumulation are deferred or displaced is largely *internal* to capitalism, that is, temporal. It was later Marxists, such as V.I. Lenin and Rosa Luxemburg, who outlined the *external* transformations.<sup>3</sup> For Harvey, the spatial fix has two interrelated facets. The first takes a material or physical form: Bob Jessop describes it as "the durable fixation of capital in place in physical form..."<sup>4</sup> The second moment is less tangible: "an improvised, temporary solution, based on

---

<sup>1</sup> See Karl Marx, *Capital*, vol. 1 (London: Penguin, 1990).

<sup>2</sup> David Harvey, *The Limits to Capital* (Oxford: Blackwell, 1982), 373-376.

<sup>3</sup> Bob Jessop, "Spatial Fixes, Temporal Fixes and Spatio-Temporal Fixes," in *David Harvey: A Critical Reader*, eds. Noel Castree and Derek Gregory (Oxford: Blackwell, 2006), 146.

<sup>4</sup> *Ibid.*, 147.

spatial reorganization and/or spatial strategies, to specific crisis-tendencies....”<sup>5</sup> Ultimately, spatial fixes can be described as the outward processes of capital that aid it to overcome, although not permanently, the internal propensities towards crisis that are inherent to it.

More specifically, Jessop notes that spatial fixes can embody four different concrete forms. The first is the development of markets in other geographical areas, but still within the sphere of capitalist exchange, to alleviate the problem of domestic underconsumption. The second involves exchange with non-capitalist economies, with the purpose of broadening the market. The third consists of the exportation of capital with the goal of creating new facilities of production. The last form aims to increase the landless proletariat by removing “peasants, artisans, the self-employed and even some capitalists from control over their respective means of production.”<sup>6</sup> It is of special importance to note these four processes, as they are all at work — in different ways — in the dispossession of Indigenous land and resources in Canadian history, and presently as well.

In *Limits to Capital*, Harvey articulates a complex theory of rent, which is grounded in Marx’s original works, but nonetheless is heavily imbued with Harvey’s own distinctively geographical approach. Land is the original source of wealth, writes Harvey, but it is also, at first glance, a use value.<sup>7</sup> The problem, then, is to understand land in terms of the theory of value, which means assigning to it an exchange value without having been the product of socially necessary labour time — the confrontation is between the commodification of land and a labour theory of value. Because land parcels can be monopolized and sold, they can be a commodity.<sup>8</sup>

---

<sup>5</sup> *Ibid.*, 147.

<sup>6</sup> *Ibid.*, 149.

<sup>7</sup> Harvey, *The Limits to Capital*, 333-334.

<sup>8</sup> *Ibid.*, 334.

The value of any specific piece of land is dependent on a variety of factors such as fertility, capital investment, and proximity to markets. Differences in the value of land directly influence differences in rent. Marx takes this central insight of Ricardo, but adds to it the insight that capital investments in the land can alter these determinants of land prices. The flow of capital into land, and its fixation by buildings, infrastructure, or fertilization of the soil, means that areas first considered remote and far from markets (and therefore having low rent) can quickly see their value, and consequently rent price, increase. The collapsing of space/time through advances in transportation and communications means that products can be brought to market more rapidly and at potentially lower cost but also that the land from which they come increases in value. This process has often meant confrontation with Indigenous communities: railroads, highways and pipelines, for example, are built through Indigenous territories, and lands that hitherto were of no interest for capitalist accumulation and could be “left” to First Nations become targeted for dispossession.

Widening his scope to examine the role that landed property plays within capitalism, Harvey argues that “the appropriation of rent and the existence of private property in land” are conditions required for the continued existence of capitalism.<sup>9</sup> Harvey enumerates three ways in which landed property works to sustain capital. The first is simply that it separates the labourer from the land. This is essential because wage labour depends on a landless proletariat. Secondly, landed property serves an ideological function; it makes private property in general sacred and revered. Finally, landed property functions as an important medium of capital flow, whereby differential rent patterns interacting with investment in the land produce conditions that may

---

<sup>9</sup> *Ibid.*, 358.



direct investments away from the most fertile pieces of land. The consequence is that there is a more efficient distribution of capital investment throughout the geographical area.<sup>10</sup>

The centrality of private property, it may be contended, suggests why Aboriginal land rights cannot simply be dismissed in the courts: an outright rejection would mean formal acknowledgement that the economy rests on an initial theft (in untreated areas) or fraud (in treated territories) and therefore that property rights are transient. Thus far, however, the relation of these concepts in critical political economy to Indigenous-non-Indigenous confrontations has taken a largely abstract form. Nevertheless, there are important connections, as Indigenous peoples in what is now called Canada experienced capitalism in a variety of — sometimes contradictory — ways. I turn next to a notion of Harvey's that has an unambiguous bearing on capital's confrontation with Indigenous people: 'primary' accumulation or accumulation by dispossession.

In *The New Imperialism* Harvey describes the process of accumulation by dispossession. He argues that capital must expand geographically because of overaccumulation, which occurs when there arises a dearth of avenues for profitable investment.<sup>11</sup> What Marx calls 'primitive accumulation' and what Harvey terms 'accumulation by dispossession' transcends the crisis of overaccumulation by releasing "a set of assets (including labour power) at very low (and in some instances zero) cost. Overaccumulated capital can seize hold of such assets and immediately turn them to profitable use."<sup>12</sup> According to Harvey, Marx envisioned this process essentially as follows: land that was communal is enclosed and made private/exclusive; the resident population is removed, thereby creating a landless proletariat; and, finally, the now privately owned land is

---

<sup>10</sup> *Ibid.*, 359-362.

<sup>11</sup> David Harvey, *The New Imperialism* (Oxford: Oxford University Press, 2003), 137-139.

<sup>12</sup> *Ibid.*, 149.

incorporated into the dominant stream of capital flow.<sup>13</sup> For Marx, this type of accumulation is ‘primary’ or ‘original’ because it “is not the result of the capitalist mode of production but its point of departure.”<sup>14</sup> However, it is possible to understand that this process of ‘primitive’ accumulation outlined by Marx occurs not only as the point of departure of capitalist production, but also as a consequence of it. For Harvey, accumulation by dispossession is an integral part of the ‘new imperialism.’ In fact, it is an invaluable analytical tool for comprehending the dispossession of Indigenous land.

#### Responses to Harvey: Jessop and Hartsock

Bob Jessop builds upon the concepts of temporal and spatial fixes in Harvey’s work. Jessop holds that in his earlier work Harvey implicitly develops a concept of spatio-temporal fix that is greater than the sum of its parts.<sup>15</sup> This spatio-temporal fix occurs within a bounded regional space and period. Essentially, a spatio-temporal fix involves a combination of “temporal deferment and geographical expansion” to overcome the crisis tendencies of capital accumulation.<sup>16</sup> The spatial and temporal elements combine to form a ‘fix’ that is greater than the sum of their parts in what Harvey calls a ‘structured coherence,’ in which “production and consumption, supply and demand... production and realization, class struggle and accumulation, culture and lifestyle, hang together... within a totality of productive forces and social relations.”<sup>17</sup> As the maintenance of structured coherence requires extra-economic forces, it therefore necessitates a detailed analysis of the state.<sup>18</sup> However, Jessop holds that Harvey’s

---

<sup>13</sup> *Ibid.*, 149.

<sup>14</sup> Marx, *Capital*, vol. 1, 873.

<sup>15</sup> Jessop, “Spatial Fixes, Temporal Fixes and Spatio-Temporal Fixes,” 152-153.

<sup>16</sup> Harvey, *The New Imperialism*, 115.

<sup>17</sup> David Harvey, *Spaces of Capital: Towards a Critical Geography* (New York: Routledge, 2001), 329.

<sup>18</sup> Jessop, “Spatial Fixes, Temporal Fixes and Spatio-Temporal Fixes,” 154.

attempt to generate such an analysis “remains underdeveloped and largely pre-theoretical.”<sup>19</sup>

Here, Jessop’s contributions become an essential tool in understanding the dispossession of Indigenous land: the state played a decisive role in the process. Therefore — with Jessop’s help — the state’s role, defined by its relation to capital, becomes clearer.

Politics is “an immanent necessity for every capitalist economy,” writes Jessop, because “market forces alone cannot reproduce capitalism.”<sup>20</sup> There are several reasons for this. Capital is unable to reproduce itself solely through the value form within the context of commodification. This is closely tied to the fictitious quality of land, money and labour. Further, capital accumulation relies on “non-commodity forms of social relations.”<sup>21</sup> Capitalism also depends on the state because its inherent structural contradictions take many forms, and their mitigation, by means of spatial, temporal, and spatio-temporal fixes requires governance and regularization.<sup>22</sup> The notion that capital relies on non-commodity economic forms is an important one when considering its relations with First Peoples; capitalism does not always immediately dispossess Indigenous people. In fact, it may work alongside non-capitalist economies for long periods. The work of Michael Asch, considered below, elaborates on this form of ‘articulation.’ Jessop’s most important contribution is a fresh focus on the role of the state in capital accumulation, and by extension, dispossession.

Nancy Hartsock offers an entirely different, but no less important critique of Harvey. Prioritizing Harvey’s more recent work on accumulation by dispossession, Hartsock argues that this process has gendered dimensions that are crucial to its functioning. Primitive accumulation,

---

<sup>19</sup> *Ibid.*, 157.

<sup>20</sup> *Ibid.*, 162.

<sup>21</sup> *Ibid.*, 162.

<sup>22</sup> *Ibid.*, 162.

she holds, relies heavily on a differential treatment of men and women.<sup>23</sup> Although Hartsock writes that women have long been presumed to exist and work outside the sphere of capital accumulation, her analysis shows that women's labour — particularly traditionally female forms of labour within the private sphere — have been central to the production and reproduction of labour power.<sup>24</sup> But the 'new imperialism' described by Harvey, which Hartsock argues is simply the latest round in a long history of accumulation by dispossession, has contradictory implications for women. On one hand, it has drawn women into relations of wage labour but simultaneously refused them fair wages, due to the traditional devaluation of "women's work" under the customary gendered division of labour. In addition, it has "feminized" the work of the entire international labouring class, both men and women. On the other hand, due to their engagement in the paid workforce, women find that their social power has increased in the context of the family and household.<sup>25</sup>

### Locke and Wood: Enclosure and Improvement

Dispossession finds its causal roots in the material relations of capitalist production — Harvey makes this clear. Nonetheless, the process itself, and more specifically the multiplicity of atrocious acts necessary to complete it, have often found their justification in Locke's theory of property. It is unclear exactly what Locke thought concerning implementation and enforcement. Barbara Arneil suggests that Locke's theory of property was constructed to encourage non-violent dispossession, through legal rather than coercive means: "cultivation and enclosure, rather

---

<sup>23</sup> Nancy Hartsock, "Globalization and Primitive Accumulation: The Contributions of David Harvey's Dialectical Marxism," in *David Harvey: A Critical Reader*, eds. Noel Castree and Derek Gregory (Oxford: Blackwell, 2006), 177.

<sup>24</sup> *Ibid.*, 183.

<sup>25</sup> *Ibid.*, 187-188.

than conquest....”<sup>26</sup> In this reading, Locke does not necessarily advocate violence. Still, he was well aware of what was occurring in the colonies and did not express great concern. The purpose of Locke’s doctrine of property, Arneil holds, was to undermine Indigenous property rights. Indigenous groups defending their traditional property rights would be subject to the ramifications of violating the law. However, Locke did write in his *First Treatise of Government* that European settlers have a right to wage war “against the *Indians*,” because he thought they lived outside political society.<sup>27</sup> In Locke’s political theory there is a complicated relationship between the ideas of political society, improvement, and property. These connections will be explored more fully in the third chapter. More immediately, Locke’s views concerning enclosure have a direct relation to Indigenous dispossession.

Locke writes, “*As much Land as a Man Tills, Plants, Improves, Cultivates, and can use the Product of, so much is his Property. He by his labour does, as it were, inclose it from the common.*”<sup>28</sup> Looking back to the notion of ‘accumulation by dispossession,’ this closely resembles the first moment of primary accumulation as described by Marx, and also provides a crucial rationale for it. This first step, the enclosure of common property, means a wholly new type of property and property rights. In other words, property becomes both *private* and *exclusive*. In *The Origins of Capitalism: A Longer View*, Ellen Meiksins Wood argues that enclosure is fundamental to capitalism. According to Wood, enclosure means both fencing in land from the commons and conferring upon it a new form of property rights. She holds, “enclosure meant not simply a physical fencing of land but the extinction of common and

---

<sup>26</sup> Barbara Arneil, “John Locke Natural Law and Colonialism,” *History of Political Thought*, 13.4, (1992), 603.

<sup>27</sup> John Locke, *Two Treatises of Government*, ed. John Laslett (Cambridge: Cambridge University Press, 1988), 237.

<sup>28</sup> *Ibid.*, 290-291.

customary use rights on land which many people depended on for their livelihood.”<sup>29</sup> Wood focusses on Locke specifically, because there is no philosophy “more emblematic of a rising agrarian capitalism,” than his.<sup>30</sup> In other words, Locke’s philosophy describes accumulation and property in a way that makes it a perfect ideological tool to justify capitalist development.

The second step of Marx’s primitive accumulation also finds rationalization in Locke. This second moment occurs when the resident occupants of the newly enclosed land are removed and turned into a landless proletariat. Of course, history shows that the displaced are not always forced into relationships of wage labour and are not always physically removed from the land. It is imperative to consider that capital does not develop upon a predetermined linear route; it works in very different ways in different places. Significantly though, the communal property rights of the former residents to their land are extinguished. According to Locke:

God gave the World to Men in Common; but since he gave it to them for their benefit, and the greatest Conveniencies of Life they were capable to draw from it, it cannot be supposed he meant it should always remain common and uncultivated. He gave it to the use of the Industrious and the Rational... not the the Fancy or Covetousness of the Quarrelsome and Contentious.<sup>31</sup>

By “the industrious and the rational,” Locke means those who will extract as much value as possible from the land. As land in the form of private, exclusive property will yield more than that held in common, god meant land to be enclosed, turned into private property, and cultivated to its maximum potential. It has been demonstrated that Locke did indeed have in mind the Americas when he wrote Chapter V.<sup>32</sup> Therefore, in his contention that agrarian capitalist production would produce more value from the land than traditional Indigenous forms of land-

---

<sup>29</sup> Ellen Meiksins Wood, *The Origin of Capitalism: A Longer View* (New York: Verso, 2002), 108.

<sup>30</sup> *Ibid.*, 110.

<sup>31</sup> Locke, *Two Treatises of Government*, 291.

<sup>32</sup> See David Armitage, “John Locke, Carolina and the ‘Two Treatises of Government,’” *Political Theory* 32, no. 5 (2004): 602-627.

use, Locke provided the justification for the appropriation of Indigenous land. In fact, Locke does not even recognize the land to be “Indigenous.” Instead, he labels the land *terra nullius*, or land that belongs to no one.

According to Locke, enclosed land is made more productive when labour is applied to it. Thus, it is improved.<sup>33</sup> It is evident that there are connections here with the second form of differential rent outlined by Marx and explicated by Harvey: the infusion of labour/capital into land increases its productivity and therefore its value. “Locke’s point,” writes Wood, “is that unimproved land is *waste*, so that any man who takes it out of common ownership and appropriates it to himself... in order to improve it has *given* something to humanity, not taken it away.”<sup>34</sup> To sum up, the dispossession of Indigenous land (and the extinction of communal property rights) finds rationale in Locke’s notion that those who “improve” the land have a god-given right to that land, which trumps traditional claims.

#### Empirical Considerations: C. Harris, Fiske, and Asch

Cole Harris introduces his book, *Making Native Space: Colonialism, Resistance, and Reserves in British Columbia*, with a description of the meeting between businessperson Gilbert Malcolm Sproat and a settlement of Aht (Nuu-chah-nulth) in Alberni Canal, Vancouver Island in 1860. The historical account is a rich one for understanding the causes and rationales for Indigenous dispossession because both the actions of Sproat and his men, and the rationalizations they used to justify their actions find theoretical explanation in Harvey and Locke respectively. Although he did initially pay them, the Aht had no interest in vacating their land and Sproat

---

<sup>33</sup> In the late 18<sup>th</sup> century, the phrasing ‘improvement’ was translated into the language of ‘development,’ most notably by Emer de Vattel. This terminology has persisted ever since.

<sup>34</sup> Wood, 111.

removed them by threat of force. The land that the Aht formerly occupied was needed by Sproat and his men to create a settlement, to which more white colonists would soon move.<sup>35</sup> Clearly, this fits the pattern of accumulation by dispossession that Harvey delineates; the Aht were removed from their land so that the European settlers would have a suitable location from which to incorporate the surrounding land and resources into streams of capital flow.

More interestingly, Sproat's men — but not Sproat himself — had no moral quandaries whatsoever about dispossessing the Aht: “The Aht, they claimed, did not occupy the land in any civilized sense, and it lay in waste for want of labour. If labour could not be brought to such land, then the worldwide progress of colonialism, which was ‘changing the whole surface of the earth,’ would be arrested.”<sup>36</sup> Here, Harris has located seemingly Lockean language and ideas in the justification for Indigenous dispossession: the Aht had no real claim to their land, according to Sproat's men, because they were not using it as productively as possible. Of course, it is not possible to assert that the settlers were consciously using Lockean justifications. Perhaps, even, Locke could be said to have used ‘settler language.’ Still, as Wood argues and Harris' account confirms, the logic of Locke's argument explains a process that was understood by the settlers to be necessary and just, and therefore describes a rationale for dispossession.

Eight years after this initial meeting on Vancouver Island, Sproat published a book chronicling his encounters with the Indigenous inhabitants.<sup>37</sup> Charles Darwin made use of Sproat's work, using it to apply his evolutionary theory of sexual selection to human beings in his *Descent of Man*.<sup>38</sup> Darwin argued that when the “civilized” races encounter the “savage” ones

---

<sup>35</sup> Cole Harris, *Making Native Space: Colonialism, Resistance, and Reserves in British Columbia* (Vancouver: University of British Columbia Press, 2002), xv.

<sup>36</sup> *Ibid.*, xvi.

<sup>37</sup> Gilbert Malcolm Sproat, *Scenes and Studies of Savage Life* (London: Smith, Elder and Co., 1868).

<sup>38</sup> Charles Darwin, *Descent of Man and Selection in Relation to Sex* (New York: A.L. Fowle, 1874), 186.



the former will naturally prevail, as the latter are simply unable to cope with changing conditions of life. According to Darwin, Sproat's account shows that not only do the settlers have a Lockean right to appropriate Indigenous land without consent, but also that the so-called "civilized" races contribute to the disappearance of the "uncivilized" one, thereby clearing more territory for settlement.<sup>39</sup>

More broadly, Harris's book examines the geographical facets of colonialism and reserves in British Columbia. Sproat and his followers, Harris holds, looked at the "uncultivated" land of Vancouver Island, lying in "waste," and — first in their minds, but eventually in reality — imposed an entirely different geography, one complete with infrastructures of production, transportation and communication.<sup>40</sup> To carry out this colonial plan, the physical space available for Indigenous people needed to be dramatically reduced; Indigenous inhabitants had to be relegated to confined territorial spaces — reserves. Two of Harvey's concepts enter here: accumulation by dispossession and spatial/spatio-temporal fixes. The infusion of capital into the land of Vancouver Island can be understood in terms of the spatial/geographic aspects of capital accumulation, Harvey's "third-cut" crisis tendencies. Quite simply, the extraction of resources and production of exchange value means implementing infrastructure and reducing the space-time necessary to bring commodities to market. But to make this possible, the Indigenous people, who constituted a physical hindrance to the process, had to be removed and divested of their land: accumulation by dispossession.

However, Indigenous inhabitants are not always simply removed from the land and their economies subsumed into the capitalist one; Michael Asch describes a case in which two types of

---

<sup>39</sup> *Ibid.*, 186-187.

<sup>40</sup> Cole Harris, xvii.

economies exist side by side. Asch maintains that there are two different — but not distinct — modes of production in the Dene economy. There exist, simultaneously, a subsistence mode of production as well as a set of practices which engage with the outside economy of capitalism.<sup>41</sup> Money obtained through participation with the capitalist economy, Asch holds, is used to support subsistence activities. Looking at the relationship from the other direction, it becomes clear that Jessop is correct that capital interacts with non-capitalist economies in a variety of ways, and by no means does it immediately attempt to destroy them.

A final instructive example is provided by Jo-Anne Fiske, in her article “Fishing is Women’s Business: Changing Economic Roles of Carrier Women and Men.” Fiske acknowledges the work of Eleanor Leacock and others, who have noted that the introduction of commodity relations to Indigenous communities has generally had the effect of subordinating women to men, because it is men’s traditional forms of labour that furnish products that are demanded on the market.<sup>42</sup> Fiske writes: “The process dislocates women as producers, undermines their social position, and discredits their abilities as public leaders and decision makers.”<sup>43</sup> Fiske’s article demonstrates, however, that in cases in which women have resisted such dislocations, by holding on to their traditional practices of production and distribution, they have retained — even enhanced — their social status. In the instance she explores, women gained control of vital salmon fisheries as a consequence of state introduced adjustments to the Carrier economy as well as the introduction of capital inflows. As a result, women have retained esteemed social status and have maintained political status both inside and outside of their

---

<sup>41</sup> Michael I. Asch, “Capital and Economic Development: A Critical Appraisal of the Recommendations of the Mackenzie Valley Pipeline Commission,” *Culture*, 2.3 (1982): 5-6.

<sup>42</sup> For example see Eleanor Leacock, *The Montagnais Hunting Territory and the Fur Trade* (Menasha, WI: American Anthropological Association, 1954).

<sup>43</sup> Jo-Anne Fiske, “Fishing is Women’s Business: Changing Economic Roles of Carrier Women and Men,” in *Native People, Native Lands*, ed. Bruce Alden Cox (Ottawa: Carleton University Press, 1987), 186.

communities.<sup>44</sup> Hartsock also observes that women's social power is increased when they participate in crucial economic activities. However, Hartsock makes the case that it is when women enter into relations of wage labour that this effect takes place. In contrast, the Carrier women who Fiske describes remained in subsistence activity.<sup>45</sup> Nevertheless, this development was a direct consequence of the introduction of capitalist relations. Ultimately, Fiske demonstrates, as do the other empirical cases considered, that capital interacts with non-capitalist economies in a variety of ways, sometimes contradictory or unexpected.

### Locke, the Doctrine of Improvement, and the Legal Roots of Dispossession

Locke proclaims in his *Second Treatise of Government* that the earth was given to the “Industrious and the Rational... not to the Fancy or Covetousness of the Quarrelsome and Contentious.”<sup>46</sup> By this, Locke means that God gave the earth to those who will cultivate the land to achieve the maximum possible output: “God and his Reason commanded him [the humans] to subdue the Earth, *i.e.* improve it for the benefit of Life....”<sup>47</sup> The use of the gendered pronoun in this quotation is important. Carole Pateman argues that in Locke's work women are deliberately excluded from the social contract and also from dominion over property.<sup>48</sup> On the contrary, Melissa A. Butler defends Locke as a proto-feminist. She argues that Locke thought of women as “individuals,” just like men.<sup>49</sup> Considering Locke's historical situation, Pateman's position seems more convincing. However, the possibility of women being or becoming property owners in

---

<sup>44</sup> *Ibid.*, 197.

<sup>45</sup> It should be noted that some Carrier women also participated in petty commodity production.

<sup>46</sup> Locke, *Two Treatises of Government*, 291.

<sup>47</sup> *Ibid.*, 291.

<sup>48</sup> Carole Pateman, *The Sexual Contract* (Stanford: Stanford University Press, 1988), 53.

<sup>49</sup> Melissa A. Butler, “Early Liberal Roots of Feminism: Locke and the Attack on Patriarchy,” in *Feminist Interpretations and Political Theory*, eds. Mary Lyndon Shanley and Carole Pateman (Cambridge and Oxford: Polity Press, 1991), 81.

capitalism or after the introduction of capital flows is complicated, as Hartsock and Fiske each demonstrate. If Locke did indeed believe that only men could rightfully possess property rights, then this is one of the very few similarities that his theory of property shares with some of the expressions of property in Indigenous societies, considered in subsequent chapters. It seems that although property was held in common in many Indigenous societies, property rights were in many cases — although not all — concentrated in the hands of the chiefs, usually men.<sup>50</sup>

For the purposes of the present analysis the key word in the above-quoted passage is “improve.” For Locke, European agriculture “improved” the land and therefore increased its productive output. Locke also holds that Indigenous forms of land-use produce fewer goods than European cultivation.<sup>51</sup> Because land cultivated by (white) Europeans — in Locke’s view — produces more value than that used by Indigenous people, and because God gave the land to those who will use it as productively as possible, European settlers have a God-given right to the “vacant” land in America.<sup>52</sup> “Improving” the land, increasing its productive output, was given as a justification for Indigenous dispossession.<sup>53</sup>

In his book, *The Great Land Rush and the Making of the Modern World: 1650-1900*, John C. Weaver explains the central importance of the doctrine of improvement in the enclosure North America. He also describes how this doctrine was used to justify uprooting Aboriginal people from their ancestral territory. Weaver holds that the notion of improvement is fundamental to Locke’s theory of property rights.<sup>54</sup> Weaver describes two sides to the notion of improvement:

---

<sup>50</sup> There are many exceptions to this. For example, there is no such concentration of property rights for the Cree of James Bay and on the northwest coast it is common for women to hold land rights.

<sup>51</sup> Locke, *Two Treatises of Government*, 294.

<sup>52</sup> *Ibid.*, 293.

<sup>53</sup> James Tully, “Rediscovering America: The *Two Treatises* and aboriginal rights,” in *An Approach to Political Philosophy: Locke in Contexts* (Cambridge: Cambridge University Press, 1993), 169.

<sup>54</sup> John C. Weaver, *The Great Land Rush and the Making of the Modern World: 1650-1900* (Montreal & Kingston: McGill-Queen’s University Press, 2003), 81.

economic and cultural. He writes, “To improve land meant to apply labour and capital, so as to boost the land’s carrying capacity and hence its market value.”<sup>55</sup> However, there is also a cultural meaning attached to improving the land: “In an embedded cultural sense, improvement meant humankind’s duty to tame wilderness, rescue wasteland — even more, to deliver itself from want and indolence.”<sup>56</sup> Clearly then, there is a paradox at work in this notion of “improvement.” On one hand, there is a material imperative: the production of maximum value, driven by market forces. On the other, the notion has an ideational meaning for those actually doing the improving: improvement carries a social and cultural meaning and is even considered a duty.

Elaborating on the perceived differences between European and Indigenous forms of agriculture, Weaver notes that part of the notion of “improvement” involves imposing order on the land, organizing and regulating it for the best fulfillment of human needs. Furthermore, this idea has deep origins in Western thought, which pre-date Locke.<sup>57</sup> Weaver ties the ideal of improvement to Christian theology as well as to Enlightenment thinking.<sup>58</sup> Because the doctrine of improvement has great social and cultural significance, and because it has deep roots in the Western tradition, it was (and is) an ideal tool in Indigenous dispossession. Weaver makes clear this connection. He writes, “In the colonies, the dispossession of a number of first peoples... advanced under that most revered regimental pennant of colonizers, ‘Improvement.’”<sup>59</sup> Because “improvement” means resource exploitation, the property rights of Aboriginal inhabitants, which enjoyed some simple recognition in early colonial regimes, had to be undermined.<sup>60</sup>

---

<sup>55</sup> *Ibid.*, 81.

<sup>56</sup> *Ibid.*, 81.

<sup>57</sup> *Ibid.*, 83.

<sup>58</sup> *Ibid.*, 83.

<sup>59</sup> *Ibid.*, 82.

<sup>60</sup> *Ibid.*, 134.

Interestingly, Weaver holds that the economic justification of “improvement,” was favoured over religious and cultural arguments for assimilation.<sup>61</sup>

A fundamental component in the global transformation of the “great land rush” that Weaver describes was the alteration of property rights and tenure.<sup>62</sup> An intrinsic part of this process, as noted, was that Indigenous property rights had to be extinguished, to pave the road for European development and expansion. Weaver describes a legal barrier to this development: “Until the rights of the antecedent inhabitants... were purchased or otherwise extinguished, sovereign entities held an imperfect root title to the land over which they claimed the right to rule and thus could not grant a perfect title to subjects looking for *waste land to improve*.”<sup>63</sup> Thus, simply removing Indigenous people from their land was, in many cases, not an option. Weaver holds, however, that land laws were used and manipulated to the ends desired by colonial authorities. In practice this took a variety of forms. In broad terms, Weaver maintains that while Aboriginal title was often recognized, colonial administrators assessed occupancy, land-use and improvement by their own standards, therefore reducing the amount of land Indigenous people could lay claim to.<sup>64</sup> The relationship of Lockean logic to this process is complicated. On one hand the recognition of Indigenous property in this way is not consistent with Locke’s attempt to deny the existence of such rights. On the other hand, the logic of ‘improvement’ plays a key role. Weaver makes it clear that this legal trend, the use of land law as a “technology” of dispossession, is closely connected to the doctrine of improvement; the underlying goal of dispossession for the sake of ‘improvement’ was justified by colonial law. Weaver’s account

---

<sup>61</sup> *Ibid.*, 134.

<sup>62</sup> *Ibid.*, 134.

<sup>63</sup> *Ibid.*, 135.

<sup>64</sup> *Ibid.*, 134.

demonstrates a tension between the Lockean doctrine of improvement, on one hand, and a recognition that the Indigenous inhabitants possessed at least some rights to the land, on the other.

Douglas C. Harris looks specifically to the history of the salmon fishery and its laws in British Columbia to examine the role of law in Indigenous dispossession. Harris examines changes in the fishery during the late nineteenth and early twentieth centuries. At this time the settler fishery came to replace the existing Indigenous fishery.<sup>65</sup> A key mechanism in this process of displacement, Harris holds, is law: “When one fishery sought to replace another, its laws had to replace the other’s.”<sup>66</sup> In turn, the laws often became an arena of intense conflict. Divergent legal traditions (settler and Indigenous) were themselves points of contestation. Harris holds that it is not of paramount significance whether the focus is placed on fish or on the laws; they are simply two levels of the same conflict.<sup>67</sup> In this way, the state can be understood as the sphere in which economic conflicts are played out: concretely, Department of Fisheries staff clashed with Department of Indian Affairs staff over the claims of coastal canneries and of interior First Nations to fish key BC salmon populations. Harris’s account presents a situation in which conflicts over the salmon fishery were formalized in a legal context.

More importantly, Harris’ study concerns the mechanisms used by the colonial state to divest Indigenous peoples of access to their traditional economic activities. To do this, the laws of the colonial state were forcibly imposed on Indigenous fishers. This imposition was justified, Harris writes, by proclaiming that there was no existing law regulating the fishery.<sup>68</sup> This is part

---

<sup>65</sup> Douglas C. Harris, *Fish, Law, and Colonialism: The Legal Capture of Salmon in British Columbia* (Toronto: University of Toronto Press, 2001), 3.

<sup>66</sup> *Ibid.*, 3.

<sup>67</sup> *Ibid.*, 3. Of course, these are distinct moments of struggle that could foreseeably develop in different directions.

<sup>68</sup> *Ibid.*, 4.

of a broader set of Eurocentric assumptions about the nature of Indigenous political, social and cultural life. James Tully notes that these presumptions, which essentially brand Aboriginal people as ‘savages’ and characterize them as living in a pre-political ‘state of nature,’ have Lockean origins.<sup>69</sup> More generally, these portrayals help to characterize the land as *terra nullius*, empty land, upon which the new settlers can justifiably lay claim, if they mix their labour with it. Tully argues that dispossession was rationalized as follows: if the Indigenous inhabitants do not constitute a political society, then they do not have a claim to the land. Locke was well-aware that Indigenous people in North America had their own forms of political organization. However, Tully notes that in Locke’s philosophy the state of nature is characterized by “‘individual popular sovereignty’ or ‘individual self-government’” and “‘individual and exclusive rights over one’s labour and its products.’”<sup>70</sup> Locke argues that Indigenous people were living in a state of nature and therefore their land could be appropriated without consent.<sup>71</sup> However, Harris demonstrates that there was indeed a complex legal framework that governed the Indigenous fishery:

The Dominion of Canada entered what it thought was an open-access fishery on the Pacific coast in the late nineteenth century. A commons perhaps, the fishery was not unregulated. A web of entitlements, prohibitions, and sanctions governed the Native fisheries, allowing certain activities, proscribing others, permitting one group to catch fish at certain times in particular locations with particular technology, while prohibiting others.<sup>72</sup>

Harris argues that the often-promulgated claim that there was no legal system that regulated the pre-contact Aboriginal fishery is false. Indeed, there was an elaborate arrangement, but one that was simply different from the system European settlers took for granted and viewed as universally valid.

---

<sup>69</sup> Tully, “Rediscovering America: The *Two Treatises* and aboriginal rights,” 139.

<sup>70</sup> *Ibid.*, 141-142.

<sup>71</sup> *Ibid.*, 145.

<sup>72</sup> Douglas C. Harris, 3.



Turning to a language of spatiality, Harris notes that the Canadian state's denial of Indigenous legal 'spaces' is part of the process of colonialism. Refusing to acknowledge these legal spaces was a tool used by the state to establish the ascendancy of its own legal system.<sup>73</sup> An example this negation of Indigenous legal spaces is the outlawing of cultural practices such as the potlatch, a tradition seen by colonial authorities as wasteful and pointless as well as a barrier to assimilation into the dominant society.<sup>74</sup> In addition, the denial of Indigenous legal space was instrumental in dispossession of land and access to resources. Harris writes, "By outlawing and thereby weakening important Native legal spaces, settler access to land and resources once governed by Native laws increased. This was part of the process by which the state established its legal hegemony."<sup>75</sup> Harris' work underscores the point that the codification of practices — such as dispossession, dislocation and assimilation of Indigenous peoples — has immense justificatory power. What is written in law, what is legalized, also becomes what is just. Of course, there were also alternative Aboriginal legal systems, but they were supplanted by the frameworks of the settler society. Many of the settlers were no doubt of the mind that the Indigenous inhabitants possessed no land rights. However, Harris's work makes it clear that there was in fact a customary tradition of law that governed Indigenous land-use. Furthermore, many of the rationalizations for this supersession of Indigenous law by settler law are rooted in Lockean philosophy.

---

<sup>73</sup> *Ibid.*, 6.

<sup>74</sup> *Ibid.*, 6.

<sup>75</sup> *Ibid.*, 6.

The Power of Narrative: Myth and Story in Contact and Dispossession

John Sutton Lutz advances a methodology for understanding contact stories, both Indigenous and European, that restores agency to Aboriginal peoples. This position removes European actors from the centre of contact history and treats both sets of historical figures equally.<sup>76</sup> This allows the histories and stories embedded in accounts of contact, from both sides, to be uncovered and examined fairly. According to Lutz, this means “treating both [accounts] as equally credible and incredible.”<sup>77</sup> Following Mary Louise Pratt, Lutz holds that it is useful to understand ‘contact’ as a ‘zone,’ which contains dimensions that are spatial as well as temporal.<sup>78</sup> In this way, the ‘contact zone’ continues to exist today. Extending the analysis, Lutz argues that this ‘zone’ can also be understood as the space in which discourse — stories, myths, narratives — about contact are created, heard, and, in some ways, speak to each other.<sup>79</sup> The contact zone is a place of ambiguity: an event can be understood in a variety of ways, just as a story can have multiple meanings. Understanding the contact zone means accepting the fact that to arrive at a point of perfect clarity and consensus would be to miss the point. Instead, the purpose is to recognize the necessity of ambiguity.

Lutz’s central argument is that what both the Indigenous inhabitants and the European newcomers discovered, upon first contact, was not new to either side. To a large degree, they encountered what they expected. Lutz writes, “Europeans did not discover the unexpected. They went into new territories full of expectations, ideas, and stereotypes.... It was not the ‘new’ that they encountered so much as what the popular myths of the day suggested they would find.”<sup>80</sup>

---

<sup>76</sup> John Sutton Lutz, “Introduction,” in *Myth and Memory: Stories of Indigenous-European Contact*, ed. John Sutton Lutz (Vancouver: University of British Columbia Press, 2007), 4-5.

<sup>77</sup> *Ibid.*, 5.

<sup>78</sup> *Ibid.*, 4.

<sup>79</sup> *Ibid.*, 4-5.

<sup>80</sup> *Ibid.*, 2.

This is equally true of Indigenous peoples, who understood European settlers in terms of their own mythologies. Aboriginals as well as settlers created new myths and stories based on these encounters.<sup>81</sup> Each side had its own ways of incorporating its experiences and discoveries into a broader cosmological order. Beyond simply providing a mechanism for comprehending the encounter, and placing it within an understandable order, narrative also played a role in justifying actions and legitimizing claims to land and resources. Lutz writes, “The legitimacy of the settler nations and indigenous claims to be the rightful owners or caretakers of the land and resources are based on these contact stories.”<sup>82</sup> The two cultural groups each had to justify — mostly to themselves — their reasons for occupying the land.

Like Lutz, Keith Thor Carlson seeks to create an “academic contact zone,” in which the stories and histories of Indigenous peoples are given due attention. Carlson looks closely to the role of narrative in Indigenous culture. He observes that in Central Coast Salish society the ability to tell stories, to ‘footnote’ properly one’s connection to a particular resource, is closely linked to customary rights to resources. He writes, “Ownership and regulatory rights to productive family fishing grounds or berry patches continue to be inherited today. Without detailed genealogical history linking a person to such sites, one would be ‘worthless’ in a very real sense of the word.”<sup>83</sup> Carlson recounts the case of an Indigenous man named John Doe, who claimed to hold important historical knowledge about the location of an abandoned Spanish fort in British Columbia. Many in his community thought that Doe had been chosen by the ancestors as a carrier of this sacred knowledge.<sup>84</sup> However, over time, his stories came under increasing

---

<sup>81</sup> *Ibid.*, 3.

<sup>82</sup> *Ibid.*, 2.

<sup>83</sup> Keith Thor Carlson, “Reflections on Indigenous History and Memory: Reconstructing and Reconsidering Contact,” in *Myth and Memory: Stories of Indigenous-European Contact*, ed. John Sutton Lutz (Vancouver: University of British Columbia Press, 2007), 49.

<sup>84</sup> *Ibid.*, 57.

scrutiny, not because of questions of their historical accuracy — although they did ultimately prove to be false — but instead because Doe failed to properly validate his claim with “oral footnoting,” the test of legitimacy in his community.<sup>85</sup> Doe attempted to ground his claims with archival documents and reference to a nineteenth century text by Franz Boas.<sup>86</sup> But this form of historical validation did not convince the other members of his community and Doe’s assertions eventually came into disrepute. Doe had become disconnected from the traditional manner of telling stories and therefore detached from the stories themselves. More specifically, Doe had become disconnected from the social meaning embedded in the stories and their telling. Without a connection to these stories and practices of narrative, Doe lost his social status. Ultimately, this account demonstrates that colonialism dispossesses people not only of their land, but of their stories and histories as well; dispossession means the disruption of story-telling. Interestingly, there is a bi-directional causal relationship between the loss of land and the loss of narrative. Removing Indigenous people from their land means interrupting the telling of narratives. However, once the connections to traditional stories are disrupted, claims to rights over the land and resources also begin to fade.

Placing the focus on literary theorist Mikhail Bakhtin, James Lawson explores the “chronotope,” an analytical concept that considers space and time as parts of the same configuration.<sup>87</sup> This paradigm is useful for linking narratives to their contexts — both spatial and temporal. Within this framework, the polyphony of narratives can also be explored. Lawson notes that for Bakhtin, the polyphonic novel is a medium in which “the reader directly

---

<sup>85</sup> *Ibid.*, 58-63.

<sup>86</sup> *Ibid.*, 59.

<sup>87</sup> James Lawson, “Chronotope, Story, and Historical Geography: Mikhail Bakhtin and the Space-Time of Narratives,” *Antipode*, 43.2, (2011), 384.

encounters multiple voices; and hence, the multiple worlds to which these voices separately bear witness.”<sup>88</sup> The work of Toby Morantz is instructive in this regard. Morantz describes her book, *The White Man’s Gonna Getcha*, as a ‘braided history.’ The first braid/story is Morantz’s account of the Quebec Cree’s understanding of their own history. The second strand is the imposition of Western institutions upon Cree culture. The third story, which Morantz acknowledges, but refuses to tell, is the Cree’s own telling of their history.<sup>89</sup>

Extending this analysis of polyphony, Lawson examines the role of narrative in Indigenous politics in Canada. Commentators who oppose First Nations rights (Thomas Flanagan, as well as Frances Widdowson and Albert Howard) do not recognize Indigenous stories in a polyphonic, or polyglot, narrative space. They do not recognize the validity of narratives other than those of their own society. These antagonists also argue that the prevailing discourse concerning Aboriginal politics is itself monoglot. Lawson writes, “These dissenters present their critique as a break in a counter-productive, monoglot consensus in Canadian scholarship. In their view, this consensus patronizingly affirms indigenous oral traditions that are ultimately useless for the tasks at hand.”<sup>90</sup> However, the truly monoglot narrative is the one to which these dissidents subscribe. Their programmatic vision can be understood as a story of development and improvement, which for Flanagan unfolds along capitalist lines, and for Widdowson and Howard is socialist. But in either case, Lawson remarks, “only one ‘good life’ is truly good, and only one story can truly produce it.”<sup>91</sup> Thus, the monoglot position of the anti-

---

<sup>88</sup> *Ibid.*, 388.

<sup>89</sup> Toby Morantz, *The White Man’s Gonna Getcha* (Montreal-Kingston: McGill-Queen’s University Press, 2002), 3.

<sup>90</sup> Lawson, 400.

<sup>91</sup> *Ibid.*, 400.

Indigenous voices becomes a sort of “narrative colonialism,” in which one “true” story supplants all others.

Flanagan’s position is worthy of further consideration, especially because he makes explicit reference to Locke in his justification of dispossession. He holds that at the time of contact:

European civilization was several thousand years more advanced than the aboriginal cultures of North America, both in technology and in social organization. Owing to this tremendous gap in civilization, the European colonization of North America was inevitable and, if we accept the philosophical analysis of John Locke... justifiable.<sup>92</sup>

To use Bakhtinian terminology, Flanagan subscribes to an “epic” account of history.<sup>93</sup> As Lawson makes clear, in Flanagan’s view there is one story: that of “civilization.” Flanagan denies that “The distinction between civilized and uncivilized cultures is a racist instrument of oppression.”<sup>94</sup> Instead, for Flanagan the distinction describes a truth about human history and development. This is not dissimilar from Locke’s philosophy, which describes an “epic” understanding of history and justifies dispossession in terms of a singular narrative. Flanagan has long used specifically Lockean arguments to justify the denial of Aboriginal title. For example, in an article published in 1989 Flanagan made direct reference to Locke’s *Second Treatise* to rationalize dispossession. Here, Flanagan finds no fault with the “modern outlook which sees the hunting-gathering way of life as an earlier stage in the evolution of human society.”<sup>95</sup> As well, he holds that Locke’s agricultural argument — or more broadly, the argument that more

---

<sup>92</sup> Thomas Flanagan, *First Nations? Second Thoughts* (Montreal-Kingston: McGill-Queen’s University Press, 2008), 6.

<sup>93</sup> Sue Vice, *Introducing Bakhtin* (Manchester: Manchester University Press, 1997), 78-83.

<sup>94</sup> Flanagan, *First Nations? Second Thoughts*, 6. (Italicized in original)

<sup>95</sup> Thomas Flanagan, “The Agricultural Argument and Original Appropriation: Indian Lands and Political Philosophy,” *Canadian Journal of Political Science*, 22.3, (1989), 597.

“productive” forms of land-use take priority over less productive ones — is not about the superiority of Europeans, but about human equality.<sup>96</sup> Flanagan writes, “On land which is not yet subjected to positive law, all have the same right to appropriate the soil. For the Indians to forbid the Europeans from planting would be to assert an unjustified ascendancy over them.”<sup>97</sup>

Flanagan’s argument about “positive law” makes it clear that in fact his argument does rely on notions of the cultural superiority of Europeans; he is willing to recognize as legitimate only the laws of the settler society. In reality — as Douglas C. Harris demonstrates, and as do later chapters in this work — a complex system of positive laws do govern Indigenous title and land-use.

#### Moving Forward: Re-Affirming Narrative and Subverting Locke

Lawson maintains that in many cases dominant narratives, such as those asserted by Flanagan and Widdowson and Howard, are now being challenged. New spaces are being created in which a multiplicity of narratives can be heard. This means creating an atmosphere of dialogism, in which the two cultures can speak *to* each other, instead of *past* one another.<sup>98</sup>

Lawson notes that opening this space for Indigenous voices — and stories — has provided “tools to undo systematic injustice and socio-economic dysfunction, to recover decision-making power, to affirm long-disdained cultural practices, and to improve social and economic benefits.”<sup>99</sup> For example, in the *Delgamuukw* case the recognition of Indigenous narratives as evidence that possess legitimacy equal to written documents also meant recognizing the authenticity of

---

<sup>96</sup> *Ibid.*, 599.

<sup>97</sup> *Ibid.*, 599.

<sup>98</sup> Lutz, “First Contact as a Spiritual Encounter,” *Myth and Memory: Stories of Indigenous-European Contact*, ed. John Sutton Lutz (Vancouver: University of British Columbia Press, 2007), 31.

<sup>99</sup> Lawson, 398.

Aboriginal claims to the land.<sup>100</sup> Just as Carlson demonstrates that disrupting narratives is connected to dislocation from the land, this case shows that recognizing traditional stories can have the opposite effect. That is, embracing Indigenous stories, creating a space in which they can be heard and appreciated on an equal footing with settler narratives and histories can lead to a reaffirmation of Aboriginal land rights.

Returning the focus to Locke, we may now consider how his argument concerning property, improvement and government can actually be employed for the cause of Aboriginal resistance and can also be used in favour of Indigenous claims against the state. James Tully identifies two problems that Locke poses for Indigenous people: “First, Locke defines political society in such a way that Amerindian government does not qualify as a legitimate form of political society. [...] Second, Locke defines property in such a way that Amerindian customary land-use is not a legitimate type of property.”<sup>101</sup> But Tully challenges both of these assumptions. Addressing the first, he argues that Indigenous groups did indeed constitute sovereign nations — even in Lockean terms. Furthermore, they understood themselves as such and comprehended their own claim to the land.<sup>102</sup> In response to the second problem, Tully holds that the forms of agriculture practiced by First Nations were by no means wasteful. Rather, how they used it was simply different, and in many cases more ecologically sustainable.<sup>103</sup> In fact, from a contemporary standpoint, armed with the knowledge that Western forms of land-use are in large part fundamentally unsustainable, it can also be argued that Indigenous forms of land-use are actually more productive, because they are capable of long-term viability. Therefore, they are —

---

<sup>100</sup> *Ibid.*, 398.

<sup>101</sup> Tully, “Rediscovering America: The *Two Treatises* and aboriginal rights,” 139.

<sup>102</sup> *Ibid.*, 147.

<sup>103</sup> *Ibid.*, 163.



in the long-term — more conducive to the “the benefit of Life,” in Locke’s words.<sup>104</sup> Locke argues that “Nothing was made by God for Man to spoil or destroy.”<sup>105</sup> Thus, there seems to be a paradox in Locke’s position on this matter. His attitude concerning the instrumental value of the ecology for human development has historically been embodied in a number of forms, most notably capitalist agriculture. The irony lies in the fact that these forms of land-use have resulted in a great deal of spoliation of the environment.

Tully clearly establishes that Locke and those who used his writings misunderstand the nature of Indigenous political society, property and land-use. He proceeds to argue that because Indigenous groups indeed constitute self-governing nations and have a legitimate claim to their land — even in the stipulations of Locke’s own argument — it logically follows from the theory set forth in the *Two Treatises* itself that Aboriginal groups have the right to “defend themselves and their property, with force if necessary, against these injustices....”<sup>106</sup> Thus, working within the internal logic of Locke’s own argument, Tully creates a claim for Indigenous groups against their colonial oppressors. In a sense, Tully’s argument can be said to be Bakhtinian; distinct lines of logic and reasoning are split apart and shown to speak against one another. These two ‘voices,’ or lines of argumentation can even be present in a single text or utterance.<sup>107</sup>

## Conclusions

The opening sections of this chapter seek to delineate several concepts in the field of critical political economy that can provide theoretical understandings of the confrontations of

---

<sup>104</sup> Locke, *Two Treatises of Government*, 291.

<sup>105</sup> *Ibid.*, 290.

<sup>106</sup> Tully, “Rediscovering America: The *Two Treatises* and aboriginal rights,” 175.

<sup>107</sup> Vice, 45.

capital with non-capitalist economies. These theoretical notions have been, where possible, corroborated with references to empirical and historical observations. Using Harvey's writings on the dynamics of capital accumulation as a solid base, it has been demonstrated that concepts such as spatial and temporal fixes, differential rent, and accumulation by dispossession all have a bearing on Indigenous dispossession. Harvey provides a basis for comprehending the irregular and multifarious spatialities and temporalities of accumulation through dispossession.

Furthermore, Jessop and Hartsock demonstrate that further explication and a careful critique of Harvey's work are fruitful as well. Thus, a more complex understanding of the following concepts has been brought to light: spatio-temporal fixes, the role of the state in capital accumulation, and the gendered dynamics of accumulation by dispossession. It is important to consider that these theorists demonstrate that capital is a fluid, relational process, which does not operate in any semblance of uniformity. It acts in different ways in different places and times for different reasons. It does not simply dispossess and destroy every non-capitalist community it comes across. Rather, in many cases capital interacts with the non-commodity form for long periods of time. Nevertheless, it always leaves its mark.

The last sections of this chapter have sought to explore a small portion of the variety of ways in which the uprooting of Indigenous peoples from their rightful land and resources has been rationalized. Locke presents a key argument: Aboriginal forms of land-use do not "improve" the land as much as possible and therefore European settlers who will use the land to its full potential are justified in stealing the land. Weaver shows how powerful this theory was in the colonial process, and how it was used in colonial law, especially around property rights and tenure. Douglas C. Harris also examines the ways that law was used in dispossession. In his

work, he examines the overpowering of colonial laws over a traditional Indigenous legal framework of salmon fishing rights. Lutz, Carlson and Lawson all explore the importance of narrative. Myth and storytelling are central to Indigenous ways of life; disrupting the storytelling process is a tool used to weaken Indigenous ties to the land, which facilitates dispossession. But the colonizers have their own myths and stories — narratives that justify depriving First Nations of their land. This analysis shows that progressive improvement for Aboriginal peoples means both allowing space for their narratives to be heard and challenging the settler narratives (Locke's in particular) that have been used to justify their oppression. Here, the analyses of Lawson and Tully are instructive.

The ideational elements described by this paper — Lockean political theory, colonial law, grand historical narratives — are not the underlying causal forces that drove Indigenous dispossession. However, colonialism required a great deal of otherwise normal and decent human beings to carry out a large number of horrible acts. These actions were sometimes made from a distance, as with lawmakers; but very often they were direct acts of violence and coercion.<sup>108</sup> The people carrying out this process needed to think that their actions were justified, that they were playing a necessary part in a larger cosmological whole.

The foregoing has aimed to explore some of the existing scholarship on the contact and interaction between Indigenous and non-Indigenous societies. Each of the scholars considered theorizes this interaction in a unique way. Those who take the dynamics of capital accumulation as an entry point for their explorations generally argue that these material imperatives are the causal mechanism of dispossession. Thus, Harvey and others tell us why dispossession has

---

<sup>108</sup> For an example of this history of violence, on Canada's West coast, see Chris Arnett, *The Terror of the Coast: Land Alienation and the Colonial War on Vancouver Island and the Gulf Islands, 1849-1863* (Burnaby, British Columbia: Talonbooks, 1999).

occurred. These theorists may begin to answer the question of how the process is justified, but ultimately a full account must turn to the ideational elements as well. In this way, it is imperative to consider what stories are told about history and colonizations, how they are told, and by whom. In this way, it is possible to understand how narrative, myth, and even law can be used as instruments of dispossession and oppression.

With the exception of Flanagan and Widdowson and Howard, the contributions of the present research do not aim to refute, or argue contra any of the existing literature on dispossession. Instead, my intention is to build on what has already been written. Understanding the human ecology — and contrasting interpretations thereof — that underlie Indigenous dispossession is not contradictory or mutually exclusive to any of the interpretations considered thus far. Rather, it is a new and different way of conceptualizing Indigenous-non-Indigenous conflict, which is theoretically and practically fruitful in of its own accord, but also will make the existing body of literature more complete.

## II. *Delgamuukw v. The Queen*: Context and Argument

The white people had no respect for the Indian people. They came  
and just took the land and just literally threw them off.

- Johnny David<sup>1</sup>

The *Delgamuukw* case was an epic and seminal legal episode, which eventually led to a qualified affirmation of Indigenous rights to traditional lands. Beginning in 1984, the case first went before the Supreme Court of British Columbia in 1987 (*Delgamuukw: SCBC*), where it was dismissed by Chief Justice Allan McEachern in 1991. The ruling was then appealed in the British Columbia Court of Appeal (*Delgamuukw: BCCA*) and eventually went to the Supreme Court of Canada (*Delgamuukw: SCC*).<sup>2</sup> The final decision was handed down by Supreme Court Chief Justice Antonio Lamer in 1997 and is considered a landmark ruling for Indigenous land claims. The journey was a tumultuous one, with many disappointments. The most notable of these was probably McEachern's original rejection of the claim of the Gitksan and Wetsuwet'en — based on outdated, racist, and colonial judgements about Aboriginal peoples and ways of life. However, a desire to reclaim their traditional land provided the Indigenous plaintiffs with the much-needed resolve to see the case through to its end.

In this chapter, I will briefly sketch the background and context of the *Delgamuukw* case. I will also outline the principal features of the legal episode itself. Most central to my argument, and the empirical basis for the two final chapters of this thesis, is an exploration of the main arguments put forward by each side and the reasoning of the deciding judges in each case. There

---

<sup>1</sup> Johnny David, *'Hang On To These Words': Johnny David's Delgamuukw Evidence*, ed. Antonia Mills (Toronto: University of Toronto Press, 2005), 370.

<sup>2</sup> Antonia Mills, "Introduction," in *'Hang On To These Words': Johnny David's Delgamuukw Evidence*, ed. Antonia Mills (Toronto: University of Toronto Press, 2005), 10-11.

are three instructive examples these types of reasoning: first, the original case presented by the Gitksan and Wetsuwet'en; second, Justice Allan McEachern's infamous dismissal of these claims; and finally, the Supreme Court of Canada overruling of the McEachern decision. Beneath the surface of these arguments, there are well-defined notions of land rights and land-use that will inform my theoretical explorations in the subsequent chapters. Specifically, I will explore how different conceptions of human ecology are represented by notions about ownership and jurisdiction over land and resources. In other words, how the Indigenous and settler societies describe and express property and land ownership suggests important facts about how the human-ecological relationship is conceived in each of these cultures. These facts support my central argument that declarations of property are dependent on notions of human ecology.

### Context

For thousands of years civilizations have resided in the Pacific Northwest. Most anthropologists believe that these inhabitants crossed the Bering Strait from Asia many generations ago. Within this vast region, the Gitksan and Wetsuwet'en nations have been based in an area of almost 57,000 square kilometres, on the Skeena, Bulkley and Nechako river systems in the west-central part of what is now called British Columbia.<sup>3</sup> Despite a long, complicated, and often hostile relationship with European newcomers, which began in 1774 with the arrival of Juan Pérez Hernandez, these nations have never ceded sovereignty of their

---

<sup>3</sup> Gisday Wa and Delgam Uukw, *The Spirit in the Land: The Opening Statement of the Gitksan and Wetsuwet'en Hereditary Chiefs in the Supreme Court of British Columbia, May 11, 1987* (Gabriola, BC: Reflections, 1987), 1,11. 5000 years is a conservative estimate of how long this territory has been occupied by these societies. Some observers have put the number at 10,000 years or higher. Exact dates or timeframes are unimportant, however; the Gitksan and Wetsuwet'en were on the land many centuries before European exploration and settlement.

traditional lands.<sup>4</sup> Indigenous land rights were recognized by the British Crown in the *Royal Proclamation of 1763* and these rights were recognized and affirmed in the patriated Canadian constitution in 1982.<sup>5</sup> It was established in the *Royal Proclamation* that Indigenous nations could only cede rights to their land to the Crown and thereby the government adopted a protectorate relationship with the nations.<sup>6</sup>

In 1831 United States Chief Justice John Marshall expressly rejected, in *Worcester v. the State of Georgia*, the argument in favour of dispossession based on Locke's *Second Treatise*. Marshall chose to ignore his earlier judgement in *Graham's Lessee v. M'Intosh* (1823), which had made specific reference to Locke.<sup>7</sup> In *Worcester*, the Chief Justice decided that the *Royal Proclamation* was the authoritative document on Indigenous nationhood and territorial jurisdiction. For many years, the Marshall decision informed Canadian jurisprudence on Aboriginal property rights and was frequently referenced by Canadian lawyers.<sup>8</sup> Of course, it was not always the case that the law was followed in practice. Later, in the *St. Catherine's Milling* case, the legal authority of the *Royal Proclamation* would again be affirmed. While this decision did recognize Aboriginal title as a legal interest, it also described the *Proclamation* as the foundation (rather than an affirmation) of such title, thereby imposing constraints.

In the Pacific Northwest, Sir James Douglas, governor of the colonies of British Columbia (1858-1864) and Vancouver Island (1851-1864), concluded fourteen treaties with the First Nations of Vancouver Island and one with a nation on the mainland.<sup>9</sup> This established a

---

<sup>4</sup> Paul Tennant, *Aboriginal Peoples and Politics: The Indian Land Question in British Columbia, 1849-1989* (Vancouver: University of British Columbia Press, 1990), 17.

<sup>5</sup> Antonia Mills, *Eagle Down is our Law* (Vancouver: University of British Columbia Press, 1994), 10.

<sup>6</sup> Katherine Anne Leishman, "Lessons from Delgamuukw v. The Queen: The Comparative Potential of Litigation and Negotiation to Resolve Aboriginal Rights Conflicts" (Thesis, University of Victoria, 1996), 8.

<sup>7</sup> Tully, "The *Two Treatises* and Aboriginal Rights," 173.

<sup>8</sup> *Ibid.*, 174.

<sup>9</sup> Mills, *Eagle Down is our Law*, 7.

precedent for relations between the colonial government and the Indigenous nations; the treaties were signed as agreements between nations.<sup>10</sup> During this time, no treaty was signed with the Gitksan or Wetsuwet'en nations.<sup>11</sup> Nevertheless, in the mid-1980's, even after Aboriginal rights were affirmed in section 35 of the *Constitution Act, 1982*, the government of British Columbia continued to consider the Gitksan and Wetsuwet'en territory in question to be Crown land and denied the claims of those nations to rightful ownership.<sup>12</sup> This approach to Indigenous land claims was the result of a significant rupture in policy, which was foreshadowed later in Douglas's career and received full expression with one of his successors, Joseph Trutch.

While the treaties that Douglas signed with the Indigenous inhabitants show a degree of recognition of Aboriginal title, his position eventually changed. Paul Tennant notes that a later statement by Douglas is explicit on Indigenous title: "Indians were to be regarded as having legitimate claim only to their village sites and fields; it denies the principle of aboriginal title."<sup>13</sup> Trutch adopted an even more radical stance toward Indigenous peoples. As commissioner of lands and works, he held that there was no legitimate Indigenous claim to the land, as the First Nations had never properly owned it.<sup>14</sup> Trutch's tenure marked a fundamental shift in the government's treatment of and relations with Indigenous peoples. The relationship, in Trutch's view, was by no means nation-to-nation. When British Columbia entered Confederation, Indigenous people in the new province became subject to the *Indian Act*. This, along with a handful of other tumultuous changes to Indigenous policy, opened the possibility of

---

<sup>10</sup> This is not to say that this type of relationship was in any way unproblematic. See James Tully, "Aboriginal Peoples: Negotiating Reconciliation," in *Canadian Politics*, 3<sup>rd</sup> edition, eds. J. Bickerton and A. Gagnon (Peterborough: Broadview Press, 1999), 415.

<sup>11</sup> Mills, *Eagle Down is our Law*, 7.

<sup>12</sup> *Ibid.*, 5.

<sup>13</sup> Tennant, *Aboriginal Peoples and Politics*, 30.

<sup>14</sup> Leishman, 10. Also, Tennant, *Aboriginal Peoples and Politics*, 39.



negotiations.<sup>15</sup> However, at this point, negotiations were for the purpose of establishing reserves, not concluding treaties.<sup>16</sup> In the late 1870's, G.M. Sproat, charged with delineating reserve boundaries, enlarged some of the reserves that had been diminished under Trutch's incumbency. However, when Prime Minister John A. Macdonald was re-elected in 1878 he appointed Peter O'Reilly, Trutch's brother-in-law, to reverse the trend.<sup>17</sup> In 1884 the Canadian government outlawed the potlatch, a ceremony through which traditional jurisdiction over territory is passed on in many Indigenous cultures. Five years later, surveys began for the creation of reserves for the Gitksan and Wetsuwet'en nations. In general, the reserves were created near existing villages. At the outset, the Gitksan and Wetsuwet'en made it clear that the establishment of reserves in no way constituted the termination of their traditional land rights.<sup>18</sup> The situation was made more complicated in 1901, when every veteran of the Boer War became eligible to claim 160 acres of Wetsuwet'en land.<sup>19</sup>

The general, if unstated, policy of integration, assimilation, and denial of Aboriginal title continued through the twentieth century. Indigenous land claims were continually dismissed by the Canadian government as "fictitious ideas put into the heads of the First Nations by white agitators such as missionaries and lawyers."<sup>20</sup> The McKenna-McBride Commission (1912-1916) continued Trutch's precedent of reducing the quantity of land available to Indigenous people. When visited by the commission, the Gitksan were particularly vocal with their concerns that the land question continued to be unresolved.<sup>21</sup> But their demands fell on deaf ears. Reserves

---

<sup>15</sup> Tennant, *Aboriginal Peoples and Politics*, 45-50.

<sup>16</sup> Mills, *Eagle Down is our Law*, 8.

<sup>17</sup> Tennant, *Aboriginal Peoples and Politics*, 50-51.

<sup>18</sup> Mills, *Eagle Down is our Law*, 9.

<sup>19</sup> *Ibid.*, 9.

<sup>20</sup> Leishman, 11-12.

<sup>21</sup> Mills, "Introduction," 8.

continued to be confined to densely-populated areas near or in existing settlements. Further, many Indigenous lands were ‘excised’ from existing reserves and made available to white settlers.<sup>22</sup> When the *Indian Act* was amended to include Section 141, in 1927, bringing forth an Indigenous land claim was indirectly barred; raising money with the purpose of hiring a lawyer to pursue claims was made illegal.<sup>23</sup> Tennant writes, “The amendment quite simply made it impossible for any organization to exist if pursuing the land claim was one of its objectives.”<sup>24</sup> When this policy was changed in 1951, it was due to a shifting international attitude that emphasized human rights and looked down upon explicit racism. Later, the objective of assimilation was veiled behind an attempt to impose legal equality, informed by Pierre Elliott Trudeau’s liberalism. This policy was most clearly expressed in Trudeau’s 1969 *White Paper*, a document that called for the elimination the *Indian Act* and with it the abrogation of special “Indian” status and the reserve system.<sup>25</sup>

In spite of these assimilationist policies — or perhaps because of them — Indigenous groups continued to organize and to fight for recognition. Even when organizing for land claims was officially outlawed and Indigenous claims seemed to have been completely repressed, political activity continued. In the late 1920’s the Allied Tribes, a central political organization in British Columbia, faded away, but the Native Brotherhood of British Columbia took its place.<sup>26</sup> According to Tennant the NBBC provided “both continuity and transition in British Columbia Indian political activity over the next three decades.”<sup>27</sup> After 1951, and especially after 1969,

---

<sup>22</sup> *Ibid.*, 8.

<sup>23</sup> Tennant, *Aboriginal Peoples and Politics*, 111-112.

<sup>24</sup> *Ibid.*, 112.

<sup>25</sup> Kiera Ladner, “Visions of Neo-Colonialism? Renewing the Relationship with Aboriginal People,” *The Canadian Journal of Native Studies* XXI, (2001): 107.

<sup>26</sup> Tennant, *Aboriginal Peoples and Politics*, 114-117.

<sup>27</sup> *Ibid.*, 115.

Indigenous groups continued to press their claims and became increasingly familiar with the legal avenues available to them.<sup>28</sup>

In 1888 the Judicial Committee of the Privy Council, in *St. Catharine's Milling and Lumber Co. v. The Queen*, had decided that the *Royal Proclamation of 1763* had created Aboriginal title, not recognized it as a pre-existing right. Moreover, the Crown could act to extinguish those rights, if it chose, rendering the interest precarious.<sup>29</sup> However, in a series of post-1951 court decisions, beginning in British Columbia with *White and Bob*, this legal precedent was eroded.<sup>30</sup> A key victory was the 1973 *Calder* case, in which the Supreme Court of Canada concluded that the Nisga'a of British Columbia did indeed hold title over their traditional territory and that such title continues to exist where it has not been extinguished.<sup>31</sup> Although the Nisga'a in fact lost on a technicality, the *Calder* decision closed the debate over Trudeau's *White Paper* and put land claims negotiations on the agenda.<sup>32</sup>

Despite these advances, when the Gitksan and Wetsuwet'en, who were considered among the more activist and organized nations in British Columbia, brought their claim forward in 1984, the feeling was one of deep frustration.<sup>33</sup> Attempts to define in a useful way the aboriginal rights established by the recently-patriated constitution had by any standard been a complete failure.<sup>34</sup> Furthermore, in 1987, the same year that the *Delgamuukw* case went before the B.C. Supreme Court, Aboriginal constitutional conferences ended in failure. Indigenous people across the country were outraged as Prime Minister Brian Mulroney and every Premier signed the Meech

---

<sup>28</sup> Leishman, 13.

<sup>29</sup> Tennant, *Aboriginal Peoples and Politics*, 213-214.

<sup>30</sup> *Ibid.*, 218-219.

<sup>31</sup> Stan Persky, "Commentary," in *Delgamuukw: The Supreme Court of Canada Decision on Aboriginal Title* (Vancouver & Toronto: The David Suzuki Foundation, 1998), 7.

<sup>32</sup> *Ibid.*, 7.

<sup>33</sup> Leishman, 14.

<sup>34</sup> Gisday Wa and Delgam Uukw, 18.

Lake Accord. Katherine Anne Leishman holds that Indigenous groups could not help but sense a deep anger and frustration because “the First Ministers... could not accept a vague definition of aboriginal self-government after four years of exhaustive elaboration and discussion, [but] they were willing to endorse the equally nebulous concept of Quebec as a ‘distinct society’ after only a brief period of discussions.”<sup>35</sup> Against this backdrop, pursuing legal action through the court system seemed to be the only remaining approach for advancing Indigenous claims.

*Delgamuukw: SCBC and the Indigenous Claim*

When *Delgamuukw: SCBC* went before the British Columbia Supreme Court in 1987, the Indigenous side was optimistic and determined. In their opening statement hereditary chiefs Gisday Wa and Delgam Uukw announced that “It is a long process, but one we will win, for the colour of right is with us. In the courts, the defendants, the provincial and federal governments, also know this in their hearts.”<sup>36</sup> The case, which laid claim to an area larger than the size of the province of Nova Scotia, was a collective action brought forward by twelve Wetsuwet’en (represented by Gisday Wa) and thirty-nine Gitksan (represented by Delgam Uukw) head chiefs.<sup>37</sup> In accordance with the traditional, matrilineal Wetsuwet’en and Gitksan system of land-use governance, each of these head chiefs was responsible for, as a caretaker and overseer, a carefully delineated set of territories and fishing locations.<sup>38</sup> However, the fifty-one plaintiffs claimed 133 separate territories; some chiefs claimed multiple territories and others lay claim to portions of land for chiefs who were not plaintiffs.<sup>39</sup>

---

<sup>35</sup> Leishman, 17.

<sup>36</sup> Gisday Wa and Delgam Uukw, 2.

<sup>37</sup> Mills, “Introduction,” 6.

<sup>38</sup> *Ibid.*, 6.

<sup>39</sup> Chief Justice Allan McEachern, *Delgamuukw v. The Queen: Reasons for Judgement* (British Columbia Supreme Court, March 8, 1991), vii.

At its root, the legal claim of the case was perfectly simple. The Gitksan and Wetsuwet'en argued that they had never signed any land treaties with the governments of Canada and therefore that they had never ceded title to their traditional territories. Their claim was even made in the terms of the settler society; the *Royal Proclamation of 1763* stated that Indigenous groups could alienate title to their land only through treaties with the Crown. In the absence of a ratified treaty and having never been conquered in war, the Gitksan and Wetsuwet'en retained title and jurisdiction over their land, according to Canadian law. The force and legitimacy of the *Royal Proclamation* had just recently been re-affirmed by its incorporation into section 35 the Canadian constitution in 1982.<sup>40</sup> The Gitksan and Wetsuwet'en presented no shortage of evidence suggesting that from the early times of contact, with the Dutch in the 17<sup>th</sup> century, Indigenous nations entered into treaty relationships with European settlers, giving the latter title and jurisdiction over portions of land. This relationship and treaty process affirmed the traditional authority of chiefs as well as the Indigenous system of land allocation and jurisdiction.<sup>41</sup> The convention of treaty-making continued into the era of English settlement and became the foundation upon which the relationship between Indigenous and settler groups developed.<sup>42</sup> Gisday Wa and Delgam Uukw argue that this foundation was solidified in the *Royal Proclamation*, the focal point of which is "the principle that Indian rights to their territory be respected, and that their lands could only be alienated to colonial authorities with Indian consent, given by authorized representatives."<sup>43</sup>

---

<sup>40</sup> Gisday Wa and Delgam Uukw, 71.

<sup>41</sup> *Ibid.*, 72.

<sup>42</sup> *Ibid.*, 72-73.

<sup>43</sup> *Ibid.*, 73.

Even at its outset, the *Delgamuukw* case was understood to be groundbreaking. There are several reasons for this. First, the massive scope of the case set it apart from many previous land claims actions. According to Leishman, the Gitksan and Wetsuwet'en argument was just as much about recognition — from the courts as well as the Canadian public — as it was about the land itself.<sup>44</sup> The Gitksan and Wetsuwet'en were not making a claim for use-rights to the territory in question. Nor were they simply asserting title over the land, under the Crown. Instead, the litigants argued that, as stipulated by the *Royal Proclamation*, Gitksan and Wetsuwet'en jurisdiction over their traditional territories had not been extinguished and was therefore being infringed upon by the Province of British Columbia.<sup>45</sup> They were demanding recognition of their unextinguished jurisdiction over the land.

Another major difference in this lawsuit pertains to how the case was argued. The previous *Delgam Uukw*, Albert Tait, had warned the Indigenous plaintiffs in the *Delgamuukw* case that they should not wear their traditional dress and regalia into the court, a white-dominated institution that historically had not taken seriously Indigenous conventions and culture.<sup>46</sup> However, the strength of the argument that the Indigenous claimants were advancing lay very deeply in their own cultural traditions and customs; asserting occupancy of the disputed lands — and thereby jurisdiction — could only be made with reference to the myths and narratives that connected the Gitksan and Wetsuwet'en to their territory. Accordingly, the Wetsuwet'en and Gitksan, when preparing their legal arguments, made extensive use of the *kungax* and *adaawk*, their respecting narrative forms.<sup>47</sup> The gulf that separates the cultures of the

---

<sup>44</sup> Leishman, 22-25.

<sup>45</sup> Gisday Wa and Delgam Uukw, 1.

<sup>46</sup> *Ibid.*, 8.

<sup>47</sup> Leishman, 27.

Wetsuwet'en and Gitksan from the settler culture is plainly evident here. The conventions surrounding jurisdiction over land in Western culture take a highly formalized form — written law, judicial proceedings, etc. Conversely, in Indigenous culture, connections to the land and claims over jurisdiction are expressed orally, and are more fluid and organic than their Western counterparts. The Indigenous ways of asserting ownership are rooted in stories, myths and narratives, which no doubt seem peculiar to members of the settler culture who are accustomed to written and formalized legal codes.

Considered on its own, that is, with reference simply to the oral traditions of the Gitksan and Wetsuwet'en, the claim had an impressive and incontrovertible logic. However, the difficulty for the plaintiffs lay in the fact that their case would be presented and decided in the courts of the dominant settler society. To these white, and essentially colonial, institutions, the traditions of the Wetsuwet'en and Gitksan were parochial and outdated — at best quaint and at worst 'unscientific.' To overcome this obstacle, the Gitksan and Wetsuwet'en used a unique combination of legal arguments: references to their own cultural traditions, mixed with more standard, Western, legal justifications, such as the *Royal Proclamation of 1763*.<sup>48</sup>

Still, convincing as their argument may have been, the plaintiffs in *Delgamuukw* knew that the defendants, the governments of British Columbia and Canada, would object to their line of reasoning. For example, Gisday Wa and Delgam Uukw were aware that their reliance on the *Royal Proclamation* would be contested. The province, they held, would argue that the *Proclamation* should be understood in a "narrow historical framework" and that because it was signed well before British Columbia entered Confederation, the document was not intended to

---

<sup>48</sup> *Ibid.*, 25.

affect the province.<sup>49</sup> Against this interpretation, the Gitksan and Wetsuwet'en argued that the *Royal Proclamation* was a broad and general Imperial document, which stipulated the tenets upon which relations with Indigenous peoples — within the Empire — were to be resolved. In this way, the *Proclamation* was not the source of Indigenous rights, but rather a formal attestation, in colonial law, of their existence and importance.<sup>50</sup> Furthermore, the Gitksan and Wetsuwet'en argued that the basic tenets of the *Royal Proclamation* were already present in Indigenous-settler relations before the document was codified. In other words, considered historically and in its rightful context, the *Proclamation* simply represents the formalization of this relationship in settler law. By the late 20<sup>th</sup> century, over 500 treaties had already been concluded between the Crown and various Indigenous nations, all in the context of the legal stipulations of the *Royal Proclamation*.<sup>51</sup> Evidently, there was a legal precedent embodied in the many treaties signed in accordance with the *Royal Proclamation*. A final ground on which the plaintiffs built their case was that the core principles regarding Indigenous lands contained in the *Proclamation* had been integrated into common law over a period of many years, culminating in their inclusion in the *Constitution Act, 1982*.<sup>52</sup>

The Gitksan and Wetsuwet'en would argue that the jurisdictional rights they possessed over their territory arose from the *Royal Proclamation*, or alternatively from “long-time use, occupation, possession and administration” of the contested land.<sup>53</sup> In either case, it was imperative that they demonstrate that their civilizations had occupied the territory. To do so, the *Delgamuukw* plaintiffs relied on revolutionary methods of argumentation that were foreign to the

---

<sup>49</sup> Gisday Wa and Delgam Uukw, 74.

<sup>50</sup> *Ibid.*, 74.

<sup>51</sup> *Ibid.*, 75-76.

<sup>52</sup> *Ibid.*, 76-83.

<sup>53</sup> Leishman, 23.



Canadian judicial system: they relied specifically on their oral histories. The litigants presented “tremendous quantities of intensely detailed evidence of their languages, genealogies, customs and oral histories,” which demonstrated that they had deep and enduring social, cultural and historical connections to their territory.<sup>54</sup>

It was continually asserted that the real ‘experts’ in the claim were the hereditary chiefs.<sup>55</sup> It was the chiefs who possessed the direct and personal knowledge of the threads that connected the Gitksan and Wetsuwet’ en to their land. They had an intimate understanding of the cultural histories and narratives that have sustained their societies’ relationships with the land for generations. Still, the chiefs also recognized that it would be useful to employ the testimony of those who were considered ‘experts’ in the eyes of a Canadian court.<sup>56</sup> Therefore, the testimony of several expert witnesses was utilized. These witnesses provided a variety of archeological, anthropological and historical evidence.<sup>57</sup> Importantly, the testimony of these expert witnesses did not form the pillars upon which the case was built. In many previous cases concerning First Nations issues, this had not been the case; academic researchers had been deemed necessary commentators — the central, key witnesses — so that facts could be represented in a vernacular acceptable to the Western courts.<sup>58</sup> In *Delgamuukw*, this type of testimony was delivered simply to support and provide background to the evidence given by the chiefs.

This unique and novel approach to presenting evidence in a land claims case was perhaps what gave the *Delgamuukw* argument its strength and led to its final vindication. However, Leishman notes that the idiosyncratic method was also more or less a necessity: “Being an oral

---

<sup>54</sup> *Ibid.*, 26.

<sup>55</sup> Gisday Wa and Delgam Uukw, 7.

<sup>56</sup> Mills, *Eagle Down is our Law*, 11.

<sup>57</sup> *Ibid.*, 15.

<sup>58</sup> *Ibid.*, 11.

society traditionally, the plaintiffs could not effectively prove their alleged ongoing ownership and jurisdiction over their territories, nor the system of House ownership and management of individual territories upon which it was based, in any other way.”<sup>59</sup> The legal arguments, while relying extensively on the *Royal Proclamation of 1763*, were extremely specific to Indigenous culture. The vast majority of contemporary knowledge concerning the Gitksan and Wetsuwet’ en societies is derived from their oral traditions, and much of the ‘expert’ anthropological and historical evidence presented at the trial was based largely in this type of knowledge.<sup>60</sup>

In the courtroom, the Gitksan and Wetsuwet’ en presented a quantity of evidence which was as diverse as it was prodigious. The Indigenous litigants recounted their traditional narratives and performed songs for the court. They gave thorough accounts of their ways of life, and their most fundamental beliefs about the world. The Gitksan and Wetsuwet’ en gave detailed accounts of their social, political, economic, spiritual and legal conventions; they argued that it is by means of these traditions that they have held, and continue to hold, jurisdiction over their land.<sup>61</sup> Leishman writes that the Gitksan and Wetsuwet’ en

[E]laborated at length upon their way of life, and how it both was, and ostensibly continues to be, predicated upon a complex institutional structure comprised of Houses, Clans, Hereditary Chiefs, and feasts that serve not only to structure relations between the Gitksan and Wet’ suwet’ en and others, but also relations between the Gitksan-Wet’ suwet’ en and their lands and resources.<sup>62</sup>

It is upon these relationships that the present analysis is based. More specifically, the central focus of this thesis is a contrast between the types of relationships that the Gitksan and Wetsuwet’ en maintain with their land and resources and how the white settler culture

---

<sup>59</sup> Leishman, 27-28.

<sup>60</sup> *Ibid.*, 28.

<sup>61</sup> *Ibid.*, 28.

<sup>62</sup> *Ibid.*, 28.

understands its interface with the ecology. Importantly, I aim to demonstrate that culturally-embedded ideas concerning ownership and usage say something significant about how societies understand their human ecology. We may infer from the above-quoted passage that the conventions that structure jurisdiction over land and resources in the Gitksan and Wetsuwet'en cultures are simultaneously different from and similar to the institutions which govern the relationship in Western culture.

### The McEachern Decision

On March 8, 1991 British Columbia Supreme Court Chief Justice Allan McEachern delivered his decision on *Delgamuukw: SCBC*. The hopes for Aboriginal victory had been high when the case had first gone to court in 1987. Four years later, they were significantly greater. In the intervening period several developments occurred which strongly favoured the plaintiffs. In 1990, the Supreme Court of Canada handed down the *Sioui* and *Sparrow* decisions, which were favourable to Indigenous interests and would be binding for McEachern.<sup>63</sup> More importantly, events outside the courtroom had placed Indigenous issues in the spotlight. The Gitksan and Wetsuwet'en continued in their political activism — they set up roadblocks and sought injunctions in attempts to halt resource extraction on their land.<sup>64</sup> Nationally, Indigenous struggles gained attention as the *Meech Lake Accord* died in the Manitoba legislature at the hands of Elijah Harper and Mohawk warriors defended a portion of their land slated to be turned into a golf course in Oka, Quebec. Across the country, Aboriginal groups erected roadblocks in support.<sup>65</sup> Indigenous groups in British Columbia were particularly vocal and active. Leishman

---

<sup>63</sup> *Ibid.*, 30.

<sup>64</sup> *Ibid.*, 31.

<sup>65</sup> *Ibid.*, 32-33.

holds that this activism had earned B.C. an unfavourable reputation for investors; the situation of unresolved land claims made investment in British Columbia a highly uncertain affair. Therefore, it was in the economic interest of the province to resolve these claims.<sup>66</sup> A final cause for optimism was that in late 1990 the provincial government of British Columbia, in expectation of an Indigenous victory in *Delgamuukw*, had finally agreed to enter land claims negotiations with the First Nations of B.C. and the government of Canada.<sup>67</sup>

Despite all expectations to the contrary, Justice McEachern's ruling was a colossal disappointment for the Gitksan and Wetsuwet'en. In a decision that caused immediate and fierce outrage across the country, McEachern dismissed entirely the claims of the Gitksan and Wetsuwet'en. McEachern proceeded from the position that Indigenous interests, and therefore jurisdictional rights, arise from either long-time occupation by people living in an organized society preceding the assertion of British sovereignty, or from the *Royal Proclamation on 1763*.<sup>68</sup> With regards to the former proposition, the chief justice did acknowledge that Aboriginal rights arising from occupation since time immemorial do exist. However, such rights are simply a burden to the Crown's title and jurisdiction over the land and, as such, may be extinguished as the Crown pleases.<sup>69</sup> Regarding the second proposition, McEachern simply argued that the *Royal Proclamation* was at no time applicable to the colony/province of British Columbia, or to Indigenous peoples living within its boundaries.<sup>70</sup> This position is not wholly unrealistic. British Columbia was not claimed by the British Empire at the time the *Royal Proclamation* was signed. Further, the nearest claim was based in the Hudson Bay watershed.

---

<sup>66</sup> *Ibid.*, 34. While this dynamic did encourage the government to resolve land claims, it also strengthened the notion that the treaties are conclusive pacts, rather than the bases of a continually changing relationship.

<sup>67</sup> *Ibid.*, 35-36.

<sup>68</sup> McEachern, viii.

<sup>69</sup> *Ibid.*, viii.

<sup>70</sup> *Ibid.*, viii.

The ultimate consequence of such a decision would have been disappointing enough, in light of its dubious legal reasoning and after such a sustained effort on the part of the Gitksan and Wetsuwet'en in arguing the case. However, the undeniably colonial, racist and paternalistic statements concerning the Indigenous litigants and their culture and ways of life contained in McEachern's ruling added insult to injury. McEachern was not interested in taking seriously the culturally-embedded claims of the Gitksan and Wetsuwet'en. For him, their *kungax* and *adaawk* were unreliable and unscientific sources of evidence. McEachern's judgement is a clear example of a monoglot space; only one true story existed for McEachern, and only one form of discourse could be factual. He argued that much of the oral evidence presented by the Gitksan and Wetsuwet'en was "not literally true."<sup>71</sup> To be sure, McEachern did note that he was convinced that the Indigenous witnesses were being truthful, but only in the sense that they believed their testimony was true. Nevertheless, he asserted that "I have a different view of what is fact and what is belief."<sup>72</sup> Of course, the distinction between fact and belief is an important one. The problem, however, is that McEachern's differentiation deliberately excluded the entire Gitksan and Wetsuwet'en worldview. Without critically interrogating his own epistemic location, McEachern categorically pronounced what was truth and what was falsehood.

Even proceeding from McEachern's distinction between fact and belief, there was a significant quantity of evidence presented by white 'expert' witnesses that confirmed and supported the testimony of the Gitksan and Wetsuwet'en. Antonia Mills and Richard Daly lived with the Wetsuwet'en and Gitksan, respectively, and delivered ample evidence to support the claims of the Indigenous litigants. However, McEachern chose not to consider seriously their

---

<sup>71</sup> *Ibid.*, 49.

<sup>72</sup> *Ibid.*, 49.

testimony because he deemed them “too closely associated with the plaintiffs....”<sup>73</sup> Mills points to the paradox in McEachern’s decision. On one hand, he states, “I am unable to accept adaawk, kungax, and oral histories as reliable bases for detailed history, but they could confirm findings based on other admissible evidence.”<sup>74</sup> On the other hand, Mills writes, “he dismissed the ‘other evidence’ that was presented.”<sup>75</sup> This contradiction reveals a certain dogmatism inherent in McEachern’s consideration of the case.

McEachern’s most inflammatory comment was to assert that pre-contact Indigenous life was “at best, ‘nasty, brutish and short.’”<sup>76</sup> It is surprising that he would make such a declaration, especially considering the vast amount of evidence presented — by both the Indigenous plaintiffs and white ‘experts’ — at the trial that suggested exactly the opposite. Many felt that this Hobbesian reference, as well as many other comments, indicated on McEachern’s part an intransigent adherence to racist and colonial notions that made him unfit to hear the case in the first place. Certainly it was this type of remark and many others like it that contributed to an immediate uproar against McEachern’s ruling.

Indeed, few were content with McEachern’s decision. Many legal theorists found his construal of the law to be highly questionable.<sup>77</sup> Brian Slattery criticized McEachern’s narrow interpretation of the law; he held that Canadian law is in fact “intersocietal,” and the judge’s insistence on relying solely on the laws of the settler society was ethnocentric.<sup>78</sup> Further, Slattery argued that it was unreasonable for McEachern to argue that the *Royal Proclamation* did not

---

<sup>73</sup> *Ibid.*, 50.

<sup>74</sup> *Ibid.*, 75.

<sup>75</sup> Mills, *Eagle Down in our Law*, 17.

<sup>76</sup> McEachern, 13.

<sup>77</sup> Leishman, 44.

<sup>78</sup> Brian Slattery, “The Legal Basis of Aboriginal Title,” in *Aboriginal Title in British Columbia: Delgamuukw v. The Queen*, ed. Frank Cassidy (Lantzville, B.C.: Oolichan Books and the Institute for Research on Public Policy, 1992), 120-121.

apply to British Columbia.<sup>79</sup> Hamar Foster criticized McEachern for ruling that Aboriginal title was not a proprietary right, and for using legal precedents and propositions from earlier cases (such as *St. Catherine's Milling*), the core tenets of which had been overturned in later ones.<sup>80</sup> Members of the settler society who had an interest in the land — such as those of the forestry and mining industry, but others as well — were also displeased. They felt that McEachern's ruling had done little to resolve the outstanding questions of Aboriginal rights and thus perpetuated the condition of uncertainty affecting British Columbia.<sup>81</sup> Naturally however, McEachern's most vocal and critical respondents were the Indigenous community and its supporters. The Gitksan and Wetsuwet'en felt deeply hurt by McEachern's words; they had displayed to his courtroom their innermost convictions and beliefs about the world, only to have them rejected and belittled. Don Ryan, and spokesperson for the *Delgamuukw* plaintiffs, said, "This is the last time that the sacred boxes of our people will be opened for the white man to look at."<sup>82</sup> In addition, McEachern was the subject of a fair amount of criticism from the academic community. For example, Mills was deeply critical of McEachern's treatment of her testimony and his understanding of anthropological data, as well as the Eurocentric bias that characterized his ruling.<sup>83</sup>

---

<sup>79</sup> *Ibid.*, 128.

<sup>80</sup> Hamar Foster, "It Goes Without Saying: The Doctrine of Extinguishment by Implication in *Delgamuukw*," in *Aboriginal Title in British Columbia: Delgamuukw v. The Queen*, ed. Frank Cassidy (Lantzville, B.C.: Oolichan Books and the Institute for Research on Public Policy, 1992), 137-139, 150-151.

<sup>81</sup> Leishman, 47.

<sup>82</sup> Ken MacQueen, "A landmark ruling shocks anthropologists: Did the chief justice show white bias when he dismissed Canada's biggest native land claim?" *Vancouver Sun*, 13 Jul. 1991, p. B3.

<sup>83</sup> See Mills, *Eagle Down is our Law*, 18-33, and Mills, "Introduction," 11. Also Frank Cassidy, ed., *Aboriginal Title in British Columbia: Delgamuukw v. The Queen* (Lantzville, B.C.: Oolichan Books and the Institute for Research on Public Policy), 1992.

*Delgamuukw: BCCA and the Lamer Decision*

Although they were deeply disappointed by McEachern's decision, the Gitksan and Wetsuwet'en were not prepared to abandon their fight, a fact that the chief justice himself had anticipated.<sup>84</sup> As *Delgamuukw: BCCA* went before the British Columbia Court of Appeal, there developed a popular consensus that Aboriginal rights issues were going to be pressed until their resolution. There were many reasons for this. The reality of the Oka crisis played a definite role, but continued organization and militancy on the part of B.C. Indigenous groups was a factor as well.<sup>85</sup> In 1993, the same year that the British Columbia Treaty Commission (BCTC) was established, the BC Court of Appeal handed down its decision in *Delgamuukw: BCCA*.<sup>86</sup> The ruling was perhaps a minor victory, as McEachern's comprehensive denial of Aboriginal rights was rejected. However, the court was divided on the nature and extent of Indigenous land rights. The *Delgamuukw* plaintiffs appealed and forced the case upwards, to the Supreme Court of Canada.<sup>87</sup>

The Gitksan and Wetsuwet'en would have to wait three more years for a decision from the Supreme Court. But the final result was worth the wait. On December 11, 1997, Indigenous activists and their supporters were vindicated when the Supreme Court of Canada (SCC) overturned much of the content of McEachern's original ruling.<sup>88</sup> The court's majority decision, written by Chief Justice Antonio Lamer, ruled that Aboriginal title does indeed exist as an inherent right and that it encompasses an exclusive right to land and resources. Importantly, the court also decided that Aboriginal title does not restrict First Nations to pre-contact forms of

---

<sup>84</sup> McEachern, 3.

<sup>85</sup> Mills, "Introduction," 11.

<sup>86</sup> *Ibid.*, 11.

<sup>87</sup> *Ibid.*, 11-12.

<sup>88</sup> Persky, 1-2.



land-use.<sup>89</sup> Furthermore, the SCC ruling created a test for establishing Aboriginal land rights. There are three criteria for this: first, the land in question must have been inhabited prior to the assertion of British sovereignty; second, if present occupation is the basis for the assertion of prior occupancy, continuity must be demonstrated; third, at the time of British sovereignty, the First Nation must have held exclusive occupation of the land.<sup>90</sup>

Interestingly, the court stipulated that while Aboriginal title does permit Indigenous nations to choose how to use their land, their choice is subject to the condition that their forms of land-use must be sustainable. The decision states: “aboriginal title encompasses the *right to choose* to what uses land can be put, subject to the ultimate limit that those uses cannot destroy the ability of the land to sustain future generations of aboriginal people...”<sup>91</sup> This is a peculiar specification. It might be read as an acknowledgement that Indigenous forms of land-use are fundamentally different from — that they are naturally more sustainable and ecologically benign than — Western forms. If this is the case however, it is questionable why it would have to be formally prescribed in law.

On the level of recognition, perhaps the most vindicating part of the SCC decision was the affirmation of the admissibility of oral evidence. The court ruling held that the presentation of oral evidence was key to the plaintiffs’ case, and had it not been dismissed, the original McEachern decision could have been quite different. The ruling states that McEachern committed several errors in assessing the oral evidence of the Gitksan and Wetsuwet’ en:

These errors are particularly worrisome because oral histories were of critical importance to the appellants’ case. They used those histories in an attempt to establish their occupation and use of the disputed territory, an essential

---

<sup>89</sup> Mills, “Introduction,” 13.

<sup>90</sup> *Delgamuukw v. British Columbia*, [1997] 3 S.C.R. 1010, para 143.

<sup>91</sup> *Ibid.*, para 166.

requirement for aboriginal title. The trial judge, after refusing to admit, or giving no independent weight to these oral histories, reached the conclusion that the appellants had not demonstrated the requisite degree of occupation for “ownership”. Had the trial judge assessed the oral histories correctly, his conclusions on these issues of fact might have been very different.<sup>92</sup>

Of course, McEachern generally did admit the oral evidence, but also insisted on giving it very little weight. In addition to negating McEachern’s treatment of Gitksan and Wetsuwet’en oral traditions, the SCC ruling set a precedent for such traditions to be considered admissible evidence on future cases involving Indigenous rights and land claims. In effect, it began to create a polyphonic space, in which Indigenous traditions can be heard alongside Western forms of knowledge and can be considered as different, but equal, forms of asserting truth about the world. Still, while it may be a step forward, it is no solution. Courts are still fundamentally Western institutions. While such institutions may be necessary for the settler society to decide on its acknowledgement of land claims, it is not a legal system that is fully recognized and accepted by Indigenous societies, which have their own mechanisms for adjudicating conflicts. Furthermore, even if Indigenous oral forms of knowledge are considered, there does not exist legal criteria for them to be evaluated by judges in the Western court system.<sup>93</sup>

While for some *Delgamuukw*: SCC may have represented an important step forward, it is not without limitations, and is by no means a resolution to the problem of Indigenous title and land claims. While the Supreme Court ruling was unquestionably progressive in overturning of the McEachern decision and affirming Aboriginal title, it does contain an important caveat. The SCC retained the right of the crown to infringe upon Aboriginal title if it deemed necessary. In such a case, there is a duty to consult and the interests of Indigenous occupants must be given

---

<sup>92</sup> *Ibid.*, para 107.

<sup>93</sup> Mills, “Introduction,” 14.

priority. If they are divested of their land, the First Nations must be compensated.<sup>94</sup> The implication of this is that the sovereignty of the Crown is still supreme, a finding with which some Indigenous voices take issue.

### Conclusion

The legacy of *Delgamuukw* is a complicated one. What commenced in the mid 1980's with confident optimism turned into what was surely one of the lowest points for Indigenous struggles in recent memory. To the Gitksan and Wetsuwet'en, Justice McEachern's decision was more than one person's rejection of their claims and traditions. The plaintiffs had presented themselves, their songs, their stories and their cosmologies to the court. Indeed, they had opened the 'sacred boxes' of their cultures for all to see. McEachern's dismissal of the Indigenous litigants' case amounted not only to a wholesale denial of their claims to jurisdiction over their land, but also to their ways of asserting that jurisdiction. The McEachern ruling implicitly proclaimed that the oral traditions of Indigenous peoples would not be given equal space in the courtrooms of the Western settler society. With the reversal of McEachern's decision in 1997, Indigenous rights were re-affirmed. Furthermore, the possibility of an open, dialogical and polyglot space was created. But the actual implications of *Delgamuukw: SCC* are still unclear, and the problem of Indigenous sovereignty remains unresolved.

It is not the aim of the present work to explore the legal side of this history any further, or to attempt to settle any of its remaining questions and problems. In the two subsequent chapters, I will draw on the three key moments of this legal affair — the original case put forward by the

---

<sup>94</sup> *Ibid.*, 13.

Gitksan and Wetsuwet'en, the McEachern ruling, and the final SCC decision — to inform theoretical explorations of the relationship between explicit claims to title and jurisdiction over land and the more subtle notions of human ecology contained within those claims. Already from the preceding historical account it is clear that the Gitksan and Wetsuwet'en have radically different notions of the human-ecological relationship than do the representatives of the court. To investigate this difference, I will rely on a dichotomy between white/Western/modern/settler on one hand and Indigenous/non-modern on the other. It is not my contention that this division is immutable, and indeed I hope that it is not. It is, however, both necessary and useful for the task at hand, which is to create and explore a contrast and difference.

### III. Locke, Human Ecology, and *Delgamuukw*

I also took many automobile trips into the territory [claimed by the Gitksan and Wetsuwet'en in *Delgamuukw*] during many of the evenings of the nearly 50 days I sat in Smithers. These explorations were for the purpose of familiarizing myself, as best I could, with this beautiful, vast and almost *empty* part of the province.

- Chief Justice Allan McEachern (*emphasis added*)<sup>1</sup>

It is curious that Justice McEachern should have chosen to describe the Gitksan and Wetsuwet'en territory as 'empty.' It is certainly not simply a comment made thoughtlessly or carelessly in passing; several times in his *Reasons for Judgement* McEachern uses this term to characterize the land, and in at least one instance he also calls it a "vast emptiness."<sup>2</sup> But certainly the territory is not empty — far from it. The parcel of land is full of lakes, streams, rivers, trees, plants and a great deal of wildlife, not to mention Indigenous inhabitants who have resided there for countless generations. But McEachern knew this of course. He meant 'empty' in a very different sense. The land was empty, in his view, because the signs of human manipulation of nature, the signs of the extraction of resources and 'value' — roads, dams, mines, processing facilities of various sorts, etc — were absent. Lacking this type of content, the land was, for McEachern, simply empty, inert and without value. It is not such a stretch to imagine him asserting, as Locke does, that "Land that is left wholly to nature, that hath no improvement of Pasturage, Tillage, or Planting, is called, as indeed it is, *wast[e]*; and we shall find the benefit of it amount to little more than nothing."<sup>3</sup>

---

<sup>1</sup> McEachern, 1-2.

<sup>2</sup> *Ibid.*, 12.

<sup>3</sup> Locke, *Two Treatises*, 297.

I am not suggesting that McEachern's ruling in the case was informed by a direct reading of Locke's *Second Treatise*. Rather, what I do want to suggest in this chapter is that in much of the settler discourse surrounding the *Delgamuukw* case, the legacy of John Locke is perceptible. Or, rather, that there is a certain logic that describes land, land and resource use, human-ecological relationships and value in Locke's philosophy, and that these ideas find expression in popular and academic discourses about Indigenous land claims issues. What has been written concerning the *Delgamuukw* case serves in this chapter as the historical and empirical basis from which I will draw the theoretical comparison.

At this point a key question must be addressed: why Locke? There are many other thinkers who used a variety of concepts to justify dispossession. The idea of *terra nullius* (literally 'no person's land') was most famously taken up by Vattel, who introduced the concept to international law.<sup>4</sup> The idea that Indigenous peoples lived outside of political society and possessed no real property rights was by no means Locke's alone. Of course, these rationalizations are compatible with Locke's thought, but they are not distinctly Lockean. However Locke is important to this account because in his political philosophy there is a crucial link between human ecology and property, which in turn informs his justification of dispossession. While figures such as Vattel and Adam Smith are significant for understanding dispossession, Locke provides a site through which this history can be analyzed in ecological terms. Another objection may be that Locke is not of central importance in the Canadian context. It is not controversial to assert that Locke's legacy is far more evident in American political history than in Canadian. Indeed, Peter H. Russell suggests that the Canadian political tradition

---

<sup>4</sup> See Tully, "The *Two Treatises* and Aboriginal Rights," 168-169.

has Burkean roots rather than Lockean ones.<sup>5</sup> Notwithstanding a dearth of direct references to Locke's work, I suggest that Lockean logic clearly inheres in contemporary discourses around Indigenous land struggles.

In this chapter I will return to the key primary source: Locke's *Second Treatise of Government*. From this text, I will draw out Locke's conception of land and the ecology, arguing that his ideas on this matter exhibit a commitment to 'narrow' anthropocentrism. Examining Locke's notions of labour, property, improvement and value, I will also describe what I understand to be his beliefs about human ecology, or the human relationship with nature. I will also incorporate Locke's concept of political society into the analysis, which, along with arguments about 'improvement,' draws important linkages between Locke's human ecology and Indigenous dispossession. From this theoretical grounding, I proceed to a series of texts and documents which concern the *Delgamuukw* proceedings and consequences. These documents range from McEachern's original 1991 ruling, to conservative commentaries on the 1997 SCC decision. While their arguments are far from identical, the authors of these documents all adopt a position that is against Indigenous land rights. These commentators arrive at such a position, I argue, because the legacy of a Lockean logic concerning property, land, and improvement persists in contemporary popular and academic discourses. As such, I follow Tully, who argues that Locke's *Two Treatises* "provides a set of concepts we standardly use to reflect on contemporary politics. This arrangement of concepts is not the only form of reflection on modern politics, not our 'horizon' so to speak, but it is a familiar and customary one."<sup>6</sup>

---

<sup>5</sup> Peter H. Russell, "Constitutional Politics: In a New Era Canada Returns to Old Methods," in *Continuity and Change in Canadian Politics: Essays in Honour of David Smith*, eds. Hans J. Michelmann and Cristine de Clercy (Toronto: University of Toronto Press, 2006), 20-29.

<sup>6</sup> Tully, "The *Two Treatises* and Aboriginal Rights," 137.

### Locke, Ecology and Dispossession

Locke begins the fifth chapter of his *Second Treatise of Government* with the assertion that the earth was given to all humans by god, to be held in common. He writes, “The Earth, and all that is therein, is given to Men for the Support and Comfort of their being.”<sup>7</sup> The fruits that the earth produces, Locke holds, “belong to Mankind in common....”<sup>8</sup> Locke moves beyond this original communism; indeed, the purpose of Chapter V is to show how private, exclusive property is possible. However, what remains constant throughout Locke’s argument is an instrumental relationship between humans and the earth, the ecology.<sup>9</sup> For Locke, the land and its resources exist simply for the purpose of human development. This is, then, a form of ‘narrow anthropocentrism.’<sup>10</sup> In this view, humans are on one side and the ecology, or nature, is on the other. The non-human is entirely subordinate and instrumental to human needs and development. In other words, there can be no intrinsic value ascribed to any entity which is not human.

According to Locke, not only does nature have no moral worth on its own, it possesses no economic value either. Locke holds that land that is “left wholly to nature” has little or no innate value, and is more or less wasted space.<sup>11</sup> Locke holds that “Nature and the Earth furnished only the almost worthless Materials, as in themselves.”<sup>12</sup> What does impart value is labour: “For ‘tis *Labour* indeed that *puts the difference of value* on every thing....”<sup>13</sup> A person may create value, may make the worthless parts of nature valuable, by mixing with it his or her labour. Locke’s

---

<sup>7</sup> Locke, *Two Treatises*, 286.

<sup>8</sup> *Ibid.*, 286.

<sup>9</sup> I use the term ‘ecology’ in a variety of senses. ‘The ecology’ essentially refers to objective nature. In ontological terms, ‘the ecology’ signifies the complete living planet and the complete set of relations that exist, on a variety of levels, between all of its occupants. This is ecology in the broadest sense.

<sup>10</sup> For a defence and elucidation of “broad anthropocentrism,” see Jonathan Hughes, *Ecology and Historical Materialism* (Cambridge: Cambridge University Press), 2000.

<sup>11</sup> Locke, *Two Treatises*, 297.

<sup>12</sup> *Ibid.*, 298.

<sup>13</sup> *Ibid.*, 296.



argument about the value that inheres in an object or product might be understood in the Aristotelian term of ‘formed matter.’ For Locke, nature is the matter, while labour provides the form.<sup>14</sup> In this sense, labour is understood as the active, primary factor, while nature is inert and passive. This dichotomy between humans and nature, with all value located in the former, is the root of Locke’s anthropocentrism. Because nature is passive and formless on its own, it has no intrinsic value; it exists only for the purpose of human advancement.

Different as humans may be from nature, or the earth, the two elements are not detached from one another. In fact, they are very much connected. For Locke, labour serves as the basis for the interaction between humans and the ecology; Locke’s human ecology is one of labour.<sup>15</sup> The active element and the value that exists in humans can be passed into the inert matter of nature, transferring upon it value.<sup>16</sup> Not only does labour confer economic value, it is also the source of property. For Locke, a person owns his or her labour. He writes, “The *Labour* of his Body, and the *Work* of his Hands, we may say, are properly his.”<sup>17</sup> By transferring their labour into a part of nature, individual humans make that part of nature their own. Tully argues that Locke’s conception of property is derived from his conception of ‘maker’s rights.’ For Locke, God made humans and therefore owns them. However, humans are the proprietors of their own ‘persons’ and also of their own actions and labour.<sup>18</sup> Thus, the part of nature that was common becomes the private exclusive property of the person who has mixed her or his labour with it:

---

<sup>14</sup> Ross Harrison, *Hobbes, Locke, and Confusion’s Masterpiece* (Cambridge: Cambridge University Press, 2003), 230.

<sup>15</sup> The human ecology of labour, and the labour theory of value were both taken up by Marx, who developed them with much more philosophical rigour and nuance. See Karl Marx, “Theses on Feuerbach,” in *The Marx-Engels Reader*, ed. Robert C. Tucker (New York: Norton, 1978), 143-145, and Karl Marx, “Economic and Philosophic Manuscripts of 1844,” in *The Marx-Engels Reader*, ed. Robert C. Tucker (New York: Norton, 1978), 70-81, and also Marx, *Capital*, vol. 1.

<sup>16</sup> Locke, *Two Treatises*, 298.

<sup>17</sup> *Ibid.*, 287-288.

<sup>18</sup> James Tully, *A Discourse on Property: John Locke and his Adversaries* (Cambridge: Cambridge University Press, 1980), 105.

“The *labour* that was mine, removing [parts of nature] out of that common state they were in, hath *fixed* my *Property* in them.”<sup>19</sup>

It has long been acknowledged that Locke takes this argument a troubling step further when he declares that the work done by a servant or paid labourer belongs not to them, but to the person they serve. Locke holds that “the Grass my Horse has bit; the Turfs my Servant has cut; and the Ore I have digg’d... become my *Property*....”<sup>20</sup> C.B. Macpherson argues that Locke’s assertion betrays the fact that he was taking a wage-labour relationship as a given.<sup>21</sup> Furthermore, according to Macpherson Locke “justifies, as natural, a class differential in rights and in rationality, and by doing so provides a positive moral basis for capitalist society.”<sup>22</sup> However, Tully argues that reading justifications for capitalism into Locke obfuscates the real issues that Locke was attempting to address. Interpreting Locke’s philosophy contextually means understanding that he was responding to a situation of great political unrest and upheaval. For Tully, Locke’s important contributions are to advance notions about critical political problems such as order, security and statecraft.<sup>23</sup> While it is an important issue, further discussion of Locke’s status as a founder or spokesperson for modern capitalism must be left aside. This thesis does very much deal with capitalism, in particular its confrontation with non-capitalist socio-economic forms. But I am not primarily concerned with how unlimited accumulation and the wage-labour relationship were or were not justified by Locke. What I am interested in is how the divestment of Indigenous people of their lands has been justified, particularly in the *Delgamuukw*

---

<sup>19</sup> Locke, *Two Treatises*, 289.

<sup>20</sup> *Ibid.*, 289.

<sup>21</sup> C.B. Macpherson, *The Political Theory of Possessive Individualism* (Oxford: Oxford University Press, 1962), 215.

<sup>22</sup> *Ibid.*, 221.

<sup>23</sup> James Tully, “After the Macpherson Thesis,” in *An Approach to Political Philosophy: Locke in Contexts* (Cambridge: Cambridge University Press, 1993), 77-78.

case. Therefore, I wish to focus on two other aspects of Locke's philosophy that have a direct bearing on the issue of dispossession: improvement and political society. Each of these concepts can be understood in their relation to Locke's narrow anthropocentrism and commitment to Promethean development.<sup>24</sup>

In her analysis of the prominent passage in the *Second Treatise* concerning the turfs one's servant has cut, Ellen Meiksins Wood sides with Macpherson's evaluation that Locke presupposes a wage-relationship. However, for Wood, that is not the central theoretical insight. She writes, "The point is rather that the landlord who puts his land to productive use, who improves it, even if it is by means of someone else's labour, is being *industrious*, no less — and perhaps more — than the labouring servant."<sup>25</sup> For Locke labour and, more generally, forms of land-use, that increase the productive output of the land are far superior than those which do not. Locke was well aware of various Indigenous forms of land-use that were being 'discovered' by European settlers in North America and it was with these that he contrasted an emergent capitalist agriculture in England. Importantly, this form of agriculture involves enclosing land from the common and exploiting it for individual gain. Locke writes:

For the provisions serving to the support of humane life, produced by one acre of enclosed and cultivated land, are... ten times more, than those, which are yielded by an acre of Land, of an equal richnesse, lyeing wast in common. [...] For I aske whether in the wild woods and uncultivated wast of America left to nature, without any improvement, tillage or husbandry, a thousand acres will yield the needy and wretched inhabitants as many conveniencies of life as ten acres of equally fertile land doe in Devonshire where they are well cultivated?<sup>26</sup>

---

<sup>24</sup> For a good discussion concerning ecology, development and Prometheanism, see Ted Benton, "Marxism and Natural Limits: An Ecological Critique and Reconstruction," *New Left Review*, 178 (1989), 51-86. Also, Ted Benton, "Ecology, Socialism and the Mastery of Nature: A Reply to Reiner Grundmann," *New Left Review*, 194 (1992), 55-74.

<sup>25</sup> Wood, 112.

<sup>26</sup> Locke, *Two Treatises*, 294.

In this passage Locke is explicit about different types of land-use. The ‘waste’ land in America is just as fertile as that in Devonshire. However, the land in England has been enclosed and cultivated: it has been improved and consequently produces more value. On the other hand, the Indigenous inhabitants of America do not enclose or improve their land, and it therefore produces much less value. Thus, if the basis of Locke’s human ecology is labour that imparts value, there is also an internal hierarchy or gradation to this concept, based on output. That is, labour that extracts more value from the land is simply better than labour which produces less value. Locke asserts that god granted the earth to human beings in common, but that he also did so for their benefit. ‘Benefit’ in this sense means “Conveniencies of Life.”<sup>27</sup> Thus, god truly meant for the land to be used by the “Industrious and Rational,” or those who would extract from it the greatest amount of said ‘conveniencies.’<sup>28</sup> This is a logical extension of Locke’s natural law argument, which states that humans must preserve their lives; more comforts and conveniences are more conducive to the preservation of humankind.<sup>29</sup>

Locke’s argument concerning improvement and development is an important aspect of his human ecology. Its legacy is discernible in contemporary discourses concerning resource use as well as in conflicts between settler and Indigenous groups over control of land and resources. Still, while Locke clearly thought that European agriculture was superior to Indigenous forms of resource use, at no point does he expressly state that on this basis alone Indigenous peoples can be justly divested of their land. Locke cannot logically deny that Indigenous forms of land-use involve the mixing of labour with the land, and therefore the infusion of property rights.

However, he does define these forms of land usage so that they do not qualify as *legitimate* types

---

<sup>27</sup> *Ibid.*, 291.

<sup>28</sup> *Ibid.*, 291.

<sup>29</sup> Tully, *A Discourse on Property*, 104.

of property.<sup>30</sup> For Locke, acquisition in Indigenous society occurs according to the law of nature, and therefore confers natural property rights; this type of appropriation is individual and exclusive, and occurs without the consent of other individuals.<sup>31</sup> This is consistent with his position that property rights can arise before people enter political society.<sup>32</sup> Before entering into political society, people may only hold natural property rights; within political society, property rights are conventional and, according to Tully, are dependent on “the performance of a social function: to preserve mankind,” which, I have demonstrated, means extracting as much value from the land as possible, to furnish comforts and conveniences.<sup>33</sup> Locke clearly did not believe that Indigenous people were using the land in a manner that produced as much value as possible.

Of course, I do not wish to suggest that pre-contact Indigenous peoples lived outside of political society. I agree with Tully that the concept, as defined by Locke, is simply inadequate for understanding Indigenous issues.<sup>34</sup> Nevertheless, Locke certainly believed that Indigenous people existed in a pre-political state.<sup>35</sup> As such, Locke holds that European settlers were justified in appropriating land occupied by Indigenous people without their consent. Tully notes that this was a difficult position for Locke to support because it was essentially contradictory to much of his earlier writings and with the natural law tradition in which Locke wrote.<sup>36</sup> But Locke overcomes the inconsistency by emphasizing the differences between European agriculture and Indigenous land-use. To be sure, Locke does recognize Indigenous rights. Tully holds that for

---

<sup>30</sup> Tully, “The *Two Treatises* and Aboriginal Rights,” 139.

<sup>31</sup> *Ibid.*, 142. It is another matter that Locke entirely misunderstands the complexity of traditions and customs that govern Indigenous land-use.

<sup>32</sup> Locke, *Two Treatises*, 286.

<sup>33</sup> Tully, *A Discourse on Property*, 99.

<sup>34</sup> Tully, “The *Two Treatises* and Aboriginal Rights,” 138.

<sup>35</sup> In the view that was contemporary in Locke’s time, not all so-called ‘pre-political’ societies were judged equally. The degree of social hierarchy, particularly the level of chiefly authority, determined how ‘civilized’ a group was deemed to be. For example, British colonists showed more respect for the Maori of New Zealand, who had a distinct and clear chiefly hierarchy, than they did to many nations in North America.

<sup>36</sup> Tully, “The *Two Treatises* and Aboriginal Rights,” 145.

Locke “The appropriation of common fruits and nuts, fish and game, and vacant land by means of individual labour is legitimate and creates a property right in the products....”<sup>37</sup> However, Locke does not recognize any other forms of exclusive property rights. Centrally, land that is not under cultivation — even if it is claimed by an Indigenous group as traditional territory — is for Locke *terra nullius*, not owned by anyone, and therefore free to be appropriated.<sup>38</sup>

An important aspect of Locke’s notions concerning the formation of political society is the origination of money, which assures that one person producing more than he or she can individually consume does not create waste.<sup>39</sup> For Locke there are three historical stages: first, the state of nature; second, the state of nature in which money has been introduced; and finally, political society.<sup>40</sup> Locke believes, according to Tully, that until land becomes scarce and currency is introduced, land may be seized without consent.<sup>41</sup> Money, and more specifically commerce, allow people to maximize their “Conveniencies of Life,” and “*enlarge* [their] *Possessions*.”<sup>42</sup> That the Indigenous societies Locke knew of did not have an established currency led him to deduce that they were not producing as much as they could have been and therefore that they did not constitute political societies. Locke understood that maximum individual production, without exchange relations, would lead to spoilage. The introduction of money overcomes this tendency — money does not spoil. In accordance with Locke’s three part classification, a group that does not have money cannot be a political society. As well, it seems that Locke has imposed onto his understanding of the Indigenous and European economic forms the Aristotelian distinction between ‘acquisition by nature’ and ‘acquisition by exchange.’ In the

---

<sup>37</sup> *Ibid.*, 146.

<sup>38</sup> *Ibid.*, 146.

<sup>39</sup> Locke, *Two Treatises*, 300-301.

<sup>40</sup> Macpherson, 210-211.

<sup>41</sup> Tully, “The *Two Treatises* and Aboriginal Rights,” 146.

<sup>42</sup> Locke, *Two Treatises*, 301.

former economic activity is for subsistence and no surplus is created. In the latter, accumulation becomes limitless because currency overcomes the problem of spoilage created by surplus production.<sup>43</sup>

It is evident, then, that Locke provides a powerful justification for the dispossession of Indigenous people and for their traditional modes of land-use to be replaced with forms that he considers more productive. It is not my purpose in the present essay to provide an analytical critique of Locke's position. I do, however, aim to demonstrate that this type of thinking has a deep legacy. I believe that by examining contemporary discourses which justify dispossession and by demonstrating their Lockean origins, the limitations and inadequacies of this type of thinking, especially as it receives expression in contemporary environmental practices, can be better interrogated.

### Locke and *Delgamuukw*: SCBC

In a particularly repugnant display of ethnocentrism, McEachern described the pre-contact life of Indigenous peoples as “nasty brutish and short,” an allusion to the social contract theory of Thomas Hobbes.<sup>44</sup> If nothing else, McEachern's reference shows that early modern political thought — that of Locke as well, I will demonstrate — does indeed have a legacy in contemporary political discourse. But, more specifically to the present analysis, the judge's comment betrays an evaluation about the political and social life of Indigenous people. In Hobbes' political philosophy, it is in the ‘state of nature’ that life is nasty, brutish and short.<sup>45</sup> By describing pre-contact Indigenous life in this way, McEachern implicitly situates it as a state of

---

<sup>43</sup> Aristotle, *Politics*, trans. Ernest Barker (London: Oxford University Press, 1958), 18-32.

<sup>44</sup> McEachern, 13.

<sup>45</sup> Thomas Hobbes, *Leviathan*, ed. A.P. Martinich, (Peterborough: Broadview, 2002), 96.

nature. The now-popular Hobbesian stock phrase he employed quite clearly situates the Gitksan and Wetsuwet'en in a pre-political state.

The social contract theories of Hobbes and Locke differ dramatically. For Hobbes, the state of nature is a perpetual state of war and humans must, as dictated by natural law, enter the social contract to preserve their lives.<sup>46</sup> Conversely, for Locke the social contract arises to protect private property.<sup>47</sup> However, in the political theories of both Hobbes and Locke the state of nature is characterized by its lack of political society. Locke, as Tully has argued, claims that those living outside political society cannot have a legitimate claim to their land and can be divested of it *without consent*.<sup>48</sup> This is precisely what McEachern argued in his *Reasons for Judgement*: the consent of the Gitksan and Wetsuwet'en was not required in the extinguishment of their land rights.<sup>49</sup> Whether McEachern had actually read Hobbes' *Leviathan* is unknown. However, his use of the phrase — which is a feature common parlance, a sign of Hobbes' legacy — undeniably places the Gitksan and Wetsuwet'en outside of political society. McEachern, via Hobbes' state of nature, arrives at an undeniably Lockean position about property, land tenure and consent. In other words, outside of political society there are no property rights, and appropriation therefore requires no consent.

McEachern's reference to Hobbes *implicitly* attempts to situate the pre-contact Gitksan and Wetsuwet'en societies in a state of nature, but he also does so explicitly in several instances. He states that 'the absence of any written history, wheeled vehicles, or beasts of burden... suggest that the Gitksan and Wet'suwet'en civilizations, if they qualify for that description, fall

---

<sup>46</sup> *Ibid.*, 99.

<sup>47</sup> This is at best a cursory explanation of the differences between Hobbes and Locke, which regrettably must suffice, as a deeper investigation would not fit the parameters of the present work.

<sup>48</sup> Tully, "The *Two Treatises* and Aboriginal Rights," 145.

<sup>49</sup> McEachern, 234.



within a much lower, even primitive order.”<sup>50</sup> McEachern also relied on accounts given by early settlers to conclude that the Gitksan and Wetsuwet’en demonstrated only “minimal levels of social organization,” and lived in a “primitive condition.”<sup>51</sup> He also expressed concern that the Gitksan and Wetsuwet’en modes of sociality seemed to be unstable.<sup>52</sup> That McEachern considered relevant, in a legal battle that was primarily about title and jurisdiction of land and resources, facts about how ‘primitive,’ ‘undeveloped’ or ‘unstable’ the Gitksan and Wetsuwet’en social organizations were suggests that for him the category of political society is connected to property rights in an important way. Indeed, Mills charges that “By discounting both the present and the past social organization of the Gitksan and Witsuwit’en, [McEachern] is able to conclude that they never had Aboriginal title.”<sup>53</sup> Mills, in general, is correct. However, the logic that McEachern employs to arrive at his conclusion is perhaps slightly more complex than she suggests.

Similarly to how Locke acknowledges that those living in the so-called state of nature possess natural property rights over the fruits, nuts, and other items they pick from the common stock, McEachern concedes that the Gitksan and Wetsuwet’en possess use rights to land not in use for other purposes.<sup>54</sup> Using the *St. Catherine’s Milling* case as a precedent, he argued that Aboriginal land rights are “personal and usufructuary” rights.<sup>55</sup> However, just as Locke grants the right to those living in political society to appropriate, without consent, the land of those who do not live in the ‘state of nature,’ McEachern argues that Aboriginal use-rights exist at the pleasure of the Crown. For Locke as for McEachern, the right to appropriate without consent

---

<sup>50</sup> *Ibid.*, 31.

<sup>51</sup> *Ibid.*, 24.

<sup>52</sup> *Ibid.*, 73.

<sup>53</sup> Mills, *Eagle Down is Our Law*, 17.

<sup>54</sup> McEachern, x.

<sup>55</sup> *Ibid.*, 193-194.

very much rests on a judgement about the complexity of social organization. However, it is also about how the land in question is put to use. As noted at the beginning of this chapter, McEachern consistently referred to the land claimed by the Gitksan and Wetsuwet'en as 'empty.' This assertion is not exactly equivalent to Locke's, which argues that land which is not improved for agricultural purposes lies in waste.<sup>56</sup> But the sentiment is almost identical. What Locke saw in the late seventeenth century was the difference between agricultural and non-agricultural forms of land-use. However, the real dichotomy, which is clear in Chapter V of the *Second Treatise*, is between types of land-use that, on the one hand, use resources as productively as possible, and, on the other, those that are wasteful or unproductive. This is precisely the evaluation that McEachern seems to have made; the land was 'empty' for him because he could see no signs which suggested that the Gitksan and Wetsuwet'en, either at the time of judgement or in the past, had been using the land in such a way as to maximize its productivity. Therefore, the Gitksan and Wetsuwet'en claims of ownership could be superseded, in McEachern's view, because there exist other forms of land-use that are more 'productive,' and which therefore command a higher level of exclusive property rights.

#### Locke and *Delgamuukw*: SCC

While McEachern's 1991 judgement elicited a great deal of hostility from pro-Indigenous voices, an equal or greater amount has been written in response to the 1997 Supreme Court of Canada decision that overturned McEachern's judgement. Many conservative analysts condemned the Lamer decision and wrote unequivocally against Indigenous land rights. Soon

---

<sup>56</sup> Locke, *Two Treatises*, 294.

after the SCC judgement, the Fraser Institute, a conservative think-tank, published a pamphlet by Melvin H. Smith titled “The Delgamuukw Case: What Does it Mean and What Do We Do Now?” Smith contends that the recognition of Aboriginal rights represents a serious constitutional crisis for the Canadian polity.<sup>57</sup> He is correct: full recognition that the contemporary Canadian state is indeed founded on unlawful dispossession would create serious legal and political difficulty. Smith’s solution, then, is to deny Indigenous title. His argument rests on narrow conceptions of political society, land-use and property rights, which all portray a Lockean legacy.

Smith is incredulous that the Supreme Court ruled that the consent of Indigenous groups should be a necessary condition when governments wish to allow tenures on lands to which Aboriginal rights apply. He describes this aspect of the SCC decision as follows: “The government can grant a tenure over lands covered by aboriginal title provided it ‘consults’ with the aboriginal group. In some cases... the Court says aboriginal *consent* will be necessary.”<sup>58</sup> Smith pronounces that this condition and several other are “hurdles,” which they clearly were for the businesses involved.<sup>59</sup> Most interestingly, he writes the word ‘consent’ in italics. Taken together with the tone and language of previous and subsequent remarks, Smith’s decision to place this type of emphasis on the word ‘consent’ suggests that he believes it to be ridiculous that Indigenous peoples should have to consent to their land being used. Later in his piece, Smith explicitly rejects the idea that the “vagaries of the ‘aboriginal perspective,’” should be considered in determining occupation.<sup>60</sup> The Eurocentrism is emphatic and unambiguous. It is not plainly

---

<sup>57</sup> Melvin H. Smith, “The Delgamuukw Case: What Does it Mean and What Do We Do Now?” *Public Policy Sources* 10 (Vancouver: The Fraser Institute, 1998), 3.

<sup>58</sup> *Ibid.*, 8.

<sup>59</sup> *Ibid.*, 8.

<sup>60</sup> *Ibid.*, 6-7.

evident that Smith is following a Lockean logic regarding political society and the state of nature here; he is not explicitly asserting that Indigenous people live in a state of nature that confers only natural property rights and that therefore their land or territory may be appropriated by others without consent. However, Smith's rejection of the idea that governments should need to obtain the consent of Indigenous groups prior to appropriating their land does take an unmistakably Lockean tone.

Smith's argument is made within the context of the Canadian state and within a paradigm of competing land rights. If Indigenous groups living within the boundaries of what is now called Canada possess rights that exist ultimately at the pleasure of the state, rights which should be, in Smith's mind, allowed to be extinguished without Indigenous consent, then there is a great difference between the exclusivity and finality of the types of rights possessed by Indigenous groups and those held by the settler society and its state. Smith holds that ideally, "Aboriginal title, if it could be proved in specific cases, would continue to exist over untenured Crown land, but only so long as the land remains untenured."<sup>61</sup> He justifies this difference by placing Indigenous peoples outside of political society. Although he does not expressly make this assertion, Smith continually precludes the idea that Indigenous nations qualify as legitimate forms of political organization. For instance, in his recommendations for overcoming the 'constitutional crisis' created by the SCC decision on *Delgamuukw*, Smith argues for a "government-to-government" solution.<sup>62</sup> But, the governments he refers to are the federal and provincial; the idea that Indigenous governments might exist and have a right to contribute to a discussion concerning their traditional territory does not enter Smith's analysis.

---

<sup>61</sup> *Ibid.*, 10.

<sup>62</sup> *Ibid.*, 9.

Although he finds it justifiable that Indigenous nations should be divested of their land, or denied access to it, without consent, Smith does not argue that they should be given nothing in return. Instead, he holds that “fair compensation,” should be given “to any aboriginal group that can establish the loss of aboriginal title over any land included in any land tenure, based on a graduating scale of compensation governed by the nature and extent of the aboriginal interests infringed upon.”<sup>63</sup> This is interesting for two reasons. First, this suggestion demonstrates an assumption that the value of the land may be expressed solely in monetary terms. Smith does not consider the possibility that Indigenous people may have a relationship with their traditional territory that is non-instrumental, aesthetic, or even spiritual. Second, Smith makes the argument that it is *economically* worthwhile to compensate Indigenous groups for tenured lands. Spending the money to compensate a First Nation for the ‘vacant,’ ‘empty,’ or ‘waste’ land, over which they have extinguishable Aboriginal rights, is a sound economic investment, for Smith, because whatever form of land-use that is to take place under the tenure issued will presumably create a greater quantity of value.<sup>64</sup> There is an implicit contrast between Indigenous land-use and settler resource development. The latter is taken to be more productive. This sentiment is carried on in Smith’s contribution to *Beyond the Nass Valley: National Implications of the Supreme Court’s Delgamuukw Decision*, also published by the Fraser Institute.<sup>65</sup>

In his analysis of the SCC ruling, Owen Lippert also relies on arguments concerning the land that are Lockean in nature. Lippert’s aim in his article “Costs and Coase” is to suggest a solution to the problem of Indigenous rights claims that will have the least possible cost for the

---

<sup>63</sup> *Ibid.*, 10.

<sup>64</sup> If this were purely Lockean thinking, no compensation would be needed, because no rights pertain. However, Smith’s argument is at least partly Lockean because it is clear that the extraction of value subordinates all other interests.

<sup>65</sup> Geoff Plant and Melvin H. Smith, “Solution or Problem?” in *Beyond the Nass Valley: National Implications of the Supreme Court’s Delgamuukw Decision*, ed. Owen Lippert (Vancouver: The Fraser Institute, 2000), 83.

governments of British Columbia and Canada. He asks, “can the question of who owns what land and why be resolved without bankrupting the country?”<sup>66</sup> Lippert holds that the costs of doing nothing are great, as no action would mean no resource development and therefore lost opportunities for profit. He writes:

The land of British Columbia has no intrinsic economic value. Its only economic worth lies in its use as a source from which to extract natural resources or as a site for activities such as recreation and tourism. [...] If the land has no intrinsic value, what’s important then to Aboriginal and non-Aboriginal people alike is how much, and in what ways, we can make use of the resources held within Crown lands. [...] In short, the more ways to achieve exchanges between landowners and land-users, the more exchanges there will be and thus the greater the potential for wealth creation.<sup>67</sup>

Lippert does not argue, as Smith does, that Indigenous groups should simply be divested of rights to their land without having to give consent. Rather, he holds that outstanding Aboriginal rights claims must be resolved in such a way that “wealth creation” is made possible. The highest imperative in Lippert’s analysis is the development of lands and resources to create the most possible value.

For Lippert, property rights exist primarily for economic purposes, and in particular for the creation of the greatest quantity of economic value. Following the economist Ronald Coase, Lippert argues, “Property rights make possible... technical efficiency (maximum possible output for given resources.)”<sup>68</sup> Importantly, Lippert’s implication is that these property rights must be individual and exclusive; in a reference to Garret Hardin, Lippert asserts that common usage rights inevitably end in a “tragedy of the commons.”<sup>69</sup> Not only does Lippert assert that more

---

<sup>66</sup> Owen Lippert, “Costs and Coase,” in *Beyond the Nass Valley: National Implications of the Supreme Court’s Delgamuukw Decision*, ed. Owen Lippert (Vancouver: The Fraser Institute, 2000), 398.

<sup>67</sup> *Ibid.*, 399.

<sup>68</sup> *Ibid.*, 407.

<sup>69</sup> *Ibid.*, 407.

wealth and value can be created in a system of private property rights, he also says that this type of rights regime is best able to protect and conserve the land and its resources: “From Adam Smith onwards, economists have shown that land will be better cared for and used more productively if owned in fee simple.”<sup>70</sup> While this may indeed be what some economists think, surely the true experts on caring for the soil would be agronomists. This aside, the logic that maximum productive output is best achieved through a system of individual property rights is unquestionably Lockean in origin. Locke asserts that land which is not enclosed and owned privately, will produce much less value than and that which is; indeed this is the central purpose of his analysis in Chapter V.<sup>71</sup>

Lippert also draws another interesting idea from Coase, one that if it does have a Lockean derivation, comes from outside of Chapter V. The purpose of the state and its institutions, holds Lippert, is to ensure a structure of property rights. The state exists, he believes, to protect private property. In Chapter IX of Locke’s *Second Treatise*, titled “Of The Ends of Political Society and Government,” he writes, “The great *and chief* end therefore, of Mens uniting into Commonwealths, and putting themselves under Government, *is the Preservation of their Property*. To which in the state of Nature there are many things wanting.”<sup>72</sup>

Clearly I have strayed considerably from the immediate issue of the *Delgamuukw* case, and Locke’s argument’s about appropriation without consent. But Lippert’s assessment of the issues and his suggestions are important nonetheless. In the aftermath of the SCC ruling in 1997, many commentators, displeased with what they understood to be the decision’s ‘destabilizing’ effects on the Canadian polity, were eager to present solutions to these perceived problems that

---

<sup>70</sup> *Ibid.*, 407.

<sup>71</sup> Locke, *Two Treatises*, 296.

<sup>72</sup> *Ibid.*, 350-351.

would also resolve the question of Aboriginal rights. However, many of these respondents, of which Lippert is a key example, also found it acceptable to impose upon Indigenous groups a series of Western notions about property and land-use. Lippert shows that buried underneath a great deal of rhetoric and legal argumentation, the issues at stake in *Delgamuukw* were also very much about how the land was to be used and to what ends.

In *First Nations? Second Thoughts*, Tom Flanagan responds to two key components of the 1997 SCC ruling: the establishment of Aboriginal title as a collective right, and the inalienability of Aboriginal title, except to the Crown. Flanagan writes, “The Lamer doctrine... by typecasting aboriginal rights as collective, makes its own application in a modern market economy difficult.”<sup>73</sup> If one accepts, as Flanagan clearly does, that the best future for First Nations in Canada involves integration into the market economy, this criticism may be considered valid. If, on the other hand, value is placed on the social, cultural and economic independence of Indigenous communities, imposing a regime of individual property rights becomes problematic. Similarly, Flanagan suggests that “the principle of inalienability except to the Crown limits the usefulness of aboriginal title. It will prohibit the owners not only from selling any of their lands but also from mortgaging them to raise investment capital.”<sup>74</sup>

Flanagan’s assertions about the type of property system are directly linked with notions relating to how the land is best used. For him, collective and inalienable property rights will not allow the “land and natural resources to find their most efficient, highest-value usage.”<sup>75</sup> Because collective ownership and the principle of inalienability introduce uncertainty, they prevent the

---

<sup>73</sup> Flanagan, *First Nations? Second Thoughts*, 131.

<sup>74</sup> *Ibid.*, 131.

<sup>75</sup> *Ibid.*, 131-132.



land and resources from being “put to [their] most profitable use,” in Flanagan’s estimation.<sup>76</sup> Amongst all the commentators on the *Delgamuukw* case, Flanagan, a political theorist, is no doubt the most familiar with the writings of Locke. Indeed, he explicitly uses the Lockean argument concerning appropriation without consent to justify the dispossession of Indigenous groups of their land.<sup>77</sup> It is therefore highly likely that his critique of the Lamer decision was also informed by Locke’s notions respecting property and land-use. The Lockean logic with regards to the relationship between private property and productivity is clearly present in Flanagan’s analysis. If his evaluation of the SCC ruling was not directly informed by Locke’s writings, then it still demonstrates the legacy of Lockean ideas in contemporary disputes about property and Indigenous rights.<sup>78</sup>

A very different line of criticism, not from a conservative analyst, suggests that the Lamer decision itself is Lockean. In his Robarts Lecture, titled “Defining Aboriginal Title in the 90’s: Has the Supreme Court Finally Got It Right?,” Kent McNeil evaluates the strengths and weaknesses of *Delgamuukw: SCC*. While he holds that the ruling does represent an important step forward for Indigenous land claims, he finds fault with Lamer’s decision regarding the infringement of Aboriginal title. Lamer writes, “the development of agriculture, forestry, mining, and hydroelectric power, the general economic development of the interior of British Columbia... the building of infrastructure and the settlement of foreign populations...,” are types of objectives that justify the infringement of Aboriginal title.<sup>79</sup> Thus, McNeil charges that in *Delgamuukw: SCC* Aboriginal title can be infringed if deemed justifiable by governments, even

---

<sup>76</sup> *Ibid.*, 131.

<sup>77</sup> *Ibid.*, 6.

<sup>78</sup> Flanagan’s approach to Indigenous politics is not considered conventional by contemporary standards. Despite the location of his work, outside the dominant discourses, Flanagan represents an important and well-heard voice on these issues.

<sup>79</sup> *Delgamuukw v. British Columbia*. C.N.L.R. 14 (1998), para 165.

though this type of jurisdiction is constitutionally protected.<sup>80</sup> More importantly, the conditions given for infringement to be justifiable are Lockean. McNeil writes, “This sounds very much like a familiar justification for dispossessing Aboriginal peoples in the heyday of European colonialism... — agriculturalists are superior to hunters and gatherers, and so can take their lands.”<sup>81</sup> But Lamer’s criteria for infringement are not only about a contrast between agriculture and hunter-gather economic activities; it is a more broad distinction between highly productive economic activities and ones that the judge obviously thought to be less productive. The chief justice thought this infringement for the sake of productive output to be justifiable because Indigenous societies, he held, exist within the context of a broader economic community.<sup>82</sup> In other words, Aboriginal title is subordinate to the economic interests of the settler society.

### *Delgamuukw* in the Media

Due to its massive scope and groundbreaking legal claim, the *Delgamuukw* case received its share of media attention, from the early 1990’s. Media responses to the development of the case were mixed; outlets based in eastern Canada (Ontario) were generally impartial, and sometimes supportive of the Indigenous side, while sources in British Columbia displayed a far greater degree of variation, often revealing disdain for Aboriginal rights.<sup>83</sup> Of all the phases of the legal episode, the Lamer decision received the most attention, beginning in 1997 with the

---

<sup>80</sup> Kent McNeil, “Defining Aboriginal Title in the 90’s: Has the Supreme Court Finally Got It Right?,” Twelfth Annual Roberts Lecture, 25 March, 1998, York University, Toronto, 18-19. [[http://www.yorku.ca/roberts/projects/lectures/pdf/rl\\_meneil.pdf](http://www.yorku.ca/roberts/projects/lectures/pdf/rl_meneil.pdf)] (15 June, 2011).

<sup>81</sup> *Ibid.*, 19.

<sup>82</sup> *Delgamuukw v. British Columbia*. C.N.L.R. 14 (1998), para 73.

<sup>83</sup> For example, contrast Trevor Lautens, “Not an Inch to the Indians,” *The Vancouver Sun*, 4 Apr. 1995, p. A13, with “Canadian Law, Indian Land,” *The Globe and Mail*, 13 Dec. 1997, p. A14, and John Schreiner, “Court Ruling on Land Claims Poles Apart from ’91 Decision: Contrast Shows how Much Law has Evolved,” *Financial Post*, 19 Dec. 1997, p. 15.

release of the judgement and continuing well into 1998. In B.C. news reporters seemed to remain generally impartial.<sup>84</sup> Stewart Bell, of *The Vancouver Sun*, even praised Chief Justice Lamer for dispelling the racist notion that Indigenous society is inferior to European society.<sup>85</sup> However, editorials and op-ed pieces often demonstrated views that were openly hostile to Aboriginal land rights.

*The Vancouver Sun* and Victoria's *Times Colonist* published many such pieces. In an editorial in *The Vancouver Sun*, Lippert laments Lamer's ruling that Indigenous oral evidence will be "on a 'equal footing' with common law tests of occupation and ownership [sic]."<sup>86</sup> Lippert's more central argument, however, was that the SCC ruling destabilized the British Columbia economy. He writes, "Lamer practically gives control of 95 per cent of the B.C. land mass to about five per cent of the population and then strips away the benefits to economic efficiency and wealth creation."<sup>87</sup> As in his later work on *Delgamuukw*, Lippert's concern here is primarily with how the land will be used and the efficiency with which value can be extracted from it. In another expression of this type of sentiment, Terry Morley lamented in an editorial in *The Vancouver Sun*, that "In *Delgamuukw*, this distant and disdainful court [the Supreme Court of Canada] places the economic prosperity of British Columbia in grave peril."<sup>88</sup> Morley revealed concern that the shift in property law delineated by Lamer's ruling could impede or halt

---

<sup>84</sup> See Stewart Bell, "Court decision highlights need for negotiated land treaty deals," *The Vancouver Sun*, 12 Dec. 1997, p. A14, and Stewart Bell, "Ruling forces B.C. to review treaty process," *The Vancouver Sun*, 13 Dec. 1997, p. A1.

<sup>85</sup> Stewart Bell, "Land claim ruling dispels an old notion," *The Vancouver Sun*, 19 Dec. 1997, p. A21.

<sup>86</sup> Owen Lippert, "Are B.C.'s Treasury, Economy in Peril of Going for a Song?" *The Vancouver Sun*, 19 Dec. 1997, p. A23.

<sup>87</sup> *Ibid.*, p. A23.

<sup>88</sup> Terry Morley, "A distant court, an imprudent decision," *The Vancouver Sun*, 20 Dec. 1997, p. A21.

resources development in B.C., even to the extent that British Columbia might become a ‘have-not’ province.<sup>89</sup>

The key analytical element that can be discerned from this discourse is that most commentators on the *Delgamuukw* case were entirely preoccupied with anxieties about the economic future of British Columbia, which they understood as intimately linked with continued development of the land and resource extraction. They saw the assertion of Aboriginal land rights as a threat to the settler regime of land and property rights. This system of property rights enables a certain type of land-use — which creates the maximum possible quantity of wealth and economic value.

### Conclusion

Evidently, there was no shortage of anti-Indigenous rhetoric throughout the course of the *Delgamuukw* case. However, to simply dismiss anti-Aboriginal voices as racist or paternalistic is also to dismiss access to a critical window into the logic that underpins such claims. As such, in the foregoing I have attempted to demonstrate that one of the fundamental principles that motivated many to oppose Aboriginal rights is a notion, or set of notions, regarding the land and resources, and their best use. Using Locke, I have argued that in this view the ecology is inert and void of intrinsic content; its value is only realized when mixed with human labour.<sup>90</sup> Forms of labour that impart into the land the most value are considered superior to those that instil less value. Closely connected to these ideas about productivity and human ecology are conceptions of

---

<sup>89</sup> *Ibid.*, p. A21.

<sup>90</sup> The idea that the material aspects of existence are without inherent value, or are otherwise inanimate, does not find its origins in Locke. However, Locke is important for the matter at hand because of his contributions to thinking about the relationship between the active and the inactive, or between humans and the ecology.

property and appropriation without consent that also find justification in Locke's writings.

Explicit references to Locke are few and far between. However, the logical continuities that run through Locke's conceptions of value, labour, property, and appropriation to contemporary discourses that seek to dismiss Indigenous property rights are apparent. Such continuities demonstrate the longevity and endurance of Locke's approach to politics and political thought. Indeed, Locke provides one of the key frameworks through which modern, Western politics is commonly understood and the *Delgamuukw* case is no exception.

#### **IV. Indigenous Society and Human Ecology**

My power is carried in my House's histories, songs, dances and crests.  
It is recreated at the Feast when the histories are told, the songs and dances are performed, and the crests displayed. With the wealth that comes from the respectful use of the territory, the House feeds the name of the Chief in the Feast Hall. In this way, the law, the Chief, the territory, and the Feast become one.

- Delgam Uukw<sup>1</sup>

In this final substantive chapter, I will examine the alternate set of discourses that animated the *Delgamuukw* case: the reasonings set forth by those who argued for Indigenous property rights. Just as in the previous chapter I demonstrated within the argument against Aboriginal land rights lies a Lockean logic concerning the land and the human relationship with nature, in what follows I will argue that the case presented in favour of Indigenous rights also relied on a highly developed conception of human ecology. Indeed, it is my contention that the contrast between these two opposing understandings of nature, land use, and human ecology offers a theoretically fertile site for inventive conceptualization of a set of human-ecological relations suited to a post-capitalist, post-modern future.

It is clear that the manner of thinking about the ecology that characterizes the modern world-view justifies the practices that are at the root of many contemporary environmental crises. While his philosophy does not encapsulate the entire modern view, Locke does provide an excellent example of this type of thought and its underpinning logic. However, in offering an Indigenous counter-view it is not my intention to argue that this opposing position contains, in itself, a solution to contemporary ecological concerns. Neither do I wish to suggest that the

---

<sup>1</sup> Gisday Wa and Delgam Uukw, 7.

Indigenous view presents a complete or entirely accurate account of human ecology. In fact, it is problematic even to suggest that there is a single “Indigenous view.” To do so is to commit a misleading essentialism. In this chapter, I examine the case for Indigenous property rights, and the human ecology that is connected to this argument, set forth by the Gitxsan and Wetsuwet’ en. Still, I recognize that such views differ even between these two nations. Finally, it would be a mistake to idealize or romanticize Indigenous ways of life and methods of land-use. Again, the theoretically rich site is the contrast between these views that I have described, not either of the two particular positions.<sup>2</sup>

In the first section of this chapter, I turn to James Tully’s description of the status of property, and its relationship to social customs and conceptions of nature, in Indigenous society. Subsequently, I examine an important account of Indigenous human ecology, offered by David Bedford and Thom Workman. This analysis portrays the world-view of Indigenous peoples as one that understands humans as fundamentally part of the ecology. Bedford and Workman use the *Great Law of Peace* to suggest that in Haudenosaunee (Iroquois) society humans are seen as inseparable from nature, and *in* and *of* nature in an inherent and inalienable way. These theoretical paradigms are not universal, however they do provide a general framework through which to explore the case made by the Wetsuwet’ en and Gitxsan in *Delgamuukw*. In this chapter’s final section, the analysis shifts from abstract to concrete, and focusses on Antonia C. Mills’ anthropological account of law in Wetsuwet’ en society. This work establishes the cosmological world-view of Wetsuwet’ en society and confirms many of the theoretical

---

<sup>2</sup> In exploring this contrast, I frequently use the terms Western, settler and modern. For the purposes of clarity I use the terms Western and settler to describe concrete historical cases. Meanwhile, modern refers to a particular world-view. Thus, the historical confrontation between Western and Indigenous societies contained within it a confrontation of modern and non-modern views.

observations made by Tully, as well as Bedford and Workman. This last section also explores the opening statements in the *Delgamuukw* case made by Gisday Wa and Delgam Uukw. In these statements, contained in the short book *Spirit in the Land*, the hereditary chiefs advance their case in favour of Aboriginal rights over the land in question. Their central aim is to prove continued occupancy and jurisdiction over the territory, a claim that can be made only with reference to the human relationship with nature. Here, there is an important similarity with the Lockean position: claims of ownership are deeply connected to notions of the value (or lack thereof) of the land itself, and to ideas concerning how humans ought best to use and interact with the land and the ecological world.

### Theorizing Indigenous Human Ecology and Property

While his article “The *Two Treatises* and Aboriginal Rights” focusses mainly on the relation of Locke’s theories of property and political society to Indigenous land rights, Tully also makes an important contrast in this piece between Indigenous and settler notions of property. Indigenous ownership, holds Tully, is inalienable.<sup>3</sup> That is, the bond that connects the people to the land cannot be broken by compact or agreement. However, this does not mean that it is the people who own the land. Rather, as Tully writes, “Although the land belongs to them, it is more accurate to say, as the Inuit stress, that they belong to the land.”<sup>4</sup> Already, the Indigenous and settler conceptions of the human relationship with the land become clear; Indigenous societies view themselves not as above nature, but as a part of it. The principle of inalienability is key for understanding contemporary Indigenous rights battles. While clearly Indigenous nations

---

<sup>3</sup> Tully, “The *Two Treatises* and Aboriginal Rights,” 153.

<sup>4</sup> *Ibid.*, 154.



understood their bond with a particular piece of territory as immutable, they were also more than willing to share the land. The ability to use the land is not necessarily exclusive. Tully writes, that in early colonial times, when Indigenous people on Canada's west coast "made property agreements with the settlers... they were granting them rights of co-use of the land, not rights to the land itself..."<sup>5</sup>

A key distinction between Lockean and Indigenous notions of property concerns how the land ought to be used. In other words, there are significant differences in what confers property rights and what property rights confer. Tully holds that in Indigenous society property rights are very much about specific geographical locations. However, these rights are primarily about the *types of activities* that occur on those areas. Lockean property rights are also specific in geographical scope, but are much more concentrated on the *products of the activities* that occur on the land.<sup>6</sup> For Locke, property rights arise when an individual appropriates for her or himself the maximum quantity of value from the land. This type of property emphasizes taking value and matter out of nature. In contradistinction, Indigenous property rights are about an organic human interaction with the ecology. They are rights to use the land to satisfy human necessities — material and spiritual. The central feature of Aboriginal property rights is that they concern *use*, not *exploitation* or *extraction*.

How ownership and use rights are expressed in Indigenous society varies from nation to nation. However, in all cases these modes of expression are divergent from how property rights are conveyed, granted, and arranged in Western society. While Locke's account focusses on individual and exclusive property rights, Tully holds that in many Aboriginal societies territory

---

<sup>5</sup> *Ibid.*, 154.

<sup>6</sup> *Ibid.*, 154.

“as a whole belongs to the nation....”<sup>7</sup> This is not to suggest that pre-contact Indigenous societies represent a form of ‘original communism.’ Rather, it is an assertion that property and use rights are intimately bound up in the community, its customs, and its history. While social customs and traditions are the means for expressing ownership of certain territories, the land itself also plays a role in shaping these customs. Tully writes, “the identity of a nation as a distinct people is inseparable from their relation to and use of the land, animals, and entire ecosystem.”<sup>8</sup>

Usufructuary rights, governing types of activities, are held by individual families and clans. They are often passed down in matrilineal systems. The jurisdiction over the nation’s total territory is held by the chiefs, who act as caretakers of the land.<sup>9</sup> This type of relationship is evident in the *Delgamuukw* case; the hereditary chiefs acted as the principal spokespeople in articulating the Wetsuwet’en and Gitksan land claim.

The expressions of ownership and stewardship of territory in Indigenous society are not separable from culturally embedded ideas about the human relationship with nature, or more accurately, notions of the place of humans within nature. In their article, “The Great Law of Peace: Alternative Inter-Nation(al) Practices and the Iroquoian Confederacy,” Bedford and Workman make an incisive distinction between how Western modernity characterizes nature, as well as the human relationship with nature, and how these concepts are understood in Iroquois society. They write, “The necessity of giving thanks to nature, an imperative incomprehensible to modern sensibility, underscores the profundity of the contrasting views of human being in Western and aboriginal understanding.”<sup>10</sup> In the history of Western thought, they hold, there has

---

<sup>7</sup> *Ibid.*, 153.

<sup>8</sup> *Ibid.*, 153-154.

<sup>9</sup> *Ibid.*, 153-154.

<sup>10</sup> David Bedford and Thom Workman, “The Great Law of Peace: Alternative Inter-Nation(al) Practices and the Iroquoian Confederacy,” *Alternatives*, 22, (1997), 89.

been a tendency, which has become acute in the modern period, to view humans and nature as separate, independent entities. This sentiment is exemplified in the phrase “[hu]man and nature.”<sup>11</sup> The key term in this formulation is “and,” which emphasizes difference and separation. The predominant character of this belief in the separateness of humans and nature is also manifested, hold Bedford and Workman, in the tendency to comprehend nature as a thing that is to be controlled, mastered, and exploited for human benefit.<sup>12</sup> This is precisely the Lockean understanding of human ecology, which has been explicated in the previous chapter. “In stark contrast,” write Bedford and Workman, “the idea of exploiting nature for gain of profit would be antithetical to aboriginal persons, for whom the sense of continuity with nature fosters a respectful view....”<sup>13</sup> Thus, the conception of nature that marks Iroquois society focusses on the continuity and sameness of humans and nature. In fact, while the modern view often operates with the assumption of a human/nature dichotomy, this dualistic way of thinking is far less present in the Haudenosaunee understanding.<sup>14</sup>

While Bedford and Workman’s empirical site is the Iroquois *Great Law of Peace*, the theoretical observations they draw from this document resonate in the statements made by Gisday Wa and Delgam Uukw in favour of Gitxsan and Wetsuwet’en land rights. The key insight that Bedford and Workman offer is the claim that the Iroquois world-view is bounded by an awareness of the “embeddedness” of human existence within the cosmos, and more specifically within the ecology.<sup>15</sup> This embeddedness takes two forms. The first is a recognition of the ontological identity of the human and the natural. Humans are understood as fundamentally *in*

---

<sup>11</sup> *Ibid.*, 90.

<sup>12</sup> *Ibid.*, 90.

<sup>13</sup> *Ibid.*, 90.

<sup>14</sup> The human/nature dichotomy is also expressed as one of society/nature and culture/nature.

<sup>15</sup> Bedford and Workman, 95-96.

and *part of* the ecological world and the broader cosmological order. Bedford and Workman write, “humans were not assigned a privileged status within the system of life, and their obligation was to respect this order by attuning or adjusting their activities to its rhythms.”<sup>16</sup> In this view, in acknowledgment of their ontological continuity with and embeddedness in the ecology, humans should bring their own being and practices into harmony with nature; they should not work against nature, or attempt to dominate or master it. The second characteristic of this embeddedness is the belief that human being is bounded by the transcendent. Bedford and Workman write, “*The Great Law of Peace* contains a recognition of the need to respect the hierarchy of being, particularly those aspects of existence that are not of the immediate world.”<sup>17</sup> Again, while Bedford and Workman take *The Great Law of Peace* as their concrete basis, their theoretical argument can be extended beyond this document. Indeed, as closer examination of *Spirit in the Land* will reveal, Gitksan and Wetsuwet'en culture also displays a highly developed appreciation of the transcendent. Furthermore, this metaphysical awareness also permeates and instructs Gitksan and Wetsuwet'en social and ecological practices.

A final pertinent insight brought forth by Bedford and Workman is that the notion of “embeddedness,” with its sub-concepts of ontological sameness and transcendent boundedness, is expressed in a variety of rituals.<sup>18</sup> These practices include offering signs of gratitude to the land or to spirit beings, as thanksgiving for its central role in sustaining human life. Bedford and Workman maintain that in the view of Haudenosaunee society, “human action in the world takes place within limits that determine what is politically appropriate against what is politically excessive. [...] The thanksgiving invocation symbolizes and ritualizes the ontological basis for

---

<sup>16</sup> *Ibid.*, 96.

<sup>17</sup> *Ibid.*, 96.

<sup>18</sup> *Ibid.*, 97.

the message of reasoned moderation.”<sup>19</sup> While Bedford and Workman make the case that the ontological foundations described above motivate political moderation in Iroquois society, I suggest that very similar underpinnings also inform ecological moderation in Gitksan and Wetsuwet’en society. Two select examples — Antonia C. Mills’s anthropological observations, and the declaration of jurisdiction presented by Gisday Wa and Delgam Uukw — both produced and presented before judge McEachern in *Delgamuukw: SCBC*, illustrate this point further.

### Indigenous Human Ecology and the *Delgamuukw* Case

Anthropologist Antonia C. Mills lived amongst the Wetsuwet’en as a participant-observer from 1985 to 1988, completing two projects. The first was a study into the belief in reincarnation in Wetsuwet’en culture. The second project, undertaken at the request of the Wetsuwet’en, was the preparation of an expert opinion for the *Delgamuukw* case, which would support the case in favour of Indigenous title over traditional Wetsuwet’en territory.<sup>20</sup> This evidence was later published by Mills in her book, *Eagle Down is Our Law*. Mills holds that the two different research projects complemented each other well.<sup>21</sup> Indeed, not only did the two research programs complement each other, Mills’ exploration of Wetsuwet’en territorial rights depended in large part on her study of the belief in reincarnation. She writes, “The material showed that the Wetsuwit’en see their links to their land going back not just generation after generation, but reincarnation after reincarnation.”<sup>22</sup> From the outset, then, it is clear that the Wetsuwet’en made claims to their land with reference to a larger cosmological order, which includes entities not of

---

<sup>19</sup> *Ibid.*, 97.

<sup>20</sup> Mills, *Eagle Down is Our Law*, 12-13.

<sup>21</sup> *Ibid.*, 13.

<sup>22</sup> *Ibid.*, 13.

the immediate world. The elements of being that are reincarnated can do so only within the context of the transcendent, and it is in relation to these elements of being that the relationship between concretely existing humans and their territory is understood and expressed. Therefore, Mills demonstrates that not only is the Wetsuwet'en worldview imbued with a sense of the transcendent, this same awareness also animates how this nation expresses claims of jurisdiction over land. Mills' account of Wetsuwet'en law makes these connections clearer.

In Wetsuwet'en society there is a complex system of laws, which govern human conduct as well as define and allocate property rights. These laws exist in relation to the transcendent realm, or the spirit world. Mills writes, "The Witsuwit'en often talk about their law. They speak of it as the principles which govern not only human relations but the relations of humans to the land, the animals, and to the spirit world which sustains them all."<sup>23</sup> It is difficult to describe a relationship of unidirectional causation between any of these aspects of Wetsuwet'en life, because Wetsuwet'en law is clearly distinguished by a sense of ontological continuity. Nevertheless, in this view, the rules that govern human behaviour are defined in relation to the transcendent realm, which also provides the boundedness of human experience and action; Mills holds that it is the spirit world which for the Wetsuwet'en "sustains" the other facets of existence. Importantly, these same laws that regulate the social life of the Wetsuwet'en also dictate how people should interact with the ecology. Mills holds, "The principles of Witsuwit'en law define both how the people own and use the surface of the earth when they are dispersed on the territories and how they govern themselves and settle disputes when they are gathered together in the feast."<sup>24</sup>

---

<sup>23</sup> *Ibid.*, 141.

<sup>24</sup> *Ibid.*, 141.

The Wetsuwet'en system that determines who is allowed to use what areas of the territory, and for what purposes, is simultaneously similar and different from the Western regime, with which we are most familiar. Mills describes a complex system of property rights that is founded on the social arrangement of houses and clans.<sup>25</sup> Her investigation shows that the elders in each house possess the highest authority over their house's territory and bear specific responsibilities, which include "overseeing the burning of the berry patches, regulating how many beaver can be taken from a particular beaver lodge, managing the harvesting of other game, and determining who is granted permission to use the territory."<sup>26</sup> Use rights are divided up between individuals within the houses and clans, and are passed on through the generations in a system of matrilineal succession.<sup>27</sup> What is most noticeably different from the Western system of individual and exclusive property rights is that the Wetsuwet'en arrangement is about rights to use the land in specific ways. In a sense, these types of property rights are not even rights to the land itself, much less products that are extracted from it. Because they focus on use — rather than production or the creation of value, or even limitless accumulation as Locke stresses — these types of rights do not encourage exploitation of resources. In fact, Mills' account makes clear that an ethic of forward-thinking preservation is even embedded in the Wetsuwet'en structure of use rights.

Another key component of Wetsuwet'en property law is that no single individual has the right to alienate any of the clan's territory. Mills holds that even the selling of a trapline by an individual person would be considered unlawful. Instead, all major decisions about transactions

---

<sup>25</sup> *Ibid.*, 141.

<sup>26</sup> *Ibid.*, 143-144.

<sup>27</sup> *Ibid.*, 142.

involving land must be made by the group, at a communal feast.<sup>28</sup> This observation is similar to Tully's, regarding the inalienability and communal nature of property in Indigenous society. According to Mills, the existence of this type of property system has led to confusion and conflict when Wetsuwet'en society confronts the settler society. She writes that the Wetsuwet'en find themselves in "a situation in which the surrounding immigrants and federal and provincial governments accept individual transactions as valid and are only peripherally aware of the feast as the proper mechanism for dealing with any and all transfers of property."<sup>29</sup> When such a situation arises, Mills holds that there is "unanimous consensus" amongst the Wetsuwet'en that it is their own legal system that should prevail.<sup>30</sup>

A clear example of the Wetsuwet'en principles of ecological moderation is contained in the laws governing respect for animals. Citing an anthropological account that dates back to the early twentieth century, Mills holds that then, and long before, the Wetsuwet'en were deeply aware of the connections that humans share with animals and with animal spirits. This relationship that include direct contact with the animals, even marrying them, and learning from them knowledge about the world that is passed down to future generations.<sup>31</sup> When Mills presented her account, the sense of this relationship had changed very little. Because people can have a personal, direct connection with the animals, they have a duty to treat them with respect. However, this does not mean that people are not allowed to kill the animals if they need to. Mills writes, "The Witsuwit'en believe that people may kill the animals as long as they treat them with respect. If they do not, the animals will not reincarnate or allow people to take them."<sup>32</sup>

---

<sup>28</sup> *Ibid.*, 144.

<sup>29</sup> *Ibid.*, 144.

<sup>30</sup> *Ibid.*, 144.

<sup>31</sup> *Ibid.*, 156.

<sup>32</sup> *Ibid.*, 157.



Respecting an animal means not wasting any of its meat or parts, and it also means not killing more of any particular species than is necessary.<sup>33</sup> Evidently there is an ethic of respectful use that guides the use of animals in Wetsuwet'en society. It is also clear that this approach to using and interacting with animals in this way — with deep respect — arises from a belief in the transcendent, yet very real existence of animal spirits. In this view, the relationship between humans and animals is not external; they are each powerfully affected and conditioned by their relationship. Because this outlook is founded in a feeling of ontological continuity with the ecological world, animals are not understood by the Gitksan to be the 'other.' Rather, as beings that possess their own internal processes and sensitivities, they have value on their own, in and of themselves. This value cannot be expressed in terms of its instrumental worth for humans.

In their opening statement before the *Delgamuukw* proceedings hereditary chiefs Gisday Wa and Delgam Uukw express the argument in favour of Gitksan and Wetsuwet'en ownership of the disputed territory in central British Columbia. This statement was published in the book *Spirit in the Land*. While the Gitksan and Wetsuwet'en nations are distinct, *Spirit in the Land* articulates a view of cosmology, nature, law, and property that is common to both groups. Gisday Wa and Delgam Uukw describe the connections that link these beliefs and features of life to ideas about jurisdiction over land. In doing so, they confirm and build upon the theoretical observations offered by Tully, and Bedford and Workman, as well as the anthropological evidence of Antonia Mills. Importantly, their claims for Gitksan and Wetsuwet'en jurisdiction relies heavily on ideas about the qualities of the ecology, and on their conception of the human relationship with other natural beings, both physical and spiritual.

---

<sup>33</sup> *Ibid.*, 158.

Gisday Wa and Delgam Uukw insist that understanding the Gitksan and Wetsuwet'en argument for jurisdiction requires an understanding of their cultures' views of the world. In other words, while property does exist in Gitksan and Wetsuwet'en culture, it is simply not expressed in terms that are familiar to Western observers. The account offered by Gisday Wa and Delgam Uukw demonstrates that Gitksan and Wetsuwet'en conceptions of the cosmos have an influence on their ideas about human ecology, the characteristics of nature itself, and the laws governing human interactions with each other as well as the ecological world. Property law — the rules regulating use-rights — are articulated in relation to these notions. Therefore, recognizing Gitksan and Wetsuwet'en property requires an understanding of these features of the nations' world-views.<sup>34</sup> Logically, then, an adequate account must begin with an exploration of Gitksan and Wetsuwet'en cosmology.

The Gitksan and Wetsuwet'en cosmology is fundamentally different from modern conceptions of the cosmos. It is characterized by a deep sense of interconnectedness and integration. However, it is also composed of distinct entities. The hereditary chiefs describe this world-view as follows:

The Western world-view sees the essential and primary interactions as being those between human beings. To the Gitksan and Wetsuwet'en, human beings are part of an interacting continuum, which includes animals and spirits. Animals and fish are viewed as members of societies, which have intelligence and power, and can influence the course of events in terms of their interrelationship with human beings.<sup>35</sup>

Evidently, this view demonstrates precisely the type of ontological sameness delineated by Bedford and Workman. Gisday Wa and Delgam Uukw describe a view that understands the

---

<sup>34</sup> Gisday Wa and Delgam Uukw, 22-23.

<sup>35</sup> *Ibid.*, 23.

world to be a differentiated unity, of which humans are only one part. There is no strict human/nature dualism in this view. To be sure, human beings may use other parts of the world for their benefit, but the human relationship to other active parts of the ecology is more than simply instrumental. Naturally, the belief that animals and spirits are actually existing entities, with their own complexities and sensitivities, means that these beings must be given their due respect. If not, they will no longer continue to provide their flesh for human consumption.<sup>36</sup>

A corollary of the view of interconnected continuity between humans and non-humans is that Gitksan and Wetsuwet'en societies do not make a series of distinctions that are familiar to those living in the settler society. Gisday Wa and Delgam Uukw hold that such distinctions include: law and morality, political and economic, secular and sacred, natural and supernatural.<sup>37</sup> An appreciation for Gitksan and Wetsuwet'en law demands a recognition of the non-existence of these distinctions in Gitksan and Wetsuwet'en societies. At this point, it is clear that the Gitksan and Wetsuwet'en sociology is broader than that of the settler society; it includes animals and spirits. From this arises a duty to respect these beings. Accordingly, the understanding of the human interface with the ecology is broader and more complex in these Indigenous societies. However, the ecology includes more than animals: thus far little has been remarked regarding the Gitksan and Wetsuwet'en view of the land. A complete juxtaposition to the modern and Lockean views — which focus on the land, and say little about animals — entails a more thorough account of the Gitksan and Wetsuwet'en relationship with the land itself.

Gisday Wa and Delgam Uukw's account of the function of canes, poles, and crests, in relation to the land, makes clear both a thoroughly developed sense of jurisdiction over territory

---

<sup>36</sup> *Ibid.*, 23.

<sup>37</sup> *Ibid.*, 24.

and a belief in the value of land that is radically different from the modern view. The chiefs write, “In very early times, a cane was touched to the land, to signify the power of the Gitksan House group merging with that of the land, and the existence thereafter of a bond between the group and their territory.”<sup>38</sup> Later, this same type of relationship was expressed using crest poles and totem poles.<sup>39</sup> Territorial jurisdiction clearly has been a longstanding feature of Gitksan culture, and it is understood and conveyed through equally time-honoured cultural practices. However, this relationship is more than simple ownership. Gisday Wa and Delgam Uukw write:

The pole which encodes the history of the House through its display of crests, also recreates, by reaching upwards, the link with the spirit forces that give the people their power. At the same time it is planted in the ground, where its roots spread out into the land, thereby linking man, spirit power, and the land so they form a living whole. Integral to this link and the maintenance of the partnership, is adherence to the fundamental principles of respect for the land and for its life forms.<sup>40</sup>

Such beliefs portray a clear sense of continuity between the transcendent, the human, and the ecology. There is not a sense that the transcendent inhabits a separate ontological sphere, outside of the immediate world. Instead, the spirit powers infuse the land and animals, and animate human experience. Furthermore, there is a feeling that the land itself is active and alive, and as such it merits respect. This is in sharp contrast to the position articulated by Locke, in which the land is understood as inert, and void of intrinsic value.

As Chief Justice Lamer finally decided in 1997, recognizing Aboriginal property rights requires understanding that territorial ownership is simply expressed differently in Indigenous society than it is in Western society. From the beginning, Gisday Wa and Delgam Uukw insisted on this fact. A key difference, as noted above, is that the Wetsuwet’en and Gitksan do not make

---

<sup>38</sup> *Ibid.*, 26.

<sup>39</sup> *Ibid.*, 26.

<sup>40</sup> *Ibid.*, 26.

certain distinctions that the settler society takes for granted — i.e. political, economic, social, etc. Consequently, Gitxsan and Wetsuwet'en institutions perform a variety of purposes simultaneously.<sup>41</sup> One such institution is the Feast system. At Gitxsan and Wetsuwet'en Feasts, a variety of social, economic, political, spiritual and educational functions are carried out. Importantly, decisions regarding ownership and transfer of land are made at the Feasts. Gisday Wa and Delgam Uukw write, "The Feast is a legal forum for the witnessing of the transmission of chiefs' names, the delineation of territorial and fishing sites, and the confirmation of those sites with the names of the hereditary chiefs."<sup>42</sup> As well, "The Feast is charged with the power of the spirit world in the form of the crests used in the Feast and in songs and dances performed."<sup>43</sup> Not only does the Feast serve legal and spiritual purposes at the same time, these functions are not understood as distinct. Territorial use rights, then, exist in relation to the spirit world and the broader cosmology. For the Gitxsan and Wetsuwet'en property rights are defined through a recognition of the embeddedness of humans in the ecology and the cosmos, and an acute sense of transcendent boundaries of human existence. For Locke, property rights are a politically regulated set of social relations, with the aim of maximum individual and aggregate production. To be sure, there is a sense of the transcendent in Locke; property rights exist in relation to the Christian God. However, for the Gitxsan and Wetsuwet'en the relation of the politics of property to the realm of transcendence is far less mediated.

A final observation concerning Gitxsan and Wetsuwet'en human ecology looks to the environmental history of these nations. The traditional Gitxsan and Wetsuwet'en territory, situated within the Skeena river system, was able to sustain a significantly higher population

---

<sup>41</sup> *Ibid.*, 30.

<sup>42</sup> *Ibid.*, 31.

<sup>43</sup> *Ibid.*, 31.

density than other areas in the region. The Gitksan and Wetsuwet'en had easy access to a variety of different ecosystems, which allowed more productive and varied economic activities.<sup>44</sup> Gisday Wa and Delgam Uukw hold that these conditions, as well as trade with neighbouring nations, have “meant that ecological monitoring, the orderly conduct of harvesting activities, and defined rights and ownership of territories and fishing sites, have always been important to the Gitksan and Wet'suwet'en economies.”<sup>45</sup> That the Gitksan and Wetsuwet'en were able to inhabit their traditional lands for thousands of years prior to European contact without serious environmental collapse or degradation suggests that their methods of “ecological monitoring” may have been largely effective. Importantly, the imperative to manage resources carefully derives not only from a deep feeling of respect for the land and its life forms, demonstrated above, but also from an awareness that there are concrete limits to what the land can provide.

### Conclusion

The aim of the foregoing is not to idealize Indigenous society or forms of land-use. Rather, the purpose of this chapter is to show that there are alternatives (to modern) ways of understanding property, human ecology, and land-use. A theory of politics and ecology that is adequate to the tasks at hand must realize and investigate this contrast. The theoretical works explored in the first section of this chapter describe Aboriginal forms of property rights and give an account of how nature and the cosmos are understood in Indigenous society. Jurisdiction over territory is inalienable and held by the community as a whole, with individual use rights granted to specific areas. This kind of property stresses types of activities, rather than the extraction of

---

<sup>44</sup> *Ibid.*, 43.

<sup>45</sup> *Ibid.*, 43.

value. The cosmos is understood as a differentiated unity, in which humans form one interconnected part. The transcendent, particularly animal spirits, play distinct role in this perspective. Without essentializing or positing a single, universal Indigenous world-view, this chapter's second section has aimed to confirm in the concrete that which is posited in the abstract; Mills as well as Gisday Wa and Delgam Uukw validate — in the case of the Gitksan and Wetsuwet'en — the theoretical material presented by Bedford and Workman, and Tully. Not only are the conceptions of cosmology, human ecology and property different in the non-modern view of the Gitksan and Wetsuwet'en societies, the relationship between these elements is expressed and understood in ways that are radically divergent from the modern viewpoint. Thus, McEachern's failure to recognize the continuity of Indigenous title in the *Delgamuukw* case rested in part on his failure to understand that Indigenous peoples and society have an interface with the world that is fundamentally different from that of the Western settler society.

## Conclusion

This thesis has two principal objectives. The first and more specific aim is to theorize the interaction between Indigenous societies and the Western settler society as — among other things — a confrontation between two radically different conceptions of human ecology, which have corresponding ontologies. The second objective is to develop a contrast between these two conceptions of the human-ecological relationship that will be useful for ecological political theory. In working towards each of these objectives I have grounded my observations as much as possible in evidence and testimony presented in *Delgamuukw*, as well as in commentary on the case.

Present in the McEachern decision, as well as in much of the analysis on the *Delgamuukw* case, was a logic that understands external nature as inanimate and lacking intrinsic value. In this view elements of the ecology become valuable only when mixed with human labour. Not only does Locke wholeheartedly adopt this standpoint, he uses it to justify the dispossession of Indigenous peoples of their traditional territory. For Locke, Indigenous peoples may be rightfully uprooted from their lands because there are forms of land-use that extract more “value” from nature than those used by Indigenous societies. A regime of individual and exclusive property rights provides the ideal conditions for the maximum production of value, according to Locke. This logic of improvement and dispossession, I have shown, is very much present in colonial history up to the present, including in the *Delgamuukw* case.

Conversely, the view that is present in many Indigenous societies, including the Gitksan and Wetsuwet'en, sees nature as a living and interconnected whole, of which human beings constitute only one part. In this world-view, humans are understood as embedded in nature and



as continuous with it. Human existence is bounded by transcendent entities, respect for which governs land and resource use. Connected to this view is a system of property rights that are inalienable, regulated communally by the House and Clan systems, and focus on types of land-use, rather than the extraction of value or products. These property rights are expressed in songs, dances, feasts, pole-raising rituals, and other traditional ceremonies.

Thus, dependent on these two divergent views of human ecology are two fundamentally different ways of expressing property and land ownership. As such, understanding conflicts over title means looking deep into these opposing conceptions of human ecology. The human interface with the natural world as understood in Indigenous society is simply irreconcilable with the modern view of the Western settler society. The concrete case study of the *Delgamuukw* legal episode makes this clear. Thus, when Chief Justice McEachern denied the existence of Aboriginal title it was because he failed to understand that in Gitksan and Wetsuwet'en society property rights are expressed in terms not immediately comprehensible to the Western observer. Politically, this has two important implications. First, a progressive politics must understand the existence of this difference and accommodate it. Legislation and conflict resolution cannot be founded solely on the world-view of the settler society. Secondly, the institutions and processes of the modern capitalist state (the state of the white settler society), which is informed by a Lockean logic of dispossession and exclusive property rights, provides an inadequate space for the successful accommodation of this tension.

Practical ecological politics has much to learn from the contrast of the Indigenous view with the Lockean conception of nature. While the dire ecological crises now facing late modernity have their roots in the laws of capital accumulation, the ideational side is important

too. In other words, Locke's views persist in contemporary discourses on the ecology and development. When nature is characterized as inert, "other," and lifeless, its subordination to humans becomes inevitable. Indeed, the domination of nature is a theme that existed in Western thought long before Locke. In contrast, and without descending into outdated essentialisms of Indigenous peoples as "the first conservationists" or "natural environmentalists," it is interesting to explore the relationship between the ontology of the Gitksan and Wetsuwet'en and their forms of land-use and notions of human ecology. Many commentators suggest that if pre-contact Indigenous societies had possessed the necessary technology, they would have exploited their resources at the same rate and with the same abandon with which the European newcomers happily did; that is, all humans possess the will to subdue and master nature, and to use it to advance their material conditions as much as possible. However, the case presented by Gisday Wa and Delgam Uukw demonstrates a respect for the ecology that is so deep that it is difficult to imagine the Gitksan and Wetsuwet'en engaging in economic activities that would be environmentally devastating or unsustainable. Of course, the Gitksan and Wetsuwet'en did, and still do, interact with the land. No doubt their activities shaped the landscape and left longstanding evidence of resource use. Still, their resource management — informed by both a reverence for the 'spirit in the land,' and an awareness of the very real and immediate limits of what their resource base could support — sustained a large population for dozens of generations before the arrival of Europeans. Evidently, there is something important to be learned from the Gitksan and Wetsuwet'en conceptions of human ecology and from their methods of land-use.

A final observation concerns the broader goal of this thesis, to contribute to ecological political theory. In exploring differing views of human ecology I have implicitly dealt with the

problem of subject and object. Indeed, I have, in a sense, reinterpreted the subject-object dilemma as one of human-ecology. This alone is fruitful for both philosophy and ecological theory. I would also like to suggest that both conceptions of the human-ecological relationship (and hence of the subject-object relationship) dealt with in this thesis are important moments in thought. Yet each, on its own, is inadequate for the theoretical and practical tasks at hand. The Indigenous standpoint is close to what R.G. Collingwood described as the Greek idea of nature.<sup>1</sup> In this view nature is an all-encompassing unity. Its implications for ecological thinking are immense; humans must be understood as in and of nature, an intrinsic part of it. However, the subject is under-theorized in this view. The Western/Lockean view provides an alternative. This view captures the Cartesian moment, at which subject and object are divided, understood as distinct substances. Hence, in Locke's philosophy humans are outside of nature, fundamentally separate from it. However, not only is this conception theoretically insufficient, it provides the grounds for nature, seen essentially as "other," to be exploited endlessly.

My ultimate contention is that ecological political theory must consider more carefully both of these views. Neither is complete on its own, but each provides important theoretical components for environmental politics. A creative incorporation of these two views might look something like the following. Humans are both inside and outside of nature. We live within it and are dependent on it. We are conditioned by our environmental surroundings, but in turn modify those conditions through practical, sensuous, self-conscious activity. The material reality of our being means that we must maintain a continuous physical intercourse with the ecology to survive. However, the moment of subjectivity means that we do not need to obey the laws of

---

<sup>1</sup> R.G. Collingwood, *The Idea of Nature* (Oxford: Oxford University Press, 1945), 3-4.

nature. Rousseau understood this problem all too well and attempted — with questionable success — to construct a politics that would conform as closely as possible to human nature. His key theoretical contribution is the insight that although the human condition forces us to live, to some extent, outside of or apart from nature, not all forms of this alienation are to be judged equally. Building on Rousseau's work, Kant and Hegel brought more philosophical rigour to the subject-object problem and Marx later began to understand the issue in ecological terms.

Now, ecological political theory can elaborate on this tradition, and subsequent refinements to it, by considering key elements of Indigenous world-views. However, this does not mean that Indigenous knowledge should be instrumentalized for a fundamentally modern project. Rather, it means that a post-modern politics has a great deal to learn from a non-modern point of view. Crucial to a politics adequate for the immense challenges at hand is the understanding that humans are fundamentally a part of nature, as Gisday Wa and Delgam Uukw suggest, but simultaneously different from and outside of it. We are a part of the ecology, yet separate from it. Developing in theory, and then revolutionizing in practice, a more clear understanding of human ecology is of paramount importance in the struggle to overcome the oppressive social relations and destructive environmental practices of capitalist modernity.

### Bibliography

- Aristotle. *Politics*. Trans. Ernest Barker. London: Oxford University Press, 1958.
- Armitage, David. "John Locke, Carolina and the 'Two Treatises of Government.'" *Political Theory* 32. 5 (2004): 602-627.
- Arneil, Barbara. "John Locke, Natural Law and Colonialism." *History of Political Thought* 13.4 (1992): 587-603.
- Arnett, Chris. *The Terror of the Coast: Land Alienation and the Colonial War on Vancouver Island and the Gulf Islands, 1849-1863*. Burnaby, British Columbia: Talonbooks, 1999.
- Asch, Michael I. "Capital and Economic Development: A Critical Appraisal of the Recommendations of the Mackenzie Valley Pipeline Commission." *Culture* 2.3 (1982): 3-9.
- Bedford, David, and Thom Workman. "The Great Law of Peace: Alternative Inter-Nation(al) Practices and the Iroquoian Confederacy." *Alternatives* 22 (1997): 87-111.
- Bell, Stewart. "Court decision highlights need for negotiated land treaty deals." *The Vancouver Sun* 12 Dec 1997: A14.
- . "Land claim ruling dispels an old notion." *The Vancouver Sun* 19 Dec 1997: A21.
- . "Ruling forces B.C. to review treaty process." *The Vancouver Sun* 13 Dec 1997: A1.
- Benton, Ted. "Ecology, Socialism and the Mastery of Nature: A Reply to Reiner Grundmann." *New Left Review* 194 (1992): 55-74.
- . "Marxism and Natural Limits: An Ecological Critique and Reconstruction." *New Left Review* 178 (1989): 51-86.
- Butler, Melissa A. "Early Liberal Roots of Feminism: Locke and the Attack on Patriarchy." *Feminist Interpretations and Political Theory*. Ed. Mary Lyndon Shanley and Carole Pateman. Cambridge and Oxford: Polity Press, 1991. 74-94.
- "Canadian Law, Indian Land." *The Globe and Mail* 13 Dec 1997: A14.
- Carlson, Keith Thor. "Reflections on Indigenous History and Memory: Reconstructing and Reconsidering Contact." *Myth and Memory: Stories of Indigenous European Contact*. Ed. John Sutton Lutz. Vancouver: University of British Columbia Press, 2007. 46-68.
- Cassidy, Frank, ed. *Aboriginal Title in British Columbia: Delgamuukw v. The Queen*. Lantzville, B.C.: Oolichan Books and the Institute for Research on Public Policy, 1992.

- Collingwood, R.G. *The Idea of Nature*. Oxford: Oxford University Press, 1945.
- Cronon, William, and Richard White. "Ecological Change and Indian-White Relations." *Handbook of North American Indians*, Vol. 4. Ed. William Sturtevant. Washington: Smithsonian Institution, 1989. 417-429.
- Darwin, Charles. *Descent of Man and Selection in Relation to Sex*. New York: A.L. Fowle, 1874.
- David, Johnny (Maxlalex). *'Hang On To These Words': Johnny David's Delgamuukw Evidence*. Ed. Antonia Mills. Toronto: University of Toronto Press, 2005.
- Delgamuukw v. British Columbia*. S.C.R. 3. 1010 (1997).
- Delgamuukw v. British Columbia*. C.N.L.R. 14 (1998).
- Fiske, Jo-Anne. "Fishing is Women's Business: Changing Economic Roles of Carrier Women and Men." *Native People, Native Lands*. Ed. Bruce Alden Cox. Ottawa: Carleton University Press, 1987. 186-198.
- Flanagan, Thomas. *First Nations? Second Thoughts*. Montreal-Kingston: McGill-Queen's University Press, 2008.
- . "The Agricultural Argument and Original Appropriation: Indian Lands and Political Philosophy." *Canadian Journal of Political Science* 22.3 (1989): 589-602.
- Foster, Hamar. "It Goes Without Saying: The Doctrine of Extinguishment by Implication in Delgamuukw." *Aboriginal Title in British Columbia: Delgamuukw v. The Queen*. Ed. Frank Cassidy. Lantzville, B.C.: Oolichan Books and the Institute for Research on Public Policy, 1992. 133-160.
- Foster, John Bellamy. *Marx's Ecology: Materialism and Nature*. New York: Monthly Review Press, 2000.
- Gisday Wa and Delgam Uukw. *The Spirit in the Land: The Opening Statement of the Gitksan and Wet'suwet'en Hereditary Chiefs in the Supreme Court of British Columbia, May 11, 1987*. Gabriola, BC: Reflections, 1987.
- Harris, Cole. *Making Native Space: Colonialism, Resistance, and Reserves in British Columbia*. Vancouver: University of British Columbia Press, 2002.
- Harris, Douglas C. *Fish, Law, and Colonialism: The Legal Capture of Salmon in British Columbia*. Toronto: University of Toronto Press, 2001.
- Harrison, Ross. *Hobbes, Locke, and Confusion's Masterpiece*. Cambridge: Cambridge University Press, 2003.

- Hartsock, Nancy. "Globalization and Primitive Accumulation: The Contributions of David Harvey's Dialectical Marxism." *David Harvey: A Critical Reader*. Eds. Noel Castree and Derek Gregory. Oxford: Blackwell, 2006. 167-190.
- Harvey, David. *Spaces of Capital: Towards a Critical Geography*. New York: Routledge, 2001.
- . *The Limits to Capital*. Oxford: Blackwell, 1982.
- . *The New Imperialism*. Oxford: Oxford University Press, 2003.
- Hobbes, Thomas. *Leviathan*. Ed. A.P. Martinich. Peterborough: Broadview, 2002.
- Hughes, Jonathan. *Ecology and Historical Materialism*. Cambridge: Cambridge University Press, 2000.
- Kovel, Joel. *The Enemy of Nature: The End of Capitalism or the End of the World?* New York, Zed Books, 2007.
- Jessop, Bob. "Spatial Fixes, Temporal Fixes and Spatio-Temporal Fixes." *David Harvey: A Critical Reader*. Eds. Noel Castree and Derek Gregory. Oxford: Blackwell, 2006. 142-166.
- Ladner, Kiera. "Visions of Neo-Colonialism? Renewing the Relationship with Aboriginal People." *The Canadian Journal of Native Studies* 21 (2001): 105-135.
- Lawson, James. "Chronotope, Story, and Historical Geography: Mikhail Bakhtin and the Space-Time of Narratives." *Antipode* 43.2 (2011): 384-412.
- Lautens, Trevor. "Not an Inch to the Indians." *The Vancouver Sun* 4 April 1995: A13.
- Leacock, Eleanor. *The Montagnais Hunting Territory and the Fur Trade*. Menasha, WI: American Anthropological Association, 1954.
- Leishman, Katherine Anne. "Lessons from Delgamuukw v. The Queen: The Comparative Potential of Litigation and Negotiation to Resolve Aboriginal Rights Conflicts." Thesis. University of Victoria, 1996.
- Lippert, Owen. "Are B.C.'s Treasury, Economy in Peril of Going for a Song?" *The Vancouver Sun* 19 Dec 1997: A23.
- . "Costs and Coase." *Beyond the Nass Valley: National Implications of the Supreme Court's Delgamuukw Decision*. Ed. Owen Lippert. Vancouver: The Fraser Institute, 2000. 397-417.
- Locke, John. *Two Treatises of Government*. Ed. John Laslett. Cambridge: Cambridge University Press, 1988.

- Lutz, John Sutton. "First Contact as a Spiritual Performance: Encounters on the North American West Coast." *Myth and Memory: Stories of Indigenous-European Contact*. Ed. John Sutton Lutz. Vancouver: University British Columbia Press, 2007. 30-45.
- . "Introduction." *Myth and Memory: Stories of Indigenous-European Contact*. Ed. John Sutton Lutz. Vancouver: University British Columbia Press, 2007. 1-14.
- Macpherson, C.B. *The Political Theory of Possessive Individualism*. Oxford: Oxford University Press, 1962.
- MacQueen, Ken. "A landmark ruling shocks anthropologists: Did the chief justice show white bias when he dismissed Canada's biggest native land claim?" *Vancouver Sun* 13 July 1991: B3.
- Marx, Karl. *Capital*, Vol 1. London: Penguin, 1990.
- . "Economic and Philosophic Manuscripts of 1844." *The Marx-Engels Reader*. Ed. Robert C. Tucker. New York: Norton, 1978. 143-145.
- . *Grundrisse*. Harmondsworth: Penguin, 1973.
- . "Theses on Feuerbach." *The Marx-Engels Reader*. Ed. Robert C. Tucker. New York: Norton, 1978. 66-125.
- . *Wage Labour and Capital*. New York: International Publishers, 1933.
- McEachern, Allan, Chief Justice. *Delgamuukw v. The Queen: Reasons for Judgement*. British Columbia Supreme Court, 1991.
- McNeil, Kent. "Defining Aboriginal Title in the 90's: Has the Supreme Court Finally Got It Right?" Twelfth Annual Robarts Lecture. York University, Toronto. 25 March 1998. [[http://www.yorku.ca/robarts/projects/lectures/pdf/rl\\_mcneil.pdf](http://www.yorku.ca/robarts/projects/lectures/pdf/rl_mcneil.pdf)] (15 June 2011).
- Mills, Antonia. *Eagle Down is our Law*. Vancouver: University of British Columbia Press, 1994.
- . "Introduction." *'Hang On To These Words': Johnny David's Delgamuukw Evidence*. Ed. Antonia Mills. Toronto: University of Toronto Press, 2005. 1-66.
- Morantz, Toby. *The White Man's Gonna Getcha*. Montreal-Kingston: McGill-Queen's University Press, 2002.
- Morley, Terry. "A distant court, an imprudent decision." *The Vancouver Sun* 20 Dec 1997: A21.
- Pateman, Carole. *The Sexual Contract*. Stanford: Stanford University Press, 1988.



- Persky, Stan. "Commentary." *Delgamuukw: The Supreme Court of Canada Decision on Aboriginal Title*. Vancouver & Toronto: The David Suzuki Foundation, 1998.
- Plant, Geoff, and Melvin H. Smith. "Solution or Problem?" *Beyond the Nass Valley: National Implications of the Supreme Court's Delgamuukw Decision*. Ed. Owen Lippert. Vancouver: The Fraser Institute, 2000. 77-92.
- Russell, Peter H. "Constitutional Politics: In a New Era Canada Returns to Old Methods." *Continuity and Change in Canadian Politics: Essays in Honour of David Smith*. Eds. Hans J. Michelmann and Cristine de Clercy. Toronto: University of Toronto Press, 2006. 19-39.
- Schreiner, John. "Court Ruling on Land Claims Poles Apart from '91 Decision: Contrast Shows how Much Law has Evolved." *Financial Post* 19 Dec 1997: 15.
- Slattery, Brian. "The Legal Basis of Aboriginal Title." *Aboriginal Title in British Columbia: Delgamuukw v. The Queen*. Ed. Frank Cassidy. Lantzville, B.C.: Oolichan Books and the Institute for Research on Public Policy, 1992. 113-132.
- Smith, Melvin H. "The Delgamuukw Case: What Does it Mean and What Do We Do Now?" *Public Policy Sources* 10. Vancouver: The Fraser Institute, 1998.
- Sproat, Gilbert Malcolm. *Scenes and Studies of Savage Life*. London: Smith, Elder and Co., 1868.
- Tennant, Paul. *Aboriginal Peoples and Politics: The Indian Land Question in British Columbia, 1849-1989*. Vancouver: University of British Columbia Press, 1990.
- Tully, James. *A Discourse on Property: John Locke and his Adversaries*. Cambridge: Cambridge University Press, 1980.
- . "Aboriginal Peoples: Negotiating Reconciliation." *Canadian Politics*, 3rd edition. Eds. J. Bickerton and A. Gagnon. Peterborough: Broadview Press, 1999. 413-441.
- . "After the Macpherson Thesis." *An Approach to Political Philosophy: Locke in Contexts*. Cambridge: Cambridge University Press, 1993. 71-95.
- . "Rediscovering America: The *Two Treatises* and Aboriginal Rights." *An Approach to Political Philosophy: Locke in Contexts*. Cambridge: Cambridge University Press, 1993. 137-176.
- Vice, Sue. *Introducing Bakhtin*. Manchester: Manchester University Press, 1997.
- Weaver, John C. *The Great Land Rush and the Making of the Modern World 1650-1900*. Montreal & Kingston: McGill-Queen's University Press, 2003.

Wood, Ellen Meiksins. *The Origin of Capitalism: A Longer View*. New York: Verso, 2002.