TSIMSHIAN RENEWAL: CENTRALIZING THE MARGIN.

by JAMES M[c]DONALD (University of Northern British Columbia)

Abstract

The appropriation of Aboriginal resources and labour by an industrial economy produced fundamental and systemic changes in the Tsimshian political economy. This paper examines the multi sectoral nature of the Aboriginal economy and how it shifted in response to the appropriation of Tsimshian resources. The cultural dynamics of contemporary efforts to restore the culture, assert aboriginal rights, and define self government will be considered in light of the implications of the Treaty process and the recent legal decisions in the Haida Gwaii and the Delkamukw cases. Is there a fracturing that will allow systemic changes and redefine the role of the margin and the meaning of Aboriginality?

This paper explores the themes of resource appropriation, sectoral restructuring in an aboriginal economy, colonization, cultural recovery and decolonization, and systemic change.

INTRODUCTION

The December 11 decision by the Supreme Court of Canada in the Delgamuukw appeal, has signalled a sea change of potentially major proportion in British Columbia. Where this change will take is largely unknown at this time but I optimistically argue that it represents a significant fracturing of the colonial regime that will allow systemic changes and redefine the role of the margin and the meaning of Aboriginality.

Aboriginal leaders quickly displayed a willingness to interpret the ruling and have expressed a variety of opinions from strident incorporation of the decision to cautious optimism. Immediate reaction included the comment from Wit. [*] Chief Yagalahl (Dora Wilson) on December 11, 1997 who poignantly announced a fracture had occurred:

> "Now, at last, our truth has been heard" (in Culhane 1998:360),

and the comment from Carrier Chief Ed John, also a leader of the First Nations Summit, the umbrella Aboriginal organization in British Columbia, who dramatically announced the role of the margin had changed:

> "Premier Clark and Prime Minister Chretien, take note! You can no longer make trade deals with the Asia Pacific countries or anyone else without us" (Culhane 1998: 367).

On the other hand, initial response from industry and government have tended either to minimize its significance or react wildly to perceived negative impacts on development. The BC and Federal governments have reserved their official positions and responses, much to the chagrin of industry which is lobbying to force the government's hand with arguments that government delays are causing the loss of hundreds of jobs and holding back capital development. The response comes from many sectors of the economy. In April, Canadian Press reported that the Community Fisheries Development Centre in Powell River attacked Fisheries Minister Dennis Streifel with a letter complaining that the Federal lack of action is causing the shellfish industry to lose market simply because the plants cannot open up new foreshore leases in the absence of a policy response to Delgamuukw (PG Citizen 1998.04.20, p.5). Second Nations Governments are concerned with their interpretations and are moving slowly. A Joint Review Committee has been established and we must await its report and another official responses from either of the two Crowns. To date, the Fedaral Government, in the only statement I have seen, has taken the non committal stance that Delgamuukw "offers us the opportunity to work together to reach innovative solutions for the future management of land and resources in B.C." (Canada 1998:3).

Obviously, all sides sense a sea change of some kind has occurred, even if we cannot agree on what exactly it has brought. Many legal minds are pouring over the legal meanings of Delgamuukw and how the decision will be given force in the economic development of BC's resource economy.

I am not a lawyer but Delgamuukw, so this paper will take a tack slightly different from the legal one and place the meaning of Delgamuukw in context of the colonial history of the Tsimshian Nation. In the larger paper from which this is an extract, the context will be established in terms of the themes of resource appropriation, sectoral restructuring in an Aboriginal economy, colonization, cultural recovery and decolonization, and systemic change. The central question is to determine whether the decision will allow systemic changes that will, in turn, redefine the role of the Aboriginal people in Canadian society, after centuries of being placed in the margin: are we seeing a change in the meaning of Aboriginality in Canada? Is the role of the margin becoming more central?

Processes, court decisions

The dynamics of contemporary efforts to restore the culture, assert aboriginal rights, and define self government must be considered in light of the implications of the Treaty process and the recent legal decisions, especially Delgamuukw.

To set the tone for this consideration, I have a statement the First Nations Summit made after the Delgamuukw decision was announced. It is made in strong and assertive language that, in my opinion, is relatively moderate: Some First Nations use stronger language and tactics; others hold these words inside themselves and speak more softly; but all feel the potential power Delgamuukw holds for them in their struggles and in their lives. The Summit's assertion was addressed to the Federal Minister of DIAND and the Provincial Minister of Aboriginal Affairs:

> 'The First Nation Summit is placing the Crown on notice that we are re-establishing our communities, our economies, and ours laws on our aboriginal title lands. Our aboriginal title has been acknowledged [in Delgamuukw] as being on an equal footing with the Crown's title, in the same way that our government's and institutions are on an equal footing with the Crown and its institutions. We are now reassuming our rightful place as Nations with aboriginal title to and control of our lands." (First Nation Summit 1998MS:1)

[I will not talk about all the factors I have mentioned as relevant (Treaty, other court cases) but focus on the Delgamuukw and related case]

The *Delgamuukw* case

Descriptive paragraph on Delga
The court room drama that is the Delgamuukw case opened in 1987. In it the Gitxsan and Wet'suwet'en people launched a major challenge to the Province's claim of ownership of the appellants' Aboriginal territory. Act One lasted 4 years, concluding with a decision that has been held up as a shocking paradigm of late 20th century colonialism. The decision not only dismissed the case made by the Hereditary Chiefs of the Gitxsan and Wet'suwet'en but concluded with a horrible depiction of Aboriginal culture and a dismissal of the sacred evidence divulged by the Gitxsan and Wet'suwet'en peoples.
The MacEachern decision was immediately appealed to the BCCA on the grounds that the lower court had erred, in particular by concluding that the Gitxsan and Wet'suwet'en had not proven ownership and jurisdiction over the claimed territory; that their rights but not title had been demonstrated, and that all rights they had had were eliminated at the time of Confederation in 1871. In a majority decision in 1993, the Court of Appeal said the Gitxsan and Wet'suwet'en did not have ownership but did have some non-exclusive rights within part of the territory and these rights had not been extinguished before 1871.

This decision was also appealed, this time to the SCC in 1993, which reviewed the evidence in 1997, and handed down its decision surprisingly early in December 1997. It is that decision which interests me in this paper.

The Delgamuukw Principles
In its 1997 *Delgamuukw* decision, the Supreme Court of Canada provided its first comprehensive set of statements on Aboriginal title and enunciated several important principles concerning the significance of 1.) Aboriginal title, 2.) The test for proving aboriginal title, 3.) The scope of constitutional protection of aboriginal title, 4.) Limitations on the provincial power to extinguish aboriginal title (BCG 1998MS:1), 5.) Infringement on Aboriginal title, and 6.) Evidential use of oral history.

These principles provide significant support for the work First Nations have been doing in overcoming the restrictions imposed on them in the colonial era. The political and economic

implications are, it seems to me, far reaching and I want to explore these implications by looking at three facets of the decision and some case study information from the colonial history of the Tsimshian, a First Nation in NW BC.

1.) Content of Aboriginal Title

The first facet of the decision that I want to focus on is what the Supreme Court said about the content of Aboriginal Title. Up to the time of this decision, the SCC had not provided much direction in the legal understanding of Aboriginal Title.

The limitation up until Delgamuukw 97, was that the Courts had characterized Aboriginal rights as activities, but Aboriginal title was a claim to land or territory (Slade and Pearlman 1998:46).

In Delgamuukw, The SCC provided some definition of Aboriginal title by describing it as

> "a right in land and, as such, is more than the right to engage in specific activities which may be themselves aboriginal rights... it confers the right to use land for a variety of activities, not all of which need be aspects of practices, customs and traditions which are integral to the distinctive cultures of aboriginal societies. " (Para 111).

There are two important aspects to this statement: First, it builds on the definition of Aboriginal rights made by the Supreme Court of Canada in *Van der Peet* which defined Aboriginal rights as follows.

> "[I]n order to be an aboriginal right, an activity must be an element of a practice, custom, or tradition integral to the distinctive culture of the aboriginal group claiming the right" (*Van der Peet* p. 27).

Second, the statement addresses the question of frozen rights and accepts that traditions change. It is important to recall the Gladstone case, which accepted evidence that Heiltsuk trade in herring spawn on kelp in 1793 constituted a commercial trade that was integral to their distinctive culture before and after contact. That Court argued for a flexible approach that avoided the "frozen rights" approach in favour of a flexible definition of practices, customs, and traditions as activities that can evolve and still be regarded as integral to Aboriginal society (see S&P:57). The approach of that Court does not demand an unbroken chain of continuity in the practice but, simply, to show the practice is rooted in the early society.

So we have the case made (in Van der Peet) that Aboriginal title is the way Aboriginal land rights are recognized and (in Delga) that exclusive use and occupation of the land is tied to those activities (land rights). Given the extensive and ubiquitous nature of Aboriginal land use and therefore land rights, this decision puts a crimp in unilateral development philosophies that prefer not to consult with FN in BC.

A related issue is defining the relative priorities between Aboriginal interests and other interests. Delgamuukw clarifies this by stating that

> "Aboriginal title is the right to the exclusive use and occupation of the land ... for a

> variety of purposes, which need not be aspects of those aboriginal practices ... which are integral to distinctive aboriginal cultures", although those protected uses must not be irreconcilable with the nature of the group's attachment to that land" (para 117).

Strengthens Sparrow that is underlying frbc$??

2.) The Scope of Protection of Aboriginal Title

The second facet of Delgamuukw 97 that I want to consider is what the Court said concerning the scope of protection for Aboriginal Title. First and foremost, the Supreme Court ruled that protection is afforded under s.35 of the Constitution Act, 1982. Thus Aboriginal Title is an entrenched right, but the Court also said it was not an absolute right. Infringements may occur if there is a compelling and substantial legislative objective and if the infringement is consistent with the Crown's fiduciary relationship with First Nations.

Many of us first became familiar with the term "fiduciary obligations" as a result of the Musqueum case when the Court said the Crown was in a trust relationship with Aboriginal Peoples and that Trust relationships involved an obligation on the part of the holder of the Trust to behave in the interests of the Trustee. This is the definition of a "fiduciary responsibility". Some may be uncomfortable with assuming the colonial foundation of this obligation, but there are also positive implications for the decolonization process.

With regards to Aboriginal Title, the SCC found the Crown's fiduciary obligations require it to 1.) consult Aboriginal People regarding their lands and 2.) accommodate the participation of aboriginal peoples in the development of those resources (BCG 1998MS:9). Depending on the nature of the infringement Aboriginal consent may be required and compensated granted (Canada 1998:4). The SCC added, for emphasis, that

> "the Crown is under a moral, if not a legal, duty to enter into and conduct those negotiations in good faith"(para. 186).

Here is the Tsimshian perception of the new situation, as expressed by Gerald Wesley, Chief Negotiator and Spokesperson for the Tsimshian Nation:

> "What are the implications to economic development? Well, by in large, [for] First Nations that ... effective economic development can't be a reality without land and resources. The reserves that we've got today don't cut it. This case helps. The issue of fair compensation when infringed upon is an item that's clearly stated in there. The issue of accommodating aboriginal interests entails notifying and consulting aboriginal peoples with respect to development of the affected territory. This is stated clearly in Delgamuukw.
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> "I think in terms of economic opportunities that is one [area] that particularly will see great advantages as far as our participation in economic development. Maintaining, promoting and supporting all three of those areas. Because of the clarity around that issue of consulting with First Nations and [of] the implications of arbitrary infringements,

> industry, government and developers, I think, will want to be much more resourceful in their efforts to involve First Nations throughout their developments and objectives. First Nations are now in a greater position to add our voice and our assurances to issues of certainty vs uncertainty in this province - but only if we are involved." (G. Wesley 1998).

And FN will insist that they be involved. In what is possibly the first action based on the infringement principle, Canadian Press reports that the Okanagan First Nations chiefs are threatening a court injunction to stop expansion of the Keenleyside Dam in the West Kootenays on the grounds the Province did not consult with them, as directed by Delgamuukw, before announcing the expansion (Canadian Press in PG Citizen, 1998.4.30).

Again, the Tsimshian view:

> [There is] "a statement that ... I'll quote: "*aboriginal title encompasses the right to exclusive use and occupation of the land held pursuant to that title*" ... that is saying, at least to me, that there is recognition of the structures [that are] in place to ensure exclusive use and occupation - First Nations' exclusive use and occupation. The context [for understanding what I mean is] historical.
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> "Those structures were our governments - First Nations governments. They are still there - maybe not as active, maybe not as strong as they were historically but our structures are still in place and we are reviving them. We are bringing them forward - the power and the principles of how we looked after ourselves day in and day out is going to be brought forward." (G. Wesley, 1998)

[points on KK's program for cultural recovery and restoration of the role of Titleholders]

4.) Oral History

The third facet of Delgamuukw 97 that I want to consider, what the Court said about oral history, ties in with and enhances the political and social implications of Delgamuukw.

In supporting the use of oral history, the Court simultaneously recognized the difficulties the conventional Canadian justice system has in using oral history as legal evidence, and re-affirmed what was stated in the SCC's earlier decision in *Van der Peet* that, despite these difficulties, special evidentiary principles must be applied so as not to undervalue the oral history of Aboriginal Peoples.

In the context of the cultural recovery, the practical importance of the SCC's directions for using oral history were pinpointed by G. Wesley (speaking about the Tsimshian Nation):

> "When we talk about [the] political implications [of Delgamuukw] we can't help but talk about the issue of Self Governments - aboriginal governance. This wasn't specifically dealt with or, at least, not resolved as a result of Delgamuukw - they said go back to retrial on that issue. But, I think the case has helped to strengthen the basic principles of

self government as far as First Nations are concerned. And I'll give two areas that stand out that support that.

"One is the recognition of our oral histories - [this] will assist in settling the [second] issue [which is the question] of paramountcy of laws. I'm talking about a term that we are dealing with at the treaty negotiation table. If there's laws that might be in conflict, who's will be supreme? And right now there are three parties at our table and we have three different opinions. And I think this [decision in Delgamuukw] will move us forward in regards to dealing with that" (G. Wesley, 1998).

TSIMSHIAN CASE STUDY

Those are some key facets of the Delgamuukw decision that will help defeat the marginalization of Aboriginal peoples in BC. The economic, political and social implications could be far reaching, as far reaching as Calder was in its time, if not further since Calder was a non-decision and Delgamuukw, even though it refers the case back for re-trail, it does provides definition to the concept of Aboriginal title.

To contextualize the importance and meaning of the Delgamuukw principles it is useful to look at some concrete case material from my work for the Tsimshian. I start from the observation that the appropriation of Aboriginal resources and labour by an industrial economy produced fundamental and systemic changes in the Tsimshian political economy. Elsewhere, I have written on how the aboriginal economy of the Tsimshian shifted in response to the appropriation and how they resisted these changes when the changes were imposed on them and were not perceived to be beneficial. The Tsimshian were not and are not opposed to change. They have in the past and continue to participate in it and embraced it. They have always been opposed, however, to the colonization of their lands and to the way that process continues to marginalize them.

One conclusion from my research work is the recognition and the documentation of how the Tsimshian economy is and always has been multi sectoral and complexly structured. This structure and the way the Tsimshian productive economy operates has shifted over time with changes in the appropriation of Tsimshian resources is the background context for understanding the implications of Delgamuukw.

I will give two brief examples that show very different types of changes and address Second Nation's stereotypes of Aboriginal peoples: the landscape and aboriginal use of logs. The first is intended to illustrate what colonialism suppressed in terms of the repression of the extensive Aboriginal resource management regime; and the second addresses the notion that the content an Aboriginal right can evolve.

Example 1: The landscape

I will start with the anthropogenic landscape that was radically redesign by colonial policies and

practices. This starting point deals with the stereotype of Aboriginal people as hunters and gatherers who did not invest in their lands, an assumption embedded in the *terra nulles* concept in Australia and the Rights of Discovery ideology in Canada. This is a stereotype that has served Second Nations well by diminishing the role and even the existence of Aboriginal resource management regimes and by nurturing the conceptual seeds that justify the displacement of Aboriginal peoples in favour of an allegedly more proactive, progressive regime that will make something out the wilderness. In this stereotype, the Aboriginal landscape becomes a "wilderness" that needs to be turned into instruments of labour to drive the new colonial economy. And so, even the image of the landscape, that is of the the territory that was once carefully managed and cultivated by Tsimshian people for centuries, becomes appropriated and brought under the dominion of capital, and the sacred Aboriginal forest can be transformed, by colonial magic, into a commercial forest under a new regime of resource management.

Information I have contributed to a book by Nancy Turner and -- in a paper on Tsimshian resource management (McDonald, in press) shows the surprising extent of Tsimshian control over the pre-capitalist environment for food production. But the use of plants has changed drastically since settlement and industrialization occurred. The new regime brought physical changes that redefined the human landscape from one that reflected the management practices and knowledge of the indigenous Tsimshian people to one that is colonized and defined by the commercial resettlement of Tsimshian territories by logging companies, settlers, and other agents of the new social order. The impact on plant management was extreme.
The late Lucy Hayward, aKitsumkalum elder, described the land as a storage box of food. (interview, June 15, 1980). Miriam Temple expressed the same idea with an analogy between managing the wealth of the land and managing your wealth in a bank.

> You go up the Nelson Creek or Starr Creek, ... it belongs to the tribe. And open it up, just like a trunk. [That's what] he do. Now you put the money away. When you need it, you go and open it up and get what you want. Just like the bank now. (Interview Sept. 29, 1980).

Compare that to the stereotyped understanding of the Indian Reserve Commissioner in 1891:

> "You will not be confined to your reserves. You can go on the mountain to hunt and gather berries as you have always done. Some think it would be a hardship that the hunting grounds should not be defined, but the govt. does not see how that could be done, for an Indian goes where he will to hunt, or gather berries. No survey could be made of them." (Public Archives of Canada RG 10 v.1022 handscript of minutes)

This seems a simple statement, but it is encapsulates the colonial mentality and presents much mis-information about the Aboriginal situation. Contrary to the Commissioner's opinion, the Tsimshians gathered much more than berries and did so in areas other than on the mountain sides. Describing their activities simply as "gathering" trivialized and dismissed their plant management strategies. Further, the Commissioner was grossly ignorant about the Tsimshian for they could not go where ever they wished but were required to observe strict laws governing resource property. These laws defined property arrangements associated within the aboriginal

lineage and town/village structures. Consequently, Tsimshian people easily could have surveyed their properties and, if they had been allowed to do so, a century of land disputes might have been avoided.

When Lucy Hayward was trying to explain to me where she used to harvest foods with her parents, she despaired and exclaimed that the berry bushes she was trying to describe around Kitsumkalum Lake had been ruined by whites and that the old trails had been replace by roads (interview, 19xx). Similarly for Miriam Temple, who put it this way:

> "All I know is [that there were] a lot of people, early days, here. All the little rivers, Kalum, [were used] ... for hunting. That's all I know. I used to go out to the Kalum myself. But, I don't, I get lost there now. I don't know, there's too much logging back there. I lost the trails." (Interview, August 21, 1980).

These references provide an indication of what was lost in this one sector of the Tsimshian economy with the imposition of only one aspect of the colonial land management regime, the reserve system.

To these losses can be added other restrictions the resource legislation imposed on Tsimshian management practices, especially those in the Forestry Act which made it illegal to remove any products of the forest on Crown Lands (Revised Statutes of British Columbia, 1924 C.93 s.1). Some old people still remember and complain about how they were prevented from taking bark from the hemlock or cedar trees. One person told me "I used to eat hemlock sap, now get pinched if you make marks on the trees" (Miriam Temple, interview, August 21, 1980). In specific cases, women were prevented from stripping trees as they had been accustomed, and men could no longer cut timber for boxes or canoes without a timber licence or lease.

Leslie Johnson Gottesfeld documents the suppression of berry patch burning in the Prince Rupert Forest District from the 1930's:

> "Indian-caused fires have decreased during the past two years. As early as possible in the Spring all Indian settlements were visited and our policy explained in plain words. Notices were written out and posted at Indian trading posts which seemed to get results." (Anonymous 1932:2, quoted in Gottesfeld 1993:96).
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> "Anyone suspected of deliberately setting fires was subject to criminal prosecution, and several convictions were obtained" (Gottesfeld 1993: 99)

I could not trace the forestry regulations on this further than 1924 but in 1887 a delegation of chiefs was told by the province's Premier that timber on crown lands was protected by timber lease and that people cutting trees for house construction or storage boxes could be stopped legally by the owners of the lands if they held a lease (British Columbia 1887:253ff.). The complicated requirements for tenure inhibited Indians from registering timber lands (see chapter 14) and there also is documentation of prejudice against Indian registry (Pritchard 1977:115ff.).

Also important to emphasize is the destruction of the resources by alternate land uses, such as agriculture and settlement, which started immediately after the reserves were established in the 1890's. By 1910 a community existed at Eby's Landing (Terrace), with homesteaders spreading across the Kitsumkalum plateau, establishing farms and settlements according to Provincial, not Tsimshian, laws and tenures. This extensive homesteading and the settlements associated with it, caused considerable losses to berry patches. In 1980, a woman who was nearly a hundred years old, tried to explain to me where her family took berries but was sure that I would not be able to locate the sites because they were overgrown with flowers (agricultural use) and destroyed by roadways. She said they had been destroyed at the turn of the century.

The loss of control over plant management meant restrictions in the use of plants established by the colonial land use and resource regulations. People were prevented from harvesting as they had been accustomed and plant management areas were destroyed by commercial use of the forest. The result was the redefinition of the Tsimshian seasonal cycle and plant management strategies as I have described elsewhere in print (McDonald 1987). A number of constraints can be noted in the scheduling of plant harvests (Turner and Peacock 1998ms), including biological factors and cultural preferences, but the point here is that colonization was also a strong influence that has received scant attention.

All these changes are part of the colonial assumption of ownership and part of the creation of a real "wilderness" that obliterated the anthropogenic mark of the Tsimshian presence, transforming the Tsimshian landscape into one that would serve the new regime. The stereotype of the great Pacific wilderness is a colonial creation that blinds a new nation (Canada) to the sovereign control of an older nation (Tsimshian) and allows governments in Ottawa and Victoria to disregard the rights of the Tsimshian, as if the lands were *terre nulles*, an empty land.

Today, the effect of colonization on resource management production is illustrated in the way Kitsumkalum people now wander around the countryside, as foragers along logging roads and side roads, seeking out good places to gather berries. Clear-cut areas are considered to be good locations for berries as are rights-of-way for roads, hydro lines, etc. These days, the gathering of plant materials is a hit and miss affair conducted without significant or sustained management. The management of, for example, berry patches is not practical in a world where clear cut logging may suddenly eradicate an important berry patch without notice and where long standing Aboriginal techniques such as burning may result in legal action. The situation for Kitsumkalum seems similar to the Gitxsan case where Leslie Johnson Gottesfeld pictured traditional berry patches that are overgrown and no longer productive (Gottesfeld 1993:70). Stephen McNeary's reference to soapberry gathering also suggests this change:

> "I found in mid-summer that there was a great interest in the location of soapberry patches, which today are exploited on a first-come, first-serve basis. It was said that in former times ... [a chief] owned a particularly large patch" (1976:115).

Recent liberalization of provincial Forestry practices may alleviate some of the pressure against

Aboriginal management techniques but the new regulations do not restore the ownership rights necessary for long term management strategies and investment - those are rights that are the Treaty negotiation table. The decision in Van der Peet and Delgamuukw that Second Nations must consult with First Nations and consider the distincitveness of Aboriginal practices will force a serious crack in the wilderness image and a Second Nation reassessment of Aboriginal society. I have already received inquiries from Second Nations people who are wondering how they can get more information on Aboriginal culture, society, and most important, economic views. This is good because it means the Courts have already had an impact and because the extensiveness of the Tsimshian resource management regime, at least, is comprehensive of the environment.

Example 2, Aboriginal logging

My first case study played with the steroetype of Aboriginal peoples as hunters and gatherers. My second one, hopefully, moves further away from the stereotype and looks at how Aboriginal activities evolve. This is relevant to the debate over whether or not an aboriginal right pertains only to activities frozen in time as pre-contact "traditional" activities (*Sparrow*?)or if traditional activies can change in response to changing conditions and still be kept in that legal catagory labelled Aboriginal rights. Recent court cases (*Gladstone, Delgamuukw*) say this is possible.

[hist of comm logging (HBC to pres)]
- construction of fort as commercial logging (with ref to Gladstone and herring spawn) continuity of evolution through h-logging, power logging, camp boat structure, diminishment, wage logging, mills, industrial failure.
- issue of evolution of rights/frozen rights
- applicable to all of BC bec of trade involvement
- how the Aboriginal economy shifted in response to the appropriation and resistance move to PtE, camps and back to KK

Logging is only one example of how, during their recent history, Tsimshians participated in several different types of relations of production, including forms derived from their original (aboriginal, in the literal sense) economic formation, forms of simple commodity production (trapping, logging, commercial fishing), small businesses, and wage labour. In other papers, I have also focussed on the food and commercial fisheries to examine how Tsimshians participated in the evolving regional economic formation. Capitalist relations of production came to have hegemony in the region, but the social formation stills retains a complexity that precludes a complete transformation and homogenization of the economy (McDonald 199). For the Tsimshians, a variety of economic activities were integrated to create the Tsimshian "way of life" as capitalist development proceeded.

A great transformation has occurred since the time when their original, independent pursuit of and participation in market transactions allowed the Tsimshians to take advantage of the opportunities presented by the local appearance of the capitalist economy. As I discussed in a paper in American Ethnologist, the evolution of the conditions for capitalist production

progressively commodified the various means of Tsimshian production. New, colonial property relations legislated after the Act of Union established a legal and economic framework that conditioned the transition in ways that were sometimes subtle, sometimes harshly direct. As a result, by the turn of the century, the people of Kitsumkalum no longer cut trees for trade but worked as loggers; the fish they once used to create a spectacular northwest coast culture, had been transformed into a "food" and a "commercial" fishery. The basic property arrangements governing the means of production had been redefined to suit the needs of capital. Eventually, this redefinition of the various forms of production which the Kitsumkalum engaged and integrated into their social formation, along with the associated reorganization of the conditions of production by imperialist forces, left the community dependent and underdeveloped.

Today, most of the community's resources, technology, and labour-power, are under the hegemony of the dominant capitalist social formation. Those few residual aboriginal elements which are not commodified are protected by "aboriginal rights" (for example, food fishing rights) and fought for through the various manifestations of “land claims process” that the Second Nations use to contain Aboriginal resistance. Even though these rights have been kept sharply restricted in scope, the development of a corpus of legal experience and landmarks such as *Delgamuukw* 1997, is turning back the tide of assimilation and preventing complete colonial dominaiton over Aboriginal lives as Aboriginal. The struggle to retain and regain community based control and the various “Indian ways of doing things” provide the economic foundation for the continuation of Aboriginal communities as well as the basis for their unique historical and social identity. The consolidation of aboriginal rights through the various reform processes, including legal precedents like Delgamuukw, strengthens the Tsimshian, reinforces their identity, helps develop a stronger community (Gisday Wa and Delgam Uukw 1989, McDonald 1990b), and allows the Tsimshians a better chance to make a life of their own choosing. It is to that strength I now turn in the next section on the dynamics of contemporary cultural practices.

Contemporary cultural dynamics

Witht his section, I can return to the final aspect of the question of whether there has been a fracturing: the question of sovereignty in the broadest and most fundamental sense. Can the people govern themselves as distinct societies? Unfortunately, this is not a rhetorical question but one that is hottly debated. Only recently, the Chief of the AFN, Phil Fontaine, accused the federal Reform Party of racism over the way they attempt to discredit First Nations and put into question t heir ability to govern themselves. (Reform has responded with a threatened law suit saying Fontaine has defemaed them. Fonatine’s response was to re-iterated his opinion. [Erin Anderssen, Globe and Mail 1998.4.9.])

Contemporary efforts to restore the culture, assert aboriginal rights, and define self government have generated cultural dynamics that are healing communities and defining the very foundations of the new relationship between the First and Second Nations. Not long ago, in March, the Lake Babine Nation, which is centred in Burns Lake, suspended its Stage Four Treaty talks in order to restructure their negotiations. In the middle of April, 1998, they held a ceremonial feather dance and formally transferred the Talking Stick to the Hereditary Chiefs, who will now take over

negotiations with the Province and Ottawa (PG Citizen, 98.04.18, page 5).

This was a highly significant act honouring the culture and the Hereditary Chiefs, one that simultaneously strikes at the privileged position the Colonial political structure has long enjoyed and takes back control over Lake Babine's own political processes. The Treaty Process is not only about land and resources.

The Tsimshian have long engaged cultural recovery as an area of critical activity. In the 1970s, the community of Kitsumkalum set out on a de-colonization journey that has required tremendous fortitude, endurance and patience. They have exhausted several different processes: economic development, Ottawa's land claims policies of the ONC and In All Fairness, the Constitution train and the entrenchment of Aboriginal Rights, Treaty Process, Ottawa's Self Government policy, and many more transformations and re-inventions of their struggle to protect their land. This history of these efforts reaches back, beyond the Garlon Pesticide Protest of 1985 or the railroad blockades of 1909 or the letters to Queen Victoria, back to the pre-Confederation defence of their territories and rights, right to the mythic charters that gave the territory into their stewardship.

Part of that defence may have included a chiefly decision to abandon the grandiose potlatches of a century ago in favour of quieter, quasi underground affairs (cf Heizer) that would not run afoul of the colonial government officials or the Church but would still respect the culture. Nonetheless, even as a strategic spirit of resistance, this decision had an impact on the social relations with the land and on the structure of the community. Band Council politics largely replaced potlatch politics. Elected Chiefs rose in prominence and influence, often at the expense of Hereditary Chiefs.

The decision to engage land claims talks in the 1970s started to change all of this. Slowly the centrifugal forces tearing the community apart began to reverse. The knowledge of the Elders was listened to more intensely and heard more clearly. Tsimshian political values and structures were sought as the foundation for the distinctive nature of Tsimshian demands. Hereditary Chiefs were brought into the political process and, with them, their power bases, which were concurrently strengthened Steady advances were made in teaching the young people (and this means anyone who was under 50) to participate in the culture. The children's dance group was revived. Cultural artefacts were restored. Traditional skills were taught formally and informally. Young girls again learned to cut fish and make crafts. Commercial skills of carving and drawing were taught and objects sold to collectors and museum.

Then in 1987, a potlatch was organized to raise three crest poles and place a title on a community leader in a self-consciously traditional demonstration of Self Government. This was the first major potlatch the community had held since the early years of the century (McDonald 199-, 1994?). This was truly a great potlatch with an estimated 1200[?}] guests at the feast and more witnessing the public pole raising. Following the success of this event, a second historically important feast was held in 1990[?] to raise another leader to a hereditary position and to adopt

individuals into the clan system. Other minor family feasts have followed, as well as a large one in 1996 at which a mass naming of 60?* individuals and which recovered that family's traditional social structure. There is much about these potlatches that is unusual but they were held in response to the unusual conditions of the de-colonization period. They are sometimes excessively large and they incorporate symbols and processes that would be unfamiliar to the ancestors who lived a hundred years ago - but they are Tsimshian and the ancestors , it is said, would approve.

Cultural recovery projects like this can be seen across the country. They are all part of a process whereby First Nations and Second Nations are re-examining fundamental political values and structures. Second Nations must be included because they are often seated on the other side of the feast hall in negotiations the First Nations (see McDonald 1990 culture article).

The people of Kitsumkalum are rapidly recovering their culture. The recovery has serious and practical applications, for they are currently in careful internal discussion over the question of how to structure its Treaty negotiations, and the form its future self government. What role will traditional structures play; what role will contemporary Indian Act structures play?

The answers to these questions will be very different now, then they would have been 20 years ago. At least in the communities with which I am most familiar. The answers are, perhaps, a little more predictable now then they would have been before Delgamuukw, although the reversal in the appeal of the logging case to the New Brunswick Court of Appeal which returned control over the Crown's lands and forests back to the Province and away from First Nations (Kingston Whig Standard, 1998.4.23) proves we live in interesting times and the future is not known. The First Nations will be taking the Appeal Court's decision to the SCC.

However, at the moment we seem to be at a critical junction and witnessing a significant fracturing that could allow systemic changes and redefine the role of the margin and the meaning of Aboriginality. The SCC's statements on Aboriginal title, by declaring Abroginal title to be sui generis and inalienable except via the role of the Federal government and in accordance with protections in the Constitution, compels Second Nations governments and citizens to respect the distinctiveness of Aboriginal communities and to support the social, political, economic, and other structures and values that go into that distinciveness.

Whether or not this potential effect occurs will depend on political and legal decisions that will be made in the near future by First Nations and Second Nations governments. Early indications are that First Nations are deciding going that way and that the Federal Government is firmly committed to negotiations....

I conclude by repeating, for emphasis, the Tsimshian view:

> "Those structures were our governments - First Nations governments. They are still there - maybe not as active, maybe not as strong as they were historically but our structures are still in place and we are reviving them. We are bringing them forward - the power and the

principles of how we looked after ourselves day in and day out [are] going to be brought forward." (G. Wesley, 1998)

Main points for TALK

What does all this mean?

It means FN in BC have managed to have aboriginal rights defined more broadly to include more activities than those that are stereotyped as traditional. These activities can include economic sectors such as logging. This is significant. It is also moves Canada slightly closer to a non-colonial relationship to Aboriginal Peoples and the land. Tsimshian peoples have logged commercially since they first boomed up rafts of logs for sale in the new construction industry that was ushered in with the construction of Fort Simpson. Colonial laws expropriated the forest and reserved it for development by foreign interests. As those laws evolved, so did the image of the Indian as trapped in traditional society that had no place for commercial lumber.

Similarly, the environment was appropriated and a wilderness created, first in the colonial imagination, then in the colonial reality of clear cuts and the destruction of a comprehensive resource management regime.

The Fracture identified:

So if a fracture has occurred how can it be identified?

First, in terms of resource management, the aboriginal system was extensive, far more extensive then members of the dominant society usually imagine. The case study describing, first, the anthropogenic landscape that was maintained by the Tsimshian, then the laws that repressed that management system in favour of a less knowledgeable one controlled, largely, by the centre away from the resource itself. The values that underlay the Tsimshian system still exist, despite the disintegrative effect of colonial forestry laws and policies. With the recovery of other parts of the cultural base and consolidation of aboriginal rights, the Tsimshian values can be re-introduced through the consultative process required by the SCC. This is an exciting prospect. All that cultural knowledge, for so long archived by the communities, now will have an audience and an importance that it has been denied for over a century.

- logging
    - hist, commercialization eg in 19th century, changes

- pol recovery
    - revival, supported now through dfn of ab rts and title, recog of values, use of oral hist.

How will the margin become the centre?

- consultation
- res mgt values
- re-appropriation of res based on the decision that ab rights are not frozen
- 15 years ago, I defined ab rts as those ab practices that were at the heart of the Ab community but there were residual activities after Tsim resources and labour had been appropriated by the centre. This definition was useful until the last couple of years (post Gladstone, VdP, Delga. 97)
- now it looks like we may need to think in terms of Second Nation's rights being the residual

category, large as it is.

CONCLUSIONS

- This paper has explored the themes of resource appropriation, sectoral restructuring in an aboriginal economy, colonization, cultural recovery and decolonization, and systemic change.

- The appropriation of Aboriginal resources and labour by an industrial economy produced fundamental and systemic changes in the Tsimshian political economy. This paper examined the multi sectoral nature of the Aboriginal economy and discussed how it shifted in response to the appropriation of Tsimshian resources. The cultural dynamics of contemporary efforts to restore the culture, assert aboriginal rights, and define self government have. ....

- It seems there is a fracturing that will allow systemic changes and redefine the role of the margin and the meaning of Aboriginality. Whether or not this potential effect occurs depends on decisions that will be made in the near future.