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## Introduction

The hinterlands of the Western Cordillera of British Columbia have long been home to the Tsimshianic-Penutian-speaking Gitksan and their Athapaskan-speaking Witsuwit'en neighbours. The mountainous, riverine homeland of these peoples, partly along the Skeena and Nass watersheds that flow into the Pacific near Prince Rupert, and partly along the Fraser River watershed that enters the far-off Gulf of Georgia at Vancouver, has provided them with both access to, and defence from, the rapid changes occurring on the adjacent coast. These changes were wrought by land-based and maritime fur trading in the late eighteenth century, colonial settlement and administration in the nineteenth century, and, more recently, industrial extraction of raw materials and energy such as gold, salmon, timber, hydroelectricity, and coal (Daly 1999). Their territories were subject to the fur trade, and, briefly, to gold prospecting. From the 1880s, significant numbers of these peoples migrated to participate in the new commercial fishery on the coast during the short summer season, but not until the second half of the twentieth century were their territories exploited massively for hydroelectricity and forest and mineral products. The Witsuwit'en and the Gitksan, along with their coastal neighbours, have cultures that are firmly attached to the cycles of the salmon, but, like their more easterly Interior Plateau neighbours, they were, and continue to be, attached to seasonal land-based resources in the valleys and mountains of their territories.

Although distant from the coastal tempo of trading and raiding, these peoples have long traditions of marriage, trade, and other interactions with their maritime neighbours. Long before the arrival of Europeans, they developed elaborate reciprocal relationships expressed in ceremonial and sumptuary fashion, and by means of gift exchange and trade between different families, nations, and biogeoclimatic regions. Like their coastal neighbours, they were familiar with raiding and trading, with a rich artistic and ceremonial life, potlatch feasting, and totem pole raising (see Figures 1

and 2). Over the past century they have worked as wage labourers. In addition, they have been formed into reserve-based wards of government, with the usual problems of unemployment, welfare ennui, structural nepotism, substance abuse, and family discord; but, like the Tswana people studied by the Comaroffs in South Africa, to name but one of many similar situations in the contemporary world: “they also engage in productive and exchange relations that perpetuate significant features of the precolonial social system, one in which human relations were not pervasively mediated by commodities, and dominant symbols unified man, spirit and nature in a mutually effective, continuous order of being” (Comaroff 1985, 2). During gold prospecting days in the 1870s, and during the subsequent paddle-wheel riverboat navigation along the Skeena River until the early 1900s (see Figures 3 and 4), Gitksan leaders lodged protests (joining delegations to Ottawa and London) against illegal incursions into their territories. During the McKenna-McBride Royal Commission (McKenna-McBride 1915), they vigorously opposed the establishment of the “reserve system.” They organized to take up “the land question” with government and participated in the Native Brotherhood, which had similar aims (Drucker 1958). In the 1920s, 1930s, and most openly at Gitsegukla in 1945 (Barbeau and Beynon 1915-57: BF 425-428; Anderson and Halpin 2000), they defied the “Potlatch Law” that had made their ceremonial activities illegal. In the 1950s, they were able to begin to change their approach to the “land question.” The Nisga’a began their litigation process in the 1960s, and the Gitksan and Witsuwit’en did the same in the years that followed. They began the process of taking the Province of British Columbia and, ultimately, the Government of Canada to court in a bid to seek recognition of their landownership and the right to institute their own form of self-governance. Before the late 1950s this avenue had not been open to First Nations peoples in Canada.

### **Hunting and Gathering in the Courtroom**

What kind of truth is adjudicated in a multi-ethnic courtroom situation such as that involved in a land rights case? Is Canada’s much discussed multiculturalism reflected in the processes through which such cases are conducted?

Before the opening of *Delgamuukw*, my clients’ political leaders did not hold very sanguinary views about multicultural respect or the scope and rules that would be employed for determining truth in the court. However, they pointed out that their constituents had vast experience with litigation from the “other side” and that the very act of being plaintiffs and not defendants, for once, was indeed a step forward in the struggle for social recognition. They viewed the court case as a step on the long road to gaining respect and status in the wider society, to pursuing a public political settlement of their grievances, and to achieving recognition of what they consid-

ered their rights. They rejected a strategy that would limit the nature of their case to what the cautious and ethnocentric courts might find “reasonable.” They wanted to mount a case that was not limited to the identity paradigm of the Department of Indian Affairs and Northern Development with its “band council” system of elective departmental governance, indirect rule, and in-built agenda for terminating Aboriginal rights through either revised or new treaty agreements and a municipal model of governance. Rather, they envisioned a case based upon postcolonial governance according to long-standing principles of kinship and affinity – a form of reciprocal social life marked by the richness, complexity, and historical depth of their two traditions and cultures. They entertained the possibility of establishing sets of overlapping rights and jurisdictions with federal and provincial governments. They hoped to push back the boundaries of what constituted admissible evidence. They hoped to call on Canada and British Columbia to redress some of the injustices of colonial and postcolonial practices by recognizing alternative Aboriginal ways of being human and the values to be found in Aboriginal stewardship and management practices on the land.

Bodies of law, like moral or religious codes, can be used in many ways to prove many things, and in the period leading up to *Delgamuukw*, the First Nations plaintiffs realized that the extent to which their point of view could attain broader understanding through the courts depended considerably upon the enlightenment of the forthcoming adjudication. The day-to-day leaders of the Office of Hereditary Chiefs were aware that they and their witnesses would be walking into a conventional court, with its juridical disciplines and hierarchies. They knew that there would be great resistance to their attempts to broaden the existing positivistic and administrative vision vis-à-vis indigenous forms of social control and self-governance. Nonetheless this is what they tried to do. They said they did not expect to win their demands simply through the courts but felt that the courts should be used to broaden administrative minds, show alternatives, and plow the ground for future political settlements of such burning issues as land and governance.

### **The Courtroom as a Vertical Force Field**

From an analytic perspective, the courtroom deliberations constituted an arena of interactions, or overlapping fields of interest, played out upon a sloping plane of power and powerlessness. Having experienced this courtroom situation from the inside, I have gained an existential appreciation of Pierre Bourdieu’s field, habitus, and symbolic capital<sup>1</sup> (Bourdieu 1990a, 1993; Bourdieu and Wacquant 1992). The courtroom in which an Aboriginal rights case is tried is a social situation marked by a definite field of power – even spatially:<sup>2</sup> With the judge both at the top of the social promontory and at the elevated front of the room, and directly below his dais, the contending

teams of jurists, together with the current witness, court stenographer, and clerk. To one side are seats reserved for the press, but during *Delgamuukw* they were almost always empty. Further down the slope, at the back of the room, almost out of earshot, are the seats for the public – in this instance, occupied by members of the plaintiff nations and sometimes by curious academics.

Bourdieu (1992 [1977], 126) points out that, in the configuration of relations that comprise a social force field, the socially closer the agents and groups within the physical space, the more common properties and common habitus they share; the more distant they are, the less they share. When one sits in the witness box at the front of the room, near the judge and the tables bursting with lawyers and documents, one is immediately encapsulated in a world of litigation and the administrative structures of the nation-state – an astral journey away from everyday life. Here the inner and implicit strategy, or the second-nature habitus, of the actors is highly conditioned by the juridical field itself. Repartee, tone of voice, body language all contribute to the role playing and impression management of specialists and professionals. This, of course, has been well documented in Goffman's (1959, 1961) interactional organization studies.

In their daily life, most witnesses possess a “sense of the game,” or a habitus, that functions very imperfectly in the adversarial field of the courtroom. Witnesses are foreigners when they take their place in the box at the front of this room, and, in terms of social hierarchy, they usually come from the seats at the back of the hall. Be they anthropologists or First Nations witnesses, their contributions to the evidence are not accepted or rejected as lived experiential statements of “fact” that one side or the other is trying to present to the judge, or that two disputants might throw out to each other in an argument; rather, they are treated as raw material from which both sides will extract “evidence” for their generalizing arguments supporting the positions of their respective clients. As such, the evidence of witnesses is never heard at face value, that is, in the contextual terms expected by the witness. It is constantly subject to the professional habitus of the legal actors and their canon of rules and procedures for conducting the competition between the field's different interests. Once in the witness box, the witness, whether from the ranks of the First Nations or the anthropologists, historians, or biologists, ceases to be socially situated in her or his everyday life and becomes part of the firepower that each team of advocates tries to use to cripple its opponents and advance its own interests. Moreover, the witness who “breaks frame” and tries to assert her/his identity as a respected interlocutor, or to defend her/his interests in the proceedings, is severely devalued as a bona fide resource not only by the judge but also by counsel for both disputants. In fact, such “outbursts” contravene the rules.

They lack dispassion and objectivity. They are part of the messiness of contextualized everyday life (see Figure 5).

History professor Arthur Ray (2003, 273), who presented ethnohistorical opinion evidence for the plaintiffs in *Delgamuukw*, has written that historical experts in Aboriginal rights cases must be guided not only by the highest ethical and professional standards but also bear in mind that their primary responsibility is to the court rather than to their clients. This might be a plausible aim for historians working within the academy, removed from the everyday life of the clients and working on evidentiary materials that are contained in written, archival sources – in a word, a project with which the courts are familiar and comfortable. But this view is predicated upon an acceptance of the current power imbalance in society and the current positivistic administrative way of thinking based on fixed text-based categories for containing data rather than on context-based categories developed from various evidentiary sources, including the oral. Rather than moving with the times, the courts frequently seem to demand that the times fit into outdated and implicitly male, middle-class, Eurocentric ways of determining truth. Professor Ray seems to be implying that the only way to let the purity of one's objectivity shine is to be answerable to the court (despite its administrative biases). This, I would argue, tends to reinforce existing ethnocentrism among the power-holders in society. Surely we, with our various bodies of situated knowledge, have to be answerable to more than one constituency and strive at all times, and everywhere in society, to advance the justice of our positions. It seems this has to be our pedagogical agenda so long as judges, as educated members of society, continue to allow nineteenth-century colonial views to cloud their twenty-first-century judgment. In *Delgamuukw* the court not only adopted a colonial and racist attitude towards the plaintiff cultures and histories, but it did so with the impunity of power.

To whom, then, should we anthropologists who are involved in Aboriginal rights cases, be responsible for our research and its educative function? I would hope that we can be responsible to ourselves as moral actors situated in society, as well as to our profession and to the basic ethics of recognizing our social engagement. Professionals have a right and a duty to contribute to the ongoing debate (in a society divided by class, gender, and ethnicity) about justice and injustice as these issues pertain to that corner of society about which we have specialized knowledge.

A corollary of Bourdieu's equation concerning cultural proximity and power is the substantive fact that the actors in the courtroom arena co-exist uneasily. They have different worldviews and ways of constituting the truth. They are ultimately coerced to conform to the procedures and views of the judiciary. The officials of the judiciary, in general, neither accept

nor acknowledge what is the *aqua vitae* of both everyday life and the anthropological universe; namely, an awareness of the importance of grasping the contextual complexity as it arises out of alternative cultural and historical trajectories of social action. The litigants and their arbitrator, the judge, play by a set of rules central to the organization of the nation-state – rules often little understood by other actors in the courtroom field of action. The indigenous witnesses and observers in this instance have their own rules of conduct for “occasions of state,” and the anthropologist, to name but one of the professionals called in to give opinions on aspects of the case, has yet other rules of procedure for seeking legitimacy in public settings.

All these systems of regulation are employed to arrive at the truth, yet we normally observe only the most hegemonic rules of procedure at work: those of the nation-state, its administrative jurisdictions, and its judiciary. However, among the witnesses there are other, often tacit, rules of procedure in play, but since these are subordinated to the adversarial method of the court, their effectiveness as ways to arrive at the truth is usually obscured or obliterated. The epistemologies of lay and expert witnesses in an Aboriginal rights case fall into this category. Their evidence is not accorded the status of knowledge. It is considered no more than a small part of the fabric from which the opposing legal arguments are constructed and adjudicated.

### **Stifled Competence**

Let us take for a moment a hypothetical elderly woman seated in the witness box, a female chief from one of the several Houses of one of the four Gitksan or five Witsuwit'en clans. She has grown up on the land under dispute and moved into the reserve village only so that her children could attend school. She herself may have received some “white man schooling,” or she may speak only a bit of English. In town she looks poor and inarticulate, but she is a woman of reputation in her community. She is the matriarch of several generations; she holds one or more feast names of great power; she knows the history and the narratives of her matrilineal family's origins on the land, as well as those of her husband's family, and the histories of the Houses in their respective villages. She knows the names of her House's territories and perhaps of several others; she has organized many large feasts; she has prayed to the “Lord Above” to give her strength for what she has to do this day. She has communicated with her ancestors and the psychic force of all the living beings in her territory or territories. She has sought out intimations of their support for what she is putting herself through for her family, for those who “have gone before,” for her village and her nation, and for those not yet born. The seat in the witness box is very hard and narrow and upright. It is meant for the criminals one watches on TV and is not a happy place for a chief to be. The judge is announced

and she has to stand for his entrance, despite her own status, venerability, and arthritis. He sits above her and does not acknowledge her presence. The lawyers look directly into her eyes – something that, were they not so ignorant, they would know is insolent and discourteous behaviour towards chiefs and those born to be chiefs.

Still, she decides to countenance with dignity all this insulting ignorance. Her family members are in the audience to provide physical and psychic support. But her enemies are here too, the cousins who are bone lazy and venal and are waiting for her to misrepresent their land and their interests so that they can pounce on her – the witness who is suffering in court on their behalf. And they are zealous to pounce as well on any financial gains that might come from this court case. And the political representatives of the two main factions in her home community are here too. One of these factions wants to use her culture as an axe to clear a space for her people in the Canada of the future. They know the language and the old customs but are perhaps too glib, too well educated in the white man's way, although the spirits of the dead speak to them. And they who stand for the other faction are very cautious and basically do not want to rock the raft that "dem DIA" have built. To make changes, one has to let go of that raft and start "rockin'" a lot of canoes. She does not really trust any of the leaders.

She has been to the hairdresser and is wearing her gold jewellery embossed with her clan crests. Birth and age have propelled her into the ranks of royalty and she is planning to speak directly to the judge (who stands for the Queen of England) about the injustice suffered by her family and also about the justice of her people's claim. In the feast hall people of reputation speak to the history of any ongoing dispute, as they know it. Others listen and add on to what is said in order to contextualize and alter its connotations or put their own interests in a more favourable light. The matter is taken as far as possible by both sides. Then the gathering breaks up and the sides continue to push for their interests in other spheres of life. Perhaps other feasts will be needed to settle the matter, or perhaps the ancestors consider that tempers should cool off and that their descendants are moving too quickly or with the wrong motives. Things change, and the positions that reflect these changes tend to win out until somebody builds on to them in a new way. Next time the chiefs meet, the discussion will continue, diplomatically. To use hot words can lead to killings and disruptions. In the old days there was no standing army. Babies could die and people starve from the chaos that reigned when the peace was broken. It would get so bad that people could not even fish and hunt and trade. And so, a stern law bid the chiefs meet once more, in solemn dignity and respect. They exchanged presents and listened to their brother and sister chiefs, and when called upon, they spoke. Words were precious and they did not waste them.

But here on this witness bench she is not accorded the smallest scrap of respect. Any old lawyer can interrupt her words whenever she or he likes. The judge does the same. They then ignore her and argue fiercely about her words or the “justice” of admitting them into the evidence, and all this without consulting she who speaks the words. She soon realizes that in this room she is not the tall cedar tree she certainly is at home. In their eyes, she is only a pile of ol’ weather-beaten planks, brought here only to fight over. In the golden days of her ancestors, this behaviour would have been grounds for war. But she cannot say this because “dem Judge” and “dem lawyer,” they feel, in their bones, that her people’s past was primitive and as low as you can get. They say you guys had no wheels, no pickup trucks, and, hey, no takeaway pizzas. They say you were cannibals and worshipped dem idol. And instead of religion, her community is said to be under the tyranny of crazy sorcerers, evil superstitions, wild masks, and pornographic dances.

She knows precisely what has to be said in this public forum. She holds her tongue in face of all the indignities and hopes that this case will at least put First Nations interests on the national agenda. She hopes that this will cause the white world to pay attention. Her people have a culture, a tradition, and a life, and the right to come out of the back alleys in the towns and down off the pile of rocks they call an Indian reserve, a right to stand up and demand respect. But she can feel the contempt of her cousin rivals in the back of the courtroom prickling the back of her neck; and she knows she must concentrate now so as not to compromise the precision of her answers. If she were to talk without clarity, or in falsehoods, the witnesses from the other clans would know and there would be hell to pay for generations to come, and Those-Who-Came-Before, they would turn their backs on her and her family and remove their power and protection. She must banish these thoughts, tell the truth, and find a way to get her message to the Queen.

### **Traitors or Subalterns to the Relations of Ruling?**

The anthropologist who takes the witness stand is also from another world, with other competences and other habits of thinking. Yet, when interrupted by the adversarial skirmishes of the lawyers, she or he, as a consequence of the same educational ethos, is able to identify to some degree with the nation-state juridical process. The anthropological witness begins to detect the motivations, the contours of the arguments, the various game plans, and the rationale behind the thinking of the advocates. She or he is from a branch of the same system of higher education as the judge and lawyers, but the game rules exclude her/his active participation in the judicial dialectic of litigation. The rules of the game demand empirical objectivity, and the task at hand is to present an antiseptic view of the plaintiffs’ life ways

and traditions, filtered through the disciplines of social science and history. The plaintiffs' lawyers, with whom I worked, requested my help to "draw a picture or a map" for the court, showing aspects of the plaintiffs' society and economy through time. In other words, my task was one of providing contextual information to the court in an area of knowledge somewhat distant from the normal realms of law. My role was to be pedagogical. Fine, but one soon finds that the court is not a classroom.

One's usual forum of discourse, the learned journal and the seminar and classroom, are not available; rather, in order to be at all credible in the eyes of the court, one must act as though one were defending one's point of view in front of one's peers. But to attempt to do this puts one in an untenable position. One has to appear more knowledgeable and more dispassionate than the seemingly dispassionate, archive-oriented experts contracted by the defendants. Yet at the same time, one is expected not to jeopardize one's clients' search for redress for the injustices of invasion, colonization, and state-imposed *in loco parentis* relations. Like the evidence of the hypothetical female chief, the ethnographic evidence of the hypothetical anthropologist is little more than a pile of old planks to be used for sectional interests, to build and house the respective contending juridical arguments. At best, anthropological opinion is material "that goes to weight," that provides a perhaps exotic, but nonetheless rational, context. It is seldom accepted as substantive truth. Evidence from the social sciences tends to be treated as tangential and not as something that illuminates the dark corners of cultural ignorance. Nor is this knowledge debated in a manner that will test its truth and efficacy – the slow sifting process of discourse and the reciprocal process of testing, rejecting, and accepting that leads to the accumulation of academic or scientific knowledge.

Well, the court had its way with us, and was less than impressed with the lay and anthropological evidence presented by the plaintiffs. Although the social scientists involved in this case may have had the same training in what Dorothy Smith (1987, 1990a, 1990b) calls "the relations of ruling," as their juridical interlocutors, their contextual evidence did not enjoy the legitimacy and status of the more conventional documentary evidence presented by witnesses for the "other side" – the defendants. The opinion evidence of the social scientists, with its specificity, its interconnections with political and social discourse in the society in general, and the lived complexity of ongoing weavings of ancient and modern realities was not the stuff a judge with an administrative habitus was willing to learn. Nor was he willing to become familiar with it.

### **Justice from the "Hovering Sovereign"**

Much has been written about the underlying worldview of the chief justice and his Reasons for Judgment in this case, and his dismissal of Gitksan and

Witsuwit'en heritage as "nasty, brutish and short" (Asch 1997; Miller 1992; Cassidy 1992; Culhane [who introduced the term "hovering sovereign" to identify the myth by which the British Crown judicially sanctions its colonial land acquisition] 1998; Mills 1994). It is not my intention to cover this ground again, yet it bears pointing out that there remains in the Canadian courts a strong and rather narrow streak of "admin speak," or what is more commonly called narrow positive empiricism in which there is one set of document-based criteria employed for establishing "the truth," and where more reflexive, culturally embedded, and nuanced points of view are either rejected or, as in Chief Justice McEachern's ruling on the validity of oral narratives as evidence, accepted as evidence but evidence whose weight is subjected to stringent mainstream assessment.<sup>3</sup> Some consider the judge to have been too "conservative" in his ruling, but the Appellate and Supreme Courts, while overturning many of his legal findings, did not challenge his findings of fact. The higher courts were content to accept his juridical – and unexamined, unconsciously ethnocentric, commonsense – assessment of the substantive evidence on life and history in the disputed territories.

As far back as Immanuel Kant, philosophers were asking what it is, with reasonable certainty, that human beings could know, and these philosophers have concluded that such knowledge must be limited to the condition and experiences of the minds that are doing the knowing. In the present era, as we divest ourselves of empire-think, we are gaining new appreciation of the fact that understanding is prone to fallibility and that, as social scientists, we have to take ever-greater pains to improve our data and to verify and contextualize our conclusions. Nice, straightforward referentiality and cut-and-dried falsification – the stuff of narrow positivists and some sections of the natural sciences – is hard to come by in the real social world. Conditions and contexts change, and with them, meanings and connotations of words and the nature of the empirical evidence. In order to find everyday shortcuts, society and its administrative bodies try to limit the denotations by using dictionaries and rules of usage, as well as moral and legal codes. But despite these attempts, society's condition of flux, change, complexity, and development continues, and so too should the system for determining truth and reality within society's courts of law.

This is not to say that enlightened voices do not exist in the courts. There are even judges who join anthropologists in condemning McEachern-like pronouncements.<sup>4</sup> When the Nisga'a *Calder* case came before the Supreme Court of Canada in the 1970s, Justice Emmett Hall, in his minority judgment, took the then current British Columbia chief justice, H.W. Davey, to task for not acknowledging the changes in society and in the accretion of knowledge with regard to First Nations life and history: "The assessment and interpretation of their historical documents and enactments tendered in evidence must be approached in the light of present-day research and

knowledge disregarding ancient concepts formulated when the understanding of the customs and culture of our original people was rudimentary and incomplete, and when they were thought to be wholly without cohesion, laws or culture, in effect, a subhuman species" (Hall 1973). Mr. Justice Hall elaborated this point by showing that, as enlightened as the early nineteenth-century rulings of Chief Justice Marshall of the United States had been, his understanding had been limited by the level of knowledge available in his day:

This concept of the original inhabitants of America led Chief Justice Marshall in his otherwise enlightened judgment in *Johnson and Graham's Lessee v. M'Intosh* (1823), 8 Wheaton 543, 21 U.S. 240, which is the outstanding judicial pronouncement on the subject of Indian rights to say (p. 590), "But the tribes of Indians inhabiting this country were fierce savages, whose occupation was war." We now know that that assessment was ill-founded. The Indians did in fact at times engage in some tribal wars but war was not their vocation and it can be said that their preoccupation with war pales into insignificance when compared to the religious and dynastic wars of "civilized" Europe of the 16th and 17th centuries. (Ibid.)

In *Delgamuukw*, the trial judge did not see fit to assess the progress of knowledge about indigenous North America and move with the times. He opted for the form of straightforward subjectivity with which he was most familiar: he assumed that the plaintiffs' ancestry was peopled with those who shifted from savagery to the civilizing process of colonial administration, and he supported this preconception with selective textual documentation and selective statistical findings. The only findings he found convincing were those that accorded with his own ethnocentric views. He remained immune to complexities that fell beyond the immediate reach of mainstream legal considerations in the late twentieth century. I submit that this reflected his leading role in the ruling relations of society, wherein simplifying data from human populations, disempowering these populations by treating them as abstract types to fit into a priori categories, is an integral part of administering the less empowered, and processing them through governmental agencies forged in the fires of colonialism. However, in subsequent decades, the courts have begun to realize the importance of trying harder to keep abreast of current knowledge regarding Aboriginal rights (see *Sparrow* [1990, 177] and *Pasco* [1989, 37-8]).

During the presentation of my evidence in court, the chief justice interrupted my account of ongoing spiritual beliefs and procedures associated with preparation for hunting big game animals. These were practices I had both witnessed and repeatedly been told about as part of the practice of respect towards, and reciprocity with, the ancestral forces of nature. He

exclaimed, "Doctor, as a scientist, don't you need a control group before you can draw this kind of conclusion?" He then mentioned his uncle, who managed to shoot deer without any such beliefs and practices, and asked, "What am I to conclude?" I countered with the importance of recognizing the social organizing principles of a set of beliefs and practices, and, in terms of law and order, the ability of such a system to compel standards of practice. But this fell on deaf ears (Transcripts 1987-89, 12096). In other words, observable indigenous belief systems and their practice were not welcome in the courtroom as sociological, organizational facts – unless, of course, they had been greeted with appropriate skepticism by being tested against a logically constructed theoretical model, had been measured quantitatively, and had withstood the test of falsification that is one part of the European scientific method. There was no room for accepting the logic of alternative or analogous ways of seeing, or of analogous and socially standardized ways of practising one's proprietorship on the land. There was room only for the received "truth" that arose from the dispassion of science and mathematics, from the likes of Newton and Descartes – a dispassion that arose historically with industrialism in Europe but gradually laid claim to universality. But are the claims of objectivity from this epistemology universal? Ought they not – before being submitted to comparisons – be tested against the history and social structure of their genesis and the history and social conditions of wherever they are subsequently employed?

Through the judge's non-self-reflexive and pragmatic eyes, the plaintiffs were engaged in one of three things: telling the truth, dwelling in superstition, or telling tales to mislead the gullible anthropologist. In the eyes of the chief justice, my anthropological task was to eliminate the two least sustainable propositions by committing the *symbolically violent* act of attempting to disprove the pragmatic effects of the plaintiffs' beliefs and practices. Such an approach would, in the present case, have distorted the social reality and history of the plaintiffs into something understandable (if wanting in modernity) in the eyes of Europeans but very alien both to the logic of these cultures and to the process of cultural understanding in the wider society. This crude view of science from the bench assumes itself to be free of the encumbrances of culture, class, and gender. Thus liberated, it is free to judge as true or false any encumbrances it finds in other cultures and classes. I use Bourdieu's notion of "symbolic violence" to refer to imposing the rules used by one set of players in the intellectual game played in the court upon the rules used by the other set of players. These imposed rules govern the "truth" of the utterances of both the indigenous plaintiff peoples and the professional "expert witnesses." Today, these two sets of alternative rules are involved in the debate about building a more tolerant and democratic society, and they ought to be allowed to interface more effectively with the institutions and thinking of the nation-state.

Rejecting such blatant, symbolically violent approaches, or what has been termed judgmental relativism on the one hand and value-neutrality on the other (Harding 1991, 139-40), I would tend towards the standpoint epistemology proposed by certain feminists working in the sciences. Writers like Sandra Harding (1986, 1991) and Donna Haraway (1988) propose this epistemology for feminism, and it could well be profitably applied to the field of Aboriginal rights. As Harding (1991, 142) explains: "A feminist standpoint epistemology requires strengthened standards of objectivity. The standpoint epistemologies call for recognition of a historical, or sociological or cultural relativism – but not for a judgmental or epistemological relativism. They call for the acknowledgment that all human beliefs – including our best scientific beliefs – are socially situated, but they also require a critical evaluation to determine which social situations tend to generate the most objective knowledge claims. They require, as judgmental relativism does not, a scientific account of the relationships between historically located belief and maximally objective belief."

Haraway (1988), in commenting on Harding's position, argues that relativism and objectivity can become concrete only from the position of situated knowledges. This has also come to be known as "standpoint knowing," where the researcher works from a deep rootedness in one corner of society and does not conform to the conventional disembodied consciousness that has been the (male) model of science since before the Enlightenment. Being rooted and partial, the researcher, as proposed by Haraway, seeks to view the objects of study as having agency in their own right. The researcher seeks to engage in conversations both with the knowledge of those studied and with other, similarly rooted "situated knowledges," and not to resort to what she calls "the god trick" of posing as a disembodied, ecologically detached master seeker of truth: "A corollary of the insistence that ethics and politics covertly or overtly provide the bases for objectivity in the sciences is granting the status of agent/actor to the 'objects' of the world. Actors come in many and wonderful forms. Accounts of a 'real' world do not, then, depend on a logic of 'discovery' but on a power-charged social relation of 'conversation.' The world neither speaks itself nor disappears in favor of a master decoder. The codes of the world are not still, waiting only to be read ... the world encountered in knowledge projects is an active entity" (Haraway 1988, 593). According to this approach to objective truth and relativity, the field of law is called upon to reflect the changing, developing, and deepening nature of knowledge rather than to force knowledge to suffer the violence of being called upon to conform to a set of jural practices whose heyday was a time of social exploitation and colonial aggression that history is supposed to have transcended.

Bourdieu (1990, 183-4), too, points out that scientific objectification is bound to remain partial, and thus false, as long as it ignores and refuses to

acknowledge the point of view from which it is enunciated – here, in the present instance, the totality of the courtroom “game” with its full force field of contending views played out according to one set of hegemonic rules. Bourdieu explains that true objectification requires a brutally objective assessment of all the “objective” positions at play in the scientific discourse used in any current arena of contention (such as he undertook with his own arena of contention in *Homo Academicus* [Bourdieu 1999]). By avoiding self-conscious construction, the hegemonic and administrative outlook leaves the crucial operations of scientific construction – the choice of the problem, the elaboration of concepts and analytic categories – to the social world as it is. It does not question the established order and fulfills a conservative function of ratifying the doxa, the received and unquestioned order of things (Bourdieu and Wacquant 1992, 246).

My standpoint of learning in the present case took place in the context of the partisanship of a court case. This has resulted in a type of ethnographic presentation of empirical facts that has had to steer a course between the narrow positivism acceptable to many judges as the basis of evidentiary proof and the more dichotomous, negotiable nature of local “social institutions.” The litigious context has indeed had some effect on the subjects emphasized in this work. For current tastes there is probably an inordinate emphasis on “surviving the season with a sufficient surplus” and on interactive proprietorship, but that was the mandate for my work. Beyond this, however, I, perhaps unconsciously, engaged in a certain amount of self-censorship, given that my main readers would be members of the judicial community. For example, the work could have benefitted theoretically from a more expansive use of Gregory’s analysis of gifts and commodities in postcolonial Melanesia. I treated this material lightly because my habitus informed me that the bench would hold economic marginalist assumptions that would regard Gregory’s adoption of the political economy approach with either contempt or the wrath of God. The hegemonic economic thinking today follows the tradition of Jevons, Menger, Walras, and Samuelson on consumer choice and economizing. The political economy approach, following as it does the more radical ideas of Adam Smith, Ricardo, Marx, and Engels, would likely have fallen not on unsympathetic ears but on antagonistic ones. This of course is no issue around a seminar table. It can be argued and debated and lead to further research, dispute, and gradual consensus. In an arena of power like the courtroom, however, such questions become real material issues. This is an example of the qualitative pitfalls of consultancy research in an arena of winners and losers, where the researcher must try to remain dispassionate regarding the facts yet morally responsible to her/his employers (Daly 2003). I have used Gregory’s analysis more extensively in reworking the material for publication.

In the same light *Our Box Was Full* over-emphasizes economic instrumentality and does not give enough indication of the complexity of indigenous practices and procedures. Due to the multifunctionality (from our cultural outlook) of social practices in First Nations societies, what we like to analyze into separate and discrete boxes (e.g., economy, kinship, religion, politics, or law) are often aspects of the same institutions and practices. Yet to discuss the spiritual sanctioning that backs up traditional laws and standards of behaviour, for example, would have caused already deaf ears to close completely. Again, in preparing this work for publication, I have tried to redress some of the imbalances caused by my own diplomatic stance towards the positivistic view of the bench.

The second issue that I want to raise is the incident that tore the largest hole in my evidence at trial, at least in the eyes of the judge. Counsel for the Government of Canada introduced as evidence, for my cross-examination, a social survey undertaken by Carleton University on behalf of the plaintiffs. I was aware of the existence of this survey and had asked to review it in the course of preparing my evidence but had been informed that, since it was poorly conceived and executed, it had been scrapped and destroyed. But indeed it was not destroyed. It was a prized weapon in the documentary arsenal of the defendants. My not having obtained this document proved to be a considerable issue for the judge:

He [Daly] was not aware of a comprehensive survey of over 1,000 persons conducted by the Tribal Council in 1979 which achieved an 80% return. This survey disclosed, for example, that 32% of the sample attended no feasts, and only 29.6% and 8.7% engaged in hunting and trapping respectively ... Apart from admissibility as evidence of its contents (for I have no way of knowing if the survey is accurate or representative, although some of its results tend to confirm the view I obtained of present Indian life), its significance is more in the fact that it was kept from Dr. Daly. Many of his views of Indian life may have been markedly different if he had access to this substantial body of information in the possession of his clients. For these reasons I place little reliance on Dr. Daly's report or evidence. (McEachern 1991: 51)

I later had the opportunity to study this document, and it proved not to be substantial at all, as I was able to indicate in redirect. It did not contain the magical powers that the chief justice had attributed to it. I found that the results – even though the returns were far from the 80 percent the judge reported (80 percent of the questionnaires may have been returned, but the majority left most questions unanswered or only intermittently answered) – were not inconsistent with the determination of the plaintiffs' mixed

economy and cultural continuity I had made in my report. The figures demonstrated a considerably higher degree of cultural retention than is found among many modern Aboriginal peoples in Canada. It appears that the judge accepted these questionable figures at face value because they seem to be numerically substantiated “concrete” facts. However, these figures are abstracted from the situations that generated them – the complexities of local, everyday life. Anthropologists are not averse to statistics, but we learn in undergraduate courses that “the figures” are only as good as the accuracy of their collection and the context and theory that situates and informs them. However, for this court, the figures *sui generis* told the whole story.

The figures of this highly incomplete survey revealed that 23.8 percent (not 32 percent as cited by the judge) of the plaintiff communities’ members did not attend feasts. The judge saw this figure as nullifying the centrality of feasting and conveniently ignored or rejected out of hand a mountain of evidence on precontact feast conditions. These conditions continued well into the memories of elderly witnesses, if not directly, then at least in the feasting rules they learned from their grandparents. They learned that *only chiefs* and their *intended heirs* attended feasts and that open invitations to the whole community were initiated only in the twentieth century. But even those who today do not attend feasts are, upon death, usually subject to the traditional obsequies of a settlement feast, no matter what their social standing.

According to the judge’s logic on this point, if this figure of 23.8 percent pertained to the Canadian electoral system, this system could not be considered a central institution in society because one-quarter of eligible voters do not participate in the electoral process – which is indeed frequently a fact at election time – without nullifying the electoral process. Furthermore, while 80 percent of those questioned in the survey may have returned their questionnaires, most of the returned forms were either not answered at all or only partially answered. Out of the 460 questioned about feasting, 390 gave no response. When asked for negative views of feasting, 432 of the 460 expressed no opinion. Similarly, the survey’s reliance on the industrialized, 1950s-type nuclear structure of the family did not allow the figures to accurately reflect the more extensive family ties to feasting, landed territories, river fishing sites, and local social legitimacy.

Regarding continuing land-based subsistence activities in the survey, we find that only 33 percent of families (nuclear) possessed smokehouses (fish and game smoking are joint family ventures, with several households using one smokehouse). Fifty percent engaged in food fishing and 47.6 percent had been engaged in hunting the previous year. Again, as with the feasts, the question of hunting statistics requires contextualizing in order to be correctly appreciated. Normally each village has, and had, specialist hunters

(those selected for apprenticeship as hunters were chosen from among the youth by elderly hunters who closely observed the coming generation). Indeed, traditionally there was a considerable extended family division of labour based on personal aptitude, be it for healing, weaving, carving, hunting, trapping, dancing, recalling oral history, trading, negotiating, or martial defence. In the court case, much was made of fur trapping as a central part of indigenous life. The survey figures showed that only 8.7 percent maintained traplines, but by the time of the survey, due to the international anti-fur lobby, the fur market had almost collapsed. While I worked in the Gitksan and Witsuwit'en territories, the Hudson's Bay Company closed down its Canadian fur branch after three centuries of trading. Its Hazelton warehouse is currently a cappuccino bar.

The scanty figures also showed that 51.6 percent of the respondents had received Aboriginal names, 66.7 percent had learned their Aboriginal language at home, 61.2 percent used this language at home, 30.6 percent taught the family oral history and knowledge of crests at home, while 47.7 percent knew their ancient narrative histories, songs, and dances. These figures from this questionable survey indicate support for my own findings as to the vitality and ongoing nature of Gitksan and Witsuwit'en ways of life, but, like the negative "facts," they count for little since the survey was so incomplete.

In relation to this undisclosed survey, and to my methods of work (document reviews, participant observation, interviews, incorporating observations and data from subsequent questioning of informants [and doing so directly into my growing report instead of compiling diary notes as one does when writing up the data far from the field, usually at a university]), I was characterized by the judge as duped and compromised and, as a researcher, less than searching, dispassionate, and objective.<sup>5</sup> In fact, I had the dubious honour of being cited in United Nations subcommittee documents on indigenous peoples' rights as the anthropologist whose testimony was rejected in a court of law because he admitted to subscribing to the American Anthropological Association's Statement of Ethics (which, at that time, contained a proviso that it was unethical to engage in activities detrimental to the well-being of those studied) (see Daly and Mills 1993).

Of course the qualities of icy objectivity, judicious dispassion, and equanimity are integral to both the bureaucracy and the academic and scientific professions. They are part of our society's ethnography, part of its system of myths and beliefs, and are integral to our higher education in virtually all fields. Both the bureaucrat and the social scientist operate in situated practice within an actual society and culture complete with a habitus that is coloured by the partisanship of the field of forces therein (although this is generally unacknowledged). As I see it, most of the social science professionals involved in *Delgamuukw* were to a considerable degree dispassionate and objective in the way they worked with the available data.<sup>6</sup> We all strive

for dispassion and objectivity before the facts, but this is never done in a non-partisan way, whether the research and scholarship is pure, applied, or subject to litigation. We are all of us situated in a stratified society and, in order to transcend this actual partisanship, we rely upon the discipline of our professionalism. If we are honest and self-reflective about our own upbringing, education, and habitus, we all have to admit that, while we can present rigorous objective findings, these are always presented to a partisan world, as Bourdieu (1999) has shown so starkly.

The nature of the beast is quite different from forensic evidence, where opinions have far less to do with the contextualized world of social relations, although even here the “objective facts” are assembled and defended according to one’s own professional stake in the forensic field. But I do not mean to imply that I ignored or distorted facts that did not accord with the clients’ case. I strove to work professionally – paying attention to documentation and consistency of available information – for my clients (the plaintiffs), and I did so openly on the witness stand in front of not only the legal profession but also my professional peers. Social scientists working openly or behind the scenes for the defendants in this case were equally advocates for their clients, but, being less honest about it, and holding views less inimical to those of the judge, they avoided being chastised for the same. Indeed, some of their views, familiar in terms of commonsense skepticism towards other cultures, were incorporated, without attribution, directly into the Reasons for Judgment.<sup>7</sup> These opposing views were accepted by the court without question, partly, I submit, due to their conformity with the colonial mentality of “us and them,” and partly to the daily habitus and doxa of the court, where decontextualized documentary evidence is privileged over the contextualized information of the empirically rooted anthropologist, archaeologist, or historian.

As Ray (2003, 263) has stressed, the counter-opinion given by the defendants relied upon pre-land-claim ethnographic work, partly because researchers for the defendants would not have been welcome in the communities of the plaintiffs. The work of those who did fieldwork among the Gitksan and Witsuwit’en was considered, rightly, to have a purposeful objective: to advance our understanding and put our findings at the disposal of the communities studied. This was something that, in the eyes of the court, made the plaintiffs’ research “less objective.” But much of the earlier research was problematic as well. When these apparently less purposeful studies were used to support courtroom arguments, especially as analogous examples from other First Nations ethnographies, their respective contextual purpose was ignored. These ethnographies usually had purposes very different from those pursued today in an era when the issue of Aboriginal rights is a major theme not only in litigation but also in relation to social theory. Our body of ethnographic knowledge changes and develops with the pas-

sage of time. Ray makes this point clearly by citing the experience of Alfred Kroeber testifying before the US Indian Claims Commission of the 1950s. Kroeber “noted that most of pre-claims anthropological research had been oriented to salvage or cultural-element distribution surveys. This work had emphasized material culture, mythology and religious beliefs; it had paid little attention to native economic systems, political organizations, or local tenure practices” (Ray 2003, 261).

I would add a point here. North American anthropological discourse of earlier decades tended to use ethnography to provide apt examples in ongoing ideological debates. Such debates raged over issues such as race and intelligence, biological versus social determinism, the position of women, and the deterministic power of capitalism versus other forms of socio-economic life. There are many examples, but I want only to raise one here. I select this example because the defendants in *Delgamuukw* abstracted features from both sides of the ethnographic debate in question. They used these features, in a decontextualized manner, to support their arguments that, prior to European contact, there were no forms of indigenous exchange or land proprietorship in the territory that became Her Majesty Queen Victoria’s Colony of British Columbia.

The debate in question dates back to before the Second World War. In reaction to the “communism of living” that Morgan (1965 [1881]) described among the Iroquois and other Native Americans, Frank Speck (1926), and others such as Robert Lowie (1936), Irving Hallowell (1943), and Loren Eiseley (Speck and Eiseley 1942), attacked the view that “free land-holding has generally been thought typical of primitive man.” This, the Morgan view, gained its ideological colouring by being adopted by Friedrich Engels in *The Origin of the Family, Private Property and the State*. On the basis of Morgan’s findings, Engels argued that, in the course of human history, there was a social and historical evolution of proprietary rights from the collective and the matriarchal to the individual and the patriarchal, and that only a communist revolution could reassert gender equality and collective social action and ownership. Speck used his ethnographic work in Canada’s eastern subarctic region to argue for the indigenous existence of individually owned family hunting territories. Eleanor Leacock (1954) challenged Speck’s argument on the basis of her ethnographic work among the Innu (Montagnais-Naskapi) and her ethnohistorical work in the archives. Her conclusion was “that prior to the influence of the European fur trade, the Labrador Indians had owned their lands collectively. Furthermore, fieldwork, plus a re-examination of reports by Speck and others made clear that even after the Montagnais-Naskapi became dependent upon fur-trading, it was not an individual’s right to land as such that was recognized, but only the right to *trap* on certain lands. People could hunt, fish and gather food, birchbark and other necessary goods where they chose” (Leacock 1981, 31).

Leacock was challenging what she considered a privileged, male, middle-class approach that saw the world's cultures in the image of their own "eternal," and not historically specific and hegemonic, culture, ideology, and habitus. This debate extended through the McCarthy era in the USA, a period when women were being removed from the wartime economy. It was a time when anti-fascist common front sympathies for the socialist camp were being suppressed, particularly in the USA, in ways reminiscent – as Arthur Miller reminds us in his play *The Crucible* – of the witch trials in seventeenth-century Salem, Massachusetts.

Subsequent research, partly in relation to land rights politics and litigation, has revealed that in the region of the eastern subarctic, individual family heads, while not "owning" land in the Western sense of individual freehold, were nonetheless responsible for "managing" and "stewarding" the resources on a given tract of land and for supervising harvest levels (Feit 1969, 1973; Sieciechowicz 1986; Tanner 1979). Although they also controlled commercial traplines on these territories, these family heads appeared to have had responsibility as "keepers of the game" (Martin 1978); that is, they managed the sentient bio-mass that was not part of the cash economy. Bishop (1986) and Morantz (1986) have also argued that this stewardship extended back at least into the earliest documentary evidence of the seventeenth century.

Land rights movements developed in the 1970s and since. Leacock, too, was involved in such projects on behalf of First Nations plaintiffs. The new Aboriginal rights climate has given rise to a new emphasis on those aspects of indigenous land tenure that most closely resembled private, jural proprietorship in the wider Canadian society. Studies of land management and collective ownership have proliferated as part of the climate of the times. Today the research continues and a number of scholars, perhaps in "the spirit of the gift" that, like debate and criticism, is part of the advance of scholarship, call for synthesizing aspects from both sides of this earlier debate in order to better approximate ethnographic reality in light of current knowledge. (See, for example, Berkes 1986; Mailhot 1986, 1999; Scott 1986; Sieciechowicz 1986; and Tanner 1991.)

The land claim process itself has generated and propelled into existence new findings. It has helped expedite, refine, and clarify earlier research findings and concepts. Predictably (from a litigious perspective but ironically in terms of Leacock's own "standpoint of knowing") in *Delgamuukw*, the provincial government's defendants emphasized arguments from social science and history that privileged the fur trade land tenure demonstrated by Leacock. Simultaneously they ignored the existence of the incipient in situ capitalist-like relations found by Speck. Leacock was thus used in court to bolster an argument that no land tenure system existed prior to the influence of Europeans and their trade.

Ray (2003) outlines similar developments arising from the interface between anthropology and the courts, both across Canada and in Australia. He finds similar processes at work in Aboriginal Australian land rights cases from *Gove* to *Mabo* and the cases arising from the struggle over Hindmarsh Island in South Australia. In light of historical research, he concludes:

Thus, the courts, necessarily one of the bastions of positivism, face an ever more difficult and frustrating struggle in their attempt to make such differentiations and deal with the fluid nature of cultural/historical evidence. Canadian Supreme Court Justice J.J. Binney highlighted the problem in 1998 in the course of rendering his decision in the controversial *Marshall* case. He wrote "The law sees a finality of interpretation of historical events where finality, according to the professional historian, is not possible. The reality, of course, is that the courts are handed disputes that require for their resolution the finding of certain historical facts. The litigating parties cannot await the possibility of a stable academic consensus." (Ray 2003, 272-3)

As an anthropologist who has been involved in such cases, I contend that our professions would be better served, and perhaps in the long run also our clients and the law, if the courts would grapple regularly with the current state of knowledge in various fields of expert opinion. In other words, it would be healthy for justice if the courts risked grappling with those state-of-the-art dialectical, open-ended, and situated expert knowledges that are offered up for consideration in the courtroom. I submit that this is a healthier approach to justice than trying to turn the profession of history or anthropology back fifty years (or more) and conforming to the outdated "necessary positivism" of the courts.

At the end of the day the judge chooses to ignore the charges of advocacy laid against whichever side makes the most coherent evidentiary sense. Given this situation, and the reputedly strange and complex nature of alternative cultures, oral history, and recent ethnography (that which has not yet achieved status as a historical document), these social phenomena are often given short shrift in courts of law. As one observer has noted:

Anthropological opinion finds that jural arguments have a pronounced colouring of ethnocentric authority to them, aspects of which are seen at work in a striking manner when the Western court system is dealing with other cultural traditions and other legal paradigms. Anthropologists who have functioned as expert witnesses in court cases on aboriginal rights have been confronted with the legal profession's conceptual limitations and its self-ascriptive opinion that their concepts have a kind of universal and authoritative standing, to the effect that it has in some cases made

cultural translation a nearly insurmountable task. (Thuen 1992, 137 [my translation])

### **Multivocal Culture**

As an actor in the land claim process, I was engaged in a set of social practices that spanned the worlds of anthropology, history, natural science, law, current politics, and everyday domestic life. I was also a neighbour to the plaintiffs and to the non-Aboriginal residents in the region. The ethnography was not only an individual production: it was socially constructed, socially constrained, and socially contested. Indeed, I came to see the process of consensus and discourse in the social sciences as analogous to that of a Witsuwit'en or Gitksan feast. In the feast, the point of view presented by the specific host family is hooked into, and tested against, the experience, interests, and point of view of the guest families and the wider society. In this process, for all its partisanship, the truth is gradually validated and/or repudiated. Social validation, whether in the sciences or on the potholed roads of "Indian reserves," involves a long and often slow process of assessing conflicting knowledges marked by ideological positions and criss-crossed by the stamp of class, ethnicity, gender, age, profession, and the many trajectories of social discourse. Are the discursive social practices for establishing "scientific facts" in general so very different?

With respect to the substantive issue of land, the discourse between indigenous peoples, the state, and the intermediaries has a long history. Indeed, this discourse goes back to the debate in Valladolid in 1550 between the priest from Chiapas, Bartolomé de Las Casas, and the philosopher of the latifundists, Juan Gines de Sepúlveda (Berger 1991, chap. 2). Although the Indigenes did not have their own voice in 1550, a little over a century later, in Iroquoian territories, they had many silver tongues. Thanks to the records of Benjamin Franklin we have many of the speeches of indigenous leaders in the 1700s who entered the discourse in defence of their rights to North America, which they called the "Turtle's Back." While government printer for the Thirteen Colonies, Benjamin Franklin published transcripts of "Indian treaty" processes in the pre-revolutionary British colonies and thereby preserved the words of some very eloquent indigenous leaders. One of the articulate speakers of that era was Onitositah (Corn Tassel), who had the following to say during his people's (the Cherokee) peace treaty (1777) with the government of the recently declared United States of America:

Let us examine the facts of your present irruption into our country, and we shall discover your pretensions on that ground. What did you do? You marched into our territories with a superior force ... Your laws extend not into our country, nor ever did. You talk of the law of nature and the law of nations, and they are both against you.

Indeed, much has been advanced on the want of what you term civilization among the Indians; and many proposals have been made to us to adopt your laws, your religion, your manners and your customs. But we confess that we do not yet see the propriety, or practicability, of such a reformation, and should be better pleased with beholding the good effects of these doctrines in your own practices than with hearing you talk about them ...

The great God of Nature has placed us in different situations. It is true that he has endowed you with many superior advantages; but he has not created us to be your slaves. *We are a separate people*. He has given each their lands, under distinct considerations and circumstances; he has stocked yours with cows, ours with buffaloe; yours with hog, ours with bear; yours with sheep, ours with deer. He has, indeed, given you an advantage in this: that your cattle are tame and domestic, while ours are wild and demand not only a larger space for range, but art to hunt and kill them. They are, nevertheless, as much our property as other animals are yours. (Williams 1921, 176-8)

Once again, more than 200 years after Onitositah's words, the plaintiff chiefs in *Delgamuukw* viewed the case as a tribunal for carrying forward the same discourse, the same struggle to defend their land and renew their demands for recognition of their identity and rights as "first-comers." In April 1988 Simoogit Gwisgen (the late Stanley Williams) of the Gitksan Gisk'aast Clan, addressed the land question and the issue of cultural persistence and legitimacy. He "added on" to what his Cherokee and Iroquois predecessors had said:

Each time our people use our law, they make it stronger, and it still goes on today. We never deserted our grandfather's seat, and we never deserted our land, our territories. It's still the same today. Today the government wants to take all this away from us, and they want to take the laws of our people, of our ancestors, and they want to break our laws today. I don't think they could do this, because it's been passed on from generation to generation, and we've had this law for thousands of years ...

When a grizzly bear gets into the provisions of another person, then he eats it up. And when the owner comes back, then the grizzly gets mad – instead – gets mad at the owner. And that's how the government is treating us today concerning our territories. (Stanley Williams, Commission Evidence, *Delgamuukw*)

The field in which this discourse has been unfolding through the generations contains enormous gaps between the hegemonic sanctioning of one point of view – that of the technologically superior land-takers – and the local knowledge and sanctioning system of those whose land is being taken.

The playing field is not level, and thus the interlocutions often sound like monologues. In North America the anthropologist with a foot in one camp, and a toehold in the other, has a long history (from Lewis Henry Morgan on) of trying to fill an intercalary role in this discourse. The chapters that follow are but one small part of this lengthy tradition; however, it is first crucial to situate them within both the general field of hunter-gatherer studies and the literature on gift-exchange societies – categories that embrace both the Witsuwit'en and the Gitksan.

### **Foraging a Future**

Recent debates concerning the temporal limitations of hunter-gatherer ethnographies and their questionable purity, and the limits of their use as rough analogues for social formations approximating human social origins, have, from one side, tended to be argued in terms of stationary snapshots of reified social entities. By virtue of the fact that classical forager bands have had interactions with agriculturalists and traders for considerable lengths of time, this position argues that the authenticity of earlier ethnographies and the contours of the hunter-gatherer social entities therein are, at best, historically specific and, at worst, subjective creations. Either way, they have been considered of little utility for comparative or evolutionary studies (Wilmsen 1983; Schrire 1984; Headland and Read 1989; Wilmsen and Denbow 1990).<sup>8</sup>

Some scholars regard forager bands, by virtue of their contact with more complex social formations, as having lost their cultural virginity, and they view them as “soiled goods” barred from polite society and unsuitable for donning the feathers of authenticity. Often such groups are considered to have no identity apart from that of faceless clients of the more complex social entities with which they interact. For instance, Jolly (1996) argues, in an either/or manner, that the dynamism of San ritual practices and rock art derives from surrounding agriculturalists rather than having either San origins or shared origins with interactive neighbouring peoples. There does not, however, seem to be conclusive evidence for pure origins among either the San or the cattle-keepers. This line of reasoning affirms the necessity of a close reading of historical context, yet its own epistemology is frequently a non-relational, non-processual historiography that replaces a classic forager snapshot ethnography with a colonially inspired snapshot, this time of peoples who are decultured subalterns to more sociologically complex peoples.

The emphasis on “all-or-nothing” synchronic social identities has led some researchers to consider the whole field of hunter-gatherer studies to be on the brink of extinction. This position rests upon the radically transformed way of life and outlook of descendants of earlier informants who were foragers (arguments outlined by Lee 1992 and, in more alarmist fashion, by Burch 1994). Perhaps the tempo of social change among hunter-gatherers is

such that social scientists, enmeshed in globalizing social processes, see only the discontinuities between post-hunter-gatherers and their foraging past. Perhaps they do not see the distinctive and flexible nature of their interaction with the wider social forces or the ability of the old culture to requicken self-identity in current practices that are often responses to international social and economic shifts. Furthermore, many may forget to recognize the need that postcolonial nation-states have to keep alive the myth of noble savages as a measuring stick of stately advance and development (Francis 1992). The present velocity of change blurs the vision of what is, was, and will be the hunter-gatherer identity (Lee and Daly 1999, 1-19).

But beyond this there is a problem with theoretical concepts that substantiate features of dynamic social relations by using static nouns like “forager” and “hunter-gatherer.” Marilyn Strathern (Ingold 1996, 60-6) makes a similar objection to the term “society” when it is treated as a group-like thing that is said to stand opposed to “the individual” and not simply as a designation for social relationships. “Foraging” or “hunting and gathering” run into trouble when they stand for groups instead of for a type of human activity, organization, and social relations. When they stand for a group, the classical “direct appropriation,” “communism in living,” and demand-sharing paradigm comes to the anthropological mind, and of course most hunting-gathering people measured against this paradigm come up wanting. However, the features that the paradigm presents are important and are often reflected in the less pure reality of ethnographies of people who engage in foraging. I suggest below that “foraging” be utilized for those activities, relations, and forms of organizing that approximate those of the classic paradigm wherever they occur, whether in fishing and hunting formations, “indirect appropriation” foraging societies, or even within the periphery of nation-states.

The theoretical crisis that mirrors current geopolitical and economic changes parallels the situation in physics in the early twentieth century, with the appearance of subatomic physics and Heisenberg’s uncertainty principle, which was so inimitably described by Bertrand Russell (1985 [1955], 411): “Nobody before quantum theory doubted that at any given moment a particle is at some definite place and moving with some definite velocity; the more accurately you determine the velocity, the less accurate will be its position. And the particle itself has become something quite vague, not a nice little billiard ball as it used to be. When you think you have caught it, it produces a convincing alibi as a wave and not a particle.”

If we keep the metaphors raised here for a moment, it might be argued that snapshot “particle” views of small-scale anthropological groups reflect general trends in recent geopolitics, wherein previous general historical “us-and-them” synchronicities are viewed as slices of time. One example is the timespan of mercantile capitalism in the societies generally studied by

anthropologists. In many such societies “peace” was imposed on the locals by the metropole countries (whose forces, conversely, tended to wage wars on rival colonial powers). In such conditions, anthropological ethnographies have portrayed relationships as discrete, bounded entities, small in scale and often peripheral to the centres of empire.

By contrast, today’s worldwide commodities market blurs both the boundaries and the image of hunter-gatherers, who every day seem to be living “more like us.” We all live in a smaller world where globalization makes space and time omnipresent, creating every *place* as here and every *time* as now, and turning what formerly appeared to be discrete particles into waves. A corollary of this situation is the disregard for boundaries, social distinctions, and those tiresome “othernesses” that hinder the expansion of the market and its local conquests. The situation has gone so far that the postmodernist Jean Baudrillard (1997) laments that the Other is disappeared almost totally into a multiculturally appropriated cosmopolitan generic self. The most apt icon of this self, he says, is the pop star Madonna, who/which is a collage of style without the boundaries and distinctions that are necessary to identify what is authentically rooted from what is not. This post-modern trend is often bleakly construed as all-powerful and as steam-rolling over small social formations and the natural environment.

While the steamrolling is undeniable, we should clearly understand that such processes proceed unevenly, at different tempos, and varying degrees of resistance. Researchers should examine actual conditions carefully before privileging the workings of the international capital market and consigning to the past the “traditional” cultural identity of small peoples. Many small kin-based societies continue to live socially distinctive lives, with powerful senses of the past and future; as such, they challenge and provide alternatives to the processes of globalized commodity exchange and capital penetration (Solway and Lee 1990; Lee 1992). As Feit has pointed out, some anthropologists not only tend to privilege the power of these megaprocesses, but they also tend to disempower the practices and initiatives of hunter-gatherers when they speak of forager ways of life in the past tense<sup>9</sup> and describe their future in the most pessimistic terms: “Anthropological constructions of hunter-gatherers are implicitly and in substantial terms disempowering, for the anthropological models deny the planning and everyday processes of change that are essential to both effective intentional action and to the human role in historical process. In short, we construct hunters who have a past and a momentary present, but who lack a real future, one with possibilities they might set about constructing as social actors” (Feit 1994, 438).

In my estimation the hunter-gatherer concept need not become more exclusive and historically limited; rather, as I hinted above, the term should be broadened to denote a condition or enterprise existing within a variety

of social formations. This is particularly apt among other small-scale kinship aggregations. What comes to mind are those groups whose traditions include having engaged in regular – or under certain extended circumstances, a modicum of – foraging activities and foraging social organization, even though these societies may combine these activities with other forms of economic activity. In some cases these peoples engage in swidden agriculture while hunting and gathering, be they in the Americas, South and Southeast Asia, or Africa. In other cases they combine pastoralism with hunting, as in Northern Eurasia and Africa. Others also combine foraging with agriculture *and* pastoralism as in South Asia, and today, many former foragers also combine hunting, gathering, and/or fishing with wage labour and stints of urban migration, as is the case with the Gitksan and Witsuwit'en. Foraging should not be viewed as something carved in granite. The Mikea of Madagascar, for instance, have been hunting and gathering for over a century, after fleeing to the forests, away from a more horticultural existence marked by colonial war and internecine strife (Kelly, Rabedimy, and Poyer 1999, 215).

Broadening the scope of foraging in this way gives researchers a fuller palette with which to paint the wide range of foraging processes and organizational forms. These can be studied in greater complexity, whether in relation to ecology and economy or in relation to culture and social relations. They deserve more nuanced understanding of the shift in forms of sociation, from predominantly foraging bands to broader organizational forms controlling stable natural produce or increasingly devoting energy to raising plant or animal domesticates. This breadth of scope is also useful for understanding the nature of present-day foraging and helps release us from the problems of the billiard ball particulate view of small social formations.

A complementary approach to what I suggest here is being developed in relation to forager-farmers in Amazonia, where research has been inspired by the debate as to whether or not foraging has been viable in the Amazon without agriculture and whether or not foragers there are “the real thing.” This research shows that Amazonian foragers create biotic niches by combining various forms of human actions and consciousness to alter the patterns of natural fruition in the surrounding environment. This enables people to live from the land by enhancing the utility of nature without actually converting to full agriculture and dominating the landscape (Balée 1989, 1992; Posey 1983; Rival 2002; Sponsel 1989; Yen 1989). In a word, this is a way of looking at the human imprint on an environment that supports hunting, fishing, gathering, and some gardening. Most if not all hunter-gatherers studied by anthropologists carry out some environmental alterations by their very presence on the land and by their “managerial” activities in relation to the biogeoclimatic conditions, as Don Ryan (Masgaak) shows in his Afterword to this book (see also Bailey 1980; Ellen 1988; Fowler 1996;

Gamble 1986; Haeussler 1986; Gottesfeld 1994; Thomas 1990). Such areas of inquiry help expand knowledge about the continuum between foraged/extracted produce and domestication.

This general outlook – that is, regarding foraging and domesticating activities as two of the possibilities in which small-scale social formations might engage – relies on a relational and cumulative concept of historical development. (By “simpler” and “more complex” I mean something like Woodburn’s [1980, 1982] distinction between a greater emphasis on direct appropriation from nature versus a greater emphasis on seasonally shared appropriations and a distributive emphasis on sharing.) In other words, the more complex does not always eliminate the simpler but, rather, may incorporate it, modify it, and, in turn, be modified by it (like Hegel’s classic discussion in *The Phenomenology of the Spirit* about the complex two-way relationship between master and slave). Indeed, degrees of encapsulation or, at a minimum, some form of periodic interaction have marked the last several millennia of relations between hunter-gatherers and their more socially complex sedentary neighbours. On the Indian subcontinent it appears that agriculturalists and foragers have shared territories and interacted for the past 4,000 years (Morrison 1999; Misra 1973; Possehl and Rissman 1992). In northeastern North America, along the edge of the Canadian Shield, which is the limit of horticultural possibility in Canada, horticultural Iroquoians – themselves partial foragers – interacted with Algonquian hunters over the past millennium (Trigger 1962; 1963; 1972, 80-1; 1976, 344). Examples occur in many other regions. Along the northern portion of the Northwest Coast and the adjacent Cordillera, oral narratives (Barbeau and Beynon n.d.) and archaeology (Fladmark, Ames, and Sutherland 1990, 239) suggest two millennia of periodic regional interaction between those who were primarily land-based hunters and those who were primarily marine hunters and fishers. These peoples conducted their interactions by gifting, feuding, trading, bartering, and intermarrying.

This long-term and extensive interaction between small-scale producers possessing different social complexity probably reinforced the distinct cultural identities of the various types of participants and gave variety to the goods used in everyday life. This endemic interaction with Others is a central theme of Eric Wolf (1982, 18), who castigates the anthropological preoccupation with the search for pristine small societies, which, in reality, have never been pristine, but rather have always been formed through social interaction – locally, regionally, and even internationally. If this were not the case, then one could assume that, at least in regions of the world where foragers have enjoyed many centuries of trade and commerce with a wider world (as in the Indian subcontinent), such small groups would long ago have lost their distinctive social and cultural identities. Long ago they should have become alienated from their close kinship with the forests/

jungles and all the forms of life and power identified therein. It is not axiomatic that the simpler entity becomes culturally obliterated by virtue of its relations with, or knowledge of, a broader, more inclusive and complex social formation.

In the 1960s Turnbull (1965, 1968), and more recently Ichikawa (1978, 1996, 1999), examined the Mbuti of the Ituri Forest. These people were associated both internally and externally with foreigners and neighbours. Such works have gifted hunter-gatherer studies with vibrant examples of the enduring and flexible nature of forager-type social relations, which existed side by side with participation in other, wider social relations. Much of pre- and protocontact Iroquoian culture (based on horticulture, fishing, and hunting) demonstrated that foraging and horticultural activities existed, as it were, under the same longhouse roof and were exemplified by reciprocal relations between the women (who produced, prepared, and stored the crops) and the men (who fished, hunted, bartered, traded, and raided) (Stites 1905; Daly 1985). This is a relational approach to the definition and description of hunting and gathering rather than an essentialist categorizing approach wherein the presence of one set of subsistence activities precludes the existence of the other.

The same approach can be extended to the study of capital penetration into hitherto indigenous forest-based social relations. If we assume, and can gradually document, that foragers have long been defined in the context of their relations with non-foragers and non-foraging activities in general, then we should be more cautious in privileging those with more complex social organization (with whom foragers interact), even when this involves the expansion of capitalist markets into the forests of the world. We should not look at the market as a simple subversion of tappers and trappers (Murphy and Steward 1968); rather, we might try to determine the ease with which foraging societies adapt to new opportunities and limitations. To what extent are old customs and institutions abandoned in favour of new procedures? And to what extent are they maintained and reformulated?

### **Complex Hunter-Gatherers**

Researchers in the field of hunter-gatherer studies have generally consigned the peoples of North America's northern Pacific coast (and those of the adjoining cordilleran hinterland [e.g., the Tsetseut, Tahltan, Interior Tlingit, Gitksan, Witsuwit'en, and Chilcotin]) to the role of problematic anomaly, the so-called complex (Price and Brown 1985; Burch and Ellanna 1994), affluent (Lee 1976; Koyama and Thomas 1981), competitive (Hayden 1994), and delayed-return (Woodburn 1980) foragers. In the literature, the major contribution of such peoples often seems to be foils for the "classic" ambulatory small-group hunter-gatherers in Australia (e.g., Spencer and Gillen 1927) or the African foragers of the Ituri Forest (Turnbull 1961, 1965; Ichikawa

1978, 1996, 1999), the Kalahari (Marshall 1976; Lee and DeVore 1976; Lee 1979, 1990; Biesele and Weinberg 1990), and the savannah near Ngorongoro (Woodburn 1970, 1979, 1982). When viewed from afar, peoples like the Witsuwit'en and Gitksan are assumed to negate notions of hunter-gatherer egalitarianism, "communism in living," and to replace the centrality of social fluidity and sharing with rigid hierarchy, slave-taking, agonistic gifting, and other acts of double-edged reciprocity. As stressed above, "simple-complex" polarized distinctions enter our discourse as synchronically conceived "snapshot" patterns of socioeconomic activity and association rather than as entities in motion, process, and interaction within a field of relations associated with both similar and different other entities and temporalities.

The peoples of the Northwest Coast are frequently considered to be complex hunter-gatherer-fishers by virtue of their storage of salmon and other species, their semi-sedentary existence, social differentiation, and forms of association. However, what is not as obvious is the fact that in the higher latitudes of the northern hemisphere, apart from perhaps the Arctic coast, most species sought by local human populations are limited to short, seasonal availability, with much more biodiversity available in the late spring, summer, and autumn seasons than during the winter. As a consequence, most of the peoples of this region have probably always been delayed-return foragers – due not to the enormity of resources available or to their "complexity" but, rather, to the need to tide themselves over until the next species can be procured for seasonal human use. Salmon and berries, dried and smoked, did of course fill the gaps when there were no other species available, and the hundreds of storage pits in the old village sites along the Skeena River of British Columbia attest to the delayed-return nature of distribution and consumption in the region.

However, a stranger in the region two centuries ago would probably have noted that the degree of centralization and hierarchy seemed to increase as he or she moved from the cordillera down the rivers and out to the estuaries and islands on the coast. Yet the inland Gitksan and, to some extent, the Witsuwit'en had a protocontact (post-1492) past characterized as somewhat competitive, reciprocal, hierarchical, and status-seeking, and they had a seasonal sedentarism with an active village life for much of the year. (The Witsuwit'en gathered in their main village only during the summer fishing season and telescoped much of their feasting into this season.) However, even the contemporary fieldworker observes that features of foraging remain part of the social life of these peoples. This is seen in their respectful but friendly attitude towards the natural surroundings ("our supermarket," "our real home"); it is witnessed in the belief in the sentient nature of material surroundings ("the spirit of the land," "the breath of the ancestors"). It is also witnessed in distrust and dislike of enduring leadership that extends

its authority beyond the scope of the descent group. Moreover, it is evidenced in the presence of internal sharing and giving of foodstuffs, the encouragement of individuality, the development of special powers, and the independence in the young. It is seen in the considerable fluidity of political alliances, including repeated attempts to resolve disputes by seeking consensus, and a tendency to vote with one's feet when tough decisions are to be made.

### **The Gifts of Nature and the Nature of Gifts**

Northwest Coast peoples are well known in anthropological history – from the journals of Captains Cook, Vancouver, Malaspina, Galiano, Caamaño, Alcalá, and Valdés (Gunther 1972; Suttles 1990b) as well as from the ethnographic writings of, among others, George Dawson, Aurel Krause, G.T. Emmons, Johan Jacobsen, Harlan Smith, Edward Sapir, Franz Boas, Marius Barbeau, and William Beynon (Suttles and Jonaitis 1990). The peoples of this region are known to be well-gifted by the bounties of nature. They are known for the complexity of their foraging-based social order, their plastic arts, their ceremonialism, and for their public form of gifting. They have given the anthropological world the phenomenon of the “potlatch” – a ceremony at which the apparently wanton giving of gifts shocked and stunned the first wave of Europeans and inspired the second wave to outlaw this practice in 1885; this so-called Potlatch Law was not rescinded until the 1950s (Laviolette 1961).

Gift-giving and feasting, practised by the Gitksan, the Witsuwit'en, and classical Northwest Coast neighbours like the Nisga'a, Coast Tsimshian, Haida, Tlingit, and the Wakashan and Salishan peoples further south, are central features of the region's cultures. They attest to the way that the horizontally organized social relations of foraging intersect with vertical tendencies towards hierarchy. For much of their history – barring the heyday of the sea otter trade between the 1780s and 1820s and subsequent decades of resource frontier market relations before the establishment of “Indian reserves” – feasting demonstrated a loose familial structure of power and authority. This authority was diffused through reciprocal gifting between the clans and their respective Houses, between villages, and even sometimes between neighbouring peoples.

The agonistic giving by prominent figures in this region during and after the maritime fur trade was recorded by Franz Boas and, following the publication of Marcel Mauss's eloquent essay, “The Gift,” has engendered a century of debate concerning the comparative nature of gifting and lending, giving and investing. It is unfortunate, however, that the “potlatch” aberration has come to stand for “potlatch feasting” since what the people call feasting (then and now) appears generally to be, and to have been, more subtle in both conception and practice, and less overtly steeped in political economy.

Building on insights recorded by Mauss, Bourdieu (1992 [1977], 4-8) argues that the nature of social interaction in gift-giving kinship societies (in terms of temporal uncertainty in relationships) differs radically from contractual interactions found in state societies. In the former, the tempo of interactions is neither predetermined nor fixed, and each act of prestation involves ongoing risk and uncertainty of outcome, thereby requiring continuing social input into the relationship between givers and receivers. This point has also been made by Gregory (1982, 12), who writes: “non-commodity (gift) exchange is an exchange of inalienable things between transactors who are in a state of reciprocal dependence. This proposition is only implicit in Marx’s analysis but it is, as will be seen below, a precise definition of gift exchange.” With contractual relations – the dominant form of interaction in state societies – the result is fixed and settled at the outset of a relationship, in a contractual manner, such as in a bill of sale, a lease, or the terms of a loan.

Gift exchange presupposes what Bourdieu calls *méconnaissance*, or wilful “misrecognition” of the reality of the objective mechanism of exchange (and self-interest). In other words, it presupposes a subtle (if rhetorical) “family-like” intimate relationship between giver and receiver, even though gifts objectively signify not only care, affection, and gratitude but also obligation and debt. Bourdieu argues that too often we neglect the temporal aspect of the gifting process. Reciprocating too soon, or too late, can both have disastrous consequences. Giving a counter-gift on the spot concludes the relationship and puts it on a par with a contractual exchange such as occurs while selling or buying. Lapsed gifts, on the other hand, entail the receiver acknowledging the social superiority of the giver. Moreover, actors in a gifting relationship work on the assumption of “the sincere fiction of a disinterested exchange,” a collectively maintained and approved self-deception, without which symbolic exchange, the medium of culture, could not function. The actors’ habitus shows them to be at once aware of the value of their exchanges and refusing to recognize this awareness. In Northwest Coast feasting, the public disinterest of a recipient masks his or her gratitude and pleasure at having received, in kindness, something of the other. At the same time, it masks the gift recipient’s frustration at being further indebted to the giver.

The lapse of time between gift and counter-gift enables the counter-gift to be seen as an inaugural act of generosity (as well as an expression of gratitude), which is given without calculation. If gifting were locally perceived as a transaction, then it could not exist as gifting. The time interval between gift and counter-gift allows for the coexistence of both calculation and generosity, and leaves the outcome of each initiative as part of an unfolding, cumulative, open-ended relationship. Of similar concern is the spatial element in reciprocal relations. Sahlins (1972, 199) finds a comparative

trend towards negative reciprocity and profit-taking increasing with the decrease in the vitality of kinship relations from the local moiety or village to tribal and international sociological spatial categories. Ingold (1986) has refined this idea, showing how negative reciprocity (as demand sharing) can occur at the centre and how positive reciprocity (as barter) can occur at the periphery of consanguinity. One can, however, debate whether demand sharing is negative reciprocity since those who demand a share are equally subject to demand by others and one's continual refusal or inability to share (to always take or keep) makes one increasingly peripheral to the sharing group (Bodenhorn 2000; Macdonald 2000). Similarly, barter at the kinship periphery can often be viewed as relatively out of balance and negative. In general, there is usually a broad trend towards more local gratitude-oriented gifting close to home, and more overt or explicit profit-seeking at the periphery of kinship societies:

The general law of exchanges means that the closer the individuals or groups are in the genealogy, the easier it is to make agreements, the more frequent they are, and the more completely they are entrusted to good faith. Conversely, as the relationship becomes more impersonal, i.e., as one moves out from the relationship between brothers to that between virtual strangers (people from two different villages), or even complete strangers, so a transaction is less likely to occur at all, but it can become, and it does increasingly become purely "economic" in character, i.e., closer to its economic reality, and the interested calculation, which is never absent, even from the most generous exchange (in which both parties account – i.e., count themselves satisfied) can be more and more openly revealed. (Bourdieu 1992, 173)

Bourdieu argues that objective economically oriented analyses, steeped in the assumptions of the social contract, generally ignore this socially constructed *méconnaissance* that is important in many face-to-face interactions, and particularly in societies lacking nation-wide institutions of social control: "In reducing the economy to its objective reality, economism annihilates the specificity located precisely in the socially maintained discrepancy between the misrecognized, or, one might say, socially repressed, objective truth of economic activity, and the social representation of production and exchange" (Bourdieu 1992, 172). From this perspective, northern Northwest Coast feasting embodies a finely tuned customary misrecognition that takes the forms of ceremony, etiquette, altruism, and respect, behind which economic and political calculations are set in motion. Only under extraordinary conditions do the latter break out into full view, in the form of the "potlatch," or what Mauss (1990, 7) called "total prestations of an agonistic type." In the agonistic potlatches of the fur trade, and to some extent today in the mid-coast region, the precious items, the coppers, were/are given

aggressively and openly or sacrificed to squelch the status of a rival (see the recent Chief Mungo Martin example below). They were often sacrificed rather than being given to the rival, with the result that the rival was challenged to reciprocate at the same or greater magnitude. Failure meant losing one's public face.

Among contemporary Gitksan and Witsuwit'en peoples, such agonistic frankness is never admitted. The land tenure and the economy of these peoples cannot properly be comprehended without an appreciation of their own understanding of reciprocal relations involved in paying off their family gift obligations, their receipt of counter-gifts, and, in turn, countering these counter-gifts. I place these activities in this order of "misrecognition" since very few matrilineal kin groups in the ethnographic region ever feel free of the deep-seated obligation to reciprocate from their "hearts" and their "treasure boxes." They do not consider that they are initiating gifting; rather, they see themselves as responding to existing social indebtedness, to earlier rounds of kindness received. They constantly feel pressed to give in response to kindness born of friendship, customary kinship services rendered, and material gifts received by their House years earlier (or even gifts unrequited by earlier generations of House members). These are people whose social dispositions have arisen from generations of luring game and fish into their possession and, when successful, giving thanks for the gift of material well-being to the life forces around them. They set up alliances through marriage with other groups whose compliance and interests may not always coincide with their own, and they face the uncertainties of salmon runs, wild produce, weather patterns, gambling risks, and political enmities. Such uncertainties are countered in relational ways, through forms of reciprocity that assume transactions (between people and the life force in each other and in all things) can be undertaken in ways that, while open-ended, engender understandable reactions and standards of behaviour.

The prevalent form of positive reciprocity employed takes the form of gifting and counter-gifting. Actors gift other groups in order to cause social imbalances to swing more in their own favour (which then creates further imbalances elsewhere in the community, requiring subsequent gifting responses). These communities have a heritage marked by a reliance upon one another's goodwill, and, lacking central leadership, bureaucracy, and a police force, they probably could not have tolerated the blatant pursuit of naked economic interest by individual persons or groups. Their *méconnaissance* subsequently took the form of the gift with its built-in temporality. A gift given probes a relationship into life or extends an existing one. What that relationship will become, only time will tell.<sup>10</sup> This relational attitude also extends to human relations with what Western cultures see as a discrete entity that goes by the name of "nature." Among the Witsuwit'en

and Gitksan the land is a gift to a matrilineal group, given by the energetic spiritual forces of that place. The human-sustaining resources of the place are likewise “owned” by the matrilineal group as the result of an ancient chain of gifting between those anthropomorphic forces that populate nature, and their counterparts, the descendants of the family’s first ancestors. The “natural” revelations made, or “gifted,” to the family’s first ancestors are gifts assumed in theory and learned in practice by each generation, and, in the form of family narratives, songs, and crests, they are passed on, or gifted, to subsequent generations. Lands acquired through peace settlements have similarly been legitimized as payments for suffering negative reciprocity and have similarly been incorporated into the sacred family narratives (*kungakh*, or *adaawk’*). The possession of the gifts of nature provides the basis for sufficient prosperity to enable the family, through its talents and its labours, to maintain its name through feasting – the most social and public form of giving.

Most analyses, from Boas (1897; Codere 1966) to Godelier (1999), begin with a tabula rasa situation wherein a free individual decides rationally to accumulate prestige by initiating a round of giving. This appears to have been possible only to a few, and only during the resource frontier days of the nineteenth century (Cole and Darling 1990). However, according to Boas, the Wakashan-speakers of the mid-coast appear to have had a less ascriptive system of kinship statuses and more social possibilities for political entrepreneurship, or “big man” competitive giving, than existed on the north coast. Competitive potlatching and winter dance societies spread north and south from the middle coast as well as into the adjacent Pacific Cordillera (Drucker 1963, 1965). For example, among the Nlaka’pamux Salish of the Fraser Canyon and Douglas Plateau, as Mary Charlie explained to Marian Smith in 1945, people sometimes potlatched “if they were after a big name”; but, as she went on to explain, a mortuary feast was different. It was to honour the dead (M.W. Smith 1945, bk. 4:1, 268 p. 40ff.).

My experience (see also Drucker and Heizer 1967; Roth 2002) indicates that every generation is born into existing obligations that have to be parlayed into a better social situation. Perhaps we should call it social repression, but virtually nobody is in a position to begin, as if they were initiating a new round of giving. Everyone today explains his/her feast-giving in terms of the misrecognition of reciprocating (or “paying out”) for kindnesses (especially the kindness of the community in rallying around at the death of a beloved House member, coming to the feast to cheer up the family and to witness the repairing of the status discontinuities created by the death of a name-holder). I do not intend to imply that such misrepresentation is conscious or that a genuine wave of gratitude does not underlie the conscious sense of indebtedness and need to pay back.

Mauss (1990), Godelier (1999), and Bourdieu (1977, 1990b) suggest that societies marked by the prevalence of gift exchange were, in terms of structural complexity, located somewhere between the realm of “total prestation”/ sharing (that of the classical hunting band perhaps) and the contractual relations of civil nation-state society. Godelier (1999, 160) has suggested that reciprocal gifting has proven important in societies where these relations are limited and relatively internal to kin grouping, and where kinship groups entail the transfer of goods and services in order to seal or renew alliances and webs of indebtedness. These alliances are expressed in idioms of friendship, kinship, and social morality.

What the Gitksan and Witsuwit'en themselves refer to as “feasting,” with its complexity of giving and receiving, paying and paying back, discharging and creating indebtedness, allows for the achievement of status within a framework of ascribed rights and responsibilities associated with a hierarchy of family names. It is a means for *de jure* status to be made more *de facto*. The term “potlatching” is better reserved for agonistic giving in abnormal competitive periods of history. Godelier (1999, 153ff) points out that the potlatch is a highly useful institution in a social formation that does not have a hierarchy of overarching power and polity-wide leadership. In such conditions gifting can serve to channel competition and to create local temporary leaders within the ever-unfolding kinship system. Gifting, of course, is a major feature of social life among the Gitksan and Witsuwit'en. These societies also exhibit an analogous institution that results in limiting the accretion of power: that is, the common practice of patrilocal residence combined with matrilineal inheritance. This breaks up potential blocs of male kin who otherwise would acquire enduring power and authority held by men and their sons. In their role as nephews, sons inherit names and land rights from their mother's brothers and not from the fathers who have raised and trained them to hunt and fish on “foreign,” or paternal, family land.

Annette Weiner (1976, 1985, 1992) has re-examined the giving processes in the Trobriand Islands, along with the body of production and distribution relations. Here, ceremonial givings are an integral part of society, and they include massive labour expenditures by women in the internal, or *sagali*, exchanges central to local social reproduction through mortuary ceremonies. Weiner points out the close bond between brothers and sisters, which is central to reciprocal giving between kin groups. She stresses that it is not strictly groups of men who give women, as Lévi-Strauss, Godelier, and Gregory have all asserted but, rather, groups of kin that give women's labour and uxorial rights to one another while, especially in matrilineal systems, *retaining* rights of geniture. The negotiated gifting of the rights to a woman's labour (in the form of giving a bride), and formerly, at least among the Witsuwit'en and Gitksan, groom service to the bride's family, is conducted not by men who exchange women but by matrons and their brothers. The

siblings leading one such group negotiate with the siblings leading another such group. The sibling bond is certainly strong on the Northwest Coast, even though brothers and sisters are separated by virilocal residence.

Marriage, due to the incest rule, can also be viewed as a form of inter-group and inter-nation gifting (Lévi-Strauss 1969). As Weiner points out, the brother-sister relationship in reciprocal gifting stresses the paradoxical nature of giving. What is it about the gift, she asks, that binds giver and receiver in a manner that is lacking in a commodity transaction? She found that the most powerful gifts in *kula* exchanges are items that simultaneously contain both something that is given and something that is retained by the giver. Because brothers and sisters have to marry out to other clans, villages, and nations, their corporeal transfer is a form of gifting between kin groups, whose members retain rights in, and affections for, their members given in marriage. When a woman is given in marriage her husband's group raises her children, but they inherit from her and her brothers. Among the Gitksan and Witsuwit'en, both spouses are bound to help the other's siblings in their feasts. In other words, the validation of landownership, and rights to esoteric family history, crests, and songs, may be revealed or temporarily gifted to other families (in their narration and performance) but do not really leave the family of origin. These gifts and revelations are facilitated by the giving of large quantities of foodstuffs as well as subsidiary gifts. As Gregory (1982, 52) has pointed out in regard to Papua New Guinea: "The aim of an inter-clan gift transactor is not simply to maximize the number of gifts of a given rank he gives away, but to give away a gift of the highest rank. However, as these usually circulate amongst a small group of big-men, a young ambitious man must begin by transacting gifts of low rank and work his way up the ladder of rank."

In terms of the Melanesian cultures studied by Weiner, the gifts of greatest potency are considered to possess an inalienable essence that renders them distinctively owned by those who made them. They are known as *kitoum* items, and, although they enter into complex geographically and temporally extensive exchanges, they continue to contain the *kitoum* of their makers. While a *kitoum* as a gift may circulate widely through a gifting network or community, there is an invisible thread tying it to its original giver. The intertwining threads of altruism and self-interest implicit in gifting and receiving make significant contributions to the building of community. These threads also extend the political renown of the givers in a social context where the pursuit of "big man" status was conducted most visibly through *kula* gifting. Fundamental to *kula* gifting, but less visible, is the gifting of foodstuffs and craft items in other ceremonialized exchanges during the lifecycle (such as mortuary exchanges). Those who would rise in *kula* exchanges must also acquit themselves well in the giving of gifts at weddings and funerals.

On the Northwest Coast there was no *kula* equivalent. The mortuary feast (Barnett 1938, 1968; Drucker 1963, 1965; Drucker and Heizer 1967; Kan 1989) was, and is, the main vehicle for public, ceremonial gifting. Here too, as across the Pacific in the *sagali* giftings that were integral to grieving the dead of the Trobriand Islands, the more valuable gifts (given by brothers) are supported by public payments to the guests in the form of items of lesser value (produced by sisters). Weiner found the mats, intricately woven by the skilled hands of the women, to be the main items of lesser value that were given in large numbers. Similarly, in Gitksan and Witsuwit'en feasts it was also furnishings made by women that filled this role – fur robes, Chilkat robes, woven rabbit fur blankets, cured hides, fine mats and bark bags, and tightly woven raingear (and later, Hudson's Bay blankets). These items and the more luxurious special gifts made by men, such as inlaid feast dishes, elaborately carved kerfed boxes (the four sides of which are made from one board notched and steamed to form three corners, while the fourth is stitched up with spruce root fibre), carved horn spoons, copper-tipped daggers, slaves, and copper shields called *hayatsxw*, were equally socially constructed extensions of the giver and/or the giving group, marked mainly by emblems from the crest system.

Agonistic giving is documented on the adjacent coast, but the Gitksan and Witsuwit'en elders consider such practices to have been uncivilized, undignified, and infringements of the rules of feast-giving. Probably during the fur trade, regional gold rushes, and early commercial fishing and forest-cutting, some feasts and many of the winter dance ceremonies (see Figure 6) were occasions for vigorous but politically subtle agonistic gifting, or "potlatching," although the chief actors were hereditary chiefs and not self-made "big men."<sup>11</sup> In these mortuary feasts, and those feasts commemorating whole generations of departed kin (see Chapter 2), gifts are to "replace" the deceased, to firm up alliances weakened by deaths. When one dies in the Trobriand system, one's heirs return one's body and subclan property to the subclan in return for gifts. *Kula* exchanges are above and beyond the general give and take of *sagali* gifting but were built materially upon its local social foundation. In a similar fashion the competitive potlatching of the mercantile and colonial nineteenth century was based upon, and constrained by, the kinship status system of legitimacy (see Chapter 6).

In potlatch and *kula* regions, the most highly valued gift objects are often of little apparent utilitarian function. However, these valued objects serve as aesthetically crafted vehicles and symbols of social transactions and, hence, of power. Godelier (1999, 161) lists the qualities of such objects. His first point is that such objects are substitutes for persons. (The oral tradition of the Tsimshianic peoples is filled not only with gifting but also with people exchanged in marriage, whether by good- or ill-will, to strengthen the relationship between groups often socially and geographically distant from one

another.) Godelier's second point is that these objects intrinsically possess psychic powers derived from deities, spirits, or ancestors and believed to be endowed with powers of life and death. Third, as comparable to one another, these highly valued objects provide their owners with a standard of self-measurement in relation to others. All these features resonate in Gitksan and Witsuwit'en gifting.

Among these peoples the most sacred group-defining incidents, as passed down in ancient songs and narratives, have to do with miraculous events that occurred in the past and at specific sites on their territories. These events are made visible in representational and plastic arts as crest figures. The combination and juxtapositioning of crest figures identify those descended from these narratives, the owning group, and the matrilineal clan associated with them. (See, for example, Figures 7 and 8, visual images of crests from Wilps Tenimget/Axti Hiix, as described and explained by Tenimget in his *Delgamuukw* evidence.) These figures and events overlap to an extent with the narratives and crests of certain other Houses and clans, such that a web of oral historical association is woven over the feasting area. Not all crest stories overlap with all others, but there is an outward-extending network of association. Crests have traditionally been carved and painted on talking sticks, house fronts, totem poles, interior house posts, and the illustrious coppers as well as upon virtually all hand-crafted items of domestic and gifting use. The items given in a feast – beginning with the foodstuffs (produced by the House members and coming from its land and fishing sites) and progressing to luxury goods – used to be accompanied by a description of their place of origin in terms of raw materials, labour input, history of the family at that place, and anecdotes about events in which certain feast guests participated at that place. As in the Trobriand Islands, owning is confirmed by giving. What is and was given in feasts is and was the item itself and the goodwill of the giver (a bit of the giver and the giver's family). What is retained is and was the ownership of the miraculous events that occurred on the giver's land and are represented by the specific visual representation of the matrilineal family's crest figures. (Vis-à-vis other clans and villages, that which is retained is legitimate proprietorship, recognized in the narratives of local "jurisprudence." However, vis-à-vis the land itself, this is conceived as a sacred gift exchange between spiritual forces and the ancestors.)

As I have indicated, at the time of contact, common feast gifts were fur robes and rawhide. (This was so obvious to outside observers that there was competition between feast requirements for beaver pelts and the demands of the Hudson's Bay Company and the North West Company traders for furs.) Other feast items were carved and woven works of art, and small items of copper. Slaves and coppers were uncommon luxury goods occasionally used in feast-giving. The fur robes were soon replaced by elk hides obtained

from the south by the fur traders, stroud (woollen trade blanket material), and copper shields fashioned from commercially obtained rolled copper. Pax Britannica put an end to the capture and exchange of slaves. Copper, while available on the Alaskan Copper River and in the northeastern Gitksan territories, was very scarce. The trade copper was made into shield-like entities with a T-shaped skeleton surmounted by a convex “head” adorned with figurative designs. On the coast, these coppers became “the ultimate symbol of wealth” (MacDonald 1984, 133). Garfield (1939, 264) reported that Tsimshian chiefs’ coppers would be broken up after the deaths of their owners, and the pieces, standing for the bones of the deceased, would be distributed to chiefly peers. Halpin and Seguin (1990, 278) state that the designs scored into the copper were not crests and that, since they changed hands, coppers could not stand for kin groups. My Gitksan teachers say that the main figure on a copper was indeed associated with the owner’s crests: “You put your crest on the copper, whatever crest that is for your totem pole is what you put on your copper. Copper is of great value among us” (from a recorded interview made with elder Sophia Mowatt, Wilps Djokaslee, Lax Se’el Frog/Raven Clan, by Jane Smith Mowatt, who generously shared it with me). This indicates that, at least on the upper Skeena, while coppers could change hands (especially parts of the copper), they also contained inalienable qualities of their first owner, who invested them with crests. While the copper increased in value with each new owner, the crest figure that rooted it in a community of origin may also have increased its mystique. Miller (1997, 156) argues that, during the chaotic changes brought about by population devastation and social upheaval with the coming of Europeans, the ownership of coppers for potlatch use “provided a durable constant in the transmission of Tsimshian traditions.”

Perhaps coppers did exist before the fur trade era, but none have been found extant in the postcolonial world (Jopling 1989). But copper, due to its scarcity and its ability to shine in the sun (the creator’s illumination) when burnished, had long been an item of wealth. It is a material that, along with *haliotis* (mother-of-pearl), which was traded from as far away as California, has been used for jewellery and for adorning carved boxes, masks, rattles, talking sticks, and, occasionally, for blades on well-crafted daggers. Copper was considered to be a hard but living substance with a soul. It signalled prosperity, wealth, power, and well-being. Gitksan *adaawk*’s identify copper with high status, such as the Lax Gibuu Wolf narrative of bear mother. In this narrative, a high-born young woman was abducted by the bears for failing to show them proper respect. In order to maintain her honour and self-respect during captivity, she was counselled by Mouse Woman to hide her defecations and to replace them secretly with bits of her copper jewellery (*adaawk*’ recounted by Art Mathews, Tenimget, in his *Delgamuikw* testimony, Transcript, 73).

Copper is also a central theme in the Hlgu lat' *adaawk'* of Wilps Djokaslee (which I have been given permission to cite by Simoogit Djokaslee, Ted Mowatt). The flatulent Hlgu lat' was ostracized for his noisy and annoying farting. He and his granny moved out of the village and lived beyond the boards where the villagers squatted to defecate by the river. There, in that undesirable location, they built a little house and made their own food. One day a copper canoe was revealed to the boy at the riverside. The copper-clad paddlers left the copper canoe on the riverbank and disappeared inland. They did not return. Hlgu lat' approached and found the canoe was solid copper. Inside was a copper box filled with furs and copper items: paddles, chiefs' regalia, rattles, and berry pickers. He took these items and cached them before running to his granny. Together they took all the wealth and hid the canoe. Hlgu lat' took copper and made a shield, on which he scored his frog and eagle crests. He made jewellery and a copper scratcher. He used the latter to pay a slave from the main house to take copper bracelets to the chief's niece, who, intrigued by the gift, came to visit him. They later married, and at their wedding, the bride's brothers paddled up the river to the main house in the copper canoe. The boy used his copper shield "to bring up all the coppers," or to engage in social giving and counter-giving until he became a man of substance. He became *simoogit* (chief), and chose as his name, Hlgu lat', which today would be translated as "Farts-a-lot." In addition to denoting flatulence, it referred to living downwind of the planks that were the village latrine. He took this unsavoury name and burnished it with feast-giving until it shone like copper. Copper had cured both his flatulence and his social ostracism, allowed him to enter the arena of feasting, and invested him with a wealth of social relations. These *adaawk's* in particular show the two poles of value used by the Tsimshianic cultures to make moral and material judgments: copper and excrement.

Thus, symbolically at least, copper appears to have been the gold standard for social status and moral purity, even if its scarcity made it impractical as a currency before the fur trade (see also Chapter 6). Coppers increased in value as they passed through giving and counter-giving. Helen Codere (1990, 369), discussing Wakashan-speakers' coppers from the period of about 1780 to 1930 on the middle coast, writes: "A copper's value was that of the property distributed at the potlatch in which it had last changed hands, and it could be bought only at double that amount, a fact that so inflated the cost of coppers by the 1920s that even when options were taken on them and down payments made, transfers were rarely completed." Here, coppers were broken in rivalry potlatches, "burned" in fires, or "drowned" by being cast into the sea. To protect his honour and avoid acknowledging his inferiority, the main rival felt pressured to treat a copper of equal value in the same way. His actions were guided automatically by the same habitus of reciprocity found not only in relation to gifting and gambling but also in

kinship and affinity. In an interesting modern note, Codere gives the history of the late Chief Mungo Martin's *Killer Whale Copper*, Max'inuxwdzi (see Figure 10). Mungo Martin, a well-known artist and chief, purchased this copper shield in 1942 for \$2,010 from Peter Scow. The missing top section was cut away by guest chiefs invited to do so at the *hamatsa* dance initiation of Mungo Martin's son. The bottom piece was cut away when a rival questioned the status of Mungo Martin's son as a *hamatsa* dancer. During the fur trade era this would have been publicly presented to the rival, who would then be silenced if he were unable to reciprocate with a gift of double the value he had received. But in this case, the cut out piece was publicly withheld from the rival. Chief Mungo Martin silenced his rival by stating that he would not be giving the piece to his critic or opponent, as the latter would never have the wherewithal to reciprocate; instead, Martin threw the cut off piece of copper into the sea when his brother died. (Codere does not say whether or not this was considered an agonistic honour contest with a rival or a family sacrifice to mark a weighty death.) The copper was later displayed as the "coffin" for Mungo Martin's son. Having no other heir, he then donated the reduced-in-size but increased-in-value copper to the British Columbia Provincial Museum (370).

This fascinating information raises questions for those of us not from this culture. What is it that compels a response from, or at least entails a social effect upon, the rival when a luxury item like a copper is either destroyed or publicly precluded from being presented as a gift to a rival? What is it that impels a response from others when a donor selects a recipient in order to refuse publicly to give his luxury item to this selected rival? Why does he publicly consider the potential recipient, who is also an actual rival, to be insufficiently worthy or insufficiently wealthy to receive it properly and to reciprocate later with a gift of double the value of the one received? What impels the donor to deploy his wealth item in an act of destruction? Mauss, in *The Gift*, suggested that destruction was a form of sacrifice to gods, spirits, and ancestors. For me, a more satisfying explanation is given by Pierre Bourdieu (1990b, chap. 6) in the course of his discourse on the temporal aspect of gift exchange, where he argues that gift reciprocation has an in-built tempo and timespan. Here, using his Kabylia fieldwork experience in Algeria, Bourdieu examines contests of honour as competitive activities of *méconnaissance* that are similar to gift-giving in kinship societies.

Whereas in classical egalitarian foraging societies people spend much of their time thwarting and limiting sectional and personal accumulation and stressing sharing and equality, among Northwest Coast foragers a similar amount of time is spent accumulating within kin groups (that are nominally equal to one another) in order to pay off indebtedness in ongoing relations of reciprocity. The pressure to gift in return, to keep up with the Joneses, comes from public opinion, from social, moral, and ethical values:

in a word, from the socially constructed precepts of honour. Honour competitiveness can serve to divert what otherwise might become anti-social and violent competitions over material interests in society into less violently disruptive channels. Honour thus functions as do schools, churches, and the police in state societies – as an effective form of social control. Honour contests are in the same league as are other forms of non-contractual exchange including gifts, compliments, insults, marriage partners, and gambling: “The exchange of honour, like every exchange (of gifts, words, etc.) is defined as such – in opposition to the unilateral violence of aggression – that is, as implying the possibility of a continuation, a reply, a riposte, a return gift, inasmuch as it contains recognition of the partner (to whom in the particular case, it accords equality of honour)” (Bourdieu 1990b, 100).

Challenges to one’s honour are only really properly constituted when they receive a riposte and are aimed at those deemed worthy of playing the game. Only those who are social equals can engage in contests of honour. Honour exchanges are duels, where everything the participant possesses can be risked. Or are they? The donor/challenger, once divested of wealth – or even his life (as in a duel) – still retains his (and it is generally a male game) high standing on the testosterone scale, his renown, and his family’s pedigree and proprietorship rights. These things of immense symbolic value are not only retained following such disbursements (or physical destructions) of wealth but are also extended and multiplied. The social process involved is the antithesis of thrift, diligence, and capital accumulation by “the rational man” and, as such, was a red flag to the colonial authorities of Church and State. The waving of this red flag in such contests of honour led to the outlawing of feasts and other gift-based ceremonies across the land. With such honourable symbolic capital and renown, one may be temporarily poor in goods; however, in the long run, the one who has vanquished his rival by destroying his own wealth is wealthy in terms of those potent social relations that make for further material wealth and exchange.

He who would engage in such a competition with someone of inferior rank would demean himself, and he who would challenge an inferior risks a snub (such as Chief Mungo Martin executed vis-à-vis his rival when he publicly “non-gave” one of the segments removed from “the body” of his “killer whale” copper). Such acts rely upon a widespread code of honour if they are to be an effective element in advancing the flow of social interaction. Likewise, he who stooped to take up a senseless challenge would lose face.

I would add that these dispositions (contests of giving and challenges to honour) reflect the type of production activity common in many foraging societies. Here, given the limited technology, people engage in a relatively light predation of nature’s resources. They do not dominate nature or bend it to their will; rather, they negotiate with it in a conceptually reciprocal

fashion. What we call nature, or the home of raw materials, they consider part of the conscious relational and social world – a world not to be dominated (which, in any case, was not technologically possible) but to be dealt with by gifting, negotiation, gambling, even trickery. Goals remain secret because there is soul-to-soul communication between even the hunter and his game. As Guédon (1984, 141) has noted, the Tsimshianic hunter cannot openly express his intention to kill a bear, because the bear, hearing this, will consider the man to be boasting and will retaliate by killing him. To avoid such a fate, the hunter says he is “going to visit Grandfather” or “the old man of the woods.” According to Guédon: “As a rule, one does not voice anything important in clear terms, for anything which is thought, and, more especially, anything which is spoken aloud, can be reclaimed in some way by other people, human or not. Nothing is hidden. The communication extends from soul to soul across the species boundaries, for instance from human to groundhogs, or mountain goats, or bears. It extends from the living to the dead ... thoughts occurring suddenly, seemingly from nowhere may have been sent by some dead relative.”

These complex foragers gamble on getting the game, the berries, and fish in the right place at the right time, and they make return prestations both to society and nature to ensure that these ventures into risk-taking continue to pay off. The fluctuations of seasonal yield in different parts of the territories make harvesting an indeterminate art requiring flexible, open-ended, and reciprocal responses, which spill over into social relations. During the height of the coastal fur trade, when statuses were being reconfigured (particularly near the trading forts), contests of honour were the underlying basis for agonistic gifting. These struggles to save and destroy “face” were, after all, conducted between those who had to go on living beside one another and interacting in everyday life. They resulted in challenges that, in our own crass culture, would be called cycles of debt and obligation that can provide impetus to social production. In agonistic feast-giving, honour challenges between high-status equals tended to keep open the channels of interaction and to throw down the gauntlet to others in the economy to reciprocate, to assuage honour, or to save face. Not to do this was to lose political influence.

Copper and other precious gifts were supported by an ambient hospitality directed by the women, with great quantities of foodstuffs found on specific territories, the scarce items bartered or gifted up from the coast (e.g., oolichan and herring eggs on kelp), but especially meat, berries, and “grease.” Food gifts were accompanied by crafted items made by the women (e.g., woven capes, bags, inlaid items, and sometimes a Chilkat robe with its complex tapestry weave of mountain goat wool and bark).<sup>12</sup> Other artistic works made by male carvers were also given. The hospitality involved music

and dance, and everything was conducted with etiquette, metaphor, and respect for the honoured guests, whether the hosts' intentions were convivial or agonistic.

Even though I have described the cultural potency of copper as an ultimate gift, I do not consider the high-status gift as being the central aspect of giving in either feasts or potlatches. What counts in gifting is not what is given but, rather, the nature of the giving. Godelier (1999, 67) points out that it is not accidental that the theoretical difficulties with gifting "cluster around the interpretation of the nature of the precious objects" circulating in gift exchanges. He goes on to suggest, along with Annette Weiner (1992), that what really counts is "an immaterial reality present in the objects," composed of ideas and symbols endowing the item with "social power, something that, while given, is never completely alienated from the giver." Among the Witsuwit'en and Gitksan it can be argued that this something is the socially recognized spiritual power in the land owned by the clan or House as revealed, or gifted, to ancestors. The spiritual force of the crests, then, signals the donor family's unique identity and legitimate proprietorship of land and history.

Bourdieu (1977, 194), meanwhile, has taken this further. He writes that what distinguishes the gift from mere "fair exchange" is the labour and attention devoted to the *form*, the manner of giving, which must, in a public way, deny the objective interests of the exchange and symbolically transform it into socially acceptable customs and conventions. Through conventional and often ceremonial forms of giving there is a convenient masking of expressions of direct personal interest. Bourdieu calls such conventional masking of sectarian material interests the deployment of *symbolic capital* as a socially acceptable way to exert power without having to resort to physical coercion. He explains that "symbolic violence" takes the form of credit, confidence, obligation, loyalty, hospitality, gifts, gratitude, piety – all the virtues of a code of honour. The use of symbolic capital in conformity with such a code constitutes a highly effective form of domination and social order.

In the cultures of the Northwest Coast great efforts are made to follow the formal regional aesthetics of designing and making gifts and their presentation (see Figure 9). This attention to design and creation also applied to the other items, which, while involved in public giving, were not themselves given (such as totem poles and house posts). As the late Haida artist Bill Reid never tired of pointing out, the highest morality is craftsmanship. One can give nothing more precious of oneself than something well-designed and well-crafted (Bill Reid, personal communication).<sup>13</sup> Rare and precious materials, painstakingly worked and perfected according to socially constructed principles of formline design (Holm 1965), always adorned the actors and

their goods in the cycles of feasts that radiated out across the region like ripples produced by raindrops on the surface of a pond.

To repeat, house fronts, house posts, talking sticks, chiefly robes, and totem poles are not feast goods, but they are both present in feasts and symbolically at the core of the group's being and proprietorship. Invested with life through the family crests they embody, their presence reinforces the legitimacy of the givers and their current actions of "giving back" (with a little extra). This act also "polishes the ancient name" by expressing goodwill and respect for others, and thereby leaving the House in good order for those who will come after. The crests themselves are considered gifts of power from the life forces in the land to the human beings living on that land. Enlivened by a life force, these gifts originally came from what the European cultures call "the world of nature." They were revealed, or given, to the ancestors of today's House members, and their power is revitalized again and again by their involvement in reciprocal gifting between kin groups. People say they give back in feasts in order to requite the gift of land, history, and legitimacy they inherited at birth.

The public form of giving gifts demonstrates that the giver is giving something of her- or himself. When the self is a kinship group in a "potlatch society" its identity is rooted in a position within a set of positions and dispositions that are in play across a whole region. These positions are geographically distributed and spiritually sanctioned. One (in the sense of the kin group representative) gives of one's ontology in public in order to retain or augment one's social identity within the existing configurations and dispositions of villages, clans, Houses, hunting territories, and fishing sites (and possibly to improve one's standing therein). One does so not as a lone entrepreneur (except in rare circumstances, as we shall see in Chapter 6 regarding the fur trade) but collectively, from within the corporate nature of the kinship system. In the long run, if a House does not requite these gifts, say, following mortuary ceremonies where the father's side has given the bereaved family a present of paying the funeral expenses, this can lead to the hosts eventually being pressed to forfeit land to their affines, their deceased chief's "father's side."

For these reasons much of what follows is presented in the spirit of the gift. The following chapter, an account of a totem-pole-raising feast, provides both a context and a paradigm for the gifting practices and symbols that inform so much of the economy and social life of these two peoples. It is an "ideal type" account, synthesized from several teaching sessions I was given by elderly feast specialists and made actual with many examples from my teachers' own life experiences, as well as my own attendance at pole-raising feasts.

In the courtroom, where this chapter began, both the plaintiff witnesses and their so-called expert witnesses engaged in the risky business of gift-

giving. They made contributions to a community in search of truth, offering public education about an ancient way of life. Hyde (1999) makes a persuasive argument for the importance of gift-giving with regard to building a sense of community in the fields both of art and scientific inquiry. The gifts Hyde has in mind are scholarly contributions to free scientific or artistic discourse (something he acknowledges is rapidly being reduced with large corporations now financing and patenting research). Scholars agree to give (relatively free of vested interests in jobs and funding) their findings to journals, conferences, and university publishers, and to counsel neophytes simply with the aim of improving their status and making a contribution to the development of their field. (Hyde finds that in such endeavours – and, we might add, like any honour-based engagement – status and income stand in inverse proportion to one another.) I submit that the plaintiffs and their experts deployed their respective gifts in the *Delgamuukw* case. They sought to gift the public with particular knowledge and information, and to give what is at the core of all gifts, namely, ideas and relationships. Such procedures are political and moral in nature, and their recompense is certainly of a very delayed nature.

The gifting of one another with ideas, counter-ideas, and something of the personality of their donor is essential to the well-being of any community. In this sense, academic and scientific communities are no different from kinship-based communities. Gifting provides structural strength to the community. However, it has little currency in those fields of human endeavour where gift relations have been superseded by contracts, as in the courts of law.

The contents of *Our Box Was Full* were given to the court and returned unopened, but in order to avoid the breaking of the ring, this book has been prepared and given as a contribution to what, it is hoped, might become a future community of understanding.



FIGURE 1 Totem poles at Gitwangax. When this photo was taken in 1923 these poles were already an established tourist attraction promoted by the Canadian National Railways.

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FIGURE 2 Gitanyow (Kitwancool) in 1910. This village, the Gitksan settlement closest to the rich Nass River estuary of their Nisga'a neighbours and relatives, remained outside the *Delgamuukw* litigation, pursuing Aboriginal rights in its own way. However, Gitanyow people were closely involved with the *Delgamuukw* case, even appearing in court as witnesses for the plaintiffs. The wealth and sophistication of this village is reflected in the complexity of its *xwts'aan* (memorial poles). *BC Archives, No. A-06900.*



FIGURE 3 The paddlewheeler steamboat *Hazelton* nearing its namesake, Hazelton, the inland terminus of navigation during the early 1900s.

*BC Archives, No. A-02004.*



FIGURE 4 Awaiting the arrival of the paddlewheeler at Hazelton/Gitanmaax around 1900. Note the food cache on stilts (to protect the contents against vermin) down the hill below the clan houses. The steamboat landing was located beside the warehouse of the Hudson's Bay Company trading post. Much of this shore was eroded by the flood of 1936, and on the remainder there was a small house in which the author lived during the period of fieldwork.

*BC Archives, No. E-08391.*



FIGURE 5 Cartoon by Don Monet occasioned by a courtroom incident during the trial stage of *Delgamuukw* when Chief Antgulilibix, Mary Johnson, was asked to sing her wilp *limx'oo'y*, or song of mourning, a crucial feature of legitimacy of territorial proprietorship. This “breaking of frame” with courtroom decorum (albeit by the most solemn values of another culture) alarmed Chief Justice McEachern, who stopped her, saying that in matters cultural he had a tin ear. Antgulilibix did not lose her aplomb, and, in so far as the judge was the representative of the Queen of England, she consistently addressed him as “Your Highness” as she vainly sought to penetrate his senses. But alas, they were hermetically sealed, as he had warned, in a thick layer of tin.

*Courtesy of the artist, Don Monet.*



FIGURE 6 Secret society gathering at Hagwilget, summer 1923. Witsuwit'en chiefs queuing to enter the hall known as Owl House. Elders of the 1990s recalled when, as small children, they peeked in the window of this house to snatch glimpses of the secret ceremonies and potlatch gift-giving inside. Among coastal peoples, and the Gitksan, these ceremonies were held in the winter months, but the Witsuwit'en fitted them into the brief summer season when they assembled at the river canyons to fish. This was the type of ceremony that was despised by William Duncan, Robert Tomlinson, and other missionaries; yet, despite negative moral pressure and being outlawed under the provisions of the Potlatch Law, these ceremonies persisted. From left to right: Burns Lake Tommy (Gitumskanist), Round Lake Tommy (Wedexkw'ets), Felix George (Goohlaht), August Pete (Kweese), Jimmy Michel (Samaxsam), and Bill Nye (Mediik).

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FIGURE 7 Totem poles at Gitwangax, with a pole of Wilps Tenimget/Axti Hiix in the foreground that has the distinctive lion crest, or *hawaaw*, on the top.  
© Canadian Museum of Civilization, No. 59698. Photo: C.M. Barbeau.



FIGURE 8 *Hawaaw*, a crest of Wilps Tenimget/Axti Hiix, Pdeek Lax Gibuu, Gitwangax. This crest, or *ayuks*, is also on the top of one of the *wilp*'s poles. The narrative of its origin, and its cultural, jural, and social significance, were explained in the *Delgamuukw* trial by Simoogit Tenimget, Arthur Mathews Jr. This *wilp* (House) had decided to reveal a certain degree of its intellectual property to the court in order to demonstrate to the judge the complexity, the philosophy, and the legitimizing function of the system of *ayuks* (crests) and *adaawk*'s (narratives) of origin. *BC Archives, Accession No. I-028221.*



FIGURE 9 (FACING PAGE, BOTTOM) An example of gift-giving and litigation. This drum by Haida artist Bill Reid was photographed at the artist's summer home in the Gulf Islands of British Columbia. Bill Reid donated drums like this one to the plaintiffs in *Delgamuukw* so that they could auction them to raise funds for the court case. *Courtesy Bill Reid Foundation. Photo: L. Mjelde.*



FIGURE 10 Kwakwak'awakw Killer Whale Copper (*Max'inuxwdzi*) belonging to the late Chief Mungo Martin, which is described here in Chapter 1 and in Codere (1990, 370). Coppers like this were items of extreme value among Gitksan and Witsuwit'en chiefs as well. The "destruction" of coppers has long intrigued social theorists.

*Courtesy Chief Peter Scow and the Royal BC Museum, No. CPN 9251.*



FIGURE 11 “You are on Wet’suwet’en Land.” Information blockade on Highway 16 on Witsuwit’en territory, July 1990. This blockade was in solidarity with the action in defence of Mohawk land at Oka, outside Montreal, and in support of the ongoing land rights case headed by Chief Gisdaywa for the Witsuwit’en and Chief Delgamuukw for the Gitksan.

*Photo: R. Daly.*



FIGURE 12 Anthropologist at work. Participant observation during the information blockade in the Witsuwit’en village of Kya Wiget (Morice-town), July 1990.

*Photo of Richard Daly: L. Mjelde.*