THE CARRIERS OF NO
AFTER THE LAND CLAIMS TRIAL

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I have been thinking about different kinds of announcements. If someone comes up to me and says, "I have bad news to tell you," I prepare myself for the kind of news I have heard before. I know what this news might be; I start to imagine what has happened. Or if someone says "I have good news": a different body set, expecting something good, knowing beforehand, being ready. But if someone says "I have strange news to tell you." That's different.

I have an urgent desire to tell you something, and at the same time I am afraid you might become embarrassed, and then I might be embarrassed. That embarrassment comes from not being able to place the information; it's strange . . . it's an imposition . . . I don't want the strangeness to be repeated, ever again.

After four years in the courts, Chief Justice Allan McEachern of the Supreme Court of British Columbia had completed his reasons for judgment in the Gitksan-Wet'suwet'en land claims litigation. At his direction, all the lawyers who had worked on the case were told to meet at the courthouse at 7 a.m., March 8, 1991. We would be sequestered for two hours with the decision and then set free to announce our respective interpretations of the case and its consequences.

I drove over the Burrard Street Bridge, listening to the radio, telling myself the story of driving to the courthouse to receive judgment in the Gitksan-Wet'suwet'en land claims trial.[1]

There were a great many lawyers at the courthouse at 7 a.m.

First, counsel for the province were called forward. Then those of us on the legal team for the aboriginal people were led by another sheriff through corridors, to inner places I had never been, the judicial backalleys of the courthouse—a cavernous, circuitous, confusing route—into a jury room, at the centre of some place, in the middle of some thing.

It was a large, windowless, dimly lit room. Copies of the judgment had been set out on the oval table. Three hundred and ninety-four pages. Each lawyer took one of the volumes. We had carefully strategized the division of issues between us so that we could cope with the

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[1] Judge's McEachern's opinion, referred to in "The Carriers of No," is reported as *Delgamuukw v. British Columbia*, 1991 A.C.W.S.J. 678491; 25 A.C.W.S. (3ed) 1012 (B.C. Supreme Court, 1991).

massive text in the short period of time allowed. But it took less than three minutes for all of us to realize that the case for the Indian people had been decimated.

Two hours later, we were led back out of that room, through the judge's entrance into a courtroom and out into the Great Hall. I saw one of my clients, a Secwepemc woman, standing across that vast space. She started towards me, smiling. She had a wide smile, and moved, in slow motion, almost floating. My movements became weightless and slow as I shook my head no, no, and faster as I put my hands up and said "no," pushing so she would go back. There was a sniper on the top of the roof and she didn't know he was there. I had seen him. I had seen him on the inside; he had climbed up the stairs, up to the top of the building, he was on the roof, and he had a gun. I pushed her so that she would get down, lie low, there's a sniper. And she slowly stopped coming towards me and she turned, her face confused as she started to move away. "It's a brutal judgment," I said. Hide. It's all over. Protect yourself.

The decision is a devastation. The judge ruled that the rights of the Gitksan-Wet'suwet'en—and indeed the rights of all aboriginal people in British Columbia—had been extinguished by the colonial government.

He decided that the land was unable to provide the Indians with anything more than a primitive existence. He said it wasn't the Indians's land being taken from them that destroyed their sense of identity, nor did the introduction of alcohol, epidemics and limited economic opportunities result from lack of access to their land. "There is much wood left in the territory," he concluded; the Indians should still be able to sustain themselves. After land has been clear-cut and logged, it becomes "useable again," and the aboriginal people may then re-enter the land "for subsistence purposes until such time as it is dedicated [by the Crown] to another purpose."

But it's not the result of the decision that makes it so devastating—there have been major defeats before. It's the judge's reasoning, it's what the judge says about knowledge, about who we are as a society that has stunned me. I want to tell you about that.

In what I say, I mean no disrespect to Judge McEachern. I don't think he is unique. In what he says and believes, he represents the best of what we have to offer.

The case is referred to as the Gitksan-Wet'suwet'en case because of the two Indian nations represented. The case bears the name of one of the house chiefs, Delgamuukw. The high chief who carried the name Delganuukw died before judgment. Now his brother has been passed the name.

Judge McEachern was embarrassed throughout the trial and he told us that. The first time he mentioned it was when the lawyers for the Gitksan-Wet'suwet'en asked that the case be heard mostly in Smithers, so that the judge would be in the Indian people's territory, so that they could readily come to the court. The judge said that he was judicially embarrassed by the request.

I started listening to that word, how and when people used it.

The judge was embarrassed by the length of the trial. He was embarrassed at the evidence that was called. He was embarrassed when Mary Johnson, one of the elders, wanted to sing her song to him in court during the telling of her *adaawk*.

The *adaawk* is the oral history that carries the people's stories, their relationship to their territory, their spirit songs. It is the *adaawk* that the people wanted to tell the judge. It is their evidence, their proof, their case. It answered everything that the lawyers for the province put forward.

To embarrass means to make difficult by obstructions. Encumbered. An impediment.

Mary Johnson was telling the judge her *adaawk*. She said, "A brother and two sisters were travelling. The brother, Wildim Waax, starved to death because they can't find anything to eat. And not long after he died, they heard the drumming grouse and the elder sister lay down near the log where the grouse drums. Whenever a grouse is drumming, he always comes back to the same spot where he drums, an old log covered with moss, and it's soft. So the elder sister hid herself underneath the moss beside the log, but she missed the grouse. Then the young sister lay down. She caught the grouse and they killed the grouse, so they sat down and they both cried. They remember their brother that's just died and they compose a dirge song."

And Peter Grant, the lawyer, says, "In the telling of this *adaawk*, is this the place where you would sing the dirge song?" Mary Johnson says, "Yes." The lawyer says, "Go ahead you can sing the song."

And the judge says, "Is the wording of the song necessary?"

The lawyer says, "Yes."

And the judge says, "I don't want to be skeptical, but I have some difficulty in understanding why the actual wording of the song is necessary."

The witness says, "Do you want me to sing the song?"

The lawyer says, "Yes."

And the judge says, "Are you going to ask the witness to now sing the song?"

The lawyer says, "The song is part of the history, and I am asking the witness to sing the song as part of the history because the song itself

invokes the history and the depth of what she is telling. It is necessary for you to appreciate . . ."

The judge says, "How long is it?"

The lawyer says, "It's not very long. It's very short."

The judge says "Could it not be written out and the witness asked if this is the wording? We are on the verge of getting way off track here. To have witnesses singing songs in court is not the proper way to approach this problem . . . I just say, with respect, I've never heard it happen before, I never thought it necessary, and I don't think it necessary now. It doesn't seem to me she has to sing it."

And the lawyer says, "It's a song that itself invokes the history and the depth of what she is telling. It is necessary for you to appreciate . . ."

The judge says, "I have a tin ear, Mr. Grant. It's not going to do any good to sing to me."

Mr. Grant says, "I would ask, Mrs. Johnson, if you could go ahead and sing the song."

And the witness says, "It's a sad song when they raise the pole, and when the pole is half-way up they told the chiefs that pull the rope to stop for a few minutes, and they sang the song and they cried. If the court wants me to sing it, I'll sing it."

And the judge says, "No I don't, Mrs. Johnson. I don't think that this is the way this part of this trial should be conducted. I just don't think it's necessary. I think it is not the right way to present the case."

The lawyer says, "You can go ahead and sing the song now."

And Mary Johnson sings her song. She sings about the grouse flying. How the grouse gave himself up to die for the sisters to help them save their lives. "And today the young lady that caught the grouse stood at the foot of our totem-pole that we restored in 1973, and she is holding the grouse with tears in her eyes."

And when Mary Johnson has finished the judge says, "All right, Mr. Grant, would you explain to me, because this may happen again, why you think it was necessary to sing the song? This is a trial, not a performance."

Mr. Grant says that the Gitksan-Wet'suwet'en expressed their ownership of their territory through their regalia, *adaawk*, and songs.

The judge says, "I don't find that a persuasive argument at all. It is not necessary in a matter of this kind for that song to have been sung, and I think that I must say now that I ought not to have been exposed to it. I don't think it should happen again. I think I'm being imposed upon, and I don't think that should happen in a trial like this . . . I see no reason whatsoever why it was necessary to ask her to sing that song. Go on with the evidence, please."

In a trial the word embarrassed describes the feelings you have when something is being presented that is unacceptable. It is the visceral effects of the disallowed, of that which does not fit our idea of information, knowledge, fact. It is the body's discomfort at being at the edge of a path.

The judge was embarrassed by the *adaawk*.

The judge had "serious doubts about the reliability of the *adaawk* as evidence." Oral traditions are not reliable. "Even when employed carefully, memory ethnography can only provide totally accurate information for relatively short time spans, usually one hundred years at the very most." Therefore, oral history can only "fill in the gaps" left at the "end of a purely scientific investigation." Further, "I am able to make the required findings about the history of these people" without the evidence of the anthropologists and the flawed archaeological evidence.

The plaintiffs's evidence was discounted, sometimes even in a kindly way, "reluctantly without intending any affront to the beliefs of these peoples." But the evidence of a life-long non-Indian resident of the territory was taken as truth. He hadn't heard the Indians say they claimed ownership of the territory. He hadn't noticed any significant number of them on the land.

The judge accepts the documentary evidence of the journal kept by the white trader at the Hudson's Bay Company, "one of our most useful historians," who had a fort on Babine Lake in 1822 and described the "primitive condition of the natives." Their condition was "not impressive."

"Many of the badges of civilization, as we of European culture understand that term, were indeed absent. The plaintiffs's ancestors had no written language, no horses or wheeled vehicles, slavery and starvation were not uncommon, wars with neighbouring peoples were common, and there is no doubt that aboriginal life in the territory was, at best, 'nasty, brutish and short.'" The Gitksan-Wet'suwet'en people, with their extraordinary art, the vast and visible manifestations of their culture, are described as having a "low level of civilization."

In the face of other's disbelief, not hearing, or hearing but not accepting what they have to say, some aboriginal people turn inward. They withdraw; they take back their stories. They move to higher ground. They don't tell their stories. They are careful who receives the wisdom.

An elder from Bella Coola told me she would rather have her stories die than tell them to someone who wasn't ready to hear.

An anthropologist tells me, "Without us there would be nothing left of aboriginal traditions."

With this court case, the rights of the aboriginal people have been extinguished. Extinguished, a Latin word: something inflamed or on

fire, and it is put out. Silenced. Blotted out of existence. To annihilate, cut off, bring to an end. To kill.

The word extinguished is related to extinct. That which has ceased to burn or shine. Vanished. Without progressive succession. Having no living representative. There is a vast emptiness.

This idea of emptiness. The land is empty. Or so the judge says. "The most striking thing that one notices in the territory away from the Skeena-Bulkley corridor, is its emptiness . . . The territory is, indeed, a vast emptiness." In Hugh Brody's film, *Hunters and Bombers*, the colonel said of Northern Quebec and Labrador that it is the best place to practice low level flying because the country is empty.

The country is inhabited by Innu.

The judge says, "If the land is substantially empty now . . . then I believe it was also empty for aboriginal purposes at the time of contact." Their rights over empty territory are easily, bloodlessly extinguished.

The judgment is unsettling. I go to the library. I buy books. I yearn for something that is part of my own cultural tradition that will allow me to respond to the worldview reflected in this judgment. I am searching for some new wisdom. I'm still looking, still searching.

I find a book by Henry Nash Smith about the the American West. A reviewer finds Smith's book devoid of Indians because Smith adopted the dominant view of the frontier as "a vast emptiness awaiting peaceful occupation by agrarian pioneers."

Other books present an image of the frontier hero: a man revered for his ability to deal with a savage environment and not succumb to the savagery, a man representing order and progress. I find Richard Slotkin, in *The Fatal Environment*, saying American history is a "heroic scale Indian war, pitting race against race and the central concern of the myth-makers is with the problem of reaching the 'end of the frontier.'"

The frontier, the violence, civilized whites and red savages creates a myth peculiar to our culture. And who is it that defends civilization against chaos in the perpetual war between civilization and savagery? The frontier hero?

In the books, the noble pathfinders who view nature as the source of all wisdom are doomed, just as the Indians are doomed. Such people, incapable or unwilling to adapt, have to face extinction before the march of civilization.

Adapt.

The judge says "it is obvious [the Indians] must make their way off the reserves. The difficulties of adapting to changing circumstances, not limited land use, is the principal cause of Indian misfortune."

Now, in court combat, lawyers for the government sneer when they refer to Indian reserve land as "free land the Indians got." They unveil the contempt they cannot hide.

Then I am embarrassed. I am ashamed.

This judgment is the judicial equivalent of a nuclear winter. The face of civilization is barbaric.

After clear-cut logging leaves the land wasted and barren, it may be re-used by the Indians for sustenance purposes.

What knowledge can be found to sustain us when we have destroyed the stories. Lawyers assemble the evidence with words cut from the environment; they hold up as evidence, hacked up pieces of meaning.

Lawyers don't have to take responsibility to construct a world. We charge ourselves only to destroy. We say no. We are the civilized, well-heeled, comfortable carriers of no.

"I flew over the territory. I was struck by its emptiness," says the judge.

This judgment has humiliated the people. I hear the Indian leaders say to one another, "we must tell the children they are as good as anybody, that we aren't just dogs." There are tears in their voices but their eyes are dry.

As though it's not enough to defeat the enemy; they have to be degraded and humiliated too.

I have an old map from the 1860s and on it there is a place with an Indian name. The elders know about it; they say the word; they give its meaning. The place, with its Indian name, is not on any of the new maps.

I call the library. I ask the man in the reference section if he can find any record of this place.

The librarian goes away.

I wait.

The librarian is a fisherman who uses a net, now he is being asked to dive. When he doesn't return I see him diving for abalone, diving for exotic fish. The librarian is fishing for the name of a place that may have been written down.

He's gone a long time. I wait. I keep looking at this map. And I think about Wilson Duff, an anthropologist and curator who sometimes spoke as if he personally knew the great Haida artist Charlie Edenshaw who died in 1924. Wilson Duff, at the end of his life, before he killed himself, was giving lectures, not as Wilson Duff but as Charles Edenshaw.

That's embarrassing. Mistaken, misplaced, in error.

The territory is empty. You must make your way off your reserves. I am embarrassed that you sing a song to me, that you believe your song has meaning.

Diving for abalone, diving for the exotic fish. Or using nets that glisten, that sound like a fist full of pearls slicking on and slipping under the water. Catching knowledge. Catching information.

I am not talking about a soft, ill-defined impulse towards something liberal, gentle, and nice. I am talking about identifying ourselves with the best and most rigorous of traditions; I am talking about taking a net, re-stitching it, sewing it back together. I am not talking about a lobster trap, a box with a small opening that only takes in what happens to lumber into it. But something muscular, something perhaps even embarrassing.

The Beaver people of Northeast British Columbia say of their prophets—"they know something." It's such a quiet acknowledgment of wisdom. It seems right.

What if we could, again, see that we don't know everything, don't yet understand everything? It would not be an embarrassment, would it?

Delight exists at the place of encountering the unknown. Yet, we act as if we know everything; we, secretly, believe we are immortal. We are mistaken to give up belief in stories, the stories that carry history. We must hear the story in the old woman's song. We must have our children practice catching and carrying with them the big stories. Our arms are thin. We have tin ears.

I'm sorry, says the judge. I don't want to discredit you or have you think I don't believe you, but I cannot accept what you say as fact.

I'm waiting on the telephone. The librarian has been gone a long time, looking for what was written down. And I wait, hoping. Hoping that one time we wrote down in another's language, a place-name that carried a story, and that we put it on a map. The story will still exist, even if we didn't write it down. It will go on, go to higher ground; we will be the losers.

Go right up to the edge of embarrassment, take yourself there, go over the edge. Information comes as a bird hitting the window. Or as a fish. Go fishing. I urge you to go fishing.