

## Introduction: Advocacy Research and Native Studies

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Since the creation of the federal Office of Native Claims in 1973, a vast amount of research has been conducted on Native people and their relations to particular lands. Yet, as both the crisis at Oka and the collapse of the Dene/Métis Land Claim Agreement demonstrate, research and negotiations will not necessarily resolve the fundamental divisions between the Canadian state and Aboriginal peoples. The recent decision of the British Columbia Supreme Court on the Gitksan-Wet'suwet'en comprehensive claim demonstrates that the slow progress towards the legal recognition of Aboriginal rights can be reversed quickly with a single judgment. Nonetheless, in the spring of 1990 the Supreme Court of Canada ruled on three important cases concerning Native rights and claims. In terms of treaty and Aboriginal rights, the Court decisions on the *Sparrow* and *Horseman* cases have clarified some issues with respect to access to natural resources. With the *Sioui* judgment, an important advance was made towards understanding the contemporary application of treaties. Thus, in terms of litigation and negotiations, there has been mixed success in the recognition of claims and rights. In regions where the Aboriginal title has not been recognized by the state, expensive research continues to be vital to the preparation of a claim for litigation. Clearly, the legal and political resolution of many Native claims in Canada will be a drawn-out process. Although the federal policy on Native claims is much discredited, advocacy research will continue to play an important role in the politics of Indian/White relations.

A vast body of grey information, or unpublished research, created by consultants, band and tribal organizations, treaty and Aboriginal rights research centres, and federal and provincial state agencies far outweighs the research published by academics. Yet the volume of research does not define the social significance of these efforts. Claims research can be more than a dry argument in support of a negotiating position. Research strategies can, and indeed, should entertain broader questions concerning economic history, community development strategies, proposals for self-government and local oral history. Such work should force us to

re-examine the conclusions of older research by considering the factual basis and underlying assumptions on which these well-established findings rest. The potential contribution of this research to the development of Native Studies as an academic discipline can be easily overlooked. New factual information is relevant to curriculum needs. Improved methodologies and interdisciplinary approaches have been developed out of necessity. While the courts are not the best forum to resolve the merits of contrasting interpretations, advocacy research has pushed research in new directions. The contrasting interpretations inherent in the claims process can contribute towards an academic identity and a scholarly basis for Native Studies.

This special issue of the *Review* focuses on advocacy research in support of Native claims. The recent Supreme Court judgments, the crisis at Oka, and the ongoing litigation and negotiations all suggest that this is a good time to pause and consider some aspects of advocacy research. The normally conservative and cautious nature of university-based research, oriented towards the production of verifiable results, does not create a setting immediately amenable to advocacy research. The use of participant observation as a method encouraged the development of an advocacy role for anthropologists. Certainly applied anthropologists have struggled with the questions surrounding advocacy research for some time.<sup>1</sup>

Increasingly, historians are dealing with the scholarly issues raised by involvement in research outside of the confines of the university.<sup>2</sup> To this end, I will address some of the intellectual opposition that exists to advocacy research and committed scholarship. To avoid misunderstandings about the purpose of Native claims research in universities, conceptual and methodological discussions about advocacy research need to occur.

Wilcomb Washburn in "Distinguishing History from Moral Philosophy and Public Advocacy" articulates many conventional arguments against the application of research to contemporary issues.<sup>3</sup> Underlying an opposition to advocacy research is the old assumption that real academic research is "value free" and "objective." Washburn pictured a current trend in the study of Indian history as follows:

Recent Indian history, in particular, is shrouded, or clouded, by the fog of war, the smoke of deliberate deception, and the coloring of special interest. Historical facts, to the extent they are used at all, are filtered through the ideological perspective of the writer. Since the elaboration of an ideological position is more a mental exercise than a search for factual knowledge, and since it requires assumptions about motives and purposes, Indian history has

increasingly become a matter of assumptions and assertions rather than a catalog or analysis of factual truths.<sup>4</sup>

Bellicose language and intemperate acquisitions aside, this challenge to recent "revisionist" scholarship calls for consideration and comment.<sup>5</sup> Washburn provides little evidence, such as a literature review, to demonstrate his claim that recent Indian history consists largely of ideological assertions and assumptions. Instead he relies on annoying public statements made by left-wing activists and radical spokesmen from the American Indian Movement in order to establish that recent history has strayed from the creation of a catalog of factual truths.

The demise of the assimilation and acculturation models has occurred because "most Indian history is written within the university, and because most university campuses are centres for left-of-centre beliefs."<sup>6</sup> While Washburn may personally find it disconcerting that the acculturation and assimilation models have been replaced by the ethnic resurgence model, it is not credible to suggest that the leftist character of American universities accounts for the decline of the older Indian history. He is reacting to a paradigm shift; a fundamental redirection of inquiry has occurred.<sup>7</sup>

In his more general assault on the trends of recent Indian history, Washburn paid special attention to advocacy research. He hurled the following accusation at advocacy researchers: "It is this sort of casual ignoring of the historian's responsibility to truth that I find all too common today among those propagandists—I will not call them historians—who struggle to convince readers of their particular views of Indian history."<sup>8</sup> Thus, "Historians as activists march to a different tune and hear a different piper than historians as scholars."<sup>9</sup> He clearly articulates the essence of his position:

In the process of using history to promote non-historical causes, the enterprise of history is inevitably lost or cheapened. Ideological concepts replace specific facts. Action replaces thought. ... But the individual as advocate has different standards and obligations than the individual as historian. If the obligation to truth is not the first and most overriding obligation of the historian, then he is not a historian. If he cannot put his argument in a form in which his facts can be checked and his assertions documented, then he is merely using his profession for ulterior purposes.<sup>10</sup>

Washburn drew attention to poorly documented arguments and outright

opposition to the idea of footnotes. Nonetheless, it is hard to imagine how the presence or absence of footnotes can determine the purity of purpose. The point would seem to be that undocumented and unsupported arguments are simply bad scholarship. Moreover, one of the characteristics of the revisions to Indian history has been the use of new archival sources. The intensive use of Hudson's Bay Company archives has contributed to a re-evaluation of the assimilation/acculturation model that was implicit in the older fur trade histories. Washburn's use of the term "truth" can best be appreciated by considering the problem of objectivity from a methodological perspective. His argument would have been stronger had he distinguished between different types of advocacy. Advocacy can be expressed in very overt and political terms. Skilled research for particular Native claims and rights is also a form of advocacy.

The adversarial forum for claim litigation requires thorough documentation (preparation of written arguments and responses; and the demand for factual verification is re-enforced by cross-examination of expert witnesses). In point of fact, some judges may provide as equal an opportunity to put forward a reasonable argument as some academic journals, which are not at all free from "old-boyism." Ideally, however, the role of the courts is to be impartial. The adversarial preparation of a case can provide the incentive for thorough research.

Nonetheless, committed scholarship is often viewed as unprofessional and ulterior. Several years ago, the British social historian, E.P. Thompson dealt with the accusation that those with commitments should be exposed as propagandists, and they do not really qualify as historians. He challenged those "who have this pompous and pretentious notion that they are *true* historians because they haven't got any commitments" by pointing out that "an immense amount of existing historiography, certainly in Britain, has seen society within the expectations, the self-image, the apologetics, of a ruling class..."<sup>11</sup> More recent trends in Indian social history recognized that the older established history interpreted Indian/White relations in a manner that justified the outcome of the frontier. The assimilation/acculturation models are consistent with colonial and post-colonial perspectives. Thus, Deloria commented that "Often the controversy revolves about beliefs held so tenaciously that questioning the orthodox point of view becomes a personal offense."<sup>12</sup> The category of "non-historical cause" is also suspect: it suggests a static view and rigid framework. It implies an historian separate from society; an existence unaffected by history or his own time.

A certain lack of clarity seems to exist in Washburn's ideal of history. Apart from a claim to "historical truth," Washburn does not define or demonstrate the different standards that separate the academic historian

from the advocacy researcher. Such ambiguity would not encourage methodological rigour or skilled research. His undefined, yet absolute, use of the term "historical truth" cannot accommodate conflicting viewpoints. But research thrives on debate. He champions a scientific, objective and value-free approach by excluding ethnic, religious and ideological "truths." Again he argues that religious faith, ethnic traditions and "personal belief in the justice of a particular point of view" are distorting lenses that have "no place in the scholarly profession of history."<sup>13</sup> However, the personal acceptance of the inevitability of the frontier or the belief in the good intentions of agents of assimilation are seen as consistent with professional history. After banishing such subjective impediments to understanding, he tosses out the idea that a synthetic approach is required to resolve the difference between Indian and White history. Another ambiguity of Washburn's polemic is his own active public writing on behalf of the Miskito Indians of Nicaragua, published by the *Washington Times*.<sup>14</sup> Perhaps in an unconsciousness way, the difficulty of separating values from scholarship was demonstrated when he bemoaned, "I have found myself in various foreign countries attempting to justify United States policy on the one hand, and history as a scholarly discipline on the other."<sup>15</sup> Conceivably, a little bit of ideology has crept into his argument. Washburn labels one of his opponents "a redoubtable warrior of the radical left" and he seems to be more than a bit put out by some of the criticism of President Nixon's Indian policy.<sup>16</sup> What is not at all clear from Washburn's analysis of moral philosophy and public advocacy, is whether the same individual can at one moment be a scholar and at the next a publicist or "propagandist." Finally, the credibility of his argument takes another turn when he asks for recognition of "my lifelong and quixotic pursuit of the reality of the Indian as 'noble' in the face of the received wisdom of anthropologists, literary scholars, and historians."<sup>17</sup> In the end, Washburn has not provided a coherent argument against advocacy research; he has merely reacted to political advocacy and social history.

The main contribution of Washburn's article has been to raise, once again, the issue of objectivity. This will prove to be a vital question, not only for the credibility and the effectiveness of committed scholarship within universities, but also in terms of the acceptability of research and expert witnesses in courts. Some judges dismiss the testimony, or even refuse to accept the expertise of a potential witness hired for advocacy research. Elias has noted that in one case the judge discounted an expert's testimony because his words had "more the ring of a convinced advocate than a dispassionate professional."<sup>18</sup> Another witness was described by a different judge as "an informed and an enthusiastic

supporter of the native peoples' cause generally ... but, by the same token, as a person who conspicuously lacked the objectivity required of an expert witness...<sup>19</sup> (It would be a worthwhile exercise to determine whether judges detect the biases of expert witnesses in support of the Crown.) What is meant by objectivity or bias, both within court testimony and academic writing, requires more discussion. Furthermore, in Native claims all the hard data desired does not exist and Elias noted that the court can therefore call on witnesses for opinions.<sup>20</sup> Concepts such as "historical truth," "convinced advocates," "enthusiastic supporters," "dispassionate professionals," "ideology," "objectivity" and "opinions" can reflect a *status quo* sort of discourse, which can be applied selectively.

There is an unchallenged tendency to attempt to sever facts from opinions. Some thirty years ago, the eminent British historian E.H. Carr noted: "The belief in a hard core of historical facts existing objectively and independently of interpretation of the historian is a preposterous fallacy, but one which is very hard to eradicate."<sup>21</sup> By showing that "historical facts" were based on imperfect observation, that documents only reveal what the recorder thought had happened and not necessarily what had actually happened, and that the historian processes, selects, organizes and orders his facts, Carr advanced historical methodology by demystifying the presumed "objectivity" of the discipline. Thus he found that "The facts of history cannot be purely objective, since they become facts of history only in virtue of the significance attached to them by the historian."<sup>22</sup> This did not mean that facts were irrelevant or unobtainable, but that the "element of interpretation enters into every fact of history."<sup>23</sup> Historical research involves a constant dialogue between facts and interpretation. Clearly, the concept of "interpretation" provides for a more meaningful approach to discuss Native history than do the emotive terms "truth" or "opinion."

Certainly, permanent "factual truths" and "historical truths" are hard to establish. Carr warned that "It is only the simplest kind of historical statement that can be adjudged absolutely true or absolutely false" and that the historian "does not deal in absolutes of this kind."<sup>24</sup> But history is not merely some mass of individual subjectivity. Nor is the deliberate falsification of history cannot be accepted as merely another interpretation. For the historian, objectivity entails the ability to rise above "the limited vision of his own situation in society and in history" and to have "the capacity to project his vision into the future in such a way as to give him a more profound and more lasting insight into the past than can be attained by those historians whose outlook is entirely bounded by their own immediate situation."<sup>25</sup> This is similar to E.P. Thompson's advice that the historian can be rigorous by distancing, by objectifying and

by being aware of one's predisposition.<sup>26</sup> Such rigour is difficult to accomplish if we fool ourselves by believing that we can be neutral or value free. An absolute and exclusive truth does not simply flow from "historical facts." For Carr, "Progress in history is achieved through the interdependence and interaction of facts and values. The objective historian is the historian who penetrates most deeply into this reciprocal process."<sup>27</sup> This is quite different from assembling a catalogue of factual truths. Serious research in support of valid Native claims lends itself to an examination of both facts and values. Similarly, the demands of the adversarial system of litigation require that researchers, lawyers and claimants be aware of how to use the reciprocal process of constantly re-examining facts and interpretations to develop a research strategy. Carr concluded that truth "is not merely a statement of fact and not merely a value judgment, but embraces both elements."<sup>28</sup> Thus a false separation cannot exist between facts and values. In Native Studies the balance between facts and values is a very pertinent question. Deloria observed that "Indian-white relations have many more pitfalls than we would suspect and most of these obstacles have little to do with historical facts or data."<sup>29</sup> Methodologies that recognize the interrelation of facts and values are relevant to advocacy research in support of claims and academic research in Native Studies.

Social historian, Linda Gordon, has also provided some interesting reflections on the use of history which are relevant to Native Studies. She has written that "there has got to be a tension between historical empathy and rootedness in one's own present, a rigorous defense against presentism and against the illusion that the historian remains outside history."<sup>30</sup> Gordon has dealt with the problem of objectivity and language by acknowledging that "history needs a subjective, imaginative, emulative process of communication."<sup>31</sup> But the recognition of the subjectivity of history should not result in completely different standards for applied and academic research. Gordon stated: "advocacy or nonadvocacy, it is the responsibility of historians to tell the truth. ... Nor is truth telling simple: in reporting truths there is a necessity to interpret them correctly to the best of one's ability."<sup>32</sup> Moreover, the application of historical research skills to contemporary problems does not mean the subordination of truth to ideology. Her experiences taught her that "one of the painful things I now see is that a good advocacy scholarship—or, as I would prefer to call it, a committed scholarship—often means criticizing assumptions that are widespread on the Left."<sup>33</sup> As long as one intellectually and honestly supports a particular claim's argument, advocacy research can be professional. The prospect of becoming "intellectual

mercenaries" appears when academics testify in support of arguments that they do not believe.

While applied research and committed scholarship are ongoing concerns for Native Studies, the main purpose of this special issue is to put on record the experiences of consultants and academics involved as claims researchers and expert witnesses. Geographically, the articles cover British Columbia (Ray, Hudson), the central subarctic (Elias) and the Great Lakes (McClurken, Cleland). Both specific and comprehensive claims are involved. Elsewhere, Doug Elias has argued that the problems facing the settlement of claims cannot be solved by merely producing more data. He has argued that

In the interim, I would suggest that native people, legal scholars, legal practitioners, and social scientists take steps to establish ways for thoughts and ideas to flow between them. At the present, it would seem that each of these actors knows very little about what constitutes the roles played [by] the others.<sup>34</sup>

The document section of this issue focuses on the *Sioui* judgment. The 1760 treaty between Governor Murray and the Huron, the factum for the intervenor (Assembly of First Nations) and the entire reasons for judgment are included in this issue of *Native Studies Review*. An introduction to these documents by Franklin Gertler and Peter Hutchins, counsel representing the intervenor, provides background on this case in a manner easily grasped by those without a legal education. Their discussion on the writing of a factum provides practical communication between lawyers and researchers. In this respect, readers should also consider Donald Bourgeois's note, "The Role of the Historian in the Litigation Process" followed by G.M. Dickinson and F.D. Gidney's commentary "History and Advocacy: Some Reflections on the Historian's Role in Litigation," in the *Canadian Historical Review*.<sup>35</sup> This special issue is an effort to improve and formalize communication between the various participants in claims research. The *Review* welcomes comments on this issue and further submissions on this topic.

Arthur Ray's article concerns the use of primary archival evidence in the courtroom. This piece outlines his personal involvement with the comprehensive claim of the Gitksan-Wet'suwet'en, and the research strategy he adopted. Apart from illustrating the conceptual and methodological limitations of the very early ethnographic writing, Ray's account implies that this academic research takes on a political and legal life. What becomes clear is that even "pure" academic research, such as the explorations of the early-20th-century field anthropologists, cannot

forever exist completely apart from the struggle for recognition of Aboriginal title. Some of the early writings of anthropologists, quite unintentionally, become matters of great controversy in contemporary claims. Decades later, these seemingly benign academic writings reappear as evidence in a courtroom. Ray's re-creation of his experience demonstrates some of the limitations of the adversarial context of litigation and potential frustrations that academics may face as expert witnesses. Essentially, the government lawyers dodged Ray's research and attempted to re-establish the image of the Indian as a "savage." Thus in some current government claims strategies, the old historiography of Indian/White relations is resuscitated. Once again, Indian culture is on trial.

Doug Hudson's discussion of the Fraser River fisheries provides an account of the work done by anthropologists. He demonstrates the current complexity of the Aboriginal right of access to a resource. Competing interests, other users and non-Indigenous management have impinged on the Aboriginal use of fish. Like Ray, his observations and experiences indicate that the court is a cumbrous, and perhaps a dubious place to resolve fundamental issues about culture. Hudson's comment that much anthropological information is tied up in the litigation process indicates one of the major problems of disseminating applied research. The fact that the role of the advocacy researcher is still being worked out, and perhaps somewhat ambiguous, is evident from his report that some researchers are no longer directly involved in strategy sessions and that Indian bands have had to obtain court injunctions concerning the control of research materials.

The article by Doug Elias begins by considering the involvement of Saskatchewan Cree in the wage labour of the fur trade. This is an empirical contribution to the economic history of Cree and he makes the argument that ahistorical classifications of culture only confuse the resolution of claims. Elias's findings allow him to refute the assumption that wage labour is alien to Native culture and that Indian involvement in wage labour amounts to a renouncement of an Aboriginal culture or a claim. In effect he provides a factual and reasoned challenge to the tests laid down in the *Baker Lake* decision. Since claims research is tending to get more complex, his discussion of "tradition" and "traditionalism" is a vital perspective for Native Studies. Elias employs a useful distinction between traditional (continuous with the past, and not identical with the past) and traditionalism (submission to the authority of tradition and excessive reverence of tradition). This is not only a cogent argument to counter the courtroom distractions, often successfully employed by the state, but this perspective also has important methodological implications

for planning research. Elias applies this distinction in his analysis of the *Horseman* judgment.

Both the McClurken and Cleland articles concern the Chippewa on the American side of the Great Lakes. McClurken's piece explains his experience as an expert witness in support of a specific claim concerning a reserve boundary. Land tenure was interlocked with band membership and kinship, and again the state argued that assimilation of the Chippewa negated any claim. The argument developed by Elias on tradition seems to be relevant to the state's effort to argue assimilation. McClurken shows that the dispute was not merely a matter of "facts," but a question of interpreting the facts. The adversarial dispute over interpretation encouraged a deeper probing of the issue; certainly such outcomes can be one of the benefits of advocacy-driven research. McClurken suggests that in order to interpret the facts in light of the law, the "biases" of the scholars must enter. This is yet another illustration that values and facts are inseparable.

The discussion by Charles Cleland provides useful information and analysis of treaty fishing rights and access to resources. He outlines the role courts play in deciding the contemporary reality of 19th-century treaties. But, in essence, his commentary concerns the social aftermath of judgments that affirm treaty rights. He recounts and analyzes the racism following on a court decision that challenged the interests of powerful groups.

Although the contributions in this issue of *Native Studies Review* are drawn from various types of claims research, it is evident that during the litigation of Native claims, Indian culture is on trial. Often minute details have to be proved beyond reasonable doubt. In the courtroom, the state is unwilling to acknowledge the existence of Indians. This format does not seem to lend itself to an exercise in critically examining past government policies towards Native people. Important evidence can be side-stepped, and differences in interpretation are not necessarily resolved intellectually in the adversarial environment of the courtroom. This almost inherently unfair dimension of the process is re-enforced by the fact that the state has unlimited resources to fend off Native claims.

## Notes

- 1 Consider Robin M. Wright, "Anthropological Presuppositions of Indigenous Advocacy," *Annual Review of Anthropology* 17 (1988), pp. 365-90; and Kirsten Hastrup and Peter Elsass, "Anthropological Advocacy: A Contradiction in Terms?" *Current Anthropology* 31, no. 3 (1990), pp. 301-08, with comments by Ralph Grillo, Per Mathiesen and Robert Paine, pp. 308-10.

- 2 See William K. Klingaman, "Historians and the Law," *The Public Historian* 3, no. 3 (1981), pp. 95-100; Paul Soifer, "The Litigation Historian: Objectivity, Responsibility, and Sources," *The Public Historian* 5, no. 2 (1983), pp. 47-62; Otis L. Graham, Jr., "The Uses and Misuses of History: Roles in Policy-making," *The Public Historian* 5, no. 2 (1983), pp. 5-19; W. Andrew Achenbaum, "The Making of an Applied Historian: Stage Two," *The Public Historian* 5, no. 2 (1983), pp. 21-46; and J. Morgan Kousser, "Are Expert Witnesses Whores? Reflections on Objectivity in Scholarship and Expert Witnessing," *The Public Historian* 6, no. 1 (1984), pp. 5-19.
- 3 Wilcomb W. Washburn, "Distinguishing History from Moral Philosophy and Public Advocacy," *The American Indian and the Problem of History*, Calvin Martin, ed. (New York: Oxford University Press, 1987), pp. 91-97.
- 4 Washburn, p. 92.
- 5 Vine Deloria, Jr., has provided some interesting reflections on the use of the term "revisionist." In particular he noted: "The identification of scholars working in the field of Indian/white relations has this strange quality to it: proponents of the Indian version of things become 'revisionists,' while advocates of traditional white interpretation of events retain a measure of prestige and reputation." See Vine Deloria, Jr., "Revision and Reversion," *The American Indian*, C. Martin, ed., pp. 84-90.
- 6 Washburn, p. 92.
- 7 His reaction to trends in Indian history demonstrates the relevance of Kuhn's concept of scientific revolutions. See Thomas S. Kuhn, *The Structure of Scientific Revolutions*, 2nd. ed. (Chicago: University of Chicago Press, 1970).
- 8 Washburn, p. 94.
- 9 Washburn, p. 95.
- 10 Washburn, p. 95.
- 11 Interview with E.P. Thompson, *Visions of History*, Henry Albelove et al., eds. (New York: Pantheon Books, 1983), p. 8.
- 12 Deloria, p. 85.
- 13 Washburn, p. 97.
- 14 For example, see "Leftist Academics and Ethnic Minorities," *Washington Times*, 30 December 1982; "A Rollback of Left in Nicaragua Too?" *Washington Times*, 20 December 1983; and "Pulling the Plug on the Sandinistas," *Washington Times*, 2 January 1985; cited in Washburn, p. 95.
- 15 Washburn, p. 94.
- 16 Washburn, p. 93.
- 17 Washburn, p. 97.
- 18 Peter Douglas Elias, "Rights and Research: The Role of the Social Sciences in the Legal and Political Resolution of Land Claims and Questions of Aboriginal Rights," *Canadian Native Law Reporter* 1 (1989), p. 28.

- 19 Elias, p. 28.
- 20 Elias, p. 28.
- 21 E.H. Carr, *What is History?* (Harmondsworth: Penguin Books, 1964, original 1961), p. 12.
- 22 Carr, p. 120.
- 23 Carr, p. 13.
- 24 Carr, p. 120.
- 25 Carr, p. 123.
- 26 Interview with Thompson, *Visions of History*, p. 8.
- 27 Carr, p. 131.
- 28 Carr, p. 131.
- 29 Deloria, p. 85.
- 30 Interview with Linda Gordon, *Visions of History*, p. 77.
- 31 Interview with Linda Gordon, p. 77.
- 32 Interview with Linda Gordon, p. 85.
- 33 Interview with Linda Gordon, p. 85.
- 34 Elias, p. 28.
- 35 Donald J. Bourgeois, "The Role of the Historian in the Litigation Process," *Canadian Historical Review* 67, no. 2 (1986), pp. 195-205; and G.M. Dickinson and R.D. Gidney, "History and Advocacy: Some Reflections on the Historian's Role in Litigation," *Canadian Historical Review* 68, no. 4 (1987), pp. 576-85.