

The Manipulation of Culture and History: A Critique of Two Expert Witnesses

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In November 1990, the Heiltsuk Band Council brought to the federal court of Canada a case regarding its people's Aboriginal and commercial rights to herring roe. Part of the proceedings involved the testimonies of two scholars, Drs. Wayne Suttles and Sheila Robinson, who had been accepted by the court to act as expert witnesses in the field of ethnohistory.¹ Like others, this case has revealed the many methodological and ethical problems of anthropological representation of First Nations peoples in mainstream legal systems. Western concepts of objectivity and fact make oral histories suspect and unreliable in the court's eyes. As demonstrated in the recent judgment of former British Columbia Supreme Court Chief Justice Allan McEachern (1991) in *Delgam Uukw v. HRMTQ*, Canadian legal institutions are fundamentally Eurocentric, allowing for little difference in cultural worldviews.² In effect, the judicial system of this country has, with few exceptions, been a great contributor to and sustainer of the colonial status quo.

The conflict between the Heiltsuk, a central Northwest Coast nation (centred at Bella Bella), and the Ministry of Fisheries and Oceans stems from Canada's refusal to negotiate rights to commercial herring roe-on-kelp harvesting. In article 15 of their legal statement (*Reid et al.*, 1990, p. 3), the Heiltsuk people claim that,

From time immemorial to the present, the Members of the Band and the members of the Heiltsuk People have harvested and cured herring roe deposited on bough or kelp from the Heiltsuk Roe Harvesting Areas, for their own consumption and for trade or sale to others.

Licensing for herring roe-on-kelp began in 1974, and since about 1975 the Band has applied for commercial licences to harvest herring roe. Since 1977, the Ministry has granted one single licence for the entire nation (*Reid et al.*, 1990, p. 4).

In 1983, a Comprehensive Claim based on the Aboriginal rights and title of the Heiltsuk people was accepted for negotiation by Canada. Nevertheless, "Canada has continuously refused or neglected to negotiate either the Plaintiff's Comprehensive Claim or the roe-on-kelp issue" (Reid *et al.*, 1990, p. 4). The Heiltsuk people collectively claim Aboriginal rights afforded them under Section 35 article 1 of *The Constitution Act, 1982*, "which include an exclusive or first-priority right to harvest from the Heiltsuk Roe Harvesting Areas . . . for their own consumption or commercially, subject only to the conservation of the species" (Reid *et al.*, 1990, p. 5).

Because the Crown has neither acknowledged the claims of the Heiltsuk people to the herring roe fishery nor granted the four additional commercial licences they requested in recent years "to address urgent social and economic needs" (Reid *et al.*, 1990, p. 5), Chief Councillor Cecil Reid and others sued for damages and rights. After having heard the testimonies and legal argument, the judge deliberated for less than an hour and then denied the Heiltsuk people their claims. The reasons for judgment had still not been issued by October 1992. Nevertheless, the case is expected to go to appeal (Pape, 1992, personal communication).

Until the reasons come down, it is impossible to know what factors influenced the judge in his decision. Certainly, he may have been swayed by the testimonies of expert witnesses. Two of these witnesses offered opinions based in ethnohistory. Dr. Wayne Suttles (1990b, appendix D), representing the Heiltsuk people, has worked with Northwest Coast peoples since the mid-1940s. An eminent scholar, he is professor emeritus at the department of anthropology of Portland State University and has also held professorial positions at the Universities of Nevada and British Columbia. In addition to his extensive academic fieldwork in the Northwest Coast, he has worked as a consultant in a variety of First Nations fishing and land claims cases, including the landmark *Sparrow* case. Suttles has a large number of publications to his credit. More recently he was the editor of the Northwest Coast volume of the Smithsonian Institution's *Handbook of North American Indians* (Suttles, 1990a).

Dr. Sheila Robinson (1990), who provided expert opinions for the Crown's legal defence, has most of her training in archaeology. In 1983, she completed her Ph.D. in cultural geography at the University of London. Her dissertation dealt with Haida and Tlingit peoples' involvement in the European maritime fur trade. Robinson has worked as a legal consultant and expert witness exclusively for the Crown in several First Nations claims cases, most notably the *Sparrow*, *Delgam Uukw* and *Reid* cases. Dr. Robinson has done no fieldwork and has not published articles

or books in the disciplines of anthropology or ethnohistory.

Suttles and Robinson have two very different approaches to the scholarship they present in the Heiltsuk case. Their basic points of departure differ, one being academic and the other what I will name legalistic. Legalistic scholarship in the style of Sheila Robinson appears to be based in the adversarial procedures of Western law. As the representative of the defendant, Robinson categorically disputes every significant item in the plaintiff's statement of claim as would a lawyer in preparing a case. Her strategy is to repeatedly attack well-established anthropological theories and historical facts, calling them "problematic" and "contentious," and thereby creating an aura of doubt and confusion where there should be none. Further, the evidence suggests that the means by which Robinson arrives at her conclusions are *secondary* to the conclusions themselves. In other words, she appears to use whatever arguments necessary to support the position of her client, the Crown counsel. Two examples of this unorthodox methodology can be seen in her narrow definitions and use of economy and commerciality, and in her criteria for accepting or rejecting historical documents. In contrast to Robinson's legalistic scholarship, academic scholarship like that of Wayne Suttles comes to its conclusions as a result of the research process. With this style of scholarship, one may or may not choose to challenge another's theories on the basis of one's research and subsequent findings. It is noteworthy that, through scholarly publication, Suttles has subjected his theories to peer review where Robinson has never done so.

Both Suttles and Robinson claim to use the methodology of ethnohistory in arriving at their conclusions. Suttles (1990b) draws on a variety of available resources including archaeology, historical and comparative linguistics, physical anthropology, written and oral histories, and ethnographies. Robinson, although she labels her research methods as "ethnohistoric," does not use linguistics or physical anthropology and disregards both archaeology and oral history because she "believes they provide little useful information about the relevant issues." In fact, she chooses "not to dwell on prehistory or 'time immemorial,'" but instead limits her resources exclusively to written documents. However, she considers these documents "speculative" for reasons I shall outline later (Robinson, 1990, pp. 4-5). Evidently, there is a conflict between Suttles and Robinson in what they consider to be reliable resources.

In recent years there has been some debate in the literature discussing the role of ethnohistory in anthropology. Ethnohistory has the potential to unsettle purely Western concepts of knowledge and has therefore become perhaps one of the greatest forces in dismantling Eurocentrism

within academia. Fogelson (1989, p. 134) asserts that

An understanding of non-Western histories requires not only the generation of documents and an expanded conception of what constitutes documentation but also a determined effort to try to comprehend alien forms of historical consciousness and discourse.

One's methodology must take seriously "native theories of history as embedded in cosmology, in narratives, in rituals and ceremonies, and more generally in native philosophies and worldviews" (p. 134). Slavish subservience to documents, like that of Robinson, has become recognizably Eurocentric.

Investigating our distinction of Western from non-Western worlds, William S. Simmons (1988) has traced how the premises of history and anthropology have developed differently. Simmons recognizes a basic dichotomy in Western thought: that of the centre and the periphery. "In this symbolism, . . . state differs from tribe, and colonizer differs from colonized, as sacred differs from profane." In European thinking, historians have represented the centre, that which is definable, "dynamic and acquisitive," whereas anthropologists have studied the periphery, or the so-called "static and unprogressive" (1988, pp. 1-2). Depending on written documentation, historians tend to have greater credibility than anthropologists in Western institutions. This is apparent in the findings of Chief Justice Allan McEachern (1991) in the *Delgam Uukw* case. Confusing fieldwork, a methodological tool, with subjectivity, he largely dismissed anthropological testimony because it lacked "credibility and reliability" (1991, p. 50). Conversely, he accepted "just about everything" that was submitted in the form of documents by historians because he felt they offered facts rather than interpretations.

This Western distinction between the historic and the ahistoric gave birth to the concept of untouched or pure cultures. Even mid- and late-twentieth century anthropologists like Kroeber and Lévi-Strauss caution that their interests lie in the "purely aboriginal, the uncontaminatedly native" (Kroeber in Simmons, 1988, p. 4). This idea of cultural purity and its counterpart, the ethnographic present, are a reflection of a fundamental Western worldview of the opposition between culture and nature. Through world-systems theory and ethnohistory, these ahistoric views of non-Western peoples have been challenged thoroughly. An understanding of cultural change has replaced notions of the "changeless society." In effect, ethnohistory and related disciplines attempt to confront the biased Western worldview by combining its perceptions of centre and periphery into a single category.

Both Suttles and Robinson refute a static view of the Heiltsuk. Even so, they do acknowledge a "traditional" culture. Suttles (1990b, p. 16) confines his use of the term traditional to "the earliest period for which we have observations recorded by Europeans – the late 18th and 19th centuries." The term in his view is a convenient point of reference to a particular period in Heiltsuk history. Conversely, Robinson (1990, p. 41) imbues the concept of tradition with a much broader meaning. She states that

"Traditional" refers to before European contact, or unaffected by European contact throughout the report. This includes times before to indirect contact with Europeans occurred [*sic*], here dated to the mid-seventeenth century. Indirect contact with foreigners may have affected Northwest Coast societies even earlier.

Implicit in her definition is the view that change instigated by European contact is inherently different to change brought on by other cultural contact or historical processes. As demonstrated in specific examples later in this work, she actually upholds the concept of a pre-European cultural purity.

Overall, the basic thrust of the expert witnesses' testimonies are opposites of one another. Suttles emphasizes the *continuity* of Heiltsuk culture through historic change. He demonstrates how,

In spite of all that has happened – their decline in numbers, coming together in a single village, conversion to Christianity, subjection to Canadian authority, involvement in commercial fishing and other industries, education in English, adoption of much of Euro-Canadian styles of housing, clothing, etc. – the Heiltsuk have persisted as a separate people with their own practices and values. [Suttles, 1990b, p. 50]

Suttles proves his claims of cultural continuity through ethnohistoric methodology. For example, he traces particular hereditary names from the time of the earliest written records. One of several of these chiefly names is *Wakas*. In 1793, George Vancouver refers to a Heiltsuk leader by the name of "*Whacosh*." Between 1833 and 1835, the name appears as "*Wacash*" in Hudson's Bay Company journals of both Alex C. Anderson and his replacement, Dr. W.F. Tolmie. In the 1920s, Franz Boas recorded the name "*Wa'ka.s*," while some years later, Phillip Drucker described a chief named "*wəquis*." Today, Suttles (1990b, pp. 50-52) has found that this same chiefly title has been passed on to a Heiltsuk woman whose

English name is Irene Brown. Using this and a variety of other archaeological and ethnohistoric methodologies, Suttles (1990b, p. 15) finds that "the evidence . . . supports a *minimum* antiquity of 2,000 years for the Heiltsuk in their territory." He also clearly notes that Heiltsuk occupation of this territory could well be much more ancient.

In contrast to Suttles' demonstration of continuity, Sheila Robinson emphasizes *discontinuity*. She asserts that "any information said to be about Northwest Coast Indians unaffected by the European presence is contentious" (1990, p. 4). Suttles does not dispute such a claim, but in opposition to his views Robinson suggests that contact with any European goods, peoples or ideas constitutes a fundamental break in Heiltsuk culture. This assumption is clearly revealed in Robinson's perceptions of changing fishing technology:

Dramatic contrasts can be seen between "traditional" or historic herring spawn exploitation in almost every aspect. . . . Recent practices are so qualitatively different from what appear to be aboriginal patterns of herring spawn collection and use that claims of continuity in this resource use are questionable. [1990, p. 15]

Thus, even though Robinson agrees that no society is changeless, she considers changing technology of resource extraction a sign that Heiltsuk people have revoked their Aboriginal lifeways, and therefore by extension their rights.

In Robinson's view, "traditional" Heiltsuk culture began to change during the protohistoric period, which she dates at the mid-seventeenth century. This date is questionable as there was no European contact anywhere on the Northwest Coast until 1741, when Russian traders met Tlingit peoples (Cole and Darling, 1990, p. 120). Nevertheless, Robinson claims that nearly 150 years passed between the period she calls the protohistoric and the first written documents on Heiltsuk peoples by Mackenzie in 1793. In her opinion, changes that occurred during the protohistoric period make even the earliest documentation by Europeans unreliable as observations of "traditional" culture. Robinson's conclusion is that we cannot assume cultural continuity or even *ancestral* continuity with the "pure" central coast people who lived during true prehistoric times. In fact, in her first endnote Robinson (1990, p. 41) clarifies that she does not

by using the term "Heiltsuk/Bella Bella" . . . acknowledge any direct connection between the plaintiffs and any groups living in the central coast region at or around the time of contact, or up to

at least the 1880s. . . . (She also does) not acknowledge a sociopolitical group by that name except in the sense that it appears to be used in the statement of claim to refer to modern people.

In some ways, one can compare Robinson's work with that of several post-modern scholars. The idea that writing is part of a process which "invents" culture is common to the theories of Hobsbawm and Ranger (1983), Clifford (1988), Geertz (1988) and others. Some anthropologists claim that such a process has become politically motivated. Discussing the Maori movement in New Zealand, Allan Hanson (1989, p. 890) feels that culture and tradition have become "an invention designed to serve contemporary purposes." So too, Robinson (1990, p. 8) suspects that

Recent interest in resource use studies about "traditional" aboriginal practises seems to correspond to increased enthusiasm for pressing native claims. The fact that so much of the ethnohistoric record was created after Northwest Coast Indians began to express concerns about resource rights should also be kept in view.

This concern for politically motivated bias is particularly contentious when asserted by Robinson because her own methodology seems unreliable. For instance, her criteria for substantiating the utility of written documents appears to be subjective. Robinson's main point of argument "emphasizes how little substantive information" is available (1990, p. 9). However, documents that clearly support the plaintiffs' claims do exist and these she attempts to discredit in a variety of ways. For example, passages in Tolmie's journal (1834-1835) describe the economic activities of Heiltsuk peoples. One in particular depicts a trade excursion by *Wakas's* people in which they transport massive amounts of dried herring roe to Kwagiulths in return for eulachon oil. Robinson (1990, pp. 16, 17, 18-19, 20, 21-23, 60) writes a combined total of four pages in an attempt to denounce the credibility of Tolmie's journal entry. Because such early descriptions are "very rare," do not indicate "a transaction based on necessity or exclusivity" or one of "modern commerce," and do not name the trade partners with contemporary spellings, it is in Robinson's "opinion . . . that (Tolmie's) observations are incorrect" (1990, p. 21).

On the other hand, Robinson upholds unreliable documents that support the Crown's position. During her cross-examination by Heiltsuk legal counsel (6 Nov. 1990), Robinson stood firmly by the observations of Captain George Vancouver. Vancouver wrote that the people of the region in question spoke a Haida dialect. To Robinson, this constitutes

evidence that prehistoric peoples of the central coast area are not the ancestors of the modern Heiltsuk. She does not question whether Vancouver had the ability to distinguish between Northwest Coast languages, especially upon hearing one for the first time. It appears that Robinson makes credible those written documents which suit her argument.

Because the Heiltsuk people claim rights to the herring roe fishery as a commercial resource, much of the testimonies of Suttles and Robinson deal with economic life. Using an ecological theory, Suttles (1990b, p. 30) explains that Northwest Coast peoples had "abundant resources," but that "they were not distributed evenly over their territory" and were often only "available in great abundances for short periods of time." He discusses seasonal rounds and hereditary ownership of resources as well as the "important" and "essential" role of exchange in Northwest Coast economies. Suttles explains how "exchanges compensated for differences in the resources of different micro-environments within the territory of a tribe and even more, between the territories of different tribes" (1990b, p. 36). Shown through the distribution of foreign obsidian in the archaeological record, Suttles establishes that such far-reaching trade is "not a recent phenomenon," but rather an economic subsistence strategy that has existed for thousands of years (1990b, p. 37).

Suttles also notes how the Heiltsuk region was particularly strategic to the trading network. Being on the outer edge of the central coast area, the Heiltsuk had access to rich marine life such as herring roe, which was not available to peoples of the inner coast (the Bella Coola to the east, the Skeena River Tsimshian and Haisla to the north, and the Oowekeno and Kwagiulth to the southeast). Through the Bella Coola, the Heiltsuk also had access to peoples in the interior (Suttles 1990b, p. 37). Moreover, the Heiltsuk inhabited "the only sheltered water route between a broad area to the north occupied by the Tlingit, Haida, and Tsimshian and a broad area to the south occupied by the Kwagiutl, Nootka, and Coast Salish." Positioned thus at "the neck of the hour-glass," the Heiltsuk became mediaries in the transmission of exchange goods between two large Northwest Coast regions (Suttles, 1990b, p. 39).

In his discussion of herring roe in particular, Suttles (1990b, pp. 58-63) demonstrates continuity as he does with the heredity of chiefly names. He offers an historic sequence of accounts recognizing Heiltsuk procurement of herring roe as well as its importance as a trade item for eulachon oil. His references date from 1793 when Alexander Mackenzie wrote the first words about Heiltsuk peoples, to Tolmie in 1834, James Douglas in 1853, missionaries of the 1880s and 1890s, hospital personnel in the early 1900s,

and Reverend Gibson from the turn of the century to the 1930s. The list continues to the present.

In contrast with the ecological theories of Suttles, Robinson (1990, p. 13) suggests that "herring spawn was probably one of several foods simply used locally or shared now and then with kinfolk dwelling in nearby areas." As already noted, she attempts to show discontinuity by documenting the participation of Heiltsuk people in Euro-Canadian-based activities like the modern fishing industry. Moreover, she questions the plaintiffs' claims to commercial rights to herring roe. Ignoring evidence that supports the existence of ancient trading routes as well as George Vancouver's proclamation that the Heiltsuk "were well versed in *commerce*" (Vancouver 1984, p. 943, emphasis added), she asserts that there is little written documentation regarding the "specifically commercial use of herring spawn by 'Bella Bella/Heiltsuk' Indians." Robinson (1990, p. 17, 56) considers the trade that did exist a "relatively informal exchange of foods among relatives" that was likely pursued because of "preference" rather than "necessity." In stating that "sharing was traditionally the 'operative ethic' for central coast Indians," she also denies that Heiltsuk peoples had any sense of resource ownership or "exclusive rights or privileges vis-a-vis herring spawn" (1990, p. 18).

Robinson defines commerciality for the court in a manner that is very narrow, even by strictly Western standards. According to one lawyer, hers is not a legal definition (Pape, 1991, personal communication). Neither can it be considered an anthropological or ethnohistoric one. Although her unique ideas have never been tested amongst or accepted by the scholarly community, Robinson (1990, p. 29) claims that the differentiation between "non-European, non-market economies and those governed by commerce is as basic to economic theory as it is to anthropological theory." Pre-contact exchange amongst Northwest Coast peoples did not, in her view, constitute "a commercial activity, in that it did not involve wage labour, standardized currencies, or markets removed in any way from a kin-based matrix" (Robinson, 1990, p. 43). Nor was it "based on considerations of cost-effectiveness, because Northwest Coast people could not pick and choose trading partners." The "main reason" why Robinson does not categorize Northwest Coast exchange systems as "commercial" is because she believes that "modern economic practises are not grounded in kinship terminology and driven by kin-based considerations" (1990, pp. 31-32).

Obviously, Robinson attempts to apply a limited, unusual and unapproved capitalistic view of modern commerce to an economic system

of an entirely different type. Economy and commerciality are not bound to specific, recent Euro-Canadian concepts as Robinson suggests, but instead vary from culture to culture. Her opinion that kinship-based exchange is not commercial is entirely unfounded, and it eliminates the very real possibility that Aboriginal kin ties were created *in order* to establish or reinforce economic alliances and trading partnerships. Some large economic players, such as the Saudi oil families, are good present-day examples of how finance and kinship can be strong partners. Similarly, Northwest Coast peoples find kinship to be integral to economic life. An example of this is found in the activities of lobby groups like the Native Brotherhood of British Columbia. As did their ancestors, many Northwest Coast peoples extract marine resources with members of their houses and lineages. Since joining the modern commercial fishing industry, skippers have continued to hire according to this hereditary ethic. The Native Brotherhood had to negotiate with the various fishing unions because Northwest Coast hiring practices were considered discriminatory by Euro-Canadian standards. The Native Brotherhood emphasized the great importance of retaining their kinship network in the fishing industry and, being successful in their lobby, they have also demonstrated how kinship structure can be central to the commercial endeavours of Northwest Coast peoples (Clement, 1986, pp. 93, 119). The continuity of commercial transactions firmly set within kinship systems has endured in spite of technological change.

In effect, Robinson's premises hold a double standard for Heiltsuk people. She emphasizes change, which is true of all peoples, yet cultural "purity" is her criteria by which a people can lay claim to Aboriginal rights. With this manipulation of logic, Robinson infers that the Heiltsuk must prove that they have been unaffected by the arrival of Europeans even though, by her own assertion, there are no ahistoric or "changeless" societies. In addition, her rejection of resource information, be it oral or written, makes unprovable any First Nation's historical connection to the lands it occupies. Essentially, the testimony that Robinson has presented in the Heiltsuk herring roe fisheries case has attempted to sabotage the credibility of both historic and anthropological scholarship. Hence, although she attacks every claim made by the plaintiffs, she cannot offer alternative theories. Robinson has in fact destroyed her own scholarly tools to build an argument.

This comparison between the testimonies of Drs. Sheila Robinson and Wayne Suttles in the Heiltsuk herring roe fisheries case attempts to show how scholarship can manipulate the histories of living peoples. Hanson

(1989, p. 890) has stated that "inventors of tradition" have largely been motivated by an upsurge in nativist movements. Yet such inventors come from the hegemonic portions of society as well. Indeed,

When the inventors are politically dominant, as has been the case between Western nations and their colonies, the invention of tradition for sub-ordinate peoples is part of a cultural imperialism that tends to maintain the asymmetrical relationship of power.

Having refused to negotiate land claims and commercial fishing rights for many years and thereby forcing important First Nations' resource conflicts to the courts, the Crown and its legal counsel have taken an active part in such cultural imperialism. Certainly the choice to hire misleading legalistic scholars is further evidence that the government does not wish to resolve legitimate grievances, but instead continue its denial of First Nations' rights. If we can judge by the Crown's success in the Heiltsuk and Gitksan-Wet'suwet'en cases, scholarship in the style of Sheila Robinson has undoubtedly become an effective tool in upholding the colonial status quo.

Notes

1. Ethnohistory encompasses several disciplines: written and oral histories, ethnographies, archaeology, historical and comparative linguistics, and physical anthropology.
2. In the case of *Delgam Uukw et al. v. HRMTQ*, over seventy Gitksan and Wet'suwet'en hereditary chiefs launched a massive three-year court action in the British Columbia Supreme Court. They sued the Crown for ownership and jurisdiction of their hereditary lands. Chief Justice Allan McEachern ruled against them with a particularly racist and assimilationist judgment. The case went to the British Columbia Court of Appeal in early 1992. As of October 1992, the judgment from those proceedings had not yet come down.

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