‘You people talk from paper’: Indigenous law, western legalism, and the cultural variability of law’s materials

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While researching aspects of indigenous oral history in the western part of what is currently called Canada, I encountered an anecdote from a Southern Tutchone elder from the Yukon. This elder, Mrs. Annie Ned, was criticizing a group of scientists at a joint conference of scientists and indigenous persons involved in environmental issues facing the polar and sub-polar regions of Canada. She said to the scientists: ‘You people talk from paper’ (Cruikshank 1998: 45). In this essay I will discuss why and how this phrase functions as potent criticism of how western law and science deal with indigenous groups in settler colonial societies and, perhaps, how western law and science deal with knowledge in general. To do that I’ll look at a case where two different kinds of legal tradition come into conflict—in part because of what each of them takes to be law’s materials. The case is called *Delgamuukw v. British Columbia* (hereinafter *Delgamuukw*). The conflict is between Canada and two indigenous groups—the Gitxsan and Wet’suwet’en—residing in what is currently called British Columbia.

1 Law’s outside

I’ll start by thinking about the focus of this collection of essays: law’s matters and materials. The legal *matters* at stake in this essay are

jurisdiction and evidence. For Canadian courts the legal *materials* of this case are statutes, court proceedings, legal decisions, and a constitution, in addition to settler colonial legal storytelling and well-entrenched assumptions about legal legitimacy. For the Gitxsan and Wet'suwet'en peoples the legal *materials* are stories, songs, feasts, and material objects. The problem is judgment: who gets to decide? Of course, in legal terms, the question 'who gets to decide' usually refers to jurisdiction. I've rendered it a problem of judgment rather than (or in addition to) jurisdiction because of what the case is about. The Gitxsan and Wet'suwet'en brought *Delgamuukw* because they wanted Canada to acknowledge that they have sovereignty over their lands because these lands have never been ceded by treaty or lost in battle. And yet Canada claims jurisdiction to decide the case. There is a fundamental disconnect here—between the logic of one claim and the logic of the other. And so we're called upon to make a judgment in this case about what empowers jurisdiction. Why should Canada's provincial and supreme courts have the power to decide a case in which the Gitxsan and Wet'suwet'en assert power over unceded territory?

I've written about the details of this case elsewhere, as have many other scholars of law, anthropology, history, and other disciplines; I am also in the midst of a larger book project exploring law's relation to time and judgment in this case and others.[2] I won't be able to do justice to the complexity of *Delgamuukw*, nor to the communities who brought the case, in this essay. In brief, various chiefs and houses of the Gitxsan and Wet'suwet'en peoples sued British Columbia, asking for recognition of their rightful ownership of and jurisdiction over lands that have never been ceded to Canada. At trial elders told oral histories meant to convey proof of longstanding residence in, responsibility for, and relation to these lands. The judge at the provincial level (McEachern J) allowed the oral histories as evidence rather than excluding them as hearsay, but then failed to treat them as capable of conveying legal truth. He ruled that the Gitxsan and Wet'suwet'en did not have standing to bring the case because their rights had been effectively extinguished by Canadian law prior to the 1982 Constitution Act (an act which establishes that the indigenous peoples of Canada have rights not granted by Canada[3]).

The legal argument for this is based on the colonial assumption that legislative enactments intended to grant unburdened title to settlers were legitimate exercises of power and effectively removed the rights of indigenous groups to land, which amounts to saying that settler assertion of sovereignty means legitimate rule even if the lands claimed are already inhabited by organized societies who did not sign treaties or lose battles over territory. Neither justice nor the history of Canadian legal rulings fully supports that conclusion.

The case was appealed to Canada's Supreme Court, where it was heard with more fairness, and where the plaintiffs amended the pleadings to seek title rather than jurisdiction. The Supreme Court found that it was a legal error for the 51 original claims (of the Chiefs of various Houses) to amalgamate into two collective claims (Gitxsan and Wet'suwet'en) for the higher court ruling, so they ordered a new trial without ruling on the legal questions, while also suggesting that political negotiation would be better suited than a trial to address the problems raised by the case. Despite not ruling on the case's main questions, the Supreme Court overturned the lower court decision that title had already been lost, affirming the existence of native title and offering some guidelines for how it is to be ascertained. It also ruled that indigenous oral narratives must be treated as valid evidence by courts hearing cases like these. Thus, though this may not sound like a win, it is widely claimed as victory by Gitxsan and Wet'suwet'en people because of what it overturned and the meaningful precedent it set for indigenous land claims in Canada. But even this fairer ruling could not get beyond settler colonial assumptions about what constitutes legal truth and how truth may be conveyed—I'll return to that shortly. For now, let's remember that we're faced with a case where indigenous peoples are seeking recognition of jurisdiction over territory that has been theirs since long before Canada existed and which has never been ceded to Canada, and yet Canada claims jurisdiction to decide the case.

How might a legal materialist approach help us think about this? On the one hand thinking about matters and materials and the differences between them potentially illuminates some parts of the problem. On

the other hand, I'm uncertain whether the discourse of legal materiality as I understand it has much room for settler colonial critique. The legal materialist approach sketched in this volume's introductory essay by Hyo Yoon Kang and Sara Kendall seems to focus on the 'inside' of law by analyzing how certain materials are enlisted in legal matters. I challenge this inside/outside premise with this case and argue that 'outside' is more significant than 'inside' for changing how we think about what settlers owe to indigenous groups. Legal arguments sometimes proceed as if there were no 'outside' to the stories they tell. I claim that there is no such thing as a totality without an outside. When something appears to have no outside, that is a function of how stories get told about it. But stories can change.

2 Stories about Law

There is no such thing as an inside with no outside. I've begun to make that argument by relying on Emmanuel Levinas' discussion of the work skepticism does in the history of philosophy (Levinas 1998: 165-171). Philosophy claims to have proved skepticism wrong by pointing out that it is inconsistent when skepticism makes a truth claim about the limits of what truth claims can do. According to skepticism's critics, the skeptic's claim relies on the thing it says is unreliable (truth) and thus the claim fails. Levinas points out that the rebuttal makes sense if you think there is only one system of logic. But it is not necessary to limit our thinking in that way. That a system is a totality and yet has an outside may appear to logic as a problem. It produces questions such as: How can something be total and yet not include something? Or: How can indigenous groups have sovereignty if they are part of a North American sovereign? But, as Levinas will point out, that is only a problem within that system. If your aim is to show that no system succeeds fully in being a totality, the objection that it defies logic to find a surplus to a totality does not make sense. In other words, as Levinas argues (in the context of philosophy), the objection that one cannot write philosophy without logic presupposes as settled what is actually in question: whether there is only one logic operative here or,

further, whether all communication must refer back to a system in a totality (Levinas 1998: 165-171). In a similar vein, we might argue that (in the context of *Delgamuukw*) the objection that we can't make dependable legal judgments based on forms of evidence that feel unfamiliar assumes that jurisdiction—what counts as law and who gets to judge—is already settled rather than being the very thing at issue. The arguments about evidence in *Delgamuukw* point to an inability—or a refusal—of settler colonial courts to take legal pluralism seriously, even when they claim to be practicing it.

But this isn't a simple story pitting indigenous groups and their allies against all lawyers. Plenty of law's thinkers and practitioners would admit that legal pluralism requires more of settler colonial courts than what is currently offered. Jeremy Webber reminds us that 'all judging presupposes an appreciation of the legitimacy and extent of legal orders'—meaning that jurisdiction is a weighty question wherever judgment is rendered (Webber 1995: 659). He offers a history of compromise and conflict that results in shared normative commitments between settlers and indigenous groups in Canada, and shows how the development of these commitments—rules and practices—mattered even when they emerged from unequal power arrangements. Both sides compromised because they needed to find some way to prevent and adjudicate conflict and harm. This history has everything to do with questions about who gets to decide:

> The issue is precisely about the extent of the non-Aboriginal legal order and the possible survival of another order whose origin lies outside the unilateral actions of a non-Aboriginal sovereign. A decision to consider non-Aboriginal law as the sole source of justiciable norms, applicable without qualification to Aboriginal people, would presuppose an answer to this fundamental question. (659)

In other words, courts need to reckon honestly with the question 'who gets to decide?' rather than assuming it has been answered. Webber's work shows that Canadian law springs from a plurality of legal traditions and thus any decision to impose one form on another is domination rather than law—and also misunderstands Canada's legal

history. So, if the Gitxsan and Wet'suwet'en claim jurisdiction over a territory and Canada asserts jurisdiction to decide whether their claim is true, it isn't simply the case that the Gitxsan and Wet'suwet'en are wrong that they have jurisdiction. Instead it makes Audra Simpson's point that 'there is more than one political show in town' (Simpson 2014: 11). That power tends to decide the issue does not change the meaning of the conflict, that what Canada calls law is not the only thing that operates as law in this region.

That gives us a different way to think about the legal materialist focus on the ways in which legality is made. There are multiple forms of law, multiple things that build worlds, and those things may be incommensurable even when they operate in the same spaces. Maybe a legal materialist lens *would* help here because, as Kang and Kendall also write, 'a legal materialist approach turns from knowledge of legal concepts (as with the doctrinal study of law) to legal ways of knowing and the materials that law draws upon' (Kang and Kendall, Introduction: 3). It is not difficult, if one takes a fair look at Gitxsan and Wet'suwet'en governance, to see legal ways of knowing drawn from specific materials. The materials are different from the ones western law draws on, but that does not render them less legitimately legal. (I'm about to trouble that way of framing the problem, however.) Nonetheless, the judgment in the provincial ruling in *Delgamuukw* proceeded as if non-Aboriginal law were the 'sole source of justiciable norms' (Webber 1995: 659).

In *Delgamuukw*, Gitxsan and Wet'suwet'en elders came to court to tell their oral narratives—called *adaawk* and *kungax*, respectively—because these are legal materials. The elders came to court to share their knowledge because these stories, heard well, prove long term occupancy and land-use, establish where fishing sites are and who is authorized to use them, describe legal and social practices of various kinds, offer a history of Gitxsan and Wet'suwet'en involvement with the land and with kin and clan, and much more. For the Gitxsan and Wet'suwet'en peoples, these stories aren't evidence of title to land, they *are* title to land—or they are something similar to what a settler colonial legalist

conception of land and property calls title.[4] The performance of these stories at key moments is what creates and maintains the system of traditional laws that governs the Gitxsan and Wet'suwet'en peoples. The Judge in *Delgamuukw* thought he had done his job by allowing these materials into his courtroom. But, though he admitted the stories into evidence, he failed to learn how to hear them as legal materials—and that is one reason why his judgment was unjust. That this is the outcome is perhaps unsurprising. But it is not impossible to imagine a different kind of hearing, where instead of shoring up established procedures that can only extend a legacy of colonial domination, all involved are able to recognize what they do not yet know and then seek to learn how different kinds of legal materials work. But even if we managed to get past power and into fairness, would recognizing indigenous stories, songs, and material culture as legal materials be good enough?

3 Oral Narrative as Legal Material

Let's return to where we began. Mrs. Annie Ned's larger comment was: 'Where do these people come from, outside? You tell different stories from us people. You people talk from paper—Me, I want to talk from Grandpa' (Cruikshank 1998: 45).[5] That addition—'I want to talk from Grandpa'—makes it clear that we're dealing with the difference between storing knowledge in documents and passing it down through oral narratives. But even that characterization I've just made, while accurate, misses something about the difference being pointed to in Mrs. Ned's comment.

Julie Cruikshank shows what is distinctive about knowledge stored in oral forms by describing how she was taught by elders and then discussing the different things a single narrative can mean depending on who tells it to whom and in what context. In *The Social Life of Stories*, Cruikshank argues that narratives passed down orally over generations are not only a resource for learning about the past of a culture defined by an oral tradition, but also 'provide a foundation for evaluating contemporary choices and for clarifying decisions made' at various stages of life (xii). The stories, embedded in a context, build

on shared knowledge, and yet they also have the power to 'subvert official orthodoxies and to challenge conventional ways of thinking' (xiii). However, it took some time, and some willingness to adjust her expectations, for her to learn this. Cruikshank arrived at the scene of her fieldwork in the Yukon with a typical set of anthropological concerns: she was interested in the Klondike gold rush, cooperative relationships between Tlingit and Tutchone peoples, the construction of the Alaska highway, and the effects of those changes on the lives of people who were native to that region. With each elder she met, and each such anthropological question she posed, she was told, patiently but firmly, that she must begin by recording stories. And so, she listened to stories while also worrying that things were going off the rails. Then she began to understand that the elders were 'consciously providing me with a kind of cultural scaffolding, the broad framework I needed to learn before I could begin to ask intelligent questions' (27). She was being offered an education in how to approach knowledge as Tutchone and Tlingit peoples do. In describing for us her own process of learning, Cruikshank opens up a view into a way of thinking that is *not inferior* to text-based knowledge, but is sufficiently different that, because it is also marginalized by unequal power arrangements, is always in danger of being treated as inferior or at the very least misunderstood in such a way that injustice is the result.

What does it mean to say 'you people talk from paper'? You might say it's the flipside of the western attitude 'you people don't even record your histories on paper!' The belief that oral histories are deficient relative to written ones fails to understand that knowledge may take different forms and that ideas may be retained over time in practices other than writing. The truth of this is also reflected in the western/Anglo legal tradition. Marianne Constable's *The Law of the Other* does a good job of showing how, even in the history of England, the *writing* of law may be the mark of a sovereign imposing his will on a conquered people, that writing down rules that had not yet been written changes their character, and that it is not necessary to presume that rules are writable in order to be able to follow them (Constable 1994: 67-95). There is a presumption that people with oral traditions or 'unwritten

rules' just haven't gotten around to writing down their histories yet. But that assumes that oral tradition says and does what a settler colonial subject thinks history or law or geography or religion say and do. And that is not true.

First of all, an oral narrative is not always the same, even if it tells the same story. Who is doing the telling, to whom, for what reason and in what setting—all of that will mean that both the telling and the hearing are likely to differ over time. That is not so hard to understand if you stop and think about how, when you read a book or watch a movie more than once, it often does not mean exactly the same thing both times. But let's not colonize the form entirely by thinking we get what's at stake because we sometimes read books more than once. Cruikshank tells the story of an oral narrative imparted to her by the elder Angela Sidney, about separation, loss, and return. A man named Kaax'achgook goes to hunt seal, is warned by spirits that it is not safe for him to do so and thus returns home. After some time passes, he gets sad that he isn't providing for his family and decides to go back out hunting, and then gets lost when his boat gets caught in a storm and he is marooned on an island. He is gone for a year and his relatives think he is dead, but during that time he harvests many seals and otters, observes the position of the sun at sunrise and sunset every day, and uses that to figure out when and how to sail back home. It's a long story with a lot of (what a settler's ear might impatiently call) wandering but three of its main themes are: 'I gave up my life out on the deep for the shark'; 'The sun came up and saved people'; 'I gave up hope and then dreamed I was home' (Cruikshank 35). You can see from my short characterization that the story teaches something about maritime navigation, about making the best of a bad situation, about failing to listen to spirits, about not losing hope, about wanting to be home, and so on.

The first time Sidney tells the story to Cruikshank, it is as a story about why she is authorized to tell the story—there is an embedded story about how her clan rather than another came to be authorized to tell this tale.[6] The second time Cruikshank hears the story (eleven years

later), it is when Sidney's son, who fought in WWII, is visiting and Sidney wants to communicate that he had been gone so long, across the sea, that she had worried he was dead, but that he returned home. The third time Cruikshank hears the story it was at the opening of a college in the Yukon, and this time it was told to make the point that, now that they had their own college, they would no longer lose their children to Vancouver. Sidney didn't add those metadiscursive explanations to the tellings but rather relied on the story to communicate in its context what it needed to tell in that moment. This is what stories can do for people who are deeply enmeshed in a tradition and taught that story is a cooperative enterprise from which lifelong learning is possible.

In the provincial courtroom in *Delgamuukw*, lawyers for the state and province worried that this variability allows too much license and not enough stability to do justice. That worry betrays a lack of knowledge of how these oral narratives operate in their specific cultural setting. The stories may vary, but only in pre-established, acceptable ways. For instance, in the Gitxsan context, when an *adaawk* gets recounted at a feast, every guest Chief who is there as witness serves in the role of *niid'nt*, 'the ones who approve.' As Val Napoleon puts it, 'the witnessing and approval must be publicly declared to effect any change in social standing. In this way, the feast is a public, interactive, and highly political process, conducted with extreme tact and subtlety' (Napoleon 2005: 126-7). No one has the power to change these kinds of stories without broad social support. It should not be difficult for judges or lawyers in settler colonial courts to understand this, given that the law on which they rely also must be both stable *and* responsive to survive the passing of time. (And some of that law will be common law, which isn't 'written' in the same way a statute is. That makes the prejudice against 'unwritten law' even more interesting.[7]) In settler colonial legal institutions there are rules and procedures for change that all involved parties understand, much like how those in attendance at a Gitxsan feast understand what may and may not happen there. Settler colonial courts also bear witness to how legal rules and principles are interpreted differently over time. So, a written text may offer a different kind of stability than does an oral narrative, but even a written legal text's

stability is manifestly flexible. Nonetheless, lawyers for the province and state in the *Delgamuukw* case tried to undermine the oral narratives told by elders by looking for inconsistencies in their telling. They did not look for inconsistencies in their own story of law, even though their case is built on quite a few, including the problem of jurisdiction. Nor did they try to learn how Gitxsan and Wet'suwet'en stories preserve knowledge over time in ways different from how settler colonial legal documents do. In other words, they did not seek to know how Gitxsan and Wet'suwet'en stories work as legal materials, and that means they were not able to *hear* the stories or ask meaningful questions about them.

That might lead us to embrace an argument like, 'we must learn how to hear indigenous oral narratives as legal materials or as valid evidence.' Perhaps that is an imperfect initial step forward. However, with oral history, both the reasons for being and the aim of a story may differ substantially from a form that values stability over change. So, while worries lawyers have about the possibility of error or unreliability in indigenous stories 'may not take sufficient account of the checks and balances in language, people, and culture that help sustain such memories,' those same worries may miss that there is, as John Borrows points out, 'something quite different going on in the transmission of oral history than the mere recording of events' (Borrows 2001: 10). When Mrs. Annie Ned says 'you people talk from paper' she's not only voicing a criticism of how settler colonial knowledge is conveyed but of how those who are embedded in its ways learn to think and listen. They look for universal truths and controlled experiments, and think data provides an answer to every question. They call history authoritative when it is contained in a text that does not change, even though their own lives could easily teach them how the past resounds in the present moment differently over time. And so settler colonial subjects may not see that it is fully possible to have a deep understanding of how the world works that emerges differently—that does not rely on the 'dead' letter of a text. And also, they tend to listen to an oral narrative in order to turn it into a text that can then be read like any other text. But that is exactly the right way to fail to understand what is at stake in different ways of world-building.

4 Legal materials in the courtroom

In the provincial hearings in *Delgamuukw*, McEachern J could not accept that oral history might be authoritative about anything, but he could not see that he had that prejudice because, according to his reasoning, he had allowed it all in court and listened to it and thus had been fair. The Judge could not hear oral history as being legal title to land (as the Gitxsan and Wet'suwet'en peoples say that it is) and he could not get past the 'supernatural' elements that, to his ear, can only be mythical and thus not-true.[8] Even the Canadian Supreme Court's later, much more fair ruling said something like: in the absence of written records, conclusive evidence would be hard to come by, so oral histories must be taken seriously. One version of this, from Chief Justice Lamer, reads: 'Since conclusive evidence of presovereignty occupation may be difficult, an aboriginal community may provide evidence of present occupation as proof of presovereignty occupation in support of a claim to aboriginal title' (*Delgamuukw* 1997). This just-sounding claim misses a very important point, that for these peoples and their traditions, oral histories *are conclusive evidence.* We think from paper.

But that sentence I just wrote, that 'for these peoples and their traditions, oral histories *are conclusive evidence,' is, like the wording the Canadian Supreme Court chose, not quite right.* A settler colonial way of approaching this problem would be to say, well, the courts just need to learn to accept oral histories as conclusive evidence, as valid legal materials. But that strikes me as not good enough—it still aims to colonize a form of indigenous governance by making it conform to settler colonial legalism.[9] Instead, perhaps we can ask how someone trained as a lawyer in a textual tradition might learn to see that a song, a story, a ceremonial robe, or a totem pole could *be* law or legal title rather than evidence of those things.[10]

This is where a legal materialist approach might help. Kang and Kendall write: 'with the concept of jurisdiction, for example, the observer's epistemological task of self-reflection is to trace how the abstract idea of jurisdiction is brought into being by delineating and qualifying the relations amongst constitutive parts that comprise it'

(Kang and Kendall, Introduction: 13). If jurisdiction for a Canadian court comes from a constitution, laws, legal precedent, treaties, and other such legal materials (this is what gets argued, even if domination is the more truthful answer), that gives us a text-heavy way of determining where power lies in this case.[11] But if our task is to delineate and qualify the relations among the constitutive parts that comprise something like jurisdiction, or to identify 'the materials through which law operates, and how they are enlisted in the production of legality' (Kang and Kendall, Introduction: 13), then it shouldn't be impossible to see that jurisdiction for Gitxsan and Wet'suwet'en peoples comes from stories, songs, and material objects other than paper. They don't talk from paper.

We still haven't solved the problem that power tends to decide the answer to this conflict. But maybe a materialist approach helps elucidate things that might not otherwise be seen? This approach might, for instance, shine a brighter light on the gaping holes in Canadian jurisdiction over the area of British Columbia in question. Canadian jurisdiction is as much a *story* as anything brought forward by the elders who testified in this case. That an incomplete and one-sided story was once written down and turned into law does not, on its own, make that story more authoritative than one that has been passed down in living speech across many years and over multiple generations.[1] Basic respect dictates that we acknowledge that and deal with what it means for law in settler colonial states.

5 Beyond the text

In her essay 'Law's materiality,' Kang writes: 'Although legality is materialized through different media and the latter shapes the scope and meaning of law, law is predominantly a hermeneutic practice operating in a textual mode, which is implicated with many other representational practices' (Kang 2018: 464). It is no secret that western law operates in a textual mode. But it may be possible for those of us who inherit that tradition to see beyond its texts, or to recognize

1 See Constable M on the difference between law as propositional statement and law as practice.

that its texts are materials that may mean different things across time and place. To get beyond our prejudices about what counts as law, we may have to begin by admitting that indigenous oral narratives, songs, totem poles and other aspects of material culture are legal materials. Then we would have to interrogate that new knowledge, and perhaps learn that in getting there by that method we ended up bringing colonialism with us.

The work I've been doing on Levinas' ideas about skepticism points us in a similar direction. You are reading this argument rather than hearing me speak it. Thus, the argument is stuck in its original moment of writing, unable to respond to changing conditions and any new knowledge I might gain in dialogue with you or the larger world. Those are the conditions. That might leave us hopeless if we didn't admit that writing rarely communicates only what is written. As Levinas puts it, every book gets its audience, and is part of a world it does not include, and even when you read to yourself rather than speaking with others you are participating in a world where the book is one structure but there are also other structures. As he points out, 'the permanent return of skepticism does not so much signify the possible breakup of structures as the fact that they are not the ultimate framework for meaning, that for their accord repression can already be necessary' (Levinas 1998: 169). If we attend to that truth rather than clinging to the authority of texts, we might catch sight of the repressive force required to make legal meaning adhere only to text. And learning to see *that* is one way to begin to unsettle settler colonialism.

Endnotes

1. Associate Professor of Peace, Justice, and Human Rights, Haverford College. I am indebted to ongoing conversation about law's matters and materials with Sara Kendall and Hyo Yoon Kang, and the network of thinkers they have gathered together around this project; and to the LTC anonymous reviewers whose comments were helpfully critical, incisive, and generous.

2. The forthcoming book is tentatively titled *Lapse Time: Interruption and Resistance in International Criminal Law and the Settler Colonial State*. The essay is Stauffer 2019. Selections from among the vast scholarly literature on *Delgamuukw* include: Wa G and D Uukw 1989; Borrows J 1999; Christie G 2005; Cruikshank J 1992; Gover BJ and ML Macaulay 1996; Reiter EH 2010.
3. Constitution Act of 1982, Section 35: '(1) The existing aboriginal and treaty rights of the aboriginal people in Canada are hereby recognized and affirmed. (2) In this Act, "Aboriginal Peoples of Canada" includes the Indian, Inuit, and Métis Peoples of Canada.'
4. See Bryan B 2011 for an interesting analysis of what happens when a settler colonial court imposes an alien frame on another culture's self-understanding. See also Anker K 2005 for a meditation on how things other than written texts work as legal materials.
5. I originally developed some of these ideas in a blog post. See Stauffer J 2017.
6. Many societies organized around transmission of oral stories have rules about who can tell certain stories, who can hear them, and in what setting they may be told. Some stories are only for feasts, only for chiefs, only for certain Houses, and so on. Ideas about jurisdiction reside within these constraints. For instance, when I paid a Gitxsan guide to teach me how to understand the totem poles of Anspay'axw (or Kispiox), he told me some of the stories, told me that he couldn't tell me others, and then said there was one story he could tell because it was under his father's authority, but only if I agreed never to tell it, because I bear no connection to that authority.
7. However, see Constable M for a good reading of the difference between common law 'unwritten law' and law that transpires in action as practical knowledge.
8. For instance, in the courtroom, when, after presenting all the *adaawk*-based evidence, the lawyer for the plaintiffs asserted that the *adaawx* are told in court for the truth of their contents, McEachern J interrupted with this question: 'Well, do you advance Mrs. Johnson's evidence about the destruction of the village by a supernatural bear as proof of that fact? That's what you just said, I think.' Delgamuukw 28 May 1987: 738. This shows that the judge had not developed the capacity to hear the story that Antgulilbix/Mrs. Mary Johnson told about a bear with unusual powers—a story that, if heard well, can establish a history of dwelling in specific areas

of land (and so, offer evidence of continued residence) as well as giving reasons for a move from one location to another (a landslide). It does much more than that—within the story there are instructions for how to mourn properly, a history of how fishing is conducted in specific sites, etc.

9. Bryan B 2011 makes this point well.
10. See Anker K 2005 for an analysis of this problem in the Australian context.
11. Valverde M 2011 makes an interesting argument about how the court in this case, when faced with the difficulty of determining the weight and admissibility of indigenous legal materials, turned away from legal doctrine and toward a medieval idea of the 'honor of the Crown,' found in the language of 'fiduciary duty' in *Delgamuukw* and other contemporary cases dealing with both indigenous land claims and the 'duty to consult.' This strategy conveniently skirts difficult jurisdictional issues while shoring up Canadian sovereignty by assuming that 'the Crown' is always honorable—which can be a tough argument to sell in an indigenous land claims case.

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