

QUESTIONS & DISCUSSION

PARTICIPANT: The tracing of the difference in treaties and different linguistic traditions interests me. My question is for Patricia Seed: Is there something else happening in those traditions that determines that difference? Why is it that the English treaty process develops in that way, other than the history of the word, and the Portuguese and Spanish traditions developed in a different direction? Is there an underlying social-economic process that's involved, and how would you begin to unpack those differences?

PATRICIA SEED: I suspect they introduced the requirement for a written document in acquiring land from the natives because of unresolved and irresolvable conflicts among English colonists in the New World over land boundaries. Often there were multiple purchasers for a single area in the New World and all of the purchasers relied upon verbal agreements. A great many English purchasers with multiple verbal agreements very quickly became a major headache for political leaders in the New World. Unwilling or unable to use native understandings of ownership or use rights to decide who had the greater right to the land, colonial leaders were unable to settle these conflicts. Colonists doggedly continued to fight each other over property ownership. These and similar conflicts pushed the adoption of the mandatory written document to transfer land in England in 1682 and then, of course, in the colonies as well. This statute allowed English officials a legal way for deciding conflicts among the colonists about land boundaries.

This leads to a second issue: what does the word "purchase" mean in English? What it means is that you turn something over to somebody else

permanently, in exchange for what the English language calls a *valuable* consideration. But that doesn't answer the question of what's valuable; whose standard of value are you using? Furthermore, the word "purchase" contains the notion of permanent alienability. In other words, that I can give this money to the person next to me, and she maybe lends me a pen. But that doesn't mean that I have purchased it, for I might have merely rented it for a time. English settlers assumed that in any transaction in which they gave Aboriginal people something that they thought was valuable in exchange for land, the swap was permanent.

Another peculiar dimension of English land law is the confusion of the right to own with actual physical possession. You know the sixteenth-century saying that possession is eleven points of the law, which then becomes "possession is nine tenths of the law." In other words, "if I have land, it's mine." In most western European legal systems, this is a very bizarre notion because it's the person who has the legal title that has a right to it, and not the person who actually physically possesses it.

PARTICIPANT: Patricia talked about the difference in New Zealand, which is also part of the same English tradition. I wondered whether there's anything more than the simple fact that there was a dual language version. This is an important reality because, as Sharon Venne made clear, the language of the other side never gets articulated much in Canada and doesn't enter into the debate. Ours is a largely settler discourse. Unless you seek out an alternative, it's very hard to hear the other side. But I'm wondering if there are other factors.

PATRICIA SEED: You mean in the contemporary situation in New Zealand? There is something else. When Britain decided to join the common market in 1971, they basically jettisoned all of the economic supports that they had for the purchase of things like land and butter from both New Zealand and Australia. Since Britain had rejected them in favor of their fellow Europeans, I think that a lot of *Pakeha* (English New Zealanders) and Australians decided that Britain had abandoned them and that they were going to find some kind of Aboriginal or Native heritage as part of *their* rebuilding of their own image of themselves. So it became part of what I think of as the postcolonial national imaginaries of both Australia and New Zealand. In New Zealand what they've done has been remarkable; they've reintroduced Maori in the schools, including in the Pakeha schools, so that Pakeha now grow up knowing at least some Maori. They've really made a change to a deliberate kind of bicultural society.

That is not to say that everyone is happy with the present situations. There is a tension there and I don't want to deny it. You can find plenty of people in New Zealand who are hostile to Maori gains. Sometimes I hear resentments over the size of large settlements. Many Pakeha ask why the Wharangei River dwellers (a large North Island community) received such a large share of land. Despite the underlying resentment, on the surface of these exchanges there's a sense that, yes, the Maori were here first; this was their territory; we did come to it; and we have to figure out some kind of accommodation.

PARTICIPANT: Sharon, can you talk a bit more about the spirit and the intent of the treaties from an Indigenous perspective? What things were understood by the treaties, over and above the things that were written down in the text? I find that really fascinating in terms of what I've been hearing here. What was understood to be part of the treaty besides just the written components of it?

SHARON VENNE: One of the really critical things about the treaties that I did not touch on relates to treaties under international law. Article three of the Vienna Convention on Treaties recognizes that the written version and the oral version of a Treaty are at the same level: they are equal under international law. What does that mean? It means that one version does not dominate the other version. There is a very spiritual reason related to the Cree legal system. When the Elders talk about the spirit in the intent of the Treaty, what is it really? At the time of the making of the Treaty, what was in the minds of the people on both sides when they were at the table? What were they agreeing on? It is that agreement embodied in the oral understanding of the Treaty from the Elders' perspective. In reality, the oral understanding of the Treaty is more legitimate than the non-Indigenous written version, but I do not want to get into a big discussion about Cree law at this time. Let me just conclude by saying that the actual meaning of the spirit of the treaty-making relates to the Cree legal system and the relationship between the Cree people and the Creation. It is the working of our own legal system, our own Cree legal system and what they were doing at the time of the treaty-making and who was the witness at the time of the treaty-making. Who were the witnesses besides the treaty commissioner and the Elders? The Creation witnessed the two sides sitting, talking, and agreeing. Indigenous Peoples always know that there was a witness to that process. The witness was the Creation—or the spirit of the treaty, if I can put it in those words. Regardless of the

Crown's writings, there will always be the Creation who will make the corrections.

PARTICIPANT: Sharon, you mentioned a book you had written.

SHARON VENNE: My book, *Our Elders Understand Our Rights*, is about the history of Indigenous Peoples at the United Nations. It recounts some of the struggle to move an international community from looking at us as objects to seeing us as subjects. Even now, most people, even representatives of Canada at the United Nations, talk about us as "our Indians," as if we belong to them, which I find very offensive. I don't belong to anybody. I belong to my own person; I belong to my own nation. We're trying to move the thinking of people from seeing us as objects to seeing that we are subjects of international law, that, as a nation, we have the right to make decisions about our own people, our own future. It's a big step for them to take, because I think that the colonizers are addicted to us. I'm working on a twelve-step program actually about how to break the colonizer's addiction. The first step is that they have to admit that they are powerless over us. I joke about it, but it's a serious thing for people to break that hold they try to have on us. It is like an addiction, you know; they can't seem to let us go to be our own persons. The book is about that.

PARTICIPANT: Sharon, could you follow up on the international tribunal that's being formed at the United Nations?

SHARON VENNE: This is something that Indigenous Peoples are working on. What we have been talking about at the United Nations, the model we've been using, is the model that the United Nations had on the subject of apartheid during the apartheid regime in South Africa. People that were violating the resolutions related to apartheid went on these lists of people where you should not shop in their stores. There was a boycott of their goods and services. Countries who were trading with South Africa^ these countries were treated differently at the United Nations. It is a model that can be used by Indigenous Peoples who have their Treaty rights violated by the state governments. The rights of Indigenous Peoples could form part of a report to the general assembly on a yearly basis. These reports could list the countries violating the rights of Indigenous Peoples, the Treaty violators. How do you get those countries to comply with the treaties? One of the biggest things that goes on at the international level is the shaming. I mean, I don't know if Canadians can be shamed. I haven't

quite figured out if they can or cannot. But how can you make a state comply with the treaties? Of course, countries like Canada, the United States, New Zealand, and others are very much against external reviews of Treaty violations. Canada is quite quick to say that they're working on an internal process to deal with Treaty violations. The trouble with that is it's set up under parliament. They control it. If you don't agree with the government then they take the funding away, or they put people in there who only follow the government policy. So there are a lot of problems with it internally. Of course, we're going to have some of those problems externally, too, if Canada has its own people sitting on the board, but these issues can be worked on and developed in the future.

PARTICIPANT: Pat, would you please talk more about the construction of the native as "hunter"?

PATRICIA SEED: The colonial fiction in the English-speaking world was the hunter. And, in fact, the reason the "hunter" has to do with Native Americans (and I go into this in my book, *American Pentimento*) has a very complicated history in terms of English law and Norman law about the kinds of rights hunters had. In this tradition, hunters weren't people who actually could own the land because hunting rights were separable from land rights. And so a hunter was somebody who didn't have, under English law, the right to own the land. So we have the debates over the creation of this fiction of the not-quite-human person. But the fiction is created wholly in terms of Anglo-Saxon and in particular Anglo-Norman law. So this notion supports the idea that the natives don't cultivate the land. One of the things that I do in the book is I have maps, and I do quite a lot with maps, but I have maps of sedentary cultivators—there are cultivators all over the place. In fact, there are sedentary cultivators—what are the Cherokee doing when they get pushed out of Georgia in the 1830s? They're cotton farmers. These people are growing cotton on huge plantations. These are not hunters, but the colonial fiction of not-quite-human somehow overrides the reality. So, this whole question of cultivation, purchase, and treaty are the three fictions by which Englishmen propose that they own the New World. The Spaniards and Portuguese have different fictions, and they're equally fictionalized, but they're all equally inventive and real and used in their own system—it's just not land, that's all.

SHARON-VENNE: Look at the debates during the time of Columbus. They decided that we were human beings, but not equal to European human beings because we weren't Christianized. The Papal Bull of 1493 said

that we couldn't own our own land because we weren't Christian and that they could use all force to convert us to Christianity and that if they kill us in the conversion process, so be it. That Papal Bull is still on the books, still part of the Catholic church, still the bedrock of the Catholic faith. In 1992, Indigenous Peoples at the United Nations at the Working Group on Indigenous Peoples wrote a letter to the Pope to ask if, as a show of good faith to Indigenous Peoples, he could rescind this Papal Bull and recognize us as human beings capable of owning our land. We wrote up this letter, signed it "Indigenous Peoples from around the world," and sent it to Pope John Paul II. About six or seven months later, we got a letter back from him, saying, no, he couldn't rescind the Papal Bull because the Catholic church was still celebrating evangelism in the Americas and around the world. 1992 was the celebration of five hundred years of evangelism in the Americas, and he would not rescind that Papal Bull that said that we cannot own our lands because we're not Christian. This example underlines the whole of Western thought in the Americas that, from a Christian point of view, we are not human beings and that, because we're not human beings like all other human beings, then we can be treated like this cup; if this cup is getting in your way, you move it. And that's how people still look at us. Governments look at us like that. Average Canadian citizens still think that if we're in their way, we should be removed. This thinking is really deeply embedded in the psyche of Christianity. Celebrating five hundred years of evangelism in the Americas, to me, is not a celebration. And I'm not discounting any Christians in the room, but I think there has to be some thought put into this whole idea.

PARTICIPANT: What's your view of the modern treaties? Do they represent a step forward from the kinds of situations you're describing?

SHARON VENNE : There's no such thing as a modern treaty. You either have a treaty or you don't have a treaty. Canada tried to perpetuate this idea that they're entering into modern treaties, when actually what they're doing is domesticating themselves and coming under the jurisdiction of the state of Canada. Recently, I've been in the North listening to the chiefs of the so-called new Treaty areas talking about what's happened to them. And what's happened is that their territories have been taken over, and so their relationship with the land is no longer there and they can't make decisions in relation to the land, which is contrary to what they had been told in the agreements. Canada has been pushing this idea that if you're going to make an agreement with them, then your rights to

the land are extinguished. I always say that if the original treaties were to read "people surrender their land," then why would they need an extinguishment clause? The only reason you need an extinguishment clause is that Indigenous Peoples obviously never gave up anything at the time of the treaty-making. Why would you extinguish something you already extinguished? That would be a legal nullity. So now they've changed the word because they've been under such criticism internationally for use of the word "extinguishment." Now Canada uses a new word, "certainty," and to me this is the same as "extinguish." It doesn't matter how you cut it, they're still pushing that they want now for Indigenous Peoples to give up our relationship with the land completely and then to turn it over to the state of Canada. The only thing that can help at an international tribunal dealing with this whole issue is acknowledgment of the fact that the Elders and the people who completed the agreement did not give their fully informed consent because they didn't know the nature of the agreement. Now it's coming out that the Elders and the chiefs are saying, "That's not what we agreed to," that they never gave their consent to what Canada was pushing on them.

PARTICIPANT: What about modern treaties like the Nisga'a Agreement?

SHARON VENNE: I don't consider the Nisga'a Agreement to be a treaty because the three parties that were making this agreement are Canada, the Nisga'a, and the province of British Columbia. The province of British Columbia does not have any international treaty-making capacity. In the process of the Nisga'a Agreement there is no modern treaty. It is a big hoax because British Columbia does not have treaty-making capacity. If there had been an agreement between Canada and the Nisga'a, then *that* could be considered a treaty. The agreement with Nunavut is a treaty. It was made between the Inuit and Canada. When you throw British Columbia into the mix you are just making another agreement. In the future, if the Nisga'a come to the United Nations for assistance with their agreement, they might argue that they made this agreement with British Columbia and Canada. The United Nations would have to say that the Nisga'a were not in the Treaty protected by international law nor is the Nisga'a Agreement subject to the rules of interpretation and implementation at the UN. Canada is perpetuating the idea of a modern treaty, but if you look at Dr. Martinez's study, the UN will say that it's not a modern • treaty. It's a constructive arrangement between people, but it is not a treaty within the international legal system.

PARTICIPANT: Sharon was talking about hopefully changing perceptions of Indigenous people in Canada. I'm wondering if there is a Cree equivalent to the Maori word for *Pakeha*? From what I know of New Zealand culture, in the usage of the term *Pakeha* there is an implicit understanding of the white culture's foreignness from the land. I'm wondering if there's a Cree equivalent that you would suggest or promote?

SHARON VENNE: In Cree we call foreigners *wapiskusuki*. Of course, in any Indigenous language, there is always a word for people who do not belong. Now, I don't know whether the non-Indigenous people would want to use the term or not.

PARTICIPANT: Also, in terms of the way that Canadians tend to contextualize our position as French Canadian, Czech-Canadian, Dutch-Canadian, or whatever our descendants. There seems to be this trouble with positioning ourselves as colonizers or settlers, because we've been here for x generations. So I was thinking that an Indigenous name, like the Maori word *Pakeha*, would be an effective way for non-Native people to identify themselves.

SHARON VENNE: To me, it doesn't matter how long the colonizers live in our land, they'll always be colonizers. The number of generations doesn't diminish the fact that they're still living here under the sufferance of the Treaty peoples. I think that people who are living here under Treaty have to understand what their Treaty rights are and to understand that there are limitations on what those rights are. Because right now people don't know the limitations placed on them by the treaty process and they think that they can go anywhere and do anything on our land without respecting the land and resources. It's very critical, especially now because of all the pollution and destruction of the resources, that there be a real attempt by the non-Indigenous peoples to understand what their Treaty limitations are. You're not children, so quit acting like spoiled children in our land because it's not acceptable, and it's not really respectful of the Treaty position that your ancestors asked our ancestors to live under. I keep telling non-Indigenous peoples to grow up and take responsibility for the Treaty because that's what you're living here under. And understand that and live that, because we do. We respect non-Indigenous people who know they're living in our lands; we know that they're here for a reason, and we try to respect it even though sometimes you just grind your teeth and you want to duke it out with a few people. We try

to follow the Elders' understanding. It tries our patience, you know, but we try to be respectful.

HAROLD CARDINAL: With respect to the last question, I guess it depends on whether you want to be a polite Cree in terms of the name. But in our tradition, in our way as Cree people, we have a name or designation for all visitors, *Omantiw*. This seems to me a very appropriate description of all the people who are not native to our land. I had one quick comment I wanted to make and then two questions, and I suppose the first is a quasi-question as well. We went over very briefly the non-human undercurrent to the colonial discourse, and in some ways in Canada that's typical of academics: they're uncomfortable discussing a racist theory that tries to legitimize the claim to ownership of the First Nation territories. In Canada, such theories have encouraged a deeply embedded form of institutional racism which in turn informs the values taught in our educational system. So deeply embedded are these racist doctrines that people don't know that they are getting shoved into their psyches and that they're spouting it out. This is one of the continuing examples of the kind of role that the Roman Catholic Church played and it's not well known amongst the general population.

The other racist doctrine is the doctrine of discovery, the notion of *terra nullius* here in Canada. Again, I think that you still can go through university, and, unless you happen to bump into a Native professor somewhere, you can go through five, six years, even ten years of university in Canada without ever having to deal with or confront the notion of the doctrine of discovery. That is a legal doctrine adopted by the Supreme Court of Canada on a continuing basis—that is a package that hasn't been dealt with.

My question [to Patricia Seed] is: how do you encourage academics to confront directly the very racist doctrines that underpin some of the most important institutions in this country? For example, in Canadian law, when dealing with any matter to do with First Nations rights, particularly the right of land; we have first to defeat what I call the presumption of savagery. We have to prove in court that our nations were not primitive, or that they had a basic semblance of organizational form to them, in order to enable the court to be able to proceed. The second question is more getting a sense of your comparative study between New Zealand, American, and Canadian treaty-making. In the US, treaty-making stopped some time in the 1800s. Where is New Zealand in terms of how they view whether treaty was a once-and-for-all?

PATRICIA SEED: It was once-and-for-all. It was 1840—that was it.

HAROLD CARDINAL: In that context, I wanted your thoughts on the neo-treaty-making approach that Canada is putting forward. That was the third element of my question.

PATRICIA SEED: How do you fight the presumption of sub-humanity or non-humanity? That's a very tough one. You're right: it's engrained in the schools, popular culture, art, literature. There are lots of fronts on which this notion is perpetrated. I think that one of the reasons why people in post-colonial English societies, such as Canada, the United States, New Zealand, and Australia, become attached to these myths—and this is very distinctive of our societies—is that there's a desire to somehow differentiate our post-colonial society from England.

Some people in these nations are creating an English post-colonial society by making use of—it's kind of a cultural property borrowing—something of Aboriginal people. Now, I know some people have suggested using contemporary intellectual property rights. The argument goes like this: If you want to borrow something of ours, you have to ask our permission first. That's one strategy. My strategy in *American Pentimento* is to put everybody's notion of sub-humanity into the same category, using a comparative approach. Because one of the things that I'm constantly running into is, yes, the statement of "our Indians," which always appalled me. People are always saying that "our Indians" are treated better than, say, in the English system, or the Portuguese, or in Brazil. So I put everybody on the same level, and I do it comparatively, and I show you how different people are doing the same kinds of things. Sometimes it's the old biblical thing about it being easier to recognize the speck in your neighbour's eye. I'm hoping that by recognizing the speck in their neighbour's eye, they can recognize the speck in their own. That's my strategy in *American Pentimento* for fighting these assumptions.

Comparative thinking always shifts around, depending upon the place from which you start. Take recent Canadian treaty-making—Nisga'a and Nunavut. On the one hand, Nunavut is wonderful if you're in the United States and you want to talk about why we couldn't have Cherokee government in Oklahoma, when in fact Oklahoma was going to be a Native American state before the United States government decided that we couldn't have an indigenous state. And so, teaching in a US classroom, I can say, well, you've got Nunavut, which is a Native-run state. What's wrong with having a Native-run state? It works very well in that critical comparative kind of context, but of course the problem for the inhabit-

ants of Nunavut has been the tradeoff, the lack of access to petroleum income and the opening up of the northwest area of the country for oil and mineral exploration. Both are real downsides of political independence. What I understand is that the leaders of Nunavut were politically savvy enough to realize that that was the only way that they could get some kind of self-government. Those options were unavailable to natives in Oklahoma during the last century.

PARTICIPANT: I was wondering under what grounds Native peoples have been able to stop or minimize oil and gas development in areas where they don't want it?

PATRICIA SEED: Ecuador's been one of the more interesting cases because Texaco absolutely devastated the landscape and peoples. Two communities in Ecuador, the Cofan and Secoya, are near the brink of extinction because of the diseases that Texaco brought. When these communities went to the national government and the national congress to complain, there was dead silence. The strategy they devised, which I think is brilliant, is to sue Texaco to recover the damages done to their community. They challenged Texaco in White Plains, New York (its headquarters), but the damage had already been done. In other words, all that they could sue for is some kind of restitution.¹

Aboriginal peoples in Spanish and Portuguese America do not have any potential of calling upon a national, political, or cultural understanding to stop mining, particularly petroleum mining. That is too touchy an issue; petroleum is seen as a state-owned resource and, as such, must be managed by the state, by the national government, just the way it's managed by the Spanish Crown in the colonial era. It's one of those political hot buttons that you can really touch. I mean, the North American oil companies never really understood it. In 1934, Standard Oil didn't understand, and got kicked out of Bolivia and Mexico. Texaco used to be the Texas and Mexican gas company; it's now just the Texas Company (Texaco). The nationalizations were immensely politically popular! One of the ways that you can really rally a political assembly any place in Spanish America is to talk about petroleum. So, Aboriginal peoples' rights to petroleum are very tricky. I don't advise making that a national issue in any of the Iberian colonies, particularly the Spanish American colonies.

In Brazil, it's complicated because during the military dictatorship, which began in 1964 but really came down with a heavy hand in 1967, what you had was an opportunity for political dissent by discussing the Aboriginal people of the Amazon. Thus the military only allowed politi-

cal dissent to be expressed regarding Aboriginal peoples in the Amazon and the extent of Indigenous rights to the gold in the region. Thus, although there are many debates that you can read from the 1970s and the 1980s supposedly about Aboriginal peoples in the Amazon, you have to decode them first. In other words, you have to reinterpret what was said in terms of the political discourse that was going on about the left and the right and the military in Brazil because sometimes, and very often, Aboriginal peoples are meant to stand for the position of certain political parties within Brazil. You can't read those debates openly. In other words, they're not transparent statements about the Aboriginal peoples from the '70s and '80s.

During that repressive time, however, the military actually wound up being a quasi-protector, for a very brief period, of Aboriginal peoples. But this was while they were disappearing hundreds of left-wing people. Thus you had a government half-heartedly protecting indigenous people while murdering political opponents.

As soon as the military resigned and the democratically elected government took over, the military reverted to its traditional position, which is basically covert support for the far right-wing landowners in Brazil who have a devious strategy for invading aboriginal territory.

What you see portrayed in the American press is only partly true. I don't read Canadian press on Brazilian Indians, so I don't know what has come across there, but in the US press the invasion of indigenous regions is portrayed as the competition between two groups of very poor people, between the Yanomami, for example, and the landless peasants of the northeast. What the papers don't mention is that, in fact, the landless peasants are very often backed by the major right-wing landowners who want to get rid of the native people by introducing all kinds of diseases. And so you have the replication of the kinds of practices that occurred in the United States—deliberate introduction of malaria and smallpox blankets, all the kinds of horrible biological warfare that people like to deny happen, but in fact happen.

In Brazil, there is an appeal that you can use on behalf of Indigenous people, which is to appeal basically to groups of northern European NGO (non-governmental organizations) conservationists. Many of these are Scandinavian-based and, having destroyed all of their own forests, want to preserve the Amazon¹ rainforest. So you can bring, actually, a lot of international pressure to bear on the Brazilian government by calling upon these largely northern Europeans and sometimes US environmental groups to lobby—but you don't have that option in Spanish America.

PARTICIPANT: This is a question about the role of academics in relation to imperialism. I'm sure you [Patricia Seed] and Sharon Venne are familiar with the Hawaiian example where the Hawaiian people tried to argue that sacred sites are being bombed by the US military, and an anthropologist published a paper indicating that these sacred sites were not from time immemorial—they were fairly recent, as a kind of reconstructive cultural movement. That paper was used by the US government to justify demolishing these sacred sites. That is a pretty shocking example of how academics can be used to justify such actions. How do you see that?

PATRICIA SEED: I have a position on this. An incredible kind of hypocrisy exists in the English language tradition and it goes back to a seventeenth-century English mythification of the New World. There's a statement from John Locke which I *love* to hate: "In the beginning, all the world was America." What do you mean, "in the beginning"? America is America now. America isn't the way England was twenty, thirty years ago, or a hundred years ago, but that's what he meant. He meant that the Native peoples of the Americas had what he thought was a form of communal land ownership that, in England, was being displaced by large landowners grabbing land, claiming it for themselves, and kicking out all the smallholders—all the communal holders, all the collective holders. So, what he does is constitute America as the imagined past of England, a kind of mythical period of English history. This moment, and this movement, does not occur in *any* Iberian language literature on the New World. Why? Because they're not undergoing the same economic transformation—they're not moving from communal land to large individual properties. Rather, they've got a collection, as they've always had, of communal, collective, and corporately held (in a pre-corporate kind of sense) communities—they all exist at the same time. So they don't have this notion that there is a *past*, and they don't try to reinvent the Americas as the past that they once had.

This creates an immense hypocrisy—that Aboriginal peoples *must* prove that what they did was what they did in time immemorial. Why? Why can't they change? Do you want to tell the settler community that they can only build houses the way they used to on the plains here? When did these people own the present? Why does a Hawaiian community have to prove that it belongs to time immemorial? They've made it a sacred site—it's their sacred site! Why can't they change? Why does what they do have to belong to this timeless, eternal, prehistorical past? Why can't they fish with new instruments? Why can't they use contemporary technology? The settlers do. It's part of this distinction that tries, and

succeeds a lot of the time, to permanently keep Aboriginal peoples on the other side—and that is to say, they don't belong to history. History begins with the coming of the people with writing, the people of the book. In *American Pentimento*, I'm actually very critical of the way people in New Zealand use Alan Henson's piece—Alan Henson talked about how certain Maori customs were in fact created. Well, in the light of the colonial present, of course! What culture doesn't interact with other cultures around it, and recreate itself in terms of changing circumstances? Why is it that that becomes politically such a powerful issue? Everybody has a right to belong to the present if they want to. Everybody has a right to make technological change if they want to. So, I find that whole premise to be a very questionable one, and it's what people make of that story that I wind up calling into question.

PARTICIPANT: My question relates to what you [Patricia Seed] were saying about the Iberian tradition being a different one. Of course, from the sixteenth-century point of view, the Black Legend that the Spaniards were the ones actively killing and displacing Aboriginal peoples helped other European nations to differentiate their brand of colonialism. What role if any does the Black Legend play in the Iberian traditions you were discussing?

PATRICIA SEED: The Black Legend originated in an internal critique of Spanish colonization. The Spanish insisted that all native peoples be Christianized. As a native you didn't have an option to keep your faith, to keep your spiritual connections to the past—that was not ever an issue to the Spanish colonists. The difficult issue for the Spaniards was *how* were they going to Christianize the natives?

The western Christian tradition is torn—divided—between the peaceful means and the military means of conversion. And so the constant tension in the Spanish empire centred on *how* are we going to Christianize? Are we going to take the sword, like Charlemagne did, and say, Convert, or I'll cut your head off? Or, are we going to have a dialogue (that means we're going to talk to you), and after a while you're going to become Christian. The end result is the same—mandatory Christianization.

Bartholome de Las Casas argued within this tradition for the peaceful means of conversion and, as a result, he developed this very powerful negative critique of the military tradition, which he identified as Islamic. Las Casas sought to prevent conquerors from launching a military attack immediately after reading the requirement. He wanted to provide a long interval of gradual conversion.

I wrote about this critique in *Ceremonies of Possession* in a chapter on the requirement, which is how the Spanish legally take possession. Spaniards take legal possession of the New World by reading a text, because they possess bodies and not land. A nineteenth-century French writer calls it the conquest of souls, but it's not quite right because to sixteenth-century Spaniards an Indian soul wasn't quite human—it's slightly anachronistic to use "conquest of souls." It would be better to say that when Spaniards read a text they were conquering bodies.

But when England began to have the technological capacity to challenge Spain in the Atlantic at the end of the sixteenth century, they began to develop their own rationales for displacing Spanish rule. They turned to Las Casas's critique of the Spanish military tradition of forcing conversion and therefore political rule. The English competitors, however, said, Oh, look at the Spanish, look at all of these horrible atrocities! And they *are* horrible: I've never been able to teach Las Casas because I find it too despicable. It's beyond human understanding how horrible it is.

But the English colonizers did not take Las Casas's observations as a critique of any use of force against indigenous people. Nor did they take it as the means to effect Christianization of the Americas. Rather, the English used this critique in a very political kind of way only to dismiss the Spanish. And that is the origin of the Black Legend.

The Black Legend appalls me because its core message opposes the use of force against indigenous peoples. Yet while criticizing Spaniards for military actions, English colonizers fail even to admit responsibility for their own killing of indigenous peoples.

Several years ago I read the narratives that the French, the Dutch, and the English had written about wars with the Mohegans. The Dutch have a very pacifist tradition, so they were very divided, and some questioned whether it was right to fight native peoples under any circumstances. Some Dutch settlers said yes, others said no, so there was a tension that allowed critical perspectives and debate over the legitimacy of military action. Unlike the Dutch, French colonists in New York did not publicly debate the legitimacy of military action against natives. Rather, French colonizers occasionally expressed regret for tactical mistakes—you know, you really shouldn't have done that. There wasn't quite the same regret that there was with killing a Frenchman, but, on the other hand, some French colonists thought that maybe this killing isn't such a shrewd policy. But from the English—there's silence. The Pequot massacre—I mean, they're killing women and children and they're writing about the screams of the dying in a triumphalist fashion. And there's *no* discussion afterwards—there's just this kind of heavy silence from 1634 up

until King Phillip's war. So, on the one hand, I don't want to justify what the Spaniards did because I can't deal with it, but on the other hand, it really bothers me that there isn't this tradition of criticism and regret and apology for the killings not far from here. It puzzles me. I want to spend some time in the future thinking about why there isn't this kind of critical tradition—and when can you start to criticize the tradition and the killings of native people, and when are you absolutely politically prohibited from doing so.

PARTICIPANT: Harold, you shared with us that you had been through the European academic system. How could post-secondary institutions do a better job of providing Aboriginal students with that cultural fit?

HAROLD CARDINAL: One of the models that I've seen that has worked and is working is a kind of partnering that you find in Saskatchewan between the Saskatchewan Indian Federated College [now the First Nations University of Canada] and the Universities of Saskatchewan and Regina. Similar arrangements exist between the Gabriel Dumont Institute and the same universities. There one sees formal partnerships between First Nations- and Aboriginal-controlled institutions on one hand and the Universities of Saskatchewan and Regina on the other. Such an arrangement has enabled the s i F c to grant degrees through the University of Regina. These are useful working models.

But we have a real problem in our academic institutions that needs to be addressed and overcome, I think. Even though the Supreme Court decision in *Delgamuukw* (1997) legitimized the information from oral traditions and accorded oral traditions the same weight as written sources, the perception still remains that written documents are superior, more accurate and reliable, and therefore to be trusted more than information from oral traditions.

This misperception arises from the fact that, even though the white man has been amongst our people for over five hundred years, he still knows little about First Nations people. There is a general ignorance of the fact that First Nations have imposed really tough discipline on the way in which certain kinds of information is to be transmitted or passed on. In many First Nations there are strict laws, rules, and regulations governing how certain information or knowledge is transmitted from one person to another, from one generation to another. Part of the difficulty is that all that has been seen is the verbal transmission of the information. What hasn't been seen or understood are the stringent laws our nations have developed through centuries, laws enabling us to judge

the validity and accuracy of information. If we were to do a comparative analysis, I would think, quite easily, that our laws and regulations are far more stringent than anything in Western academia, in terms of the standards that would have to be met by information, but we haven't done this kind of analysis.

In the meantime, we need to generate the kind of academic exercise to provide comfort to those who require it, not only sceptical white people but also, more importantly, Aboriginal peoples in our respective communities. We need to know that the information we're dealing with is something we can trust and rely on. So we have to be able to identify and explain those things and make sure that the information that we deal with, in either system of knowledge, is one that is reliable in the long run. Once we do that perhaps we can allay some of the concerns that those coming from written traditions have about the information and the systems in the oral traditions. That's at one level. I don't think, for example, that even where we have partnered institutions the process has begun to address that. Sometimes I think we become too defensive when we look at these kinds of issues instead of trying to deal with what it is that we have to overcome—and hopefully that kind of process can occur sooner rather than later.

We also have a warped notion of what Elders or knowledge keepers are in the western tradition, and we often undervalue them. We ask an Elder to our meeting and if [he or she] opens the meeting with a prayer and then shuts up for the rest of the meeting and closes it off again, we think we're using the Elders the way we should. We don't acknowledge that, in a professional sense, they have spent a lifetime studying a particular subject matter; they are no different than the PhD students who've spent their academic lives focusing on a particular area of study. We have to be able to give contemporary acknowledgment to the kind of knowledge that Elders have—particularly in educational institutions (because you asked in a university context).

One of the most refreshing experiences I had as a student was taking a comparative law course at Tel Aviv University in Israel. The course examined the legal systems of the United States, the State of Israel, and traditional Jewish law. We had an American judge to talk about the criminal procedures in the American legal system, an Israeli law professor who dealt with the State Criminal laws of Israel, and a Jewish Rabbi who presented the approaches used by traditional Jewish law. In that team teaching approach, there was absolutely no question that the Rabbi had as much legitimate information to impart as the American judge and Israeli law professor.

We need to find similar ways to recognize our knowledge keepers and accord them the same kind of respect that ought to be theirs in the academic community. This old idea of the academic running to the Elders to get information and then turning around and being the recognized white expert has to end soon. If we're going to continue the tradition of enabling our knowledge keepers to grow and address the future needs of our people, we need to have a system in place that recognizes and values their contributions. Such an approach will provide many young people, and maybe many of the middle generation, validation and reaffirmation. Such an approach would signal to our Elders that their knowledge is viewed by others as valuable and relevant. They need to know that.

PARTICIPANT: Frank Tough, if they did find that, because of the scrip fraud, Aboriginal title wasn't surrendered properly, what would be the consequences?

FRANK TOUGH: Well, I'm not sure that fraud in scrip will defeat the Crown's argument that there was a clear and plain intent to extinguish, but if (and I'm not a lawyer) the courts decided that Aboriginal title was breached, then that would set off the process of negotiations. So a possible outcome of that would be some form of new land tenure for the Metis, some compensation.

PATRICIA SEED: Was there any attempt to adopt a Torrens land system in Canada?² They did that in several other colonies. Did they consider it here?

FRANK TOUGH: Yes, in western Canada in 1869-70, in an area attached to the Dominion. They set up a survey system that's not unlike the American system in the West, in terms of townships and ranges, and there is a system of land registry. But it's jurisdictionally a little more complicated because the province of Manitoba, for example, was a self-governing entity that did not have ownership or management over the lands. And because it was in the process of being surveyed and settled, there wasn't a system of municipalities either. So, through a process of fee simple patents, they issued patents to the land that were then registered as a local title. But I think it was intended to implement a Torrens system.

PARTICIPANT: [*Question inaudible.*]

FRANK TOUGH: Well, it's an interesting problem because the federal courts are looking to an Aboriginal practice as something that is integral to the culture before contact with Europeans. We know that the Metis are defined as an Aboriginal people, but they're also the consequence of contact with the European.³ In about 1778, Peter Pond goes up into the Lake Athabasca country, and the North West Company follows from there.⁴ And with the North West Company and the Hudson's Bay Company in that area you get the genesis of a Metis population.

PARTICIPANT: Frank, I was curious, to what extent are there oral narratives that support your archival research?

FRANK TOUGH: There is a bit. The other thing that I came across—and in fact the trial judge asked me about this—is that some of the Elders said that the Church had taken their scrip coupons and certificates. We have written documents that prove that the Church was involved with taking possession of the coupons and that they were in cahoots with Revillon Freres.⁵ So there's a few bits. But what I would say about most of this stuff is that in a way it's an archive—they don't know what the state of their application is; they have no idea of this process.

NOTES

- 1 Seed: This is the first lawsuit filed in the U.S. by foreign plaintiffs alleging environmental damage overseas. The US judge gave Texaco a choice of a U.S. or Ecuadorian trial; they opted for the latter.
- 2 Tough: A system of land registration, devised by Sir Richard Robert Torrens, based on a description of every land parcel, name of the owner, and anyone else who had an interest in the parcel of land.
- 3 Tough: The question of whether or not the Metis have Aboriginal rights, notwithstanding the fact that they are a result of contact, was decided by the Supreme Court of Canada in *R. v. Powley*.
- 4 Editor: For an introduction to the life and contributions of explorer Peter Pond, see the description at <http://www.collectionscanada.ca/explorers/h24-i620-e.html>. The Peter Pond Society website (www.peterpondsociety.com) maintains a useful bibliography.
- 5 Editor: Revillon Freres (Brothers Revillon), also known as "The French Company," was a French fur and luxury goods operation that competed with the Hudson's Bay Company from 1903, when the Revillon brothers settled Moosonee, Ontario, until 1936, when the company was bought out by the HBC. Continuing to operate in France, the company eventually merged with the publishing group Les Editions Mondiales in 1982.