
BOOK REVIEW

Mamiskotamaw: “Oral History,” “Indigenous Method” and Canadian Law in Three Books

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I MATA CIMO:[†] INTRODUCTION

Since the appearance of *Delgamuukw v. British Columbia*,² Canadian jurisprudence pertaining to Indigenous peoples’ legal issues has shifted. The amount of academic and non-scholarly scrutiny the decision has undergone gives testament to this point.³ The case refines the nature of “exclusive use,” Aboriginal title, “shared” title and fiduciary obligations in ways that anyone interested in s. 35 must carefully consider.⁴

Yet the most unique aspect of *Delgamuukw* remains its approach to what has been termed “oral history.” Canada’s highest court acknowledged that Indigenous peoples have learned and taught historical events to community members in verbal, rather than written, forms. The Court concluded that the trial

† I was taught that this word is a plains Cree version of “discussion.” As I hope to explain throughout this presentation, I want to integrate Indigenous ideas that I believe helpful for the progression of my presentation. I thank Marilyn Dumont and Donna Paskemin for helping me formulate the foundations of this technique. Extremely helpful comments were also received from Jean-François Gaudreault-DesBiens. I am particularly thankful to the editors of the Indigenous Law Journal for their guidance as well.

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1. My plains Cree teachings have been learned from Freda Ahenakew, Lawrence Eyapaise and Donna Paskemin. The word appearing after the colon is a rough translation.

2. [1997] 3 S.C.R. 1010 [hereinafter *Delgamuukw*].

3. Some of the many examples include Stan Persky, *Delgamuukw: The Supreme Court of Canada Decision on Aboriginal Title* (Vancouver; Toronto: Greystone Books, 1998); Frank Cassidy, ed., *Aboriginal Title in British Columbia: Delgamuukw v. the Queen* (Lantzville, British Columbia: Oolichan Books, 1992); and Owen Paul Lippert, ed., *Beyond Nass Valley: National Implications of the Supreme Court’s Delgamuukw Decision* (Vancouver: Fraser Institute, 2000).

4. By “s. 35” I mean section 35 of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (U.K.), 1982, c. 11. Section 35 states:

(1) The existing [A]boriginal and treaty rights of the [A]boriginal peoples of Canada are hereby recognized and affirmed. (2) In this Act, “[A]boriginal peoples of Canada” includes Indian, Inuit and Metis peoples of Canada. (3) For greater certainty, in subsection (1), “treaty rights” includes rights that now exist by way of land claims agreements or may be so acquired. (4) Notwithstanding any other provision of this Act, the [A]boriginal and treaty rights referred to in subsection (1) are guaranteed equally to male and female persons.

judge was wrong in his analysis when he omitted the remarks of community members.⁵ What the Court does *not* do is give the term a definitive meaning. Compared to other s. 35 ideas,⁶ the form of “oral history” remains unclear, and thus also unclear is its evidentiary role in trial proceedings. This apparent incompleteness has led some scholars to wonder whether the decision is as progressive as the Court concludes.⁷

What I want to do here is work with, rather than critique, this unknown form of “oral history.” To do so, I will evaluate texts that include “oral history” in their contents. Each book’s interpretation of this concept is different. The term’s juridical incompleteness may be perceived by some as an inconvenience, but I believe its state also lends itself to presenting a variety of techniques. The different approaches to oral history in these three books can be, I contend, all considered valid, as *Delgamuukw* does not devise limitations about the forms oral history can take.⁸

I also want the descriptions to demonstrate an example of an “Indigenous method.” By “Indigenous method,” I mean a format of research and presentation that includes the presenter’s Indigenous heritage as an admitted influence. The impact of one’s culture upon analysis should not be underrated, but such an influence is not necessarily a negative analytical component.⁹ In this presentation, in fact, I consider it an extremely positive aspect. It helps justify why I am in a position to write the following remarks and it provides a means to introduce Indigenous norms to those who wish to learn more about different critical thought processes. It explains my expertise and it sheds light on value systems that deserve recognition in academia.¹⁰

I formulate my method the following way: Because I am Métis from Saskatchewan, trained in history and law, and currently studying s. 35, I have

5. *Delgamuukw*, *supra* note 2 at 1074, Lamer, C.J. writes:

The implication of the trial judge’s reasoning is that oral histories should never be given any independent weight and are only useful as confirmatory evidence in [A]boriginal rights litigation. I fear that if this reasoning were followed, the oral histories of [A]boriginal peoples would be consistently and systematically undervalued by the Canadian legal system, in contradiction of the express instruction to the contrary in *Van der Peet* that trial courts interpret the evidence of [A]boriginal peoples in light of the difficulties inherent in adjudicating Aboriginal claims.

6. In comparison, the Court has provided substantive discussion about the requirements needed to prove an “Aboriginal right” in *R. v. Van der Peet*, [1996] 2 S.C.R. 507 at 548-550 [hereinafter *Van Der Peet*]. The interplay of “pre-contact” and “Aboriginal title” are defined in *Delgamuukw*, *supra* note 2 at paras. 114, 141.
7. See John Borrows’ comments in “Listening for a Change: The Courts and Oral Tradition,” [2001] 39:1 Osgoode Hall L.J. at 24-25 [hereinafter “Listening for a Change”]. See also generally Lori Ann Roness & Kent McNeil, “Legalizing Oral History: Proving Aboriginal Claims in Canadian Courts” (2000) 39:3 J. of the West 66.
8. For comments about lower courts’ various ways of understanding the term, see generally Frank Tough, “*Profv. Prof* in the Trial of the Benoit Treaty Eight Tax Case: Some Thoughts on Academics as Expert Witnesses” (2004) 15:1 Native Studies Rev. 53.
9. Umberto Eco, “Innovation and Repetition: Between Modern and Postmodern Aesthetics” (1985) 114 *Daedalus* 159 at 173-174.
10. Charles Jago, “Breaking With Tradition” *University Affairs/Affaires universitaires* (June-July 2004) 22 at 25.

chosen books that describe where I am from and that are, I argue, legalistic due to their inclusion of some type of “oral history.”¹¹ As I have been taught that direct mention of any failings would be considered poor Indigenous form on my part, I also do not spend time explaining negative aspects of the books. In order to reinforce this aspect of my method, I have chosen to only discuss books that I consider successful.¹²

When I braid the influences of my own cultural background, my professional training and my scholarly interests together, certain books seem important for me to evaluate. *Treaty Elders of Saskatchewan: Our Dream is that Our Peoples Will One Day be Clearly Recognized as Nations*;¹³ *They Will Have Our Words: The Dene Elders Project, Volume 2*;¹⁴ and *They Knew Both Sides of Medicine: Cree Tales of Curing and Cursing as Told by Alice Ahenakew*¹⁵ contain important commentary about western Canada, Indigenous research and presentation techniques, oral history and, as significantly, Canadian constitutional matters.¹⁶ Indigenous scholars have, in longer pieces, challenged the presumed correctness of non-Indigenous methodological strategies.¹⁷ My comments here are an attempt to perform the same function in the form of a book review.¹⁸

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11. For comments about how such cultural placement is actually the most accurate station to appreciate analysis, see Arnold E. Davidson, Priscilla L. Walton & Jennifer Andrews, *Border Crossings: Thomas Kings' Cultural Inversions* (Toronto: University of Toronto Press, 2003) at 147.
 12. I thank Marilyn Dumont for explaining this aspect of a protocol she considers to be Plains Cree and Métis in origin. See also Norma Sluman & Jean Goodwill, *John Tootoosis: A Biography of a Cree Leader* (Ottawa: Golden Dog, 1982) at 40. Additional guidance can be gleaned from Maria Campbell, *Stories of the Road Allowance People* (Penticton, British Columbia: Theytus Books, 1995). For the importance of recognizing cultural influences upon scholarly analysis, see Homi K. Bhabha, *The Location of Culture* (London: Routledge, 1994) at 154. Compare the different writing voices in two successful pieces in Michael Asch, ed., *Aboriginal and Treaty Rights in Canada: Essays on Law, Equality, and Respect for Difference* (Vancouver: University of British Columbia Press, 1997): first by Catherine Bell & Michael Asch, “Challenging Assumptions: The Impact of Precedent in Aboriginal Rights Litigation” 38, and then Sharon Venne, “Understanding Treaty 6: An Indigenous Perspective” 173. I do not want to suggest that indirect criticism is a universal among North American Indigenous peoples. An example that demonstrates a technique oppositional to my own is Ward Churchill, “Contours of Enlightenment: Reflections on Science, Theology, Law and the Alternative Vision of Vine Deloria, Jr.” in Richard A. Grounds, George E. Tinker & David E. Wilkins, eds., *Native Voices: American Indian Identity and Resistance* (Lawrence, Kansas: University of Kansas Press, 2003) at 250.
 13. Harold Cardinal & Walter Hildebrandt (Calgary: University of Calgary Press, 2000) [hereinafter *Treaty Elders of Saskatchewan*].
 14. Lynda Holland & Mary Ann Kkailther (La Ronge, Saskatchewan: Holland-Dalby Educational Consulting, 2003) [hereinafter *They Will Have Our Words*].
 15. H.C. Wolfart & Freda Ahenakew, eds. and trans., (Winnipeg: The University of Manitoba Press, 2000) [hereinafter *They Knew Both Sides of Medicine*].
 16. For extremely helpful guidance on this point, see Brian Calliou, “Methodology for Recording Oral Histories in the Aboriginal Community” (2004) 15:1 *Native Studies Rev.* at 82-95.
 17. See for example John Borrows, “Re-living the Present: Title, Treaties, and the Trickster in British Columbia” (1998) 120 *B.C. Studies* 99; and Winona Wheeler, “Narrative Wisps of the Ochekwii Past: A Journey in Recovering Collective Memories” (1999-2000) 19-10 *Oral History Forum* 113.
 18. Eve Marie Garrouette, *Real Indians: Identity and the Survival of Native America* (Berkeley: University of California Press, 2003) at xiii and 113.

II NISITOHT: SEPARATE UNDERSTANDINGS

The Role of Unity in Treaty Elders of Saskatchewan

Two authors have organized a work about all First Nations located in Saskatchewan. By compiling presentations made by elders at various forums held in different locations, Harold Cardinal and Walter Hildebrandt¹⁹ expose the reader to views about treaty relationships from across the province. At meetings in Saskatchewan's five treaty regions co-organized by the Federation of Saskatchewan Indian Nations, the governments of Canada and Saskatchewan, and the Office of the Treaty Commissioner, elders spoke about how they understood the rights and responsibilities described in treaties. After receiving permission from meeting participants, Cardinal and Hildebrandt organized a monograph that "contains a traditional First Nations theoretical framework" because it describes elders' perspectives about treaty implementation in Saskatchewan.²⁰ Separate chapters, each representing a value considered fundamental to the elders, teach the reader about those past events that influence First Nations' views about treaty interpretation today.

While constantly mentioning the diversity among different nations, the elders agree that certain universal principles exist among all Aboriginal peoples. The most influential belief is that the Creator gave the Earth to First Nations as a gift. To protect this present, the old people must teach the young how to act responsibly. Peaceful coexistence among all animal species (and all First Nations) is possible when the Earth is protected. As Elder Peter Waskahat of Frog Lake First Nation explains:

A livelihood, that was taught, that was what we had; it revolved around survival of the people, and a lot of this livelihood was taught from the teachings of many generations, the teachings from the Creation; that is how they saw their world There was a lot of teachings, lifelong teachings that were passed from generation to generation.²¹

After respect for the Earth is demonstrated, other "shared First Nations foundations" can govern personal actions, community activities, inter-nation relations among Indigenous cultures, and treaty adherence by Aboriginals and the Crown. By explaining these values, the elders are able to better explain their grave disappointment in non-Indigenous governments.²²

19. Harold Cardinal, *The Unjust Society: the Tragedy of Canada's Indians* (Edmonton: Hurtig, 1969); Walter Hildebrandt, *The Battle at Batoche: British Small Warfare and the Entrenched Métis* (Ottawa: National Historic Parks and Sites Branch, Parks Canada, 1985) and (with the Treaty 7 elders and Tribal Council, Dorothy First Rider and Sarah Carter) *The True Spirit and Intent of Treaty 7* (Montreal and Kingston: McGill-Queen's University Press, 1996).

20. *Treaty Elders of Saskatchewan*, supra note 13 at ix-x.

21. Elder Peter Waskahat (Frog Lake First Nation, Treaty 6), (Treaty Elders Forum, Jackfish Lake Lodge, Cochin, Saskatchewan, 15 November 1997) in *Treaty Elders of Saskatchewan*, *ibid.* at 11.

22. See "Kihci-asotamatowin/Sacred Promises to One Another, The Treaty Sovereigns' Sacred Undertakings" in *Treaty Elders of Saskatchewan*, *ibid.* at 25-38.

For those with little exposure to Indigenous and non-Indigenous relations in western Canada, it may be surprising to learn that the activity of treaty-making is not disputed by the elders who participated in the creation of the book. What is challenged by the First Nations is what treaty-making *means*. To them, signing a treaty is not a demonstration of legal surrender.²³ It represents, instead, an acknowledgment of a new relationship. The elders contend that Crown representatives promised that such an understanding would be enforced. The documents would not, in other words, change First Nation lives in ways that the First Nations did not themselves approve. A treaty is simply another way to continue peaceful coexistence because it is a “sharing arrangement.”²⁴

Not surprisingly, then, the elders remark mostly about previous and current treaty interpretations. They argue that treaties cannot be applied properly unless the policies of “Miskasowin,”²⁵ “Pimacihowin,”²⁶ “Tapwewin”²⁷ and “Kihci-asotamatowin”²⁸ are enforced. As the Crown does not enforce these norms, it violates the treaties.²⁹ This failed enforcement has two effects: Aboriginal values are deemed irrelevant to Canadian law and the Crown demonstrates it cannot be trusted to keep to agreements it has created.³⁰

These Indigenous legal norms are incredibly compelling both in how they explain Indigenous values and in how they are, according to Cardinal and Hildebrandt, constitutionally protected. The authors insert Supreme Court of Canada jurisprudence into the book’s commentary so that the reader learns that treaty documents are to be “given a fair, large and liberal construction in favour of the Indians.”³¹ The Supreme Court has also said that “where a treaty was concluded verbally and afterwards written up by representatives of the Crown, it would be unconscionable for the Crown to ignore the oral terms while relying upon the written terms.”³² The elders’ comments, then, seem not only reasonable, but following them is legally (*i.e.* constitutionally) mandatory. It becomes clear that:

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23. This view contrasts sharply with Crown officials’ views, particularly when governments formulate their arguments about Aboriginal title. Aboriginal title is possible to prove, according to the Crown, when an Indigenous community was not part of historic treaty agreements about the land in question. The issue of whether a treated nation has Aboriginal title to the land mentioned in its respective nation has yet to be articulated clearly by the courts.
 24. *Treaty Elders of Saskatchewan*, *supra* note 13 at 36.
 25. Finding one’s sense of origin and belonging, or finding one’s self or centre.
 26. Making a living.
 27. Speaking the truth, or speaking with accuracy and precision.
 28. Sacred promises made between parties, particularly the sacred undertakings which the treaty sovereigns (both the Crown and the First Nations) must follow.
 29. *Treaty Elders of Saskatchewan*, *supra* note 13 at 10-12.
 30. The principles are “the joint acknowledgement by the treaty-makers of the supremacy of the Creator and their joint fidelity to that divine sovereignty” (*Treaty Elders of Saskatchewan*, *ibid.* at 31); a “commitment between the parties to maintain a relationship of peace” (at 32); “to initiate and create a perpetual familial relationship based on familial concepts defined by the First Nations principles of *wahkohtowin* (good relationships)” (at 33); “the guarantee of each other’s survival and stability anchored on the principle of mutual sharing” (at 34); “a continuous right of livelihood” (at 36).
 31. *Treaty Elders of Saskatchewan*, *supra* note 13 at 50, referring to *R. v. Simon*, [1985] 2 S.C.R. 387.
 32. *Ibid.* at 52, using *R. v. Marshall*, [1999] C.N.L.R. 161 (S.C.C.).

[F]undamental contradictions exist between First Nations oral history and understanding of the treaties and the written text Until the parties can agree on a process for reconciling these fundamentally contradicting records of the treaties, it will be difficult for them to create the partnership and reconciliation that they both desire.³³

Crown attitudes and actions dismiss First Nations perspectives as illogical and consequently, Cardinal and Hildebrandt argue, their position violates s. 35.

By compiling oral histories gathered at meetings devoted to better relations between the Crown and First Nations, Cardinal and Hildebrandt introduce Indigenous legal norms, judicial interpretation and an oral history methodology. They suggest that communities can organize a unified front to oppose government actions and they can present this opposition to non-government audiences as well. Articulating the past and its influence upon modern perspectives is done succinctly in *Treaty Elders of Saskatchewan*.

Saskatchewan Dene in *They Will Have Our Words*

Another approach to explaining issues in Saskatchewan is to examine a specific First Nation. By using interviews conducted by Larry Hewitt, authors Lynda Holland and Mary Ann Kkailther have compiled oral histories about Saskatchewan's most northern Indigenous culture. Living in climatic and terrain conditions likely too difficult for most Canadians to endure, the Dene demonstrate they have a distinct nationhood which they work doggedly to protect.

Hewitt's efforts were originally meant to be integrated into elementary and secondary school curricula. His research, unfortunately, was never used for such a purpose.³⁴ Holland and Kkailther decided to use the interviews in a way to educate others about the Dene culture. After confirming Hewitt's translations and receiving permission from the interviewees or their families to publish the translations, Holland and Kkailther sorted the interviews by community, wrote an introduction and biographical notes about the interviewees, and published these efforts. Other than the introductory remarks, the elders (and three priests) truly speak for themselves. Interviewees are clear in their opinions, they demonstrate Indigenous cadences and vernacular, and they provide descriptions about topics, such as hunting and geographic location of communities, that are often analyzed in s. 35 jurisprudence.

It becomes obvious that the most important subject to the Dene elders is the caribou hunt. Interviewees repeatedly detail where the hunt happens, how the hunt is organized and how the caribou benefit all community members. The caribou explain the Creator's superiority, they provide food and technology, and they define how Dene interact with other Aboriginals. The animals, most notably, force the Dene to invent Indigenous legal norms that regulate such

33. *Treaty Elders of Saskatchewan*, *ibid.* at 58.

34. *They Will Have Our Words*, *supra* note 14 at xv-xvi.

topics as intergenerational communication, community location and relations between the Dene and the Inuit. As Father Joseph Dauvet observes:

[T]he caribou is the meeting of two people, the caribou people and the Chipewyn people. If we could put this feeling into words we would say, "The caribou must be happy to have come to us as we have come to them." It is not a hunt. It is something different If it doesn't come it is a collective responsibility. People ask, "What did we do wrong?"³⁵

Other topics receiving attention include territoriality, spiritualism, social events, boundaries, language issues, trading relationships and shared sovereignty.³⁶ Along with the caribou hunt, these concepts (such as gambling and the "Tea Dance") are ways to enforce cultural identity.³⁷ Elders describe, over and over, how Dene nationhood can be observed.

One of the book's notable strengths is its explanations about pre-contact activities. Elders' remarks are about relations before newcomers arrived and before newcomers' ways became dominant in northern Canada. Dene cultural attributes were reinforced in survival methods, family social patterns and relations with other Indigenous cultures. The Dene were located in a region less desirable to Europeans in the 18th and 19th centuries, so exposure to non-Indigenous values, actions and diseases was different as compared to Indigenous counterparts in southern and eastern Canada. The elders in this book, then, often have first-hand experiences to recall, or stories that were told to them by ancestors directly involved in treaty-making and traditional Dene activities. The explanations of pre-contact activities are, therefore, lacking the supposed bias that critics of oral history often claim exists when a story is repeated through many generations.³⁸

But besides how the pre-contact descriptions can stand on their own as insightful information about the past, the stories also help provide context for the tragedy of many post-contact government policies. Crown-imposed fishing techniques,³⁹ dishonesty at trading posts⁴⁰ and non-Indigenous educational systems are considered methods to stop the enforcement of pre-contact Indigenous values.⁴¹ Treaty signings rarely improve conditions and simply prove that the Crown cannot even keep to its own legal norms.⁴² The elders' enthusiasm to speak to Hewitt stems from their grave concern that both the Indigenous principles and the Crown's responsibilities would be forgotten if they were not described in their remarks. Peter Deranger, a Dene elder, states this concern:

35. *They Will Have Our Words*, *supra* note 14 at 166. Three priests' comments are also interspersed in the book.

36. *Ibid.* at 29 and 39.

37. *Ibid.* at 25 and 26.

38. For a reaction to this view, see "Listening for a Change," *supra* note 7.

39. *Ibid.* at 61.

40. *Ibid.* at 106-107.

41. *Ibid.* at 163.

42. *Ibid.* at 129.

When I was younger I lost the meaning of the old ways. I thought the old ways were dying so I might as well go to school. So I went to school. But I didn't learn anything ... I like the idea of going back to the old ways. I know it's not easy, but then nothing is easy.

If Dene culture is to continue, this knowledge must be explained to as many people as possible.

Indigenous methods are more frequent in this work when compared to Cardinal's and Hildebrandt's compilation. Elders regularly use storytelling and metaphoric techniques to explain Dene values. Some strategies are used repeatedly. Thandanthur, for example, is a woman whose multiple stories act as a helpful tool to discuss Dene sovereignty and inter-nation relations.⁴³ Those less exposed to Indigenous sources may develop a discomfort when trying to accept these styles as academically valid or legalistically relevant. However, the messages are not clouded because of the manner in which they are explained and the elders are very cognizant of not losing the attention of their (particularly non-Aboriginal) audience. As the stories regularly contain information about s. 35 matters, the interviews are yet another example of a source helpful for creating valid understandings of s. 35. Moreover, personal survival and cultural affirmation are components of the book. Martin Sayazie explains his responsibility to recount this past to others:

My father told me to tell the people to hold on to the Dene culture and spirituality because the Dene had very hard lives before European contact but still they lived peacefully amongst each other. They cared for one another. My father told me to have the Dene stories recorded since the white man has the technology This is the only way to help our young generations. They will have our words to see and read, even after we are gone from the world.⁴⁴

Within these same explanations, however, exist important mention of the nation's constitutional status. The elders' words let us learn about one culture, an oral history methodology and information about constitutive matters that exist just south of the 60th parallel.

Learning Both Ways in *They Knew Both Sides of Medicine*

They Knew Both Sides of Medicine is about one person within a nation. In this book, Alice Ahenakew reflects about her own life specifically and about plains Cree ways in general. By providing anecdotal stories, Ahenakew explains her own internal values and how her culture's values continue to exist.⁴⁵ This

43. *Ibid.* at 84-85.

44. *Ibid.* at 91-92.

45. For an explanation about how individual ideas explain the collective, see Corinne Squire, "Introduction" in Molly Andrews *et al.*, eds., *Lines of Narrative: Psychosocial Perspectives* (London and New York: Routledge, 2000) at 13.

microcosmic analysis shows how Ahenakew capably educates both Aboriginals and non-Aboriginals about fundamental Indigenous norms.

Two University of Manitoba professors, H.C. Wolfart and Freda Ahenakew, met with Alice Ahenakew, audiotaped their conversations, translated these discussions (as she spoke in Cree), and compiled both the Cree and English versions of her stories into a text form. They also created a glossary and a lengthy introduction about Cree language components. The book, in other words, certainly has relevance for the field of linguistics.

Yet, as the other books also do, *They Knew Both Sides of Medicine* becomes legalistic because of what the interviewee(s) describe(s). Admittedly, Alice Ahenakew's style may not be considered very juridical. Her repetition may be taken as a nuisance, for example, and her metaphors are rampant and sometimes rambling. She discusses personal values, family life patterns and the interplay of Christianity with Indigenous spirituality. By reading the book's introduction, however, one realizes the work's legal value cannot be underrated. Her repetition demonstrates emphasis, truthfulness and her capability to remember events accurately.⁴⁶ Her technique, rather than a sign of poor communication, demonstrates her stories' accuracy and importance. A metaphoric voice appears often, but understanding her analogies is not difficult, especially for those skilled in legal analysis.⁴⁷ Her sharp memory permits her to illustrate legal principles in ways that simultaneously demonstrate a plains Cree ideology.

The most notable metaphor is her discussion about two types of "medicine." Using good medicine ensures proper decision-making. We obtain this medicine by interacting with nature and others in respectful ways. The wrong medicine, conversely, creates permanent damage to our personal spirit. If we do not commit ourselves to our family and the protection of the Earth, the wrong medicine will affect our lives in countless undesirable ways. This lesson is repeated in other stories such as "A Throw-Away Society"⁴⁸ and "An Ungodly Smell."⁴⁹

Not only is Ahenakew knowledgeable, she is also funny. By using humour, she can explain incredibly delicate matters in ways that prove she is concerned about her audience's comfort and attention span.⁵⁰ A young man's flailing dating techniques, his subsequent marriage proposal to Ahenakew and the couple's early struggles when joining a Christian church permit her to illustrate Cree family law, Indigenous-defined crimes, Aboriginal hunting regulations, and Indigenous and non-Indigenous relations.⁵¹ Ahenakew uses her own life as a vessel to depict how newcomers imposed their norms onto Cree communities

46. *They Knew Both Sides of Medicine*, *supra* note 15, "Successive Tellings, Parallel Records" at 152-156.

47. Martin P. Golding, *Legal Reasoning* (Peterborough, Ont.: Broadview Press, 2001) at 10.

48. *They Knew Both Sides of Medicine*, *supra* note 15 at 93.

49. *Ibid.* at 95.

50. *Ibid.* at 148-149.

51. *Ibid.* at 34-35.

without an appreciation for the damage such an imposition would inflict upon Indigenous life ways.⁵²

Of the three books discussed in this presentation, *They Knew Both Sides of Medicine* is certainly the most different from traditional legal discourse.⁵³ Yet because of s. 35's current form when recalling the Court's demands about what "Aboriginal right" means, the book's relevance is apparent because it shows how oral history can explain constitutional issues pertaining to the Cree of western Canada.⁵⁴ The teachings are presented both directly and subtly, and constitutive topics pepper the book's contents.⁵⁵ Because Ahenakew wants us to learn how she functions as a Cree woman, the reader learns about s. 35 subjects and another oral history technique. By revealing her life to the reader, Alice Ahenakew reveals legalistic and methodological issues as well.

III PAH-PEYAKWAN: THE SAME FOR EACH

The books explained here each have their own unique traits. Yet they also have some characteristics in common. First, they provide background knowledge about pre-contact and post-contact history. Such explanations are needed in order to discuss modern relations between Aboriginal peoples and the Crown properly.⁵⁶ The pre-contact information is particularly helpful, considering the form s. 35 has due to the test in *Van der Peet*.⁵⁷ The history, then, is learned easily because it is presented respectfully and for an audience that may have little or no understanding of Aboriginal issues.⁵⁸

The books also provide significant details about topics that have become part of s. 35 discourse. Sovereignty, treaty interpretation and cultural activities appear constantly in the works. Their applicability to legal arguments seems likely to

52. Neil McLeod's "Nehiyawiwihn and Modernity" explains how Cree self-awareness expresses social realities in Patrick Douaud & Bruce Dawson, eds., *Plain Speaking: Essays on Aboriginal Peoples and the Prairie* (Regina: Canada Plains Research Center, 2002) at 51.

53. For opinions that conflict with mine regarding the relevance of oral history to legal matters, see generally A. von Gernet, "What My Elders Taught Me: Oral Traditions as Evidence in Litigation" in Owen Lippert, ed., *Beyond the Nass Valley: National Implications of the Supreme Court's Delgamuukw* (Vancouver: The Fraser Institute, 2000) 103; and Peter Wood, *Diversity: The Invention of a Concept* (San Francisco: Encounter Books, 2003).

54. An example of a case where these concepts are considered is *R. v. Harry Catarat and James Sylvestre* (25 August 1999) QB99469 (Sask. Q.B.).

55. Richard Delgado, "Stories for Oppositionists and Others: A Plea for Narrative" 87 Mich. L. Rev. 2411 at 2413-2415; Jonathan Yovel & Elizabeth Mertz, "The Role of Social Science in Legal Decisions" in Austin Sarat, ed., *The Blackwell Companion to Law and Society* (Oxford: Blackwell Publishing, 2004) 410.

56. J.R. Miller, *Lethal Legacy: Current Native Controversies in Canada* (Toronto: McClelland and Stewart, 2004) at 276.

57. *Van der Peet*, *supra* note 6.

58. Sharon Venne's piece is another example of complex terms presented simply to an audience likely unfamiliar with Indigenous ideas. Venne, *supra* note 12. See also generally Gerald Vizenor, *Manifest Manners: Post Indian Warriors of Survivance* (Hanover, London: Wesleyan University Press, 1994).

increase rather than dissipate.⁵⁹ The works are important references for those interested in creating constitutive arguments about Indigenous legal issues.

The area of “Indigenous law,” a topic that needs more exposure in the legal arena, is also described repeatedly. This term is, for me, a categorization of the legalisms originating in Indigenous communities and based on Indigenous values. They may not receive constitutional protection, but they are still considered laws by the elders. Adhering to these rules is another way to enforce cultural integrity. Marriage norms, gender roles and hunting methods might not pass the integrality portion of the *Van der Peet* test,⁶⁰ but the elders will not relent on their legality nonetheless. Interviewees contend all Indigenous laws are valid and should be recognized by Canadian courts. But even if they are not given constitutional protection, they are important to use when creating better political arrangements between the Crown and Aboriginals today.

Finally, each book is a successful attempt at introducing oral history to a larger audience. The texts are diverse in their presentation of oral history and they can act as templates, guides or simply reflections for those interested in gathering and analyzing oral history in subsequent legal arguments. What makes them seem valid for the purposes here is that they all were approved by the participants. At minimum, they explain a true version of Aboriginal views. At maximum, they are legally valid descriptions that let the fluid nature of *Delgamuukw* be reinforced. Just as versions about written documents can vary, so too can oral testimonies. What the compilations do is increase the amount of information we have that can act as oral history for upcoming constitutive negotiations and litigations. The stories are part of many different intellectual realms, and one field they contribute to is the analysis of law.⁶¹

IV PONAHKAMIKAN: COMING TO AN END

Our current Chief Justice of the Supreme Court of Canada, Beverly McLachlin, lamented in *Mitchell v. M.N.R.* that the Indigenous group involved in this case presented a “paucity of evidence” to support its legal arguments.⁶² The perception that there needs to be more quantity of information about Aboriginals is, I think, an issue with many parties who analyze s. 35.⁶³ Whether the compilers of the books described here imagined their works as legal texts is unclear, but regardless of whether they thought that could happen, it has already occurred.

59. Douglas Harris, “Indigenous Territoriality in Canadian Courts” in Ardith Walkem & Halie Bruce, eds., *Box of Treasures or Empty Box? Twenty Years of Section 35* (Winnipeg: Theytus Books, 2003) at 173.

60. Kent McNeil, “Reconciliation and the Supreme Court: The Opposing Views of Chief Justices Lamer and McLachlin” (2003) 2 *Indigenous L.J.* 1 at 4.

61. Garrouette, *supra* note 18 at 190-191, n. 8.

62. [2001] 1 S.C.R. 911 at 948.

63. Victor Masayesva, “It Shall Not End Anywhere: Transforming Oral Traditions” in Laura J. Murray & Keren Rice, eds., *Talking on the Page: Editing Aboriginal Oral Texts* (Toronto: University of Toronto Press, 1999) at 91.

The role they have, due to *Delgamuukw*, is profoundly influential in understanding what s. 35 can achieve.

My presentation here was created as a means to explore what “oral history” can mean, where it can be found and how it can be appreciated if using a method that employs values that are part of my own Indigenous background. By revealing my own cultural position and professional training, I conclude that my ethnic and educational location permits me to reflect about these sources’ relevance. In the end, I consider it clear that the books have significant roles to play in determining the future form of s. 35. What the works reveal, in content and method, is that oral history is inarguably helpful when appreciating Aboriginal viewpoints. Oral history, moreover, can come in different forms and still be constitutionally acceptable. In short, Canadian jurisprudence has made these books into sources about Canadian law. By using the information in *They Will Have Our Words, Treaty Elders of Saskatchewan* and *They Knew Both Sides of Medicine*, the peaceful coexistence that elders hope for can be reached more quickly, respectfully and legally.