

Asch, Michael. (2014). *On Being Here to Stay: Treaties and Aboriginal Rights in Canada*. Toronto, ON: University of Toronto Press. pp. 232. ISBN-10: 1442610026. ISBN-13: 978-1442610026. \$15.72

Reviewed by Vanessa Sloan Morgan

“Ultimately, it is through negotiated settlements, with good faith and give and take on all sides, reinforced by the judgments of this Court, that we will achieve what I stated in *Van der Peet, supra*, at para. 31, to be a basic purpose of s. 35(1) [of the Canadian Constitution] - ‘the reconciliation of the pre-existence of aboriginal societies with the sovereignty of the Crown.’ Let us face it, we are all here to stay.”

-Chief Justice Antonio Lamer,  
*Delgamuukw v. BC, 1997*, para 186 (p. 3).

*On Being Here to Stay: Treaties and Aboriginal Rights in Canada* moves past implantation arguments of settler colonialism<sup>1</sup> to critically re-evaluate Indigenous-settler and Indigenous-state relationships established through treaty making in Canada; or what Chief Justice Lamer commented upon in his 1997 deliberation in *Delgamuukw v. BC* as Indigenous peoples, not the state, reconciling with the sovereignty of the Crown. Launching his argument from Lamer’s infamous quote proclaiming that “we are all here to stay,” Asch provides an immediate and necessary contribution to scholarship concerning largely historically based perceptions of settler colonialism.<sup>2</sup> With over three decades of experience and subsequent personal reflection on treaty relationships in Canada, Asch offers an honest and, although mildly repetitive at the outset, thought provoking, critical, and arguably prefigurative piece. His anthropological and political science background<sup>3</sup> is apparent with much of his work rooted in key theorists such as Lévi-Strauss, Geertz (although not explicitly), and Hobbes. This book does not suffer from disciplinary rigidity, however. Drawing from historical texts and oral testimonies, legal rulings, ethnographic and first-hand experience, and western and Indigenous philosophies, Asch’s ultimate goal is to explore an integral question that underlies many of the conflicts surrounding treaty relations to date: How did the Canadian state gain authority to govern lands that were already being governed by Indigenous people, and what, then, is the subsequent basis for (settlers’) right to stay given how these lands were acquired?<sup>4</sup>

Asch confesses that his intent in writing *On Being Here to Stay* was simply: “to write a book that would need little further research.”<sup>5</sup> Although his resolve was not fully manifested, it did translate into a book with a clear division. As such, the first four chapters read as a summary of his previous works, shedding further light on the political Indigenous-state relationship in Canada to date. Key to this argument is the presentation of a near conservative continuum of political thought on the topic, ranging from theorists who naturalize the state and subsequently call for the outright assimilation of Indigenous peoples into a homogeneous, liberal culture to that of theorists critical of benevolent multicultural approaches to social (state) organization. In chapter three, Asch begins on the far right of the continuum and talks through Tom Flanagan’s Eurocentric dismissal of the principle of temporal priority,<sup>6</sup> a legal doctrine that is at the core of territorial acquisition. Doing so, Asch demonstrates contradictory statements in Flanagan’s arguments, while presenting historical and legal materials that disprove his claims. Relying upon “reason rather than precedent,”<sup>7</sup> Asch ultimately provides responses to Flanagan’s fallacies and, in doing so, brings readers to his next thesis: if the principle temporal priority applies, what are the consequences of applying it to the Indigenous rights?<sup>8</sup> Chapter four weighs arguments for and against self-determination. Pointing to the United Nations Declaration on Decolonization (1960), Asch presents two common arguments against why this Declaration is not upheld or referred to more often in self-determining debates in Canada: 1) that Indigenous peoples do not constitute a ‘self’;<sup>9</sup> and 2) distinguishing between kinds of colonies.<sup>10</sup> After debating these two common rebuttals to the Declaration Asch successfully concludes that there is no valid reason why it does not apply to self-determination for Indigenous peoples in what is now known as Canada.<sup>11</sup> Continuing to present the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), key theorists on self-determination, a keystone principle in the UNDRIP, such as Will Kymlicka<sup>12</sup> and Alan Cairns’ *Citizen Plus* approach<sup>13</sup> are also presented and critiqued. In concluding, Asch states a central problem to all of the debates surrounding self-determination is that: “[the] self-determination argument puts settlers in a no-win position”;<sup>14</sup> an argument that he later addresses through principles of responsibility, linking, and sharing.

Chapter five represents a shift in the book, moving readers from a

synopsis of previous work into somewhat new terrain. Relations negotiated in Treaty 4, the primary focus of Asch's analysis, are represented as a covenant on sharing the land. As earlier presented in the book, he recalls the imagery and language of brethren and how, upon signing Treaty 4, it was stated that the Dominion of Canada and signatory First Nations agreed to a relationship of brothers; the maternal role of the Queen / Crown's in this brotherhood is, however, debated by Asch in various contexts. This sibling like relationship is reiterated in numerous oral testimonies and recollections of treaties, affirming that lands were not 'ceded or surrendered.'<sup>15</sup> Rather, First Nations signatories of Treaty 4 agreed that the land would be shared; as stated by Asch: "[Treaty 4 signatories] would share the land [with settlers], and [settlers] would treat them like our own brothers and sisters."<sup>16</sup> Flowing from this idea of sharing the land, chapter six begins by recognizing that implementing a principle of sharing in good faith is impossible within the current political (state) structure and international and domestic power relations - a point that Coulthard fiercely makes in his reading of the Guswentha, or Two Row Wampum, in regard to Indigenous-state co-existence.<sup>17</sup> *Witaskewin*, a Cree word meaning 'living together on the land',<sup>18</sup> is instead provided, bearing tribute to the 'ethic of sharing' integral to, and documented in, oral Treaty 4 negotiations. Chapter seven addresses how exactly to formulate a way of living together - *witaskewin* - in a manner that goes beyond the colonial courts subordination (and definition) of Indigenous 'rights and title'; where negotiated inferiority<sup>19</sup> is not central to the lip services given in modern treaty negotiations and where the fact that historic treaties were negotiated with the Crown, not with Canada, is transferred into appropriate actions by the contemporary settler state. The final three are near riveting in terms of anarchist developments, sowing potentially fertile seeds for further exploration.

Recalling the Westphalia model's incompatibility with the existence of nations within nations - a primary reason that the Declaration on Decolonization is rejected in the Canadian context - Asch presents an alternate view. Proposing the linking principle, Asch skillfully draws upon Hobbes' *Leviathan* to reveal the foundational 'Law of Nature'. Countering this argument, Lévi-Stauss' model of (monogamous, but possibly gender-less) marriage is provided to sketch a necessity of linking - one that would overcome the imagery

of cultural homogeneity inherent within Hobbes' work. Throughout this text, passages from Kiotseaton, a Haudenosaunee Chief who entered into a Treaty of Peace with the Jesuits and other First Nations in 1645, is quoted breathing life into the linking principle,<sup>20</sup> but also moving the argument away from staunchly Eurocentric theorizations of relational ontology. Treaties are therefore reframed as foundational agreements that are intended to exist in perpetuity not necessarily between nations / states, but as they would between families - brothers and sisters. The concept of family is indeed central to Asch's linking principles. In suggesting a 'way forward', Asch concludes that "the way we make sense of political relations is so deeply ingrained in us that it would be very hard to embark on a different way were we at the beginning and prepared to approach the nation-to-nation relationship we have been offered with the utmost goodwill and a complete openness to learn from our partners."<sup>21</sup> The final chapter then deals with 'setting the record straight', outlining how Morris, the chief negotiator of Treaty 4, sought to implement principles of linking, sharing the land, and the perpetuity of the Treaty existing in good faith.

Foundational to Asch's work is the idea of temporal priority; a key element in western-based principles of cause and effect.<sup>22</sup> In light of the case at hand, this 'cause and effect' principle posits that settlers arrived on Indigenous territories to encounter peoples who were already well established. Decision-making, customs, and governance were all solidly formulated, culturally reinforced, and being enacted within the 'new world' upon 'discovery'. Framing the argument in this way, from the concept of temporal priority rather than *terra nullius*<sup>23</sup> - or empty lands - shifts conventional discussions of the colonial processes and justification for authoritarian assertion that led to the creation of the contemporary Canadian state and associated Indigenous-settler relations. Responsibility is then placed upon settlers to themselves adapt to local customs, not on scholars or legal practitioners to tirelessly debate the morality of *terra nullius* - a legal doctrine that has been struck down in former British colonies due to its racist and, quite literally, incorrect application (see *Mabo v. Queensland*, 1992). The linking principle further shifts away from arguments necessitating state structures - that of nation-to-nation agreements - instead bringing matters to a rawer level. After all, Asch's central argument against *Leviathan* is that the family, the need to procreate, is quite literally a primordial necessity for

humanity. Admittedly, propositions made in this book are quite effective, skillfully crafted, and even novel. It can undoubtedly contribute to work concerning issues of movement solidarity and, as mentioned before, settler colonialism. What is somewhat concerning, however, is the lack of intersection between colonialism and capitalism. Although briefly discussed within Treaty 4's clause in seed provision and disaster relief,<sup>24</sup> the inseparable role that capitalism and extractive based economies have played in not only maintaining but also excusing state oppression is absent. Principles of linking and of the onus of responsibility being placed upon settlers to themselves act in good faith to both the land and to Indigenous peoples is not diminished, but indeed reduced to somewhat of a moral claim.

One could argue that identifying Treaty's of sharing be implemented in perpetuity overrules this criticism. Just as Asch himself, however, identifies the incompatibility of current political orders with the *Guswentha*, the same can be said of his principles of sharing and linking, especially when located within capitalist modes of production. It is not entirely clear whether Asch is calling for a dismantling of the state, which from his preface one would assume that he is not, or whether a revamping of internal structures is in order. What is clear, though, is that without explicit mention of the morality of capitalism, if you will, principles of linking and sharing may be futile in a discourse of responsibility; if this 'responsibility' does not encounter a state wall, then it will encounter a capitalist stronghold, both of which can be unforgiving of family structures in anyway other than the nuclear, the insulated, and the systemically dependent. This examination is almost excusable for Asch sets out with what he seeks to do: to explore the idea that we are all here to 'stay'. He presents a number of fruitful critiques of various bodies of literature and of records pertaining to Treaty relations. Thus, he sets the stage for an explicitly anti-capitalist, anti-colonial, and even anarchist, analysis of Indigenous-settler relations and treaties; all forms of analysis that he has never purported to engage with explicitly. Asch's work does navigate numerous realms of thought adeptly and without depending solely upon Western philosophies. Indeed it is because of this multifaceted approach that the ontological argument made can hold water. With over three decades of experience behind his thinking, his process of personal reflection is not lost upon the reader. In this way, Asch's work presents a

unique opportunity to learn from his vast amounts of experience in a constructive fashion.

Likening building the structure of co-existence, premised upon sharing and linking, to building a house together, a metaphor that Asch recalls a Dene elder voicing a number of decades ago, he appropriately summarizes his argument for re-imagining Indigenous-settler relations:

[A]s new participants, then, it is [settlers'] responsibility to take particular care in contributing to building lest we inadvertently damage the houses already here, for, whether or not we claim sovereignty, we have much to learn from Indigenous peoples about how to live on these lands, despite our predisposition to believe the opposite.<sup>25</sup>

It is from this point that he concludes, setting the stage for walls of respectful relations and responsibility to be constructed.

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- 1 Wolfe, P. (2006). Settler Colonialism and the Elimination of the Native. *Journal of Genocide Research*, Vol. 8., No. 4. pp. 387-409. doi: 10.1080 / 14623520601056240
  - 2 See Snelgrove, C., Dhamoon, R. K., & Corntassel, J. (2014). "Unsettling Settler Colonialism: The Discourse and Politics of Settlers, and Solidarity with Indigenous Nations," in *Decolonization: Indigeneity, Education & Society*. Vol. 3., No. 2., pp 1-32.
  - 3 Trained as an ethnomusicologist at Columbia University, Michael Asch has provided expert witness testimonies in a number Aboriginal rights cases in Canada, in addition to being a senior research associate during the Royal Commission of Aboriginal Peoples (1993-1994). He is currently a professor (limited term) in the Department of Anthropology and adjunct professor in the Department of Political Science at the University of Victoria. He is also a professor emeritus at the University of Alberta's Department of Anthropology, having joined the faculty in 1971.
  - 4 Asch, Michael. (2014) *On Being Here to Stay: Treaties and Aboriginal Rights in Canada*. Toronto, ON: University of Toronto Press. p. 4.
  - 5 Ibid., vii.
  - 6 Flanagan, T. (2008) *First Nations? Second Thoughts* (2<sup>nd</sup> Edition). Canada: McGill-Queen's University Press.
  - 7 Op.Cit., fn. 4., p. 49.
  - 8 Ibid., 58.
  - 9 Ibid., 62-3.

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- 10 Ibid., 63-5.
- 11 Ibid., 65.
- 12 Ibid., 61.
- 13 Ibid., 68-71.
- 14 Ibid., 72.
- 15 See page 106-112 for more on this disjuncture.
- 16 Ibid., 97.
- 17 Coulthard, G. (2014) *Red Skin, White Masks: Rejecting the Colonial Politics of Recognition*. Minneapolis, MN: University of Minnesota Press.
- 18 Op.Cit., fn. 4., p. 114.
- 19 Ladner [2001] cited in Ibid., 104.
- 20 Ibid., 118.
- 21 Ibid., 133.
- 22 See Ryan, T. (2003) "Hume's Argument for the Temporal Priority of Causes," *Hume Studies*. XXVIX, No. 1. pp. 29-41.
- 23 Asch, Michael. (2002) "From *Terra Nullius* to Affirmation: Reconciling Aboriginal Rights with the Canadian Constitution," *Canadian Journal of Law and Society*. Vol. 17., No. 2. pp. 23-40.
- 24 Op.Cit., fn. 4., pp. 140-9.
- 25 Ibid., 132.