

WSANEC
Emerging Land or Emerging People

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Abstract: The WSANEC Nation has been located on what is now known as the Saanich Peninsula on southern Vancouver Island since time immemorial. Remarkably little has been written about this Nation, which was divided by the Oregon Treaty in 1846 into Canadian/American sides of the border. In Canada the WSANEC Nation was then further divided into 4 separate reserves. This article examines the WSANEC Nation's relationship with its traditional territories, the effects of colonization on this relationship, and ongoing resistance to continued colonization from both internal and external forces. WSANEC history is examined through the documentation in the Nation's oral traditions, using the Douglas Treaties, the landmark Saanich Bay Marina Case, and James Island development as examples.

Key Terms: WSANEC; Douglas Treaty; Coast Salish

Introduction

The WSANEC Nation is located on what is now known as the Saanich Peninsula on the southern part of Vancouver Island. WSANEC territories once encompassed the entire Saanich Peninsula, many of the surrounding Islands, and extended south onto the mainland of Washington State. With the signing of the Oregon treaty in 1846, WSANEC territories and people were divided into Canadian or American sides (Sage, 1946). As a result, family ties were disrupted and families on each side of the border were left to face different government policies. The WSANEC Nation in Canada is currently divided into four separate reserves located in the areas known today as: Tsawout, Tsartlip, Puaquachin, and Tseycum. While a great deal of scholarship has been written about the Indigenous peoples of British Columbia there has been remarkably little written about the WSANEC Nation. This article examines this largely undocumented and unexplored Nation, divided and increasingly surrounded by the dominant culture, by first reviewing current scholarship on British Columbia resettlement. Next, the Saanichton Marina court case is explored, with specific focus on the contested Douglas Treaty rights and how these rights are related to the success of the Tsawout arguments in the case. Finally, ongoing fights for the recognition of Douglas Treaty rights, alongside

current efforts by the Tsawout Band, and the WSANEC Nation, to combat internal and external colonization are examined.

There have been numerous books and journal articles written on the subject of colonial resettlement in British Columbia (Duff 2009; Harris 1997; Harris 2002). The study of Indigenous peoples in British Columbia has been approached from a cultural relativist perspective found in the works of prolific writer and anthropologist Franz Boas (Boas 1902; Boas 1917; Boas 1935), and similarly British Columbia Indigenous Nations have been examined through ethnographic approaches found in the work of anthropologists such as Wilson Duff (Duff 1952; Duff 1959). Finally, an over abundance of BC Treaty (McKee, 1996; McKee 2009, Woolford 1971) and Douglas or Fort Victoria Treaty (Duff 1969; Edmonds 2010; Harris 2008; Harris 2009) books, chapters in books, and journal articles are available online and in print. Describing Boas, Cole Harris in *How Did Colonialism Disposess?* writes; “Boas had little interest in the native societies around him (which, he thought, were becoming civilized), except insofar as they supplied informants about earlier, precontact times” (2004, p. 170). The same statement can be made about many of the early researchers and is an example of what Indigenous scholar Adam Gaudry calls *extraction methodology* (2011, p. 113).

According to Gaudry “[t]he extraction approach to research involves removing knowledge from its immediate context and presenting it to a highly specialized group of outsiders” (2011, p. 114). Therefore, as a WSANEC man I have a direct responsibility to maintain an Indigenous perspective by utilizing oral histories from WSANEC elders, and I feel it is paramount for engaging the material through an *Indigenous lens*. Recent scholarship has begun to explore “[e]ngaging politically with the principles of indigeneity” (Fleras, Maaka 2010), a theoretic approach similar to the *gendered lens* approach utilized by feminist scholars to engage political and academic scholarship as a way to highlight gender disparities which otherwise remain hidden. Engaging through an Indigenous lens alters an exploration of occupied, contested, treaty lands and divided WSANEC people as viewed through postcolonial and settler-colonial literature. The potential is then one of an Indigenous examination of traditional territories, past and current land and resource struggles, from the perspective of WSANEC peoples and their relationship to oral accounts of traditional territories.

Thousands of years before James Douglas approached WSANEC people and proposed his agreements, WSANEC people lived and travelled across what is now called the Saanich Peninsula. Oral tradition can be traced back to our own creation and flood stories. A great example of our WSANEC flood story can be found in *Rethinking Scientific Literacy* (2004, p. 41), a story which originally appeared in a

paper for the Institute of Ocean Sciences in Sidney BC and was written by Kevin P. Paul:

Once, long ago, the ocean's power was shown to an unsuspecting people. The tides began rising higher and higher than even the oldest people could remember. It became clear to these people that there was something very dangerous about this tide [...]

The seawaters continued to rise for several days. Eventually the people needed their canoes. They tied all of their rope together and then to themselves. One end of the rope was tied to an arbutus tree on top of the mountain and when the water stopped rising, the people were left floating in their canoes above the mountain.

It was the raven who appeared to tell them that the flood would soon be over. When the flood waters were going down, a small child noticed the raven circling in, the child began to jump around and cry out in excitement, "NI QENNET TTH WSANEC" "Look what is emerging!" Below where the raven had been circling, a piece of land had begun to emerge. The old man pointed down to that place and said, "That is our new home, WSANEC, and from now on we will be known as the WSANEC people." The old man also declared, on that day, that the mountain which had offered them protection would be treated with great care and respect, the same respect given to their greatest elders and it was to be known as LAU, WEL, NEW – "The place of refuge." Also, the arbutus trees would no longer be used for firewood.

This story illustrates two things. First, the oral tradition traces the presence of WSANEC Peoples on what is now called the Saanich Peninsula to a time which is comparable to the biblical flood of Noah's Ark. Second, the territories of what is now called the Saanich Peninsula and specifically what is now called Mount Newton were never viewed and treated as property to be bought, owned, or sold. LAU, WEL, NEW is still a sacred place today and is still used for ceremonial purposes and the cleansing practices mentioned in *Rethinking Scientific Literacy* (2004, p. 42). The question remains, why would WSANEC people sell something they considered to "...be treated with great care and respect, the same respect given to their greatest elders..."? It simply would not happen.

British Columbia Resettlement

The resettlement of British Columbia by European populations occurred in a drastically different way from the rest of North America. Sustained contact with

outsiders was effectively shielded by the formidable Rocky Mountains for many years. In the two hundred years since European contact, Indigenous cultures all across British Columbia have been inalterably changed. Contact closed in from the Russians to the North, the Spanish to the South, and the British and Americans to the East. Many historians have found little evidence that these early fur-traders had any interest in land settlement during the early contact period of the late-18th to mid-19th century (Duff, 1964). However, eventually the fur traders set up trading posts, and as the years progressed there was an influx of non-indigenous peoples along with a drastic population decrease in many of British Columbia's Indigenous Nations. As a result, the attitudes toward the original inhabitants began change (Duff, 1964; Harris, 1997).

According to Cole Harris in *How Did Colonialism Disposess?* (2004), the imposition of colonialism on the rest of British Columbia did not require treaties. A more honest history challenges colonial notions of a country "...founded on non-violence" (Reagan 2010). As settler colonies spread, the basis for the relationship between Indigenous and non-indigenous peoples shifted from one of trade to one of land acquisition. There was a movement toward creating reserve lands, dispossessing Indigenous peoples, and acquisition of lands needed for settler colonies, often by using intimidation and force. Harris demonstrates that after a few public hangings and or shelling a few villages in order to instill fear, it was "...judged sufficient to anchor a Warship just off a native village and ostentatiously prepare the guns" (2004, p. 169). Once the Indigenous populations were diminished by disease and the population of settlers increased, a mere show of force was enough to dispossess Indigenous nations of their land.

The Oregon Treaty was signed in 1846 without the consultation with any Indigenous groups. [The treaty was an agreement between Great Britain and the United States and established the border between what is now Canada and the United States. The border extends west from the mainland and veers through the Gulf Islands and around the southern tip of Vancouver Island.] The signing of the Oregon Treaty, combined with the discovery of gold on the Fraser River, encouraged the government of Canada to establish a colony on Vancouver Island. Fort Victoria had been established in 1843 and the colony of Victoria established in 1849 (Duff, 1964). James Douglas, of the now infamous Douglas Treaties, was the Governor of Vancouver Island (1851-1864) and of the mainland colony of British Columbia (1858-1864) concurrently. Douglas acted on behalf of the Hudson's Bay Company and as Governor of Vancouver Island, and was appointed by the British government as their representative to negotiate the transfer of ownership of Indigenous lands to the Crown. Fourteen agreements were made with Indigenous

Nations from Victoria, Nanaimo, and Fort Rupert. The lack of treaties in the rest of British Columbia has been a source of legal debate and political maneuvering ever since; however the North Saanich Douglas Treaty will be the focus of the following discussion (Duff, 1964).

James Douglas Agreements and the Saanichton Marina Court Case

There are a few dubious attributes to the Douglas *conveyance agreements*, and there seem to be no concrete answers, only speculation. Why were there only fourteen agreements made on Vancouver Island beginning in 1850, and why did they stop in 1854? Neither group was fluent in each other's language, so what was the legality of agreements where neither party was completely aware of the other party's actions? What can be made of Douglas' tactic of obtaining signatures from the representatives of the different Nations on a blank sheet of paper and then adding wording similar to the recently concluded Treaty of Waitangi? Why did James Douglas only provide his signature on the Nanaimo treaty of 1854, and why did the rest of the treaties which bear his name not also bear his signature? (Duff, 1969).

There are no clear answers. The only concrete facts are that James Douglas, acting on behalf of the British Government, concluded fourteen land conveyance agreements with Indigenous Nations on Vancouver Island. Beginning in 1850 and concluding in 1854, they were made on behalf of the following peoples:

Saanich, Victoria, Metchosin and Sooke areas:

- Teechamitsa now called Esquimalt Band
- Kosampson now called Esquimalt Band
- Whyomilth now called Esquimalt Band
- Swengwhung now called Songhees Band
- Chilcowitch now called Songhees Band
- Che-ko-nein now called Songhees Band
- Ka-ky-aakan now called Becher Bay Band
- Chewhaytsum now called Becher Bay Band
- Sooke now called Sooke Band
- Saanich (South) now called Tsawout and Tsartlip Bands
- Saanich (North) now called Pauqhachin and Tseycum Bands

Nanaimo:

- Saalequun now called Nanaimo Band

Port Hardy Area:

Queackar now called Kwakiutl (Kwawkelth) Band

Quakiolth now called Kwakiutl (Kwawkelth) Band

WSANEC oral interpretations of the Douglas Treaties differ from the non-indigenous interpretations and were part of the trial of *Claxton et al. v. Saanichton Marina Ltd.*, (1985). The Saanichton Marina case (as it will hereafter be referred) was a landmark Douglas Treaty case which was built off of *R v. White and Bob* (1965). This earlier case found the James Douglas agreements were, legally speaking, Treaties and that the HBC and James Douglas were empowered by the British Imperial government to make Treaties with the Indigenous peoples of Vancouver Island. White and Bob of the Saalequun Nation successfully argued this fact. A fact which Claxton et al. would again argue twenty years later on behalf of the Tsawout peoples of the WSANEC Nation.

In 1983 the Province of British Columbia issued a license of occupation to Saanichton Marina Ltd. in order that they could construct a marina and breakwater in Saanichton Bay. Traditional Tsawout fishing and resource gathering encompassed the entire of Saanichton Bay since time immemorial. In defense of this traditional fishery, the Tsawout peoples had been working to stop the construction from the time that the proposal was made public. In 1987 the British Columbia Supreme Court granted a permanent injunction for Claxton et al. against Saanichton Marina Ltd. The situation became a standoff, when in 1985, dredging began on the site, and Earl Claxton Jr. attached himself to the dredge cable, refusing to come down. For over an hour he stayed on the cable, while the freezing rain turned to sleet, until finally the two sides agreed to a halt the dredging until the court decided the matter. Claxton's actions were a testament to WSANEC attachment and dedication to traditional territories. In 1989 the Supreme Court once again sided with the Tsawout and the Saanichton Marina Ltd. project was permanently stopped (Harris 2009).

WSANEC Oral Testimony

The Saanichton Bay Marina case contained important WSANEC Indigenous content. The testimonies given by Gabriel Bartleman and John Elliot Sr. regarding the oral history of the North Saanich Douglas Treaty of 1852 were especially enlightening. There has been a great deal of colonial scholarship written on the Douglas Treaties, and the hearing of Indigenous oral history and comparing the two perceptions yields important information. There were two significant events which were relayed in Hamar Foster's *The Saanichton Bay Marina case: imperial law*,

colonial history and competing theories of aboriginal title (1989). First, there was the issue of a young Indigenous boy being shot by one of James Douglas' men. Second was the felling of trees in the Cadboro Bay area. According to courtroom testimony as well as oral history as told by Dave Elliot Senior in *Saltwater People* (1983) a group of WSANEC men paddled their war canoes and confronted the offending men and told them to stop cutting down trees.

There are subtle correlations between the courtroom testimonies of John Elliot Senior and Gabriel Bartleman, and the corroborating story as told by Dave Elliot Senior in *Saltwater People* when taken in conjunction with research conducted by Wilson Duff for his essay *The Fort Victoria Treaties* (1969). A tenuous but significant connection to the oral accounts of WSANEC elders begs further examination. In March of 1843 according to a written narrative by a Catholic missionary travelling with Douglas, confirmed by a pocket diary Douglas kept, the ship *Cadboro* arrived at what is believed to be Clover point (Cadboro Bay) on the 14th. Missionary J.B.Z. Bolduc writes: "we arrived about 4 o'clock in the afternoon" and "[n]ext morning, the pirogues (Indian boats) came from every side" (Duff, 1969, p 38). While Douglas' diary states on the 15th he, "[w]ent out this morning with a boat and examined the wood on the north shore of the harbour" (1969, p. 38). Could this, in fact, be the date the WJOLEP warriors sailed around and confronted the foreigners attempting to take the sacred cedar trees?

During this time period, of course, the WSANEC would have been practicing our traditional longhouse activities, conducted during the winter months. Our longhouse practices are still largely kept private and though there have been a number of surprisingly accurate accounts written by non-indigenous peoples, an insider account is not likely to be forthcoming. A big part of the gatherings is the opportunity for speakers to share information and teachings at all sizes of gatherings. This would be an important learning opportunity for the younger people to listen and take counsel from Elders. Referenced in the courtroom testimony in Janice Knighton's Indigenous Governance Community Project paper (2004), Dave Elliot Sr. said "[t]raditionally, at gatherings there are people recognized as witnesses, as such the Elders names were noted as..." and he goes on to list the English and traditional names of the Elders responsible for remembering the events and work at the gathering. In this way the story of the Cadboro Bay confrontation would have been remembered, shared, and passed along. In *The Uncharted Nations: A Reference History of the Canadian Tribes*, Robert Macdonald states "...[i]n feudal Europe the parallel of the potlatch existed in the obligation of the nobility to the crown, which bestowed their privileges in return for support, both

financial and martial” (1978 p. 212). Though somewhat dated, it is still a misconception held by many.

WSANEC vs. Colonial Resource Extraction

WSANEC people gathered yearly for the harvesting and storing of salmon in a complex and organized activity called reef net fishing. During this time they stored unbelievable amounts of salmon that were later used during the winter months for survival and also for trade and distribution at the winter longhouse gatherings. In opposition to Macdonald’s view, WSANEC people traded or made “give-aways” of resources plentiful in their area with the expectation other Nations would reciprocate. In this way, what was plentiful in one area would be shared with brothers and sisters from another and vice versa.

Indigenous Nations and connection between land, spirituality and culture have been the source of many books and academic papers. Colonial empire however, has consistently viewed land and its subsequent resources as nothing more than a way to make a living (Harris, 2004; Tully, 1994). The prime directive of colonial power is to first secure the land by displacing Indigenous peoples, then establish a colony and import colonists to tame the wilderness. Co-optation of resources in the form of animal fur, sea life, trees and farmable land historically has led to severe depletion of these resources. Now, sub-surface resources seem to top the list of desirable commodities, along with trees (still), oil, and increasingly water. Land originally set aside for Indigenous Nations because of its supposed lack of desirable resources, now looks more attractive.

Reef net fishing, as well as the hunting and gathering of plants and animals formed the basis of Tsawout land use. Traditional Tsawout hunting and fishing in these areas included much of the Saanich Peninsula as well as specific, well-established, areas on the surrounding islands. When James Douglas made the North Saanich Treaty of 1952 the phrase “...we are at liberty to hunt over the unoccupied lands, and to carry on our fisheries as formerly” would have included all areas utilized by WSANEC and specifically the Tsawout people, at this time. A major misconception concerning the North Saanich Douglas Treaty is that WSANEC people surrendered the rights to all of our traditional territories. Once the reserves were established, the government claimed that all of the surrounding islands were crown land. The explicit wording in the North Saanich Douglas Treaty refers to *lands* between Mt. Douglas and Cowichan Head. Subsequently the government

sold or simply forced Tsawout people off of their island homes while simultaneously outlawing traditional resource extraction, like reef net fishing.

The reef net fisheries for WSANEC peoples is extremely complex and required extensive knowledge of the tides, salmon runs, seasons, weather, tensile strength of reef nets, the appropriate weight of buoys and weighted stones, and conservation of salmon.¹ Traditionally, when the first salmon started to run, the community held a huge feast celebration and prayers of thanks were given to the returning salmon who in WSANEC traditions were returning relatives. In this way the reef net fishing was not only for sustenance, but also for spiritual and community purposes. When the Oregon Treaty was signed in 1846 a largely imaginary boundary line cut out large portions of reef net fishing sites from WSANEC peoples. The effect was that a spiritual, communal, and sustenance practice was suddenly outlawed by an imaginary line that cut through traditional WSANEC fishing territory.

Tsawout Oral Testimonies

In 2001, the Tsawout band conducted interviews about traditional burial grounds, food gathering and plants in order to oppose a BC Hydro project to install a natural gas pipeline in traditional WSANEC fishing territories. Excerpts from the Elder interviews contain important information on the traditional uses and areas of resource extraction for WSANEC Tsawout peoples. Many of the islands contained specific areas where certain resources had been extracted for thousands of years prior to contact. There were also places for specific ceremonial uses and many areas held an attached spiritual significance. These Elders recounted memories they had or stories they were told by their parents or grandparents. The subsequent interviews and transcripts were made available for this paper in light of this writer's WSANEC and Tsawout ancestry (personal communication, March 28, 2001).

James Island is at the forefront since each of the Elders mentioned it in conjunction with salmon, halibut, rabbit, crab, herring, which is not too surprising since James Island can be clearly seen from the present Tsawout reserve (E. Claxton Sr., R. Sam, C. Thomas, G. Pelkey, personal communications March 28, 2001). A Seattle billionaire currently owns the island, however, Tsawout is attempting to conduct an archaeological inventory to confirm the presence of WSANEC peoples (McCaw, 1996). Oral history tells of WSANEC presence on the territories until the government forced them off when they built an explosives plant in 1914. One Elder commented that the poisons from the plant are still seeping into

¹ A thorough and informative paper written by Nicholas Claxton for an Indigenous Governance Project is a good resource for this practice (2003).

and poisoning traditional territories. Darcy Island was also the home of WSANEC people until the government told them it would be establishing a leper colony there, again scaring the people off their land (G. Pelkey, personal communication, March 28, 2001).

These interviews contain countless examples of oral history passed to these Elders regarding which areas in the territories were good for specific resources; which islands were good for seaweed, clams, halibut, sea urchin; and which islands held special spiritual significance and what stories belongs with it. Significantly, each island has a specific name in Sencoten (WSANEC language) which apparently lends legal credit since having place names means the area held significance (E. Claxton Sr., R. Sam, C. Thomas, G. Pelkey, personal communications March 28, 2001). However, for WSANEC peoples having a place name takes second place to the actual spiritual WSANEC connection to the land and area. Oral history based on these Elder tapes is the subject of a planned book by the Tsawout community. There are also a few other recorded interviews available in Sencoten to those who speak the language.

Everything With A Prayer

Albert Memmi in *The Colonizer and the Colonized* (1965) and Franz Fanon in *The Wretched of the Earth* (1961) discuss the effects and methods of colonization. Both scholars discuss the insidious nature of colonization where violent life and death struggles to oppose colonialism is normalized. Here in Canada the colonialism is less obviously about conflict between Indigenous peoples and Canadians, but this does not mean it is any less violent in its treatment of the original inhabitants. The process is arguably more sinister when posed with the question of whether it is better to experience a quick death or one which is slow and painful. The Indigenous Nations of Turtle Island are by no mean ready to give up and perish; however, government policy can be seen to advocate for a slow process of assimilation (Indigenous death by law) through legislation. WSANEC people have experienced a dispossession of a majority of traditional lands, including the surrounding islands and traditional fishing areas. This, in turn, has led to a dangerous disconnection from lands and resources resulting in precarious present day conditions. Efforts to address this disconnect is at the heart of the proposed book by the Tsawout administration entitled, *Everything With A Prayer, SCI, NONET (The Song of our Beliefs)*, attributed to Tsawout Elders Dr. Earl Claxton and Ray Sam. The book is a beautifully written account of WSANEC oral history as told by the two Elder's ancestors and passed down to them in the traditional way. Contained in this book to date are details on the Tsawout oral history of WSANEC presence on Vancouver

Island and the surrounding gulf islands. Each of the islands has a corresponding oral history that includes what resources were utilized on which islands, what time of year the place was used, and for what purpose. Also included are oral histories of spiritual practices, traditional vision quests, and mythological occurrences. Each story has a direct relation to WSANEC people and how we are expected to govern and behave in life. WSANEC territory when viewed on a map stretches from the mainland north and south of the border, includes many of the Canadian and American gulf islands (we did not make up the imaginary line) and also stretches around to the Malahat and Goldstream. Territories were shared between Nations since the concept of land ownership was inconceivable. Shared territories and respect for this was reciprocal and though of course there was conflict it was never over who “owned” which piece of land.

Conclusion

The North and South Saanich Douglas Treaties have had profound and alternately devastating effects for the WSANEC Nation. The treaties have protected hunting and fishing to an extent, but absence of the surrounding islands in the treaties has created debilitating conditions for the WSANEC people. The Oregon Treaty of 1846 and its “imaginary line” cut off a primary source of spiritual, cultural, and traditional living found in reef net fishing. The depletion in sea stock and the continued pollution of Tsawout Bay combined with the occupation of traditional Island territories has left the Tsawout with a fraction of our traditional land-base and an increasingly polluted Tsawout Bay resources. Recently land title held by some reserve members has been used to build subdivisions where non-indigenous people, for a monthly fee, can move into fenced off, high-end trailer homes. Though great for those with a title to these lands, this practice has created an ever-widening gap of *haves* and *have-nots* in the community which distressingly resembles the dominant culture off-reserve. Land and development has become an important internal issue for the Tsawout community.

Therein lies the problem inherent in addressing on-reserve life in a meaningful WSANEC community-driven way. When the chief and council make plans in the name of development and progress there must be Tsawout community member input into the process. This writer participates in colonization by attending university with the expressed intent of using this knowledge to aid my community at some point in the future. Conversely, I have seen the proposed development plan for cutting down our remaining forest and building “market housing” over a large portion of the Tsawout reserve. The market housing area is much larger than the reserve housing area and many of our reserve homes have multiple generations of

families living in them. How can I oppose colonization and yet participate in one of its major institutions? Alternately, how can Tsawout have overcrowded community member housing and yet still have plans to build housing for non-indigenous people on-reserve? Albert Memmi's work is informative here, he writes: "So goes the drama of the man who is a product and victim of colonization. He almost never succeeds in corresponding with himself" (1965 p.140). As Indigenous peoples, we are living in dangerous times. In order to move forward we must hold fast to our traditional, cultural, and spiritual roots. As Tsawout members we must never forget we are first and foremost WSANEC peoples and our allegiance should always be to our land and to our Nation.

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