EDITORIAL

The crown grant of Vancouver Island to the Hudson's Bay Company in 1849 made no mention of Native title or rights. This was deliberate. The Colonial Office in London did not quite know where it stood on the matter. A year later, when James Douglas, then Chief Factor of the Hudson's Bay Company on Vancouver Island, recommended the purchase of land from Native groups near Victoria, he received contradictory instructions from his superiors in London. One approved such purchases. Another said that the Natives did not own what they did not use and therefore had almost nothing to sell. George Simpson, Governor of Rupert's Land, was not sure, but thought that some Native right to land might exist, and that it would be well to settle the matter by purchase once and for all. Douglas, whose mind was as pragmatic as Simpson's, made fourteen formal purchases on Vancouver Island from 1850/54. Years later, the courts held that they were treaties.

When a second colony, British Columbia, was created in 1858, the idea of purchasing Native land had largely slipped from view. On the mainland Douglas had neither means nor inclination to do so, and the Colonial Office did not press him. When British Columbia entered confederation in 1871, Ottawa assumed that Native title existed and that treaties were required to extinguish it. The province admitted neither proposition, and Ottawa eventually backed down. From time to time thereafter, as Hamar Foster points out in his essay that follows, officials in Ottawa took up the case for Native title, but never forcefully enough to override a provincial government that represented the interests of settlers and capital, both land-hungry.

Insistent Native voices supported by decisions of the Supreme Court of Canada from the early 1970s to Delgamuukw late in 1996, have brought the matter back into focus. Native title, Canadian law now holds, exists in British Columbia. One of the corollaries of this conclusion is the treaty process now underway in the province. The Nisga'a Treaty is the first to come out of the pipeline, the first attempt to translate an abstract understanding, no longer in question – that Native people have, or can establish that they have, unextinguished title to the land – into a practical, workable agreement between a Native society and two levels of Canadian government. It is an

exceedingly important document, hopefully a turning point in the long and all-too-sordid story of colonialism in British Columbia.

One of the most basic lines on the map of the province is being renegotiated, a line first drawn on Vancouver Island in the 1850s to separate tiny patches reserved for Natives from all the rest, open for newcomers. It is our boundary between the desert and the sown – though which is which is differently understood.

The Nisga'a will have 2000 square kilometers, the heart of their traditional territory, and their old reserves will disappear. For a hundred years, more or less, the many small reserves scattered across the province have been the basic geography of colonialism in British Columbia. This reserve geography was both a remnant of Native space and a tactic of social control. The colony, then province, of British Columbia worked out its Native land policies in the late 1860s and 1870s (and then hardly changed them for a hundred years). It favoured small reserves partly to clear as much space as possible for newcomers but also because Native people would not be able to support themselves. They would, therefore, find outside wage work and, in so doing, would acquire habits of industry, thrift, and material accumulation. In this way savages would become civilized (such was the language) and would assimilate into the larger society. The policy cleared the land for settlers and capital, provided cheap labour for the resource industries, and established the moral justification for doing so. Small, scattered reserves also had the great advantage of keeping Native groups apart and, thereby, of discouraging their confederation and the possibility of insurrection. When the settler population was small, this was an important consideration.

The old reserve system was impregnated with colonialism, and the Nisga'a Treaty is intended to usher in something else. What that will be cannot be altogether foreseen. But clearly the treaty is an honourable and vastly deliberated attempt to redress a horrid record and its attendant social problems without interfering unduly with the lives and opportunities of the many other peoples – the great majority of British Columbians – who have been the inadvertent beneficiaries of colonialism. This is not easily done, and it is not surprising that basic considerations are implicit in the treaty: the appropriate balance of individual and group rights in a liberal democracy, the nature (as it is and as it might be) of Canadian confederation, the type of society we are and might become. The treaty requires a broader view and deeper reflection than the popular

media can provide. Such is the rationale for this special issue of *BC Studies*.

The issue begins, appropriately, with Chief Joseph Gosnell's speech to the provincial legislature on December 2, 1998. Here, in compact, powerful rhetoric, is a statement of the treaty's meaning for the Nisga'a. Then Hamar Foster, legal historian at the University of Victoria, offers a rich survey of the background of the treaty and responds, as a treaty supporter, to some of the criticisms of it. Charles Taylor, distinguished emeritus professor of philosophy at McGill University, offers much more general support for the treaty by considering the propositions that it is racist and that it creates an unwarranted level of government. Sam LaSelva, a political philosopher at the University of British Columbia, considers the treaty in relation to Canadian confederation and to the type of nationhood to which we might aspire. He reflects on some of the fundamentals of this country. Gordon Gibson, senior fellow of the Fraser Institute, is a critic of the treaty because, in his view, it stresses the collective at the expense of the individual and, in so doing, ignores human nature and the lessons of history. Neil Sterritt, a Gitksan and a central figure in the long Delgamuukw trial, is also a critic, but for very different reasons: the Nisga'a land claims in the upper Nass. Sterritt considers the treaty a land grab.

As should be, the final word is given to the trickster Raven, in so far as he can be caught and reported by John Borrows, Associate Professor of Law at the University of Toronto. Raven, who has seen much and understood more, loves to talk out of both sides of his beak, as the sly old rascal does here.

These seven authors have created an important collection of remarkable writing in short order. Planning for this issue began well after the memorandum of agreement was signed on August 4. The authors have been so forthcoming because of their sense of the importance of the Nisga'a Treaty and of the debate that surrounds it. They are right. There can be little argument that the record of colonialism in BC is far worse than most of us have thought, and that the relations between Native peoples and others in this province have to be put on a different and better footing. This, I think, is hardly debatable, but how we do so should receive the type of consideration that this issue of *BC Studies* tries to offer.

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