

*Response to Joanne Drake-Terry's Review of
The Pleasure of the Crown*

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The Editors,

A bad review is every writer's worst nightmare. For a writer to say, in self-defence, that the reviewer didn't understand the book really only says that the writer failed to communicate her ideas clearly enough. I acknowledge this, and I state it as the starting point of my response to your publication of Joanne Drake-Terry's scathing critique of my book, *The Pleasure of the Crown*.

Drake-Terry begins her review by describing the book as "an array of disorganized information." It is neither her comments about my writing with which I wish to take issue nor her differences of opinion with respect to any of my arguments. It is, after all, the task of a reviewer to comment on these aspects of a text. Drake-Terry, however, starts by criticizing me for writing a book about the history of the Crown's legal arguments, and the role of anthropology in Aboriginal title litigation, at all. She argues that, because the Supreme Court of Canada's (scc) 1997 ruling on the validity of Aboriginal oral history evidence came out a few months before the book, I should have reworked it to reflect the judgment. *The Pleasure of the Crown* is intentionally and purposefully a story set in the time before December 1997, and I quite explicitly do not indulge in prediction. Whether the future will indeed be markedly different from the past as a result of the scc ruling re-

mains to be seen. However, there is nothing about my analysis of the past that I would re-write in light of the present judgment.

In particular, Drake-Terry is critical of the fact that I paid more attention to the Crown's evidence in the original *Delgamuukw v. R.* case than I did to that of the Gitksan and Wet'suwet'en. On page 20 of the introduction to *The Pleasure of the Crown* I explain that this book is not about the histories or cultures of First Nations but, rather, about the histories and cultures of law and anthropology. I describe the book as an "anthropology of European colonialism." It is fair comment for Drake-Terry to say that the aspects of the Aboriginal title issue that I choose to focus on are not of interest to her and/or are not what she considers to be the most relevant or important ones. However, it is not fair comment for her to then base a disparaging review on the fact that I wrote the book I did rather than the one she thinks I should have written.

Throughout the book I discuss the ways in which law has served both as an arm of the colonial state in dispossessing First Nations and as a tool used effectively by Aboriginal peoples to assert their rights and defend their communities. This is a widely held perspective in the field of "law and society studies," which is the framework within which I wrote the book.

I also try to demonstrate how law itself changes over time. In particular, I describe the shift from nineteenth-century legal positivism to contemporary legal liberalism within the context of Aboriginal title law. Quoting a sentence I wrote about legal positivist reasoning in the 1888 St. Catherine's Milling and Lumber case, Drake-Terry claims that I am suggesting that it is illogical for contemporary First Nations to "seek justice through litigation." Similarly, she interprets my calling the achievement of S. 35(1) of the Constitution Act a "limited victory" as a criticism of Aboriginal activists. My explicitly stated intention was to critique the way in which the Government of Canada forces Aboriginal aspirations to be framed within, and limited by, Canadian law. Such analyses of how the law works to limit the victories achieved by oppressed peoples are hardly unusual and are certainly not idiosyncratic inventions of my own.

Finally, Drake-Terry chastises me for saying that the 1997 SCC decision strengthens the position of First Nations in the BC Treaty process, and she accuses me of being "blithely unaware that the majority of BC First Nations (formerly called Indian Bands) stayed away from the treaty table, refusing to comply with the demand for extinguishment of Aboriginal title." However, my reference to the 1997 SCC judgment strengthening the position of First Nations in the BC Treaty process was made within the

context of analyzing the section of the judgment within which the Supreme Court justices encourage the parties to negotiate rather than to litigate. (Ironically, one and a half years after the judgment, I question my prediction. The governments have chosen to largely ignore the *Delgamuukw* decision, so it may *not* have strengthened the position of First Nations at the treaty tables!) On pages 346-7 I discuss criticisms of the BC Treaty Process made by many First Nations both inside and outside of the process, including those who "refused to participate in the treaty process unless or until the government drops its demand that extinguishment of Aboriginal title must be the inevitable outcome of treaty negotiations" (347).

I regret that someone of Joanne Drake-Terry's stature so intensely disliked my book. I do argue, though, that she focused her critique on certain selected sentences and, on this basis, made allegations about my intentions and motivations that I do not think constitute "fair comment." I believe that, read within the context of the paragraphs or chapters in which they were written (or within the context of the book as a whole), the meanings of these sentences would normally be interpreted very differently than they were by Drake-Terry. In particular, I regret that anyone would interpret my work as being disrespectful of Aboriginal peoples' struggles for justice. Nothing could be further from my intention.

