

Heiltsuk Herring: An Exploration of Stories, The State, and Capitalism

BC Political Economy

University of Victoria

Saul Brown
V00830459
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My Relationship to this Work and Wanai (Herring):

My *Hailhzaqvla* name is *Ach'ebuh*, which originates from the unceded territory of the Heiltsuk Nation located in what some refer to as the central coast of British Columbia (BC). My *Hailhzaqvla* name roughly translates into “ferocious grizzly bear” or “the silvertip/hump of a grizzly bear”. I come from the house of *Hemas Dhadhiyasila* - this is my Grandfather and Father’s house. This name of rank and house has been handed down to worthy Chiefs since the first ancestor descended down from the cosmos. Since time immemorial the Heiltsuk have had a complex society based on the potlatch, which is our form of governance. It is from the potlatch that my name came. It is through the potlatch that our stories stay vibrant and rich, such as the stories of my name. All of our ancestral names that my family owns and uses tie us directly to the land and seas from which we come and the stories that connect us to that place. Thus, names enforce our inalienable relationship to place.

In Heiltsuk the name of a person carries a transfer of privilege and responsibility from one generation to the next, providing for intergenerational succession. This is also like the succession of stories. This is our truth as a Nation even when we, the Heiltsuk, stood on the brink of annihilation by way of Canadian colonization. As a member of the Heiltsuk Nation who was born and raised in our traditional territory, I have been exposed to the implications of Heiltsuk stories and everything they embody. Being exposed to Heiltsuk stories at a young age was never an oddity for me because I was born into the house of *Hemas Dhadhiyasila*. Being born into this life and responsibility nurtured my

Heiltsuk worldview just as the potlatch nurtures Heiltsuk stories. My worldview accepts, trusts, and celebrates Heiltsuk stories. *I do not identify as Canadian.*

Introduction:

Pacific herring (*Clupea pallasii*) is a small, but critically important fish to the ecology and life of Heiltsuk territory. An ecosystem that just over 200 years ago only knew Indigenous populations, stories, customs, and laws (Harris, 1997). Since deep time, the Heiltsuk First Nation has been in relationship to this forage fish for food, social, ceremonial, and economic purposes. This paper will look at how changes in state-led herring management and other social and institutional developments in BC have affected the Heiltsuk people's relationship to herring. This paper will do this, while examining the governance issues surrounding herring, with Heiltsuk government, Canadian government, and, industry being the central actors within this issue. The paper recognizes that this issue of the governance of herring is situated within the over-arching issue surrounding the governance of all and any natural resources harvest/extracted within Indigenous territories (all of Canada). Thus, this paper will analyze the role of the state through examining Department Fisheries and Oceans policy and practice regarding herring mismanagement. It will also engage critically with the judicial system of Canada and how the *Gladstone* (1996) decision creates a despotic relationship between the Heiltsuk and the state of Canada, while simultaneously enforcing illegitimate Canadian sovereignty. Finally it will explore how the herring industry and the market has interacted with the state, all while the Heiltsuk-herring relationship has borne the brunt of these affects.

Wanai (Herring) and Heiltsuk Worldview:

The Heiltsuk people are working hard to regain control of their territories and all the natural resources wherein to retain and revitalize local food security, governance, social relations, ceremonies and economies. The traumatic decline of fish stocks, and of forage fish, in particular herring (Pikitch et al. 2012), has been a driving force for many of these initiatives. Herring serves as the foundation of many coastal ecosystems, because herring, throughout their lifecycle are a vital component to life both on land and at sea. In the sea herring provide critical sustenance to fish birds, marine mammals and invertebrates. On coastal lands mink, bears, wolves, eagles, other birds and a plethora of other mammals including humans consume herring (Schweigert et al. 2010).

The coast of Heiltsuk territory is no exception: for a healthy eco-system, there must be a solid foundation of herring. The Heiltsuk people have an inalienable relationship to their territories and all animate beings within their territories. This includes wanai or herring. To outsiders, this relationship is often characterized as herring being a “cultural keystone species” (Moss 2015), which is well-taken, but the relationship between the Heiltsuk people and herring is also much deeper and richer than that. The relationship fostered between the Heiltsuk, Heiltsuk territory, and herring is one of interconnectedness; the Gvi’ilas (Heiltsuk law) endows the Heiltsuk people rights to access and use of herring, *as well as* responsibility of stewardship and maintenance of the herring stocks. This relationship is one of reciprocity, a vigorous eco-system is essential to Heiltsuk way of life, and therefore the focus is always on what can be gifted to future generations, not on what can be taken in the contemporary. The eco-system, herring included, has always taken care of the Heiltsuk people. In accepting that the herring has

continually provided for us, we also accept that herring and all they provide are a gift from creator and as such, our worldview bids us to be stewards of this sacred gift.

Herring season is special to the Heiltsuk people above all other seasons because it represents the beginning of a New Year and time of plenty; it is the end of the winter's darkness and ceremonies. This is a transition period that is mirrored in our potlatch, by the Heiltsuk custom of moving from our winter or red cedar bark ceremony to our peace dance ceremonies. Stories and oral narratives are a time-honoured mode of transmitting Heiltsuk knowledge. One story that exemplifies the Heiltsuk-herring relationship, and the Heiltsuk Nation's responsibility as stewards is the story of Raven transplanting herring. The short version of the story is that Raven was in a Nulu, where there was no herring. Raven went to Gildth, the only area that had herring, he then transplanted herring from Gildith to Nulu. This is one of the first examples of stewardship and enhancement of a natural resource. An archeological study affirms the Heiltsuk narrative of stewardship and abundance based on herring, in that the site at Nulu shows herring made up about 85 per cent of the fish found in local middens (McKechnie et. Al 2014).

Colonization and the Impacts on the Heiltsuk-Herring relationship:

Understanding colonization is imperative to understanding how the Heiltsuk-herring relationship has been altered. Since the onset of colonization, Indigenous peoples have been survivors of many horrific attempts to rid them from their homelands. Franz Fanon, in his book *Wretched of the Earth* (2004), articulates that colonization is the complete subjugation of a racial, cultural, ethnic, religious or other group defined according to certain shared characteristics (p.32). This subjugation occurs and then perpetuates itself when settlers, who deem themselves superior, establish institutions (such as, but not

limited to the present colonial judicial system and DFO) premised on dominating the psychological, material, economic, cultural, geographic, spiritual and everyday existences of the original inhabitants of that place. Fanon demonstrates that colonialism, which at its heart assumes the superiority of the colonialists, is “not a thinking machine” (p.48). The underlying goal of continued colonization is about land and resource acquisition and exploitation, thus accumulation by dispossession. This colonial legacy continues to be a source of great despair for Indigenous nations: indeed, colonization is an ongoing process.

Through the violent process of colonization there have been many obscene societal power structures were created. Power structures that continue to shape societal order in BC and are rooted in Euro-Canadian superiority and the tensions held within capitalism. Colonization of BC can be viewed as process of undercutting the very existence Native nations. By the late 1700s, these social and environmental transformations significantly marginalized Heiltsuk communities (Harkin 1996). Between 1775 and 1889, roughly 80-90% of the Heiltsuk population died as a result of pandemic diseases (Boyd 1999). The implementation of the *Indian Act* in 1876 and the Potlatch Ban in 1884 by the Canadian federal government caused much strife within the social systems of the Heiltsuk, and made Heiltsuk governance of herring illegal. A wealth of traditional knowledge about herring and other aspects of the social-ecological system was lost and the Heiltsuk governance system was shaken by the dramatic declines in the Heiltsuk population (Harkin 1996). These acts and associated laws challenged Heiltsuk paradigms of authority, governance systems, political and social institutions and most importantly, Gvi'ilas (Heiltsuk law). By 1890, many Heiltsuk children were forced to leave Bella

Bella to attend residential schools across the Pacific coast (Harkin 1996). The transmission of Heiltsuk knowledge acquired over millennia, including knowledge of herring seasonality, spawning locations, harvesting technologies, and ecological indicator was hindered by these malicious state-sanctioned acts of cultural genocide (TRC 2015). By way of the state's assimilationist policies that sought to kill the "Indian in the Child" through severe emotional, sexual and physical abuse (Milloy 1999) some Heiltsuk community member's mindset was altered, becoming more willing to view herring as resource to be exploited, taking on capitalist tendencies.

DFO and Assumed Colonial Jurisdiction:

The Department of Fisheries and Oceans (DFO) is a federally operated branch of government that controls waterways within and adjacent to Canada. Its stated mandate is to produce healthy and sustainable access to the oceans that surround Canadian territory (DFO, 2016). On paper, DFO has developed multiple approaches to strengthen its relationship with the Indigenous populations within Canada. For instance, there are two policies in place since the mid 1990's. The *DFO Integrated Aboriginal Policy* that is intended to address the need to foster a respectful, inclusive, and mutually beneficial relationship with aboriginal people, therefore contributing to the well being of Native communities (DFO, 2012). Additionally, the *Aboriginal Fishing Strategy* (AFS) works to provide a framework for Native communities to participate in the management of fisheries, therefore improving conservation, management, and the enhancement of the resource (DFO, 2012). Yet, with these two policies in place, there are still confrontations over management of fisheries and in particular, herring.

Beginning in 1876, the federal government authorized the first commercial harvest of herring as a bait fishery (Powell 2012), which pushed Heiltsuk people to the fringes of the fishery. In 1906, DFO established the Fisheries Act, which created more regulations for the fisheries and changed the structure of the licensing system, including the intentional exclusion of many First Nations fishermen (Harris 2000). By the early 20th century, the herring industry witnessed the emergence and subsequent collapse of the reduction fishery (Newell 1993)

Under the reduction fishery (1937-1967), herring were caught in large quantities and indiscriminately processed into fishmeal and oil (Newell 1993). DFO closed the reduction fishery from 1968 until the early 1970s to allow herring stocks to rebuild (Following the partial recovery of the stocks, DFO initiated the sac roe fisheries in 1972 and the spawn on kelp fisheries (SOK) in 1975 (DFO 2011). The sac roe fisheries target unfertilized “pre-spawn” egg sacs that are removed from the female herring and shipped overseas; the carcasses are processed into fishmeal (DFO 2013). In contrast, SOK fisheries target the fertilized eggs that have been deposited on kelp suspended in the water column, and the females are not harvested (DFO 2013). Both the sac roe and SOK fisheries remain in operation today (DFO 2016).

By the early 1980s, the SOK fisheries became increasingly economically viable (Harris 2000). Heiltsuk fishermen wanted to participate in the fisheries, but the Heiltsuk Nation did not have enough licenses allocated to it from DFO to support all of them; many Heiltsuk fishermen were relegated to be “deckhands” for other larger companies as a result. The Heiltsuk community then requested more SOK licenses during the 1980s to help the fishermen of their community escape the trenches of poverty, but they were

denied by DFO (Harris 2000). By the late 1990s, as a result of the *R. v. Gladstone* (1996) decision, DFO began allocating additional SOK licenses to the Heiltsuk Nation, and the Nation was responsible for allocating these licenses to Heiltsuk herring fishermen. Unfortunately, resource allocation remained increasingly difficult with additional [?]resource users, and less fish to go around (Harris 2000). DFO has continually attempted to push the Heiltsuk people to the margins of their own territory in terms of management and governance of herring and the oceans that the herring call home.

Gladstone and the Tyranny of Canadian Courts:

The courts act as mediators for the state for disputes in BC, this is often done with capital at the center of disputes, as is the occasion for Supreme Court of Canada (SCC) *Gladstone* decision. Bill and Don Gladstone are members of the Heiltsuk Nation. In April of 1988 they harvested 4000 pounds of herring roe on kelp as the Heiltsuk people have done for thousands of years. They had shipped this herring roe to the Vancouver area and approached a fish dealer with a sample to see if he was “interested”. The Heiltsuk have always traded and had commerce with herring roe on kelp. By approaching the fish dealer, the Gladstone brothers were continuing a form of commerce that their forefathers had practiced. However, the brothers were charged under s. 61(1) of the *Fisheries Act* with attempting to catch and sell herring spawn on kelp without the proper license contrary to s. 20(3) of the Pacific Herring Fishery Regulations. Once arrested, Bill produced a Heiltsuk food fish license permitting him to harvest 500 pounds. The Supreme Court of British Columbia and the Court of Appeal upheld the convictions. The constitutional question before this Court questioned whether s. 20(3) of the Pacific Herring Fishery Regulations was of no force or effect in the circumstances in virtue of s.

52 of the *Constitution Act, 1982*, by reason of the Aboriginal rights within the meaning of s. 35(1) of the *Constitution Act, 1982*. The case also questioned the sufficiency of their actions to constitute an attempt to sell.

The Gladstone brothers appealed the case to the SCC and were vindicated, making *Gladstone* the first decision to recognize an Aboriginal commercial right to fish for herring roe on kelp. Based on extensive historic evidence, the Court recognized that the Heiltsuk commercial trade in herring spawn on kelp was not an incidental activity, but rather, “a central and integral” (*Gladstone, 1996*, par. 29) feature of Heiltsuk culture. The Court also held that the past and present fishery regulations did not extinguish Aboriginal rights to fish commercially, but demonstrated an intention to control them. Finally, although the Court held that the regulatory scheme constituted a *prima facie* infringement of the Aboriginal rights of the Heiltsuk, it could not properly assess the extent of the infringement or consider whether there was a reasonable justification to limit these rights based on lack of evidence.

In *Gladstone*, the Gladstone brothers had no choice but to go to court, it was that or jail, illustrating the oppression most Indigenous Nations face. They were arrested for doing what the Heiltsuk have done for longer than our collective memories can recall. Indigenous peoples and nations choose the courts out of necessity or lesser evil than going to jail or the modern treaty process. However, when the Heiltsuk are forced to engage with this system and appeal to the Constitution as tool for liberation, the courts become a reproducing force of a colonial power imbalance.

Although the implications of *Gladstone* are many, it is imperative to understand the colonial logic employed by the courts when deciding what constitutes as an

Aboriginal right. As stated, the Gladstone brothers had no other choice than to challenge the constitutionality of the *Fisheries Act*. Once in the courts, the Gladstone brothers, as well as the broader Heiltsuk nation, had to argue that harvesting and trading herring roe on kelp was integral to the distinct Heiltsuk society. For the judiciary to analyze specific actions as indicators of what is integral to Heiltsuk society is immoral as no one but a Heiltsuk can define what is integral to Heiltsuk society. Henderson points out “the fundamental issue in the integral test is the disguised identity of the decision-maker. The *Van der Peet* judgment [also used in *Gladstone*] entrenches European paternalism because the courts of the colonizer have assumed the authority to define the nature and meaning of Aboriginal culture” (Henderson 2006, p. 210).

This colonial legal logic often leads to misrepresentation, and then the oppression of Indigenous communities, as in the case with the legal test of “centrality”. Legal scholars Brash and Henderson (1997) articulate that the test for Aboriginal rights established in *R. v. Sparrow* requires a First Nation to prove that their right was “practiced aboriginally” and never extinguished. Under the test established in *Van der Peet* and *Gladstone*, the First Nation must prove “centrality” of the activity to a pre-colonial Aboriginal culture. Even if this test is met and the First Nation wins the case as in *Gladstone*, this Aboriginal right only exists to the degree that the Justices deem it to work within Anglo-Canadian law as a whole (Brash, Henderson 1997). This elucidates the asymmetrical power dynamic occurring in Canadian Courts even when Indigenous Nations manage to meet the threshold of the colonial courts terms. So-called victories, then, are still constrained to what the Justices deem them to be. This is evident with *Gladstone* considering how the Heiltsuk won the right to a commercial Aboriginal

fishery, yet are still the subject to Department of Fisheries and Ocean's (DFO) yearly quota allocations of the herring fishery. This is problematic because the decision-making authority lies within DFO policy and practice. Within the logic of the courts, Aboriginal rights do not mean governance within Heiltsuk jurisdiction. The *Gladstone* decision privileges colonial practices of conservation and capitalism, while simultaneously subordinating Heiltsuk structures of conservation and commerce.

Another impact colonial courts have in the further subjugation of Indigenous peoples through the courts is their quest to define what is central to “distinctive aboriginal cultures.” With the courts deciding that harvesting and trading herring roe was a “central and defining feature” (*Gladstone* 1996, par. 29) to Heiltsuk culture, they also did irreparable damage with the jurisprudence this set out. This conception of centrality does not account for the interdependence of activities that are interpreted by the courts as rights (Brash, Henderson 1997). In *Gladstone* the courts deemed herring roe trade as central, but the courts decision does not align with Heiltsuk philosophy of enhancement and abundance that sees herring roe as an interconnected part of the biosphere, in which the Heiltsuk are responsible for as marine stewards. This also means that the SCC dictated that the Heiltsuk only have a priority to an Aboriginal fishery for herring, not management/stewardship of the fishery. This excludes all other animate beings in Heiltsuk territory thus narrowing the scope of aboriginal rights to one species, herring roe-on-kelp. As a result, the Heiltsuk will “bear an even greater uncertainty as to the extent of their resources, and scope of their political authority” (p.8)

Canadian Law has been discriminating against Indigenous peoples since the *Indian Act*, however there are some younger Indigenous people who see law as a way

forward, however utilizing Canadian law must be approached with caution as the underlying logic of the courts remains the same as the *Indian Act*. This is the case because even when Indigenous nations successfully defend their rights in Canadian courts, their participation in the legal process perverts their worldviews and responsibilities. The ultimate authority, then, seems to lie in that body which makes the final decision. The decision-making power of the SCC comes from the assertion of Canadian sovereignty and the dispossession of Indigenous spaces. In this way, the Supreme Court is tied to the Canadian state and whatever decisions it makes, the process upholds the presumed legitimacy of the colonial state. Mary Ellen Turpel captures the underlying paradox of Indigenous people forcefully being subsumed into Canadian law and then attempting to use this law as liberation.

Whether aboriginal peoples win or lose their particular cases in Canadian courts, or whether the law seems appropriately situated as a guardian of aboriginal interests, there is certainly much to lose by using colonial legal structures. To win may simply mean to more fully situate yourselves as a subordinate to a paternal guardian state... [I]t is others (the Canadian colonial legal regime) who officially have the power to define aboriginal existence, experience and even aboriginal struggles against it when legal doctrine is utilized. p.

Turpel illuminates that the courts set out the problem, however, the courts get the problem wrong as it does not address the colonial relationship and unjust power dynamic between the parties. The answer to the courts problem does not advance Indigenous self-determination, or in this case restores the Heiltsuk-herring relationship.

Herring and Capitalism:

Fishing has been integral to economy of British Columbia since the colonial onset of the province. Coincided with the boom of this fishing industry is that the Crown,

which is part of the Canadian state, has been charging Indigenous peoples under the *Fisheries Act* since 1890's (Harris, 2000). Capitalism permeates all aspects of life and existing culture and social relations (Warburton & Coburn 1998), including Indigenous relations. "The current disadvantaged position of many native peoples is primarily a consequence of the destructive impact of Euro-Canadians' use of power to impose their forms of economic activity and culture on pre-existing cultures and modes of production" (p 276). The herring fishery as a staple of the BC economy had an impact on the political authorities and legislation used by the state to manage this fishery. BC created a dependency on fish and particularly herring as already inherently unstable staple. Then there was a massive boom from 1948 to 1962 when the quantity of herring caught for the reduction fishery increased roughly 700 percent (Newell 1993). In the 1970's the Japanese market opened up for herring roe-on-kelp, with opening of this international market, the intensification and overfishing continues at alarming rates (Newell 1993). DFO's policy enforces *Gladstone* (1996), the judicial system is reliant on colonial legal logic, built on dispossession. This demonstrates one way, in which the state privileges and perpetuates capitalist interests for both the reduction fishery boom, and the opening of international markets, while subordinating indigenous economies, and ultimately affecting the Heiltsuk-herring relationship.

It is important to note that the poverty level within the Heiltsuk community is at an alarming level, with unemployment rates as high as eighty-five percent (Lynne, 2011). The people of the Heiltsuk Nation depend on sea life to sustain their families and community members. This is the case, as the cost of living within this region is extremely high due to its seclusion from any metropolis. The fishing industry has been part of the

economic well-being of this group of people for thousands of years as they traded up and down the coast with neighbouring nations to sustain themselves. In contemporary times, and given the adjustments that the community has made in an attempt to survive colonization, fishing to sell and gain profit is one way that the Heiltsuk people have adapted to change to support themselves, just as their ancestors once had. Heiltsuk people are fishermen, and the impact on the aquatic life that surrounds them is a threat to their very survival as a people. Yet, by way of state-sanctioned capitalism, the Heiltsuk have had their relationship with herring tainted.

Conclusion:

BC is built upon the violent dispossession of Indigenous lands and waters. DFO policy and practice discriminated against Indigenous people from its inception. After, the *Indian Act* was amended to allow Indigenous people to attain legal counsel; Indigenous people challenged DFO's jurisdiction, with cases like *Gladstone (1996)*. However, taking the struggle to the courts crated a metamorphosis of issues for Indigenous people and the species within their territories. The role of state allowed capital interest to ravage the herring stocks of BC, with the Heiltsuk bearing the brunt of this action. Foucault (1980) articulates the predicament of the Heiltsuk-herring relationship in that "Humanity does not gradually progress from combat to combat until it arrives at universal reciprocity, where the rule of law finally replaces warfare. Humanity installs each of its violences in a system of rules and thus proceeds from domination to domination".

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