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Frontiers of Progress: The Case of the Westbank First Nation

Sadie Donovan

Although a greater amount of attention is being drawn in the direction of Aboriginal forestry in Canada, Aboriginal forestry practitioners have to contend with the stereotype that their relationship with the forest is centered on spirituality. This romanticization of Aboriginal relationships with forests gives the Canadian state license to conceptualize traditional Aboriginal lands as a productive, opportunistic wilderness; a 'resource frontier.' In her ethnography entitled Friction: An Ethnography of Global Connections (2005), Anna Tsing provides insightful discussion into how we might think differently about the concept of the frontier. For Tsing (2005:27), frontiers are particular kinds of edges where "the expansive nature of extraction comes into its own... [F]rontiers create wilderness so that some—and not others—may reap its rewards." Moreover, frontiers confuse the boundaries of law and alter rules that enable new economies of profit as well as loss (Tsing 2005:26-7). Resource frontiers, in particular, 'free up' natural resources by disengaging the land from local inhabitants, allowing bureaucrats and government officials to carry out corporate capitalist expansion (Tsing 2005:28).

Tsing’s discussion of 'resource frontier' can be usefully applied to the context of the Westbank First Nation and British Columbia logging dispute and the subsequent resolution which resulted in the Westbank First Nation Self-Government Agreement (2003; hereafter referred to as the Westbank Agreement). The dispute between the Westbank First Nation and the province of British Columbia specifically relates to the 'freeing up' of Westbank traditional territory in ways that excluded the Westbank First Nation from economic opportunities. The provincial Crown 'imagined' the traditional territory of the Westbank First Nation as free for exploitation. When the Westbank resisted the political project of the Crown, they retaliated by asserting the right to title to their land. The issue was resolved in 2003 through the enactment of the Westbank First Nation Self-Government agreement. It is my contention that, despite the implementation and subsequent optimism surrounding the Agreement, the Canadian state continues to conceptualize Westbank traditional territories as a resource frontier that they are entitled to, a 'space of desire' which is open to exploration and exploitation (Tsing 2005:32). Moreover, the state has politically justified this conceptualization by embedding it into the Agreement itself. In this paper, I examine the political and ecological backdrop that led to the construction of this agreement. I also briefly consider the role of the Canadian federal and provincial governments within the realm of Aboriginal forestry. In addition, I examine specific government policies that justify the conceptualization of Aboriginal space as a resource frontier that is open to capitalist claims. These policies are then examined within the context of the Westbank Agreement.

Case Study

Aboriginal forestry is becoming recognized as a fast growing section by Canadian forest management companies (Parsons & Prest 2003:779). For Aboriginal forestry practitioners, the forest is a source for building and maintaining traditional ecological knowledge as well as a means for providing greater economic self-sufficiency (Parsons & Prest 2003:781). The forestry dispute between the Westbank First Nation and the Crown fits into this context as the Westbank were fighting the government for both rights to traditional territory and economic gain.

The Westbank First Nation are a part of the larger Okanagan Nation that is located in the southern part of the province near Kelowna BC. In the fall of 1999, the Westbank First Nation, who had been unsuccessful in obtaining a logging permit from the British Columbia Ministry of Forests, began logging on Crown land without a permit (Curran & M’Gonigle 1999:712). According to Beatty and Pemberton of the Vancouver Sun (1999:2), the Westbank First Nation claimed that the province had been unwilling to recognize Native entitlement to traditional territories. After 10 months of

In all of the sources that I examined, the Westbank First Nation was treated as a homogenous group. As an anthropologist, I am aware that there was likely to have been internal fission within the group. Unfortunately, the sources I examined have not provided me with adequate information to explore the heterogeneity of the Westbank First Nation in this paper.
inaction and frustration, then-Chief Ron Derrickson stated that it was important for natives to assert their Aboriginal claim to the land. Derrickson also pointed out that the logging initiatives were done in an effort to stimulate the Native economy (Beatty and Pemberton 1999:3): “[t]he harvesting of our timber grew from frustration led on by the province ignoring Aboriginal title and rights under the Delgamuukw decision”³ (Derrickson in Bonneau-Jack 1999:1).

Despite mainstream backlash, the Westbank First Nation was widely supported by other Aboriginal groups: “As provincial officials issued a stop work order, criticized the logging as illegal, and talk of RCMP intervention began, more and more First Nations and First Nations organizations joined in an unprecedented show of solidarity” (Bonneau-Jack 1999:1). The show of support from other First Nations communities signaled a growing dissatisfaction with provincial and federal use of traditional territories (Curran & M’Gonigle 1999:712-13). Steward Phillip, president of the Union of British Columbia Indian Chiefs, echoed this sentiment:

We, as Native people, have an undeniable right to participate in the economic interests of the province... Delgamuukw says we are the owners of this land and that must be fully understood, respected and implemented in all future planning of resource extraction (Phillip in Bonneau-Jack 1999:2).

On Oct 3, 2003, it appeared as though the Westbank First Nation won their right to access their traditional lands and territory in ways they saw fit: the Westbank First Nation signed a self-government agreement which superficially assigned the Westbank jurisdiction over land management, resources, and language and culture. Robert Nault, Minister of Indian Affairs had this to say about the agreement:

The Westbank Self-Government Agreement is a significant achievement for both our parties... For one, it will provide Westbank with the tools it needs to make decisions over its own affairs. Second, it demonstrates that the Government of Canada’s approach to negotiating self-government in partnership with First Nations produces real and sustainable results (Nault 2001).

Westbank Chief Robert Louie was equally optimistic:

For decades we at Westbank First Nation have had to contend with all the restrictions and deficiencies of the archaic federal Indian Act... At long last we have been able to break that bond and have successfully negotiated the kind of government necessary for us to move forward and create opportunities for membership (Nault 2001.)

The above quotes illustrate the satisfaction of both parties over the outcome of the Westbank Agreement. However, a closer inspection of the Agreement itself reveals underlying political processes that undermine and restrict Westbank access to land and resource management, particularly with respect to logging. The duplicitious and undercutting effects of the Agreement are bound up in larger government policies that justify state access to Aboriginal resources. As such, it is necessary to briefly outline the role that the Canadian federal and provincial governments have played in Canadian Aboriginal forestry before examining the specific policies that are potentially detrimental to Westbank self-government aims.

**Background: The Role of Provincial and Federal Governments**

Within Canada, both federal and provincial legislation dictates how Aboriginal peoples may use traditional lands: “Section 91(24) of the Canadian Constitution Act, 1867 assigns jurisdiction for ‘Indians and lands reserved for Indians’ to the federal government. Conversely, forest management comes under provincial regulation (Curran & M’Gonigle 1999:717). These jurisdictions have traditionally limited the ways in which Aboriginal peoples may use land. In British Columbia, the province

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³ Delgamuukw refers to a Supreme Court of Canada decision which recognized that Aboriginal peoples had exclusive rights to their traditional territories. A detailed discussion is included further in this paper.
negotiates on the basis of a ‘land selection’ model whereby the total land that can be held by a First Nation in fee simple must be no more than 5 per cent of the provincial land base (Curran & M’Gonigle 1999:719 – 720). Therefore, the scope of traditional land bases continues to be restricted by the Crown.

As previously stated, the Westbank First Nation logging dispute has highlighted the importance of economic benefits for Aboriginal peoples in the area of forest use and management. For Aboriginal peoples, forests are particularly important as 80 percent of the 603 First Nations of Canada inhabit productive forest areas (Curran & M’Gonigle 1999:713). Furthermore, of this 80 percent, more than one third have over 1000 hectares of forest within the boundaries of their reserves (ibid.). Despite the growing awareness that Aboriginal people are seeking to reap the socio-economic benefits of forestry use, much of what is considered ‘traditional Aboriginal land’ is currently managed by the provincial Crown (Parsons & Prest 2003:782). Parsons and Prest (ibid.) note that “[Despite the ramifications of the Delgamuukw decision, there] continues to be confrontation in the forest sector between Aboriginal and non-Aboriginal people, with judgments coming from the courts.” As illustrated above, this has certainly been the case with the Westbank First Nation. Moreover, the current legal regime does not allow Aboriginal peoples to access their land in ways that underlie Aboriginal title. The combined federal and provincial jurisdictions prevent Aboriginal peoples from generating revenue from their lands, especially with regards to logging (Curran & M’Gonigle 1999:738). Parsons and Prest (2003:782) note that collisions between Aboriginal peoples and government authorities are often catalyzed by issues including Aboriginal rights and economic benefits. Although large numbers of Aboriginal communities are gaining access to Crown lands through tenure arrangements, their involvement in land use management continues to be minimal (Parsons & Prest 2003:782). Asch and Zlotkin (2002[1997]:208) further add that a fundamental obstacle to the completion of land use agreements has been disagreement over whether settlements should contain wording that extinguishes all or part of Aboriginal rights and title. Currently, the federal government requires extinguishment as a condition for settling outstanding land claims. Many Aboriginal groups reject this condition and refuse to settle; instead, they seek recognition and affirmation of Aboriginal rights and title (Asch & Zlotkin 1997:208).

In the case of the Westbank First Nation Self-Government Agreement, the agreement made between the Westbank and the Crown is not constituted as a treaty as seen in section 4(a)5. However, the Agreement also states in sections 6 and 7 that:

6. Nothing in this agreement or legislation shall be construed as limiting or restricting either Party’s position with respect to aboriginal rights, title, jurisdictions or interests.
7. Nothing in this Agreement or the Legislation shall be construed to abrogate or derogate from aboriginal rights recognized and affirmed by section 35 of the Constitution Act, 1982. (Emphasis mine in section 6).

These sections are noteworthy for several reasons: While the Westbank Agreement is not formally recognized as a treaty, the potential remains for the restriction, if not the implicit extinguishment of certain Aboriginal rights and title. Section 6 allows the Crown to assert their definitions of Aboriginal rights and title, which may vary from the Westbank definitions. Moreover, while section 7 claims not to detract from aboriginal rights and title that were recognized by the Constitution Act, 1982, it makes no mention of the effects of the Delgamuukw decision (1997) on the assertion of Aboriginal rights and title which came about, in part, because the Constitution Act, 1982, was problematic. However, before the potential restrictions of government policy on the Westbank Agreement are explored further, a discussion which attends to the meaning of Aboriginal rights and title within governmental policy discourse must initially be addressed.

Aboriginal Rights and Title

Isaac (2003:2) defines Aboriginal rights as the legal embodiment of Aboriginal peoples’

5 Section 4(a) of the Westbank Agreement states that “This Agreement shall not constitute a treaty. This Agreement is without prejudice to treaty-making in British Columbia.”
claims to their traditional lands and their ability to partake in traditional activities and customs. Aboriginal title is the special legal interest that Aboriginal people have towards those lands that they have historically occupied. Although Aboriginal title is defined as a right to the land, it is also considered a burden on the Crown’s underlying title to the land. According to the Delgamuukw decision, which is discussed at length below, Aboriginal title encompasses the right to exclusive use and occupation of the land for a variety of purposes, although these purposes must not interfere with “the nature of the Aboriginal group’s attachment to that land” (Delgamuukw v. B.C [1997] S.C.R., para 140; 145; 117 in Isaac 2003:3). As is discussed below in further detail, the government definition of Aboriginal rights and title is obfuscating. Conversely, Aboriginal peoples have a very certain definition of what is implied by Aboriginal rights and title.

While the Canadian government ambiguously defines the concepts of Aboriginal rights and title (Asch & Zlotkin 2002:212), Asch and Zlotkin (1997:215) note that Aboriginal title is a very certain concept among Aboriginal peoples: “Aboriginal rights derive from the very existence of Aboriginal people, communities, and nations. [Moreover] Aboriginal rights and title are self-defining and derive from sources external to the Canadian legal system and constitution” (Asch & Zlotkin 1997:215). In essence, Aboriginal rights and title are the basis for political and economic accommodations between Canada and Aboriginal Nations.

The variations between Canadian state and Aboriginal definitions of Aboriginal rights and title illustrate that these are flexible categories and are defined in a variety of ways by a variety of actors. State conceptualizations of Aboriginal rights and title, in particular, have implications for how Aboriginal people may manage their lands and resources. Oftentimes, the exact nature of resource management is open-ended and ambiguous.

Section 8 of the Westbank Agreement effectively illustrates the ambiguous nature of Aboriginal rights and title: “For greater certainty, nothing in this Agreement shall be construed as recognizing or denying any aboriginal rights recognized and affirmed by section 35 of the Constitution Act, 1982.” Therefore, if Aboriginal rights and title are neither denied nor affirmed, room is made for federal and provincial governments to assert their political power over what rights may be affirmed and what rights may be denied. Indeed, both the federal Canadian and B.C. provincial governments have prioritized and maintained their authority over Westbank affairs in sections 29, 30, 31, 35, and 40 of the Westbank Agreement. Sections 29-31 affirm the priority of federal law in certain conflicts, while section 35 asserts that the Westbank Agreement does not limit the authority of Canada. More importantly, section 40 states that the Westbank Agreement does not affect Crown prerogatives and immunities. Canadian state authority and policy thus has the potential to affect the Westbank First Nation in ways that are not in accordance with their self-government aims. The particular ways in which flexible policy affects the nature of Aboriginal rights and title will come into play later in the discussion. For now, it is important to explore the nature of the Canadian Constitution, 1982, and the Delgamuukw decision [1997] in further detail.

Canadian Constitution 1982
Aboriginal treaty rights were explicitly recognized and affirmed in 1982 in section 35 of the Canadian Constitution. Since then, First Nations have been fighting with the government to have those rights defined (Miller 2001:22). Isaac (2003:271) outlines the conditions of Aboriginal title as set forth in the Canadian Constitution 1982:

Section 35 of the Constitution Act, 1982 states:

(1) The existing aboriginal and treaty rights of the aboriginal peoples of Canada are hereby recognized and affirmed.

(2) In this Act, “aboriginal peoples of Canada” includes the Indian, Inuit and Metis peoples of Canada.

(3) For greater certainty, in subsection (1) “treaty rights” includes rights that now exist by way of land claims agreements or may be so acquired.

(4) Notwithstanding any other provision of this Act, the aboriginal and treaty rights referred to in subsection (1) are guaranteed equally to male and female persons.
The applicability of section 35 to the Westbank Agreement is unclear. In the first place, because the Westbank Agreement is not considered a treaty, it begs the question of what rights are being affirmed. Moreover, Isaac (2003:371) notes that within the context of the Canadian Constitution, 1982, “treaty rights” relate specifically to hunting, fishing, trapping, and mention nothing of forest management, i.e. logging. This is especially problematic in the case of the Westbank First Nation, as dialogue was established between them and the federal and provincial governments precisely because of issues relating to logging. Although the Delgamuukw decision is not actively used within the Westbank Agreement, its implications on Westbank resource management are nonetheless implicit. In the initial dispute, then-Chief Derrickson referred to the Delgamuukw decision as justification for logging on Crown lands (see above). The meaning of Aboriginal rights and title, then, needs to be explored within this context.

Delgamuukw v. British Columbia [1997]

On December 11, 1997, the Supreme Court of Canada handed down the Delgamuukw decision which recognized that that Aboriginal peoples have exclusive rights to their traditional territories, including rights to contemporary uses of resources (Miller 2001:22). The Delgamuukw decision affirmed oral historical evidence that had been rejected in the 1993 trial presided over by Chief Justice McEachern (Isaac 2003:9). Moreover, the Delgamuukw decision reconfirmed the uniqueness of Aboriginal title that had been previously affirmed in the Canadian Constitution, 1982, i.e. “it is inalienable [not transferable due to protection by law]; it arises from the prior occupation of Canada by Aboriginal peoples and their pre-existing systems of law; and it is held communally” (Curran & M’Gonigle 1999:723).

While perceived as a milestone in government policy at the time, the Delgamuukw decision represents a much lesser recognition of Aboriginal rights and title than it claims (Miller 2001:24). Curran and M’Gonigle (1999:728-29) state that:

More than two years after the Supreme Court of Canada handed down its expansive affirmation of Aboriginal title in Delgamuukw, the law still offers First Nations little more than...an ethereal promise of no infringement of Aboriginal rights... At the same time, Aboriginal peoples have no direct management control over activities on traditional lands except through participation in the existing tenure system... the legislated tenure system for industrial logging often operates in direct opposition to traditional Aboriginal uses that are the foundation of Aboriginal title.

These observations of the shortcomings of the Delgamuukw decision, especially with respect to forestry management, have direct implications on the Westbank Agreement. Although the Westbank have entered into a relationship with the Canadian state that has been verified through policy, the very nature of that policy undermines their self-government abilities. According to section 87 of the Agreement, which lays out the encompassment of title and interests in Westbank lands: “Title to all Westbank Lands shall continue to be held in the name of Her Majesty the Queen in Right of Canada for the use and benefit of Westbank First Nations.” As a consequence, Westbank land is still technically controlled by the Canadian government, and subsequently, government interests. The precedence of government interest in lands over those of the Westbank is particularly evident in Part 12 of the agreement which specifically relates to resource management. Section 135 defines the scope of Westbank jurisdiction over resources, which includes “protection, conservation, management, development and disposition of renewable resources.” Significantly omitted from this list is jurisdiction over exploitation of resources. Furthermore, section 135(c), with specific regard to the forest management, states that Westbank jurisdiction extends to “preservation and management of the forest resource, including forest enhancement and pest control.” Noticeably missing from these parameters is the ability to exploit forest resources; the overall Westbank objective is to preserve. Thus, the management of forest ecology takes precedence over the management of forest economy.

The designation of the Westbank First Nation to the protection, rather than use, of Westbank territory is further reiterated in section 148: “Westbank First Nation has jurisdiction in
relation to the protection and conservation of the environment on Westbank Lands.” Moreover, section 150 states that in the event of a conflict between federal law and Westbank law over issues of environmental protection and conservation, federal law prevails. The limitations placed on Westbank environmental jurisdiction and land use is especially significant due to the sociopolitical milieu from which the Westbank self-government agreement arose. For example, if the Westbank First Nation pursued industrial logging for economic benefits, they could be in conflict with the environmental interests of the federal government.

Underlying these issues of access to land and jurisdiction over resources is the assumption that the Canadian state holds underlying title to all of Canada (Asch & Zlotkin 2002:211). Aboriginal title is characterized under Canadian law as a form of property right, and as such, is a burden on the underlying Crown title (Asch & Zlotkin 2002:212). Despite the recognition of Aboriginal rights and title by section 35 of the Canadian constitution, the exact nature and scope of Aboriginal rights and title remain obscurely defined (Asch and Zlotkin 2002:212): “Federal policy, therefore, conceptualized Aboriginal rights and title as uncertain, especially ‘with respect to the legal status of lands and resources’” (Federal policy 1993:5 in Asch and Zlotkin 1997:212). The intangibility of Aboriginal title and title is attributed to a lack of political agreement between Aboriginal peoples and the state and has resulted in “‘a barrier to economic development for all Canadians and has hindered full participation of Aboriginal peoples in land and resource management’” (Federal policy 1993:5 in Asch and Zlotkin 1997:212). However, while federal policy may blame Aboriginal peoples for stagnation over issues of resource management, limitations placed on access to resources have been legalized through such clauses as the ‘inherent limit’ of Aboriginal title, and the justification for infringement.

### Inherent Limit of Aboriginal Title

The Delgamuukw decision, while affirming Aboriginal rights and title, simultaneously contains a number of elements that potentially restrict the Aboriginal freedom to maneuver. These elements are listed by McNeil (2001:101) as:

1. the source of Aboriginal title;
2. the proprietary status of Aboriginal title;
3. the content of Aboriginal title;
4. the inherent limit on Aboriginal title;
5. the communal nature of Aboriginal title; and
6. the inalienability of Aboriginal title.

For the purposes of this discussion, the fourth element of Aboriginal title – its inherent limit – will be explored further.

McNeil (2001:116) notes that the ‘inherent limit’ clause directly affects the ways in which Aboriginal peoples may use the land, which is ultimately governed by the ways that Aboriginal peoples used land at the time the Crown asserted its sovereignty. In his explication of ‘inherent law,’ Chief Justice Lamer states that:

[L]ands subject to aboriginal title cannot be put to such uses as may be irreconcilable with the nature of the occupation of that land and the relationship that the particular group has had with the land which together have given rise to aboriginal title in the first place (Delgamuukw note 1 at 1089 in McNeil 2001:116).

The limit, therefore, is on land use. Chief Justice Lamer adds that land uses which are threatening to future generations of uses are, by their very nature, excluded from the rubric of Aboriginal title (Delgamuukw 1089 in McNeil 2001:117).

The limitation of Aboriginal title as defined by the Court fails to acknowledge that Aboriginal nations may want to engage in land-based activities that are culturally appropriate in the present day (McNeil 2001:118). In the case of the Westbank First Nation, these contemporary land-based activities include the right to log on their traditional territories. This Aboriginal right, as defined by Chief Derrickson (see above), is noticeably missing from the Westbank Agreement. Furthermore, in order for Aboriginal nations to manage resources in ways that are incompatible with uses during the time of Crown sovereignty, the Delgamuukw decision holds that Aboriginal peoples must surrender their lands to the Crown in order to be able to do so (Delgamuukw note 1 at 1091 in McNeil 2001:118). Among other things, this restriction limits the decision-making of Aboriginal nations
with respect to their lands and undermines their capacity to undertake economic developments that will allow them to become self-sufficient communities (McNeil 2001:118-19).

What this really appears to mean is that Aboriginal title, while not limited to Aboriginal uses of land at the time of Crown sovereignty, is still limited by those uses. It also has to be kept in mind that ‘aboriginal title encompasses the right to exclusive use and occupation’ [Delgamuukw 1083 emphasis added]. (McNeil 2001:119).

Limitations on Aboriginal land uses that are direct consequences of an indigenous representation that is frozen in colonial time and space is especially prevalent in the Westbank Agreement. This can be seen in my earlier discussion on the delegation of Westbank First Nations to environmental conservation where the emphasis is on what the Westbank First Nations may protect and conserve as opposed to what they can exploit. Clearly, then, the Westbank still have limited access to resources despite the self-government Agreement. Through existing policy, the Canadian state has codified its ability to access Westbank resources within the Agreement itself. Another clause, which allows the government to legally infringe on Aboriginal rights and title, will now be discussed. It is my contention that this clause is also manifested within the Westbank Agreement.

Infringement

Despite the affirmation of Aboriginal rights and title by both the Canadian Constitution, 1982, and the Delgamuukw decision, the government has embedded within these laws legal acts and decisions that allow the Crown to legally infringe upon Aboriginal rights and title. In the Canadian Constitution, 1982, the Court set out a method of analysis to determine if section 35(1) had been infringed by a government regulation, act, or decision. The analysis is made up of two elements: (1) the infringement test, which pertains to Aboriginal peoples, and (2) the justification analysis, which allows the court to legally justify the reasons for its infringement (Isaac 2003:371).

In the case of the infringement test, the onus is on Aboriginal peoples to prove that an infringement of an Aboriginal right or treaty right has occurred (Isaac 2003:372). This clause shifts the position of Aboriginal peoples from defendants to plaintiffs as they are challenging Crown actions. Conversely, the justification test shifts the onus to the Crown to demonstrate that the infringement is justified (ibid.). The language used to describe the infringement and justification tests is particularly noteworthy. In the case of Aboriginal peoples, they must prove that wrongdoing had occurred. The Crown, however, does not need to be accountable for their actions. Justification is an easier test for the Crown as there are already several legislative objectives built into Canadian policy that validate various forms of infringement. Valid legislative objectives that constitute infringement include: “conserving and managing a natural resource, preventing harm to the general populace and Aboriginal people (ensuring safety), other ‘compelling and substantial’ objectives, ‘important general public objectives’” (Isaac 2003:373). Moreover, in the case of Delgamuukw, the Court stated that the following objectives were valid for justifying an infringement under section 35(1):

“[D]evelopment of agriculture, forestry, mining, and hydroelectric power, the general economic development of the interior of British Columbia, protection of the environment or endangered species, the building of infrastructure and the settlement of foreign populations” (Delgamuukw v. B.C. [1997] 3 S.C.R. 1010 note 51 at para. 165 in Isaac 2003:373, emphasis mine).

Clearly, the range of justifiable infringements is expansive. Thus, the Canadian state has ample justifications for infringement. Moreover, if Aboriginal peoples attempt to prove that their rights have been infringed upon, there is little left that Canadian policy has not legitimated. The justification test, by its very nature, renders the infringement test useless.

Built into the Westbank First Nation agreement are allowances whereby the Canadian state may infringe upon Aboriginal rights. Under the subject heading “Expropriation for Community Purposes,” section 105 states that “Westbank First Nation has jurisdiction in
relation to expropriation of interest in Westbank Lands for a Community purpose subject to the following principles... (b) the following interests in Westbank Lands are not subject to Westbank expropriations... (ii) interests in Westbank: Lands held by Canada." Moreover, section 106 goes on to state that Westbank jurisdiction over their lands shall not prevent access to "those persons with rights or interests in Westbank lands." In accordance with Delgamuukw (see above), the above sections allow the Canadian government to justifiable infringe upon Westbank title.

More evidently, under the aptly titled "Federal Expropriation," Canada agrees that, as a general principle, Westbank lands will not be expropriated (section 111), however, expropriation is justifiable "and necessary for a federal public purpose that serves the national interest" (section 113). Expropriation will be granted if: "(a) alternatives to expropriation have been considered and such alternatives are not reasonably feasible; (b) there are no non-Westbank Lands reasonably available;... (e) Westbank First Nation has been provided with information relevant to the expropriation" (section 114).

Discussion

By amalgamating flexible policy that prioritizes state access to and control over traditional resources within the Westbank Agreement, the Canadian state undermines the self-government and economic potential of the Westbank First Nation. The Canadian state interests undercut the Westbank Agreement by refusing to allocate Westbank territory solely to the Westbank First Nation. As such, Westbank traditional territory retains its status as a resource frontier, a 'space of desire' which is open to the exploration and exploitation of capitalist Canadian agendas. (Tsing 2005:32). Government definitions of Aboriginal rights and title, the 'inherent limit' of these definitions, and justifications for infringement have allowed for the 'freeing up' of Westbank space in ways that are conducive to state control over access to land and resource management, particularly with regards to logging.

In this context, little has changed between the climax of disputes in 1999 and its subsequent 'resolution in October of 2003. If anything, opening up the Westbank economy through forestry has become more problematic due to its significant omission from the Westbank Agreement. More importantly, the Canadian vision of the Westbank 'resource frontier' has been reified through policy: the Westbank vision of a land separated from Canadian control (see above) has been undercut by Canadian state visions of frontier progress (Tsing 2005:31). Thus, the apparent localism of the Canadian state masks an overarching nationalist agenda in which Aboriginal territory, although inhabited by people with their own visions of economic prosperity, remains a capitalist resource frontier that is left open to exploration and exploitation; a frontier of progress; a productive and opportunistic 'wilderness'.

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