

# Capitalism and the Dis-empowerment of Canadian Aboriginal Peoples

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## Introduction

It is generally acknowledged that European colonialists sought to establish new colonies in North America, from approximately 1500 onwards, for the purposes of trade, expansion and settlement. However, the role of capitalism as a driving force behind the dis-empowerment of Aboriginal peoples both past and present, is not generally acknowledged. In Canada, both on a general level and in particular cases, we can see how the needs of capital direct the interaction between Aboriginal peoples and the state.

## Historical Background

The initial period of European contact in Canada ranges in time from approximately 1500 AD to the early 1800s and is the period of the first treaties between the British Crown and Aboriginal nations. When British colonialists first made contact in Canada, they encountered “organized” Aboriginal communities, with their own forms of governance and economic systems. Contact during this period was generally marked by a spirit of co-operation between the two nations, and respect for each other’s sovereignty.<sup>1</sup> The reasons for the colonialists initial co-operation and respect for the sovereignty of Aboriginal peoples

were practical, rather than theoretical. As noted in the Report of the Royal Commission on Aboriginal Peoples (RCAP): “Relations were established in a context in which Aboriginal peoples initially had the upper hand in population and in terms of their knowledge of the land and how to survive in it”.<sup>2</sup>

Initially, Aboriginal peoples were also partners in the colonialists’ economic endeavours, trading fish, furs and material goods, and reaping trade benefits from pursuing their traditional way of life: hunting, fishing, trapping, trading, canoeing, and transportation.<sup>3</sup> Yet another reason behind this early spirit of co-operation was the colonialists’ need for Aboriginal nations as military allies both against each other, and against the United States. At this stage of the colonial / Aboriginal nations relationship, the support or neutrality of an Aboriginal nation could only be gained by diplomacy rather than force.<sup>4</sup> Thus, despite the imperial ambitions of the Europeans, the early stages of this political relationship between European and Aboriginal nations were significant for the fact that European powers recognized Aboriginal peoples as autonomous political nations, capable of governing themselves and of entering into relationships with others.

However, towards the end of this period, there was the beginning of a shift in how the

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colonial powers viewed the Aboriginal nations with whom they were dealing. Government policy reflected an increasing trend towards assimilation, dis-empowerment and enfranchisement of Aboriginal peoples from approximately the mid 1700s through to 1970. By 1876, the first *Indian Act*<sup>5</sup> had been enacted as had various other legislative instruments of enfranchisement and assimilation. This is also the time period in which Aboriginal peoples were increasingly confined to life on reserves, in order to free up their traditional lands for colonial development.

How did this change in colonial attitude come about, and what purpose did it serve? It is not surprising to find that legislation pertaining to Aboriginal peoples throughout the period of 1500 to 1970 indicates that an overwhelming concern of the colonialists was land, and much less so the autonomy or well being of Aboriginal peoples. By the end of the eighteenth century, several factors had evolved which cleared the way for the colonialists to act on their ambitions. By the late 1700s, Aboriginal populations had drastically declined as a result of imported diseases, while the colonial population was continually increasing due to immigration from both the colonial countries, as well as a rapid influx of loyalists after the American Revolution.<sup>6</sup> These new immigrants pursued agriculture and the export of timber, particularly in the Maritimes, leading to incursions on the Aboriginal land base.<sup>7</sup>

In other areas of Canada, such as Upper Canada, the immigrants' need for land led to the Crown negotiating treaties for the purchase of Aboriginal lands, which the state then made available for purchase by the immigrants.<sup>8</sup> Further, the end of the War of 1812 and the normalization of relations between the United States and Great Britain meant that the colonialists no longer needed the Aboriginal nations as military allies.<sup>9</sup> Finally, the colonial economic base had shifted, as the fur trade declined, and immigrants increasingly desired both land with which to undertake agricultural pursuits, and access to natural resources in order to meet their own needs and that of markets elsewhere.<sup>10</sup>

In fact, not only had the colonial economic base shifted but during the period of the late 1700s up to approximately the mid 1800s, the economic system of England had undergone revolutionary change. The concurrent development of industrialization and *laissez faire* economics in England had parented a new form of capital-

ism.<sup>11</sup> Prior to the late 1700s, England's capitalism had been held somewhat in check by mercantilism, an economic philosophy which allowed the state extensive powers in regulating and controlling the economic life of the nation.<sup>12</sup>

Towards the end of the eighteenth century, mercantilism came increasingly under attack, as critics decried the role of government in regulating economic life.<sup>13</sup> Adam Smith, the pre-eminent critic of the time, argued that the government's primary function was to maintain competitive conditions, for only under such a government would the unrestricted self-interest of the individual operate for the public good.<sup>14</sup> The industrial revolution in Britain, combined with *laissez faire* economic theory, gradually forged a new model of capitalism in which free enterprise reigned and capitalists experienced relative freedom from government control. By the mid 1800s, the incentive for private enterprise was no longer encumbered by the state.

It was against this historical background that the way of life of the Aboriginal and non-Aboriginal cultures increasingly became incompatible, as the colonialists resolved that the Aboriginal way and claims to the land, would not interfere with their progress. As stated in the RCAP report, "... Aboriginal people came to be regarded as impediments to productive development".<sup>15</sup> The question then, of how the Aboriginal-colonial relationship went from an initial spirit of "contact and co-operation" to one of dis-empowerment and assimilation, involves a closer examination of the goals of capitalism and their centrality to the colonial effort.

### Goals of Capitalism

Capitalism must, by its very nature, expand, seeking new markets and labour forces, in order to keep generating profit and new capital. This need for new markets and the expansion of trade fueled colonialism, as European powers sought to continue their economic growth abroad. As noted by Michael Parenti, "What is unique about capitalism is its perpetual dynamic of capital accumulation and expansion — and the dominant role this process plays in the economic order."<sup>16</sup> In order to generate revenue out of the new territory, colonialists required land on which to base their expansion. As noted by Adam Smith, the success and affluence of a new colony is dependent upon one economic factor, the availability of "plenty of good land".<sup>17</sup> Land in

Canada in the 1840s was described as “no lottery, with a few exorbitant prizes and a large number of blanks, but a secure and certain investment.”<sup>18</sup> However, not only was it necessary that land be available for use, but also that it be owned and controlled in order to satisfy the needs of capitalists.

Economic power under capitalism can be defined as the “control, authority or influence over others which arises from the ownership of property.”<sup>19</sup> Indeed, the right of ownership in productive assets is one of the three basic institutions of capitalism.<sup>20</sup> “Private property is a person’s socially enforceable claim to use, or to exclude others from the use of, or to receive the benefits of, certain rights.”<sup>21</sup> Thus, not only did capitalism necessitate that land be available for the colonialists, but also that it be subject to private ownership. Under capitalism, inequality in economic power is equivalent to inequality in political power. Even more simply put, domination over things equals domination over people.

The state in capitalist society has as its principal task the legitimation and enforcement of property rights.<sup>22</sup> Those with capital created the capitalist state to guard the rights capital has appropriated, and to protect those rights from the antagonisms of society at large.<sup>23</sup> Historically, one can see how capital controlled the state via the institution of property qualifications for the right to vote, and the right to hold office.<sup>24</sup> Focusing on the concept of property ownership as the power to exclude others, reduces the concept of property to one referring to relationships rather than things. Property rights then, like human rights, become rights of an individual *vis a vis* other individuals.<sup>25</sup>

These ideological dimensions of capitalism were in direct conflict with the belief systems of the Aboriginal peoples the colonialists encountered. Private property concepts and their accompanying power imbalance have fostered an individualist interpretation of collective interests in capitalist society. Shared rights and obligations are of marginal importance, and exploiters of the community are supported by the state.<sup>26</sup> In contrast, Aboriginal peoples traditionally functioned as a collective, governed by the interests and survival of the group. Private property and the exclusive ownership of land or resources were not part of the Aboriginal way of life. This interconnectedness of all things has been well documented:

Aboriginal cultures are non-Anglo-European. We do not embrace a rigid separation of the religious or spiritual and the political. We have extended kinship networks. Our relations are premised on sets of responsibilities (instead of rights) among individuals, the people collectively and toward land.<sup>27</sup>

Thus, in addition to capitalism requiring that the land itself be subjected to private ownership, there was a corresponding theoretical imperative of overriding the communal way of life of Aboriginal peoples. In furtherance of private property, capitalism requires the subsumption of all earlier property forms. The capitalist state is constantly engaged in the process of creating private property for capitalists out of communal property. This is achieved by creating conditions whereby capital can realize itself by overcoming barriers imposed by alternative systems of production.<sup>28</sup> This involves the transformation of “the social means of subsistence and of production into capital.”<sup>29</sup> In addition to its role as supplier of land, the new colony also had a role to play in increasing trade for its home country. “Foreign countries in North and South America, which accounted for one-thirteenth of the total British export trade in 1821, took more than one-seventh in 1831; the exports trebled in value during these years.”<sup>30</sup>

### First Nations’ Case Studies

It is within the context of the land and resource rights of First Nation peoples, including hunting, fishing, and harvesting, that we can see more clearly the state role as legitimator and enforcer of private property rights, both past and present. In this context, there emerges a continuing pattern of state interference in transferring common property into state property, and finally, into private property. Since the early stages of colonialism in Canada, the state has engaged in the process of alienating land from Aboriginal peoples as a collective group, transferring land to state control. The state then created private property out of this land, transferring much of it to corporations such as the Hudson’s Bay Company, and the Canadian Pacific Railway.<sup>31</sup> This exemplifies the pattern of property transfer; from common to state to private.

Perhaps nothing so blatantly emphasizes this state role as section 25 of *The Indian Act, 1876* (and its precursor, the *Royal Proclamation, 1763*)

which required, by law, that any Aboriginal surrender of reserve land must be in the name of the Crown.<sup>32</sup> Subsequent to the surrender, the Crown could then act to transform the surrendered land into private property. While the government purpose behind this section was said to be the protection of Aboriginal peoples from unscrupulous colonialists, the state role in the transfer of property from communal to state to private is clearly evident. Further, this provision remains in the current *Indian Act*.<sup>33</sup>

Not long after this legislation was enacted, a case came before the Privy Council of Britain which highlighted the state role as protector of the interests of capital. At issue in the case of *St. Catherine's Milling and Lumber Co. v. R.* (1888), was whether certain Aboriginal lands which had been surrendered belonged to the province or the Dominion of Canada. The St. Catherine's Milling Company had received a cutting permit from the federal government for the land in which the province claimed to hold beneficial interest. In 1873, the federal government had entered into a treaty with the Saulteaux Ojibway which provided that the First Nation surrendered their right and title to certain land in exchange for specific considerations. One very important treaty provision was that:

... subject to such regulations as may be made by the Dominion Government, the Indians are to have the right to pursue their avocations of hunting and fishing throughout the surrendered territory, with the exception of those portions of it which may, from time to time, be required or taken up for settlement, mining, lumbering or other purposes.<sup>34</sup>

Thus, while the First Nation surrendered their title to the land, they were to retain the right to hunt and fish in their traditional territory. However, the limitation placed on this right which excepted areas taken up for mining and lumbering proved problematic for the First Nation. While the First Nation may have meant to preserve some semblance of their traditional way of life in the form of maintaining hunting and fishing rights, it is evident that the government retained control over this right, rendering it a "qualified privilege", dependent on the "goodwill" of the Crown.<sup>35</sup> Given the discretion of the Crown, the First Nation had little protection when the lumbering company sought and received a permit from the government to cut away one million feet of lumber from the land.<sup>36</sup>

This early case, essentially a battle between the federal and provincial Crown as to who had the jurisdiction to award the lumber licence, does not consider the damaging effect that the cutting away of one million feet of lumber would have on the area wildlife and on the treaty right to hunt. While the federal licence at issue was held to be invalid, and had to be reissued by the province, the rights to the lumber ended up in the control of a private company, without consideration of the First Nation's hunting and fishing rights.

This case illustrates the pattern of the transfer of property rights from communal to state, to private. While the title to the land remained with the Crown, the permit given to the private company effectively overrode the First Nation's communal interests in the property. Further, the provision in the treaty which excepted areas of land required or taken up for settlement, mining, lumbering or other purposes from the First Nation's hunting and fishing rights, meant that the licence given to the lumbering company was to the exclusion of the rights of the First Nation. Thus, the lumbering company had a right both to use, and to exclude others from the use of, certain rights relating to the land.

Further, capitalism as a system was served by further reducing or eliminating the extent of the First Nations rights to hunt and fish and thereby engage in alternative systems of production. Through the transfer of this land from the First Nation to the state, and the issuance of a licence to private business, the Aboriginal means of subsistence and of production was effectively transformed into capital.

Similarly, in British Columbia, where much of the land and resources are subject to comprehensive claims based on Aboriginal title, the First Nations have found themselves battling state supported private corporations for the preservation of their rights. Many of the Aboriginal claims to land and resources are subject to a lengthy treaty making process engaged in with both the federal government and the province since 1993. With this process underway, BC Indian Chiefs issued a demand to the government that development be halted on lands subject to a claim for Aboriginal title.

This request was denied by the Aboriginal Affairs Minister for British Columbia as "irresponsible" because it would send the wrong signals to investors and "could harm investment or job creation in B.C."<sup>37</sup> Further, the Minister

stated that “We intend to carry on with our responsibility, which is to keep the economy vibrant and healthy”.<sup>38</sup> As a result, the First Nations lost their bid to have the province stop issuing Crown logging and other resource permits until the implications of the Supreme Court of Canada decision in *Delgamuukw* could be ascertained.<sup>39</sup>

More specifically, the Haida of B.C. went to court in an attempt to protect their lands and resources from a private logging company, MacMillan Bloedel, given exclusive rights to cut on Crown lands. The Haida claim Aboriginal title to a large area of British Columbia, much of which was subject to a provincial tree farm licence issued to Macmillan Bloedel. Once the original 25 year licence expired the government renewed it in both 1981 and 1995. The Haida went to court by way of judicial review seeking to set aside the decisions of the Minister of Forests to replace the licence in 1981 and 1995.<sup>40</sup>

The case centred around the question of whether or not Aboriginal title and rights constituted an encumbrance within the meaning of the B.C. *Forest Act*, thereby preventing the Minister from issuing the licence. The Court concluded that the Aboriginal title and rights did indeed constitute an encumbrance, and allowed the Haida’s appeal, thereby preventing the province from giving logging companies exclusive rights to Crown land where Aboriginal rights and title had been established.

However, the Haida desire to end MacMillan Bloedel’s licence to log on about 190,000 hectares of their claimed homeland altogether. As stated by the lawyer for the Haida: “What’s at stake ultimately is the Haida culture, ... the continuing right of Haida people to access our forests to keep our culture alive”.<sup>41</sup> She further noted that the exclusive nature of the provincial licensing system is at odds with Aboriginal title, creating the prospect for “fundamental change”.<sup>42</sup> It is important to note that while this case was a victory for the Haida, it was determined on the hypothesis that the Aboriginal title and rights claim of the Haida had been established. The question was determined by the court on the assumption that the Haida had title and other Aboriginal rights over the area in question, including the land, water, flora, fauna and resources.<sup>43</sup> This reaffirms that the government and the courts are not willing to protect areas subject to a claim for Aboriginal title or rights pending their determination.

In Vancouver, the Sauteau First Nation commenced an action for judicial review against decisions of the Ministry of Energy and Mines and the Ministry of Forests concerning permits that had been issued to the gas conglomerate Amoco Canada. The Sauteau, a small Treaty 8 Band from Northeast B.C., opposed the issuance of permits to Amoco for the development of an exploratory gas well by Energy and Mines, and for cutting timber by the Ministry of Forests, on land subject to Aboriginal treaty rights and title.<sup>44</sup> Against the protests of this First Nation, Amoco had begun exploratory drilling in a watershed area for which the First Nation had been seeking legislated protection for several years.<sup>45</sup> The corporation expects to find a “world class” deposit of deadly but very valuable sour gas.<sup>46</sup> If successful in this endeavour, the corporation plans to establish more exploratory and development wells, along with pipelines and processing plants.

The goal of the Sauteau in this court action was to have the two Ministerial decisions set aside and for orders requiring the respondent Ministries to consult further with them before any new decision was made regarding Amoco’s application to develop an exploratory well and for the necessary cutting permits to provide access to that wellsite. While there had been extensive consultations between this and other concerned First Nations, and the Ministries and Amoco, the Sauteau felt these consultations were inadequate and continued to oppose the development of an area accepted by the court to be a spiritual site for the First Nations.<sup>47</sup> The court found that while the Sauteau First Nation “are adamant in their opposition to this project, they have been afforded the fulfilment of the duty upon the Crown to be consulted.”<sup>48</sup> The First Nation’s petition was consequently dismissed.

Accordingly, the Chief of the Sauteau First Nation questioned:

... how can Glen Clark [Premier of B.C.] say he’s respecting and looking after our Treaty and Aboriginal rights and interests when he stands to gain hundreds of millions in royalty revenues if Amoco is successful. I’d say he’s in a clear conflict of interest!<sup>49</sup> (emphasis added)

Further he added:

They’ve completely missed the point ... we’re trying to protect the water, wildlife and pristine ecosystem which still exists

there—it's where our Elders prophesied a hundred years ago, we must depend upon the future for our basic sustenance—that's something money just can't buy.<sup>50</sup>

The comments of this Chief accurately reflect the conflicted role of the state as the guardian of Aboriginal and treaty rights, and the promoter and protector of capitalism.

And while the state has “missed the point” on the values and way of life of this First Nation, it only too well recognizes the point of capitalism: to maximize profit, while simultaneously overriding alternative systems. In fact, the B.C. government has openly acknowledged that a motivating factor behind their negotiation of treaties in British Columbia is the creation of a stable climate for economic development.<sup>51</sup>

Across the country, in Quebec, the Grand Council of the Crees of Eeyou Istchee undertook an action in the Quebec Superior Court in July 1998, to prevent the destructive forest management practices in that area, and challenge the state support of this exploitation.<sup>52</sup> The Grand Council is also seeking a court order requiring the Quebec government to abide by the terms of the James Bay and Northern Quebec Agreement and to respect its own *Forestry Act*. Their position is that from the signing of this agreement onwards, the Quebec government has not respected its commitment to the Cree people to ensure that forestry development is conducted in such a way as to protect Cree rights.<sup>53</sup> The 1975 agreement promises:

- A procedure whereby environmental and social laws and regulations and land use regulations may from time to time be adopted if necessary to minimize the negative impact of development in or affecting the Territory upon the Native people and the wildlife resources of the Territory;
- The protection of native people, societies, communities, economics, with respect to developmental activity affecting the Territory;
- The protection of wildlife resources, physical and biotic environment, and ecological systems in the Territory with respect to developmental activity affecting the Territory.<sup>54</sup>

The Crees contend that the terms of this modern day treaty are not being fulfilled, and are in fact being ignored by Quebec in the implementation of policies, laws and regulations determining how forestry operations may be undertaken.<sup>55</sup>

As a result of this neglect the Crees contend that the Quebec forestry industry is mining out Eeyou Istchee, clear cutting forest habitat, and rapidly depleting Cree hunting territory. While under the treaty, development must incorporate the commitment of government to protect the Cree traditional way of life and the environment, this has not occurred. Cutting is taking place in the absence of land-use planning, and without consultation with the affected Cree communities. The result is that “An age old system of land management and social organization is being destroyed”.<sup>56</sup> As the Grand Chief of the Grand Council of Crees, Matthew CoonCome stated:

*It is intolerable that the solemn promises of Quebec to the Crees be left up to industry to determine.* The Agreement of 1975 calls for laws and regulations in this situation and Quebec has failed to put into place the required protections. This attack on our rights has been systematic, and long-term and has survived successive governments in the Province.<sup>57</sup> (emphasis added)

The Crees are asking that the court prohibit the defendant Corporations from carrying out forestry practices that violate Cree international, Aboriginal, and treaty rights throughout the Eeyou Istchee. They are also seeking an order requiring all forestry operations in the area to undergo federal and provincial impact assessment. Finally, they seek damages for breaches by Canada and Quebec of their Constitutional, Treaty and other duties.<sup>58</sup>

Again, this case illustrates the state role in furthering the goals of private capital. Despite having entered into a modern day treaty in 1975 with the Crees, the state continues to support private capital even where that necessitates breaching treaty and Aboriginal rights. The Grand Chief highlights the fact that the government's obligations towards Aboriginal peoples are often effectively, if not formally, left to the determinations of private industry. As well, this case evidences the role of the state in supporting the success and profitability of capital, particularly where the sacrifice is “an age old system of land management and social organization”. The Cree way of life, and its alternative systems face absorption, driven by the needs of capital to continue growing and expanding whatever the human or environmental cost.

Further east, there is increasing conflict in New Brunswick as First Nations communities

declare their rights to harvest trees on Crown land. The Maliseet and Mi'ikmaq First Nations contend that their 18<sup>th</sup> century treaties with the Crown prove that the Crown lands of New Brunswick were never ceded or surrendered and are still Aboriginal lands.<sup>59</sup> In the words of one First Nations logger, "the land belongs to the native people and we have the right to harvest the natural resources".<sup>60</sup> This issue came to the forefront when a Mi'ikmaq was charged with unlawfully cutting bird's eye maple, under section 67 of the *Crown Lands and Forests Act*.<sup>61</sup> The accused was originally acquitted at trial and on appeal by the Crown, with the appeal judge finding that the First Nations had land and treaty rights which included the right to harvest trees on Crown lands.<sup>62</sup>

Briefly, the facts of the case are that the accused had cut three logs of very valuable Bird's eye maple on Crown land with no authority from the Minister. The land where the logs were cut was licensed to Stone Consolidated Inc.<sup>63</sup> The Crown appealed the judge's decision to the New Brunswick Court of Appeal, which reversed the previous courts, concluding that on the evidence provided, the defence had established neither a treaty right nor an Aboriginal right to commercial harvesting.<sup>64</sup> Leave to appeal this decision to the Supreme Court of Canada was subsequently denied.<sup>65</sup>

While the legal issues in this case concern the relevant treaty provisions and the question of the existence of an Aboriginal right to commercial harvesting, it is interesting to consider the parties involved and the interests at stake. In this case, Mr. Paul cut three logs on Crown land that was licensed to a major timber company. It is clear that it is the interest of this company and other logging companies to have a monopoly on tree harvesting in the area as this maximizes their profit. The restriction of an Aboriginal right to harvest commercially is clearly not in the interests of the impoverished Aboriginal communities. Nor does it appear to be in the interests of the community in general as there is no mention of any environmental or conservation concerns in the various judgments.

However, as discussed above, it is the role of the state to protect the interests of capital in order to perpetuate the system. The charging and trial of this First Nations person for cutting three logs on an area licenced to a major corporation brings to mind a quote from Adam Smith:

When some have great wealth and others nothing, it is necessary that the arm of authority should be continually stretched forth.... Laws and governments may be considered in this and in every case as a combination of the rich to oppress the poor and preserve to themselves the inequality of the goods.<sup>66</sup>

It is also noteworthy that at the Court of Appeal level, several lumber companies were granted intervener status in the case.<sup>67</sup> What possible interest could these corporations have in Aboriginal and treaty rights, other than that of protecting their profit margin?

In response to a recent report generated by the New Brunswick government on this issue, one Aboriginal owner of a logging company commented:

What I wanted to see in this report was more willingness to share the resource.... They should have recommended that some of the big companies drop a portion of their annual allowable cut, maybe 10 per cent apiece. There should have been some compromise.<sup>68</sup>

It comes as no surprise that most of New Brunswick's six million hectares of forest land is owned by or reserved for big forestry companies.<sup>69</sup> The Aboriginal peoples who lived in New Brunswick long before European settlers made contact, have not only been deprived of their rights to the land itself, but also to its produce. These peoples who now live in a state of high unemployment and poverty, are being denied even the most basic Aboriginal rights to natural resources over which they once had free reign. Even absent a detailed discussion of Aboriginal and treaty rights, it is clear whose interests are being protected in this case. It is not the interests of the environment, and it is most definitely not the interests of the Aboriginal people in the area. Rather, it is the interests of private capital which seek to be preserved via the protection of the state. For the large lumbering companies to "share" the resource or "compromise" would translate into loss of profit, rather than the growth of capital.

## Conclusion

Given the historical and constitutional importance of treaty and Aboriginal rights, it is appropriate that these issues take centre stage in the debate. However, an examination of which inter-

ests oppose the rights for which Aboriginal peoples seek recognition, can be instructive. The question of whose interests are being served is one that should be asked in order to understand what exactly Aboriginal peoples face in their struggles for recognition.

Not only are corporations granted property rights by the state, but they also have the capital, and thus the political power to enforce those rights. In contrast, many First Nations find that their Aboriginal rights are largely unrecognized and unprotected because the people as a whole are economically, and thus politically dis-empowered. Given that the state is in the contradictory role of protector of capital, and guardian of Aboriginal and treaty rights, it is worth considering the role of capitalism as a basis for the dis-empowerment of Aboriginal peoples historically, and present day. It may be that the origin and continuance of Aboriginal dis-empowerment is largely economic, having less to do with the race or culture of the occupiers of the land, but more to do with the land and resources themselves.

#### NOTES

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4. *Ibid.*, at 102.
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33. *Indian Act*, R.S. 1985, c. I-6, s. 37.
34. *St. Catherine's Milling and Lumber Co. v. R.* (1888), 14 App. Cas. 46 (P.C.).
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61. *Crown Lands and Forests Act*, S.N.B. 1980, c. C-38.1.
62. *R. v. Paul*, [1998] 1 C.N.L.R. 209.
63. *Ibid.*, at 210.
64. *R. v. Paul*, (1998) 158 D.L.R. (4<sup>th</sup>) 231 (N.B.C.A.).
65. [1998] 4 C.N.L.R. iv (note) (S.C.C.).
66. D. Hay, "The Criminal Prosecution in England and its Historians" (1984) 47 Mod. L.R. 6 at 25.
67. *R. v. Paul* (1998), 158 D.L.R. (4<sup>th</sup>) 231 (N.B.C.A.) at 234.
68. "N.B. natives dismiss report as inadequate", *Globe and Mail*, March 26, 1999, A5.
69. *Ibid.*