

Culture

Michael ASCH, *Home and Native Land: Aboriginal Rights and The Canadian Constitution*, Toronto, Methuen, 1984. 156 pages, \$9.95 (paper)

Conni Kilfoil



Volume 5, numéro 1, 1985

URI : <https://id.erudit.org/iderudit/1078354ar>

DOI : <https://doi.org/10.7202/1078354ar>

[Aller au sommaire du numéro](#)

Éditeur(s)

Canadian Anthropology Society / Société Canadienne d'Anthropologie (CASA), formerly/anciennement Canadian Ethnology Society / Société Canadienne d'Ethnologie

ISSN

0229-009X (imprimé)

2563-710X (numérique)

[Découvrir la revue](#)

Citer ce compte rendu

Kilfoil, C. (1985). Compte rendu de [Michael ASCH, *Home and Native Land: Aboriginal Rights and The Canadian Constitution*, Toronto, Methuen, 1984. 156 pages, \$9.95 (paper)]. *Culture*, 5(1), 101–102. <https://doi.org/10.7202/1078354ar>

Tous droits réservés © Canadian Anthropology Society / Société Canadienne d'Anthropologie (CASA), formerly/anciennement Canadian Ethnology Society / Société Canadienne d'Ethnologie, 1985

Ce document est protégé par la loi sur le droit d'auteur. L'utilisation des services d'Érudit (y compris la reproduction) est assujettie à sa politique d'utilisation que vous pouvez consulter en ligne.

<https://apropos.erudit.org/fr/usagers/politique-dutilisation/>

érudit

Cet article est diffusé et préservé par Érudit.

Érudit est un consortium interuniversitaire sans but lucratif composé de l'Université de Montréal, l'Université Laval et l'Université du Québec à Montréal. Il a pour mission la promotion et la valorisation de la recherche.

<https://www.erudit.org/fr/>

NOTE

1. Pour obtenir les cartes, il faut s'adresser à: Pierrette Désy, Département de Géographie, Université du Québec à Montréal, C.P. 8888, Succursale «A», Montréal, P.Q. H3C 3P8.

Michael ASCH, *Home and Native Land: Aboriginal Rights and The Canadian Constitution*, Toronto, Methuen, 1984. 156 pages, \$9.95 (paper).

By Conni Kilfoil
Crane, Paterson — Barristers & Solicitors,
Richmond, B.C.

Michael Asch's *Home and Native Land* could appropriately be sub-titled "Everything You Wanted to Know About Aboriginal Rights and the Canadian Constitution But Were Too Confused To Ask". Asch has chosen in his book to focus generally on political aboriginal rights, that is rights to self-government and ultimately self-determination, and specifically on the perceived conflict between constitutional recognition of aboriginal rights and the egalitarian ideology of the Canadian liberal-democratic state.

Asch prepares us for his analysis of this conflict by attempting to define aboriginal rights, by destroying some of the commonly-held myths regarding Native people, and by reviewing a mass of political documentation (produced by Native groups) to discover the thread that runs through the various Native positions.

That thread, according to Asch, is the claim that aboriginal peoples have the right to maintain distinct ways of life, which right can only be realized with an aboriginal land base and aboriginal self-government.

In an attempt to assess the content of this position, Asch reviews the judicial treatment of aboriginal rights and the evolution of federal policy with respect to those rights, especially since the famous *Calder* case of 1973. In that decision, the Supreme Court of Canada divided equally on the question of whether the Nishga Indians of the Nass Valley of British Columbia retained aboriginal title to their lands, the seventh judge deciding against the Nishga on a technicality.

But Asch's discussion to this point is merely a background to his central thesis: that the argument that entrenchment of Native legislative authority

would violate the fundamental principles of Canadian liberal-democratic society is wrong. Using a minimal definition of liberal-democracy as a system of democratic government in which "... the value of individual freedom is joined through a political and legal structure to a belief in the legitimacy of majority rule...", Asch postulates that one of the fundamental characteristics of such a system is the notion that all individuals in the system be treated equally.

In the Canadian Native context, then, the question becomes whether the granting of permanent political rights (via entrenchment) to a certain class of citizens (Natives) can be accommodated within the existing political system.

A true anthropologist, Asch takes a comparative approach to the problem and looks to various "consociational" liberal-democracies, those states structured to accommodate the political rights of their ethno-national entities, for his answer. He examines Belgium, with its system of regional councils exercising a jurisdiction independent of the national Parliament; Switzerland, with its central federal government and regional cantons and half-cantons; and Canada itself which, it is claimed, is structured to accommodate the ethno-national political rights of Francophone Canadians. Just as structures in the Canadian state have been perceived as accommodating the "French fact", concludes Asch, so too would it be possible to accommodate the "aboriginal fact" by adopting the consociational model of political structure. The federal government need not fear that the entrenchment of sovereign aboriginal political rights would violate its political ideology, since it is possible to accommodate within the same state both ethno-national political rights and the fundamental egalitarian principle of liberal-democratic rule.

Asch's book begs so many questions that a reviewer is tempted to overlook the strength of the book and focus on its weaknesses. If *Home and Native Land* has a central fault, it is its over-ambitious scope. In raising the argument that entrenchment of aboriginal rights is inimical to the Canadian liberal-democratic state, Asch surely realizes that he is grappling with a problem which is far more complex than his fourteen-page chapter can even begin to deal with; consequently, too many questions remain unanswered, too many themes undeveloped. One is left wishing that the analogy between aboriginal-Canadians and French-Canadians had been examined less superficially; that the analysis of federal policy, and the ironies contained therein, had been developed more critically; and that the history of *unequal* treatment

of Canadian natives, not in fact but in law, had been added to the discussion on "equality of consideration".

As a lawyer, I found Dr. Asch's treatment of the legal material, such as his analysis of the evidence in the *Milurpum* decision, interesting. As an anthropologist, I kept wishing that Dr. Asch would examine more critically some assumptions inherent in his own analysis — the assumption that Native people form a political interest group; the assumption that entrenchment of aboriginal rights will effect a material change in the lives of Canadian Native peoples, the assumption that entrenchment of aboriginal rights is "essential" to Native political development.

This kind of in-depth analysis is, of course, beyond the scope of Dr. Asch's book. The real strength of *Home and Native Land* is its ability to make sense out of a great mass of political documentation and to articulate the issues involved in entrenchment of Native rights in a manner that should prove useful for those concerned with aboriginal peoples and their rights.

Guy WRIGHT, *Sons and Seals: A Voyage to the Ice*, St. John's, Institute of Social and Economic Research, Memorial University of Newfoundland, 1984. 129 pages, \$9.95 (paper).

By Steve J. Langdon
University of Alaska, Anchorage

In *Culture and Practical Reason* (1976), Marshall Sahlins suggested some of the meaning dimensions which "la pensée bourgeoise" uses to order phenomena. Sahlins' categories were presented in the course of developing his claim that culture (meaning) orders economy (utility) rather than the reverse. A symbolic analysis of the recent controversies in Western societies surrounding whaling and sealing activities would provide further revealing insights into the cultural meanings which organize "la pensée bourgeoise". A good starting point for such an analysis would be Guy Wright's *Sons and Seals: A Voyage to the Ice*.

This book, a revision of the author's Master's Thesis, is published by Memorial University's Institute of Social and Economic Research as No. 29 in the Newfoundland Social and Economic Studies series. It juxtaposes the mutually exclusive values of animal welfare protestors and Newfoundland sealers, while providing an ethnographic

description of a voyage to harvest harp seals which Wright joined in 1979. It explores the ambivalence and psychic resolution in the sealers' approach to the harvest as well as the differences in beliefs about the harp seal hunt found among and within environmentalist organizations.

The short book is divided into eight chapters, the middle four of which constitute the ethnographic core based on the author's fieldwork. In addition there are three appendices, one of which is the Canadian government's position on seals and sealing, while the other two present environmentalist positions. There are two sections of useful photographs, one with scenes from the hunt taken at the turn of the century and the other with photos Wright took during his fieldwork.

The first chapter introduces the topic, the development of Wright's interest in the issues, his methodological approach (participant observation and informal interviewing), and outlines the modest aims of the book. Wright straightforwardly presents his bias in favor of the hunters, but generally is restrained in his treatment of environmentalists. There is one accusatory and self-indulgent lapse late in the book (p. 108) where Wright implies that environmentalist leaders use the sealing issue to raise money to maintain their organizations. In general, though, there is a healthy and frank tone of naiveté and openness throughout in the author's writing about his own thoughts and emotions, which adds to the volume's believability and impact.

In Chapter 2, the commercial harp seal hunt is traced from its origins in Newfoundland in the 18th century to the present day. The pattern of sealing which persisted down to the last hunt in 1983 was established early. Merchants and large vessel owners hired on crews of fishermen and outporters and transported them as hunters to the "Front". There, the harp seals congregate each spring for breeding, at the edge of the pack ice in the Atlantic northeast of Newfoundland. The hunters would live on the ships, trekking out daily to club and skin the seals and transport them back to the ships, where they would spend most of the night cleaning and storing the pelts in the holds. The vessels and men would spend from four to six weeks at the ice depending on a variety of factors. Vessels were often overcrowded, and many men lost their lives on the hunt over the years.

Until the 1960s, little attention was paid to conservation of the seals. Over 250,000 pups were taken, annually, on average, from 1951 to 1970. By the mid-1960s the Canadian and Norwegian governments began controlling the harvests through