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Book Review

On Being Here to Stay: Treaties and Aboriginal Rights in Canada

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On Being Here to Stay: Treaties and Aboriginal Rights in Canada by Michael Asch. Toronto: University of Toronto Press, 2014. 232 pp. \$24.95 paperback, \$55.00 cloth.

“What, beyond the fact that we have the numbers and the power to insist on it, authorizes our being here to stay?” (Asch 3).

Michael Asch, known for his writings on the political relationship between Indigenous peoples and Settler Canadians as well as for his expert testimony in legal cases, provides us with an answer to this central question in his new book, *On Being Here to Stay: Aboriginal Rights in Canada*.

The question is pressing for at least two reasons. The first Asch calls a truism: non-Indigenous Settlers are not going anywhere. Decolonization in Canada will not look like it did in India, Africa, and most of the globe where, as the story goes, European colonizers packed their suitcases and went home. Supreme Court of Canada Chief Justice Antonio Lamer asserted this in the 1997 *Delgamuukw* decision when he wrote “Let us face it, we are all here to stay” (Asch 3). The second reason is that that temporal priority is a central tenant in Settler culture and law, making it wrong to move onto the lands of another people without their permission (Asch 35). Settler Canadians thus violated their *own* principle, relying instead on sheer power not only to maintain their presence but also to assert territorial sovereignty over the land they now claim as Canada. Even though some treaties provided Settlers with permission to stay, “it is also clear that these agreements did not give us authority to live as though these lands belong to us” (Asch 4). Taken together, the two aspects show that promoting healthier Indigenous-Settler relations is not just about what justifies the continued presence of Settlers, as if all that is needed is a good reason or two to satisfy curious minds; it is about Settlers discovering and interpreting the reasons that justify their ongoing presence, which invariably leads to discovering the importance of renewing positive relationships with Indigenous peoples, predicated on recognizing their having been here first.

To help resolve this tension—stemming from the truism of Settler permanence and the normative implications of Indigenous priority—Asch creatively and intentionally provokes cognitive dissonance in skeptical readers and then throws them a rope. Chapters 2 through 4 defend the idea of this tension against those who claim otherwise. The last five chapters give readers a way to return to mental equanimity through an alternative vision based on treaty that “encourage Settlers to see the legitimacy of their settlement on these lands as linked to the fact that they gained permission to settle on them from people who had the authority to grant such permission” (Asch 6). It is toward the latter chapters that those familiar with the topic will gravitate most, though there is much to be found earlier on.

Chapter 2, for instance, offers a much-anticipated expert perspective on the implications, thirty years later, of the *Constitution Act, 1982*. In 1984, in *Home and Native Land*, Asch

wondered aloud whether the recognition of Aboriginal and treaty rights under section 35 would fundamentally challenge the integrity of the state's sovereignty. At the time, Asch was balancing the general excitement that comes from "a reversal in state policy of the greatest magnitude" with the caution that comes from recognizing that the devil would be in the details (see Asch 1984, 8–10). Asch wisely called for caution in the face of excitement. Today, he not only believes that section 35 has failed to challenge the exclusive nature of Canadian sovereignty, but predicts that it is unlikely that it ever will unless more drastic changes take place. Indeed, chapter 2 backs up a claim found in the introduction: "if the courts and the government have their way, Aboriginal rights will never be interpreted as including many political rights, and certainly not the right to self-determination of colonized peoples" (Asch 5). This is rather bold. While it is indeed more-or-less accepted that democratically elected officials typically drag their feet, many feel that the courts offer more hope. Asch disagrees, lumping the courts in with governments on more than one occasion (e.g., Asch 32). He comes to this conclusion knowing full well that the 2004 *Haida Nation* and *Taku* decisions have been hailed for having the catalytic potential to force the paradigm shift he thinks we need (see, e.g., Hoehn 2012). Asch, rightly in my estimation, remains skeptical. I also doubt the 2014 *Tsilhqot'in* decision, rendered after the book's publication, will do much to change his mind. While Asch's is just one perspective, it must be recognized that he has tremendous expertise in and first-hand experience of Canada's legal system.

The next two chapters round out the first part. In each chapter Asch takes on a different arch-rival—focusing on Thomas Flanagan in chapter 3 and Alan Cairns in chapter 4—to suggest that the tension that comes from the need to reconcile Settler permanence with Indigenous priority remains despite their best efforts to assert the idea that Settlers are already legitimately here to stay. These chapters—roughly and respectively analogous with the assimilationist white-paper liberalism of 1969 and multicultural liberalism ever since—may seem outdated, as many have already rallied against the racist and/or colonial aspects of both approaches (e.g., Turner 2006). Asch adds very little to these debates, though he does an admirable job defending the idea that liberal theorists always fall back on might equaling right. His immediate goal is not to dismiss these arguments once and for all (though he would happily see them lose favour), but to keep the aforementioned tension alive despite their best efforts. He recognizes this, writing at one point, "I know that my responses may be amenable to some, but certainly not to all. There are, after all, different opinions on these topics. But my goal has not been to silence viewpoints. Rather, it has been to show that [they offer] no compelling reason for me to abandon mine" (Asch 58).

The remaining chapters offer a more novel line of thinking on how Settlers can justify their permanent presence in Canada. His focus is on the post-Confederation numbered treaties—particularly Treaty 4 and Treaty 6. Indigenous peoples and Settler Canadians not only have very different perspectives on these treaties, they also pass down their meaning in different ways. Settler governments argue that exclusive sovereignty was transferred to Canada via extinguishment clauses found in the written text, whereas Indigenous peoples claim they agreed to share the land based on oral tradition (Asch 77). Asch sides with

Indigenous perspectives, suggesting they should not only be held alongside those of the Crown as proposed during the Royal Commission on Aboriginal Peoples, but should be given precedence based on his understanding of the Crown's intent as captured in a book written by Treaty Commissioner Alexander Morris in 1880. Asch therefore aligns himself against Western ideas of sovereignty, associated with the Westphalian tradition generally and Hobbes's *Leviathan* specifically, and suggests that we should instead adopt Mohawk Chief Kiotseaeton's "linking principle"—a principle that sees Settler and Indigenous peoples bound to each another as mutual relatives sharing a house. Inspired by the work of Lévi-Strauss on kinship, Asch proposes an alternative to the Hobbesian call for absolute sovereignty in the face of a violent state of nature, preferring instead familial links from below that link us together in the name of survival and mutual self-interest. As captured in Indigenous and Settler accounts of the treaty process, we should want to take care of one another. Asch sees treaties as the foundation of the house we build together "in which we both can live, the shape of which cannot be predetermined because it is the consequence of the steps we take in building it" (Asch 132).

In evaluating the book, I want to avoid the usual route of focusing on Asch's specific arguments and how his approach strengthens or weakens his conclusions. This is not to say that the book is without challenges; indeed, broad questions could be raised about his focus on historical treaties generally and certain treaties specifically, as well as whether they could or should apply across the entire landscape commonly known as Canada. One could question his choice of interlocutors, his reading of their arguments, and his effectiveness in employing them to make his own points more convincing. Yet Asch's ambition is less about providing irrefutable arguments and more about offering an alternative constitutional vision that Settlers and Indigenous peoples can share. It is this political objective that I want to discuss, for I believe that it is on these terms that Asch himself would prefer further engagement.

Asch urges Settlers to look into the mirror of history in order to see the buried vision of those who negotiated treaties based on peace, mutual respect, and friendship. In their place, Settlers mistakenly hold up imperialists, mostly of British origin, as the "Fathers of Confederation" and thereby overlook what really justifies Settler permanence in Canada. Asch asks us to consider nothing short of restoring a new narrative of Canada's founding. He even gives Settlers new heroes to emulate in Treaty Commissioner Morris and Governor General Lord Dufferin, whose authority gave meaning and form to the treaties (Asch 162–4). Even if one disagrees with the content of his work, there should be little doubt that such a project deserves greater attention and support.

So how do we counter Settler ignorance, fueled by the nation-building efforts of the Canadian state? On this profound question Asch is relatively silent, notwithstanding the power of *On Being Here to Stay* itself as a testament to the importance of speaking out and finding a way of legitimating the presence of Settlers here. Unfortunately, even attentive readers might indeed be left with more questions than answers. Assuming the book convinces Settlers that they have yet to provide a convincing account on why they

are legitimately here to stay, how should their view of Canadian citizenship change? What political actions and avenues should they pursue? Of course, answers to these questions might be too much to expect from a book that already gives us so much. Yet, if I am right in suggesting that Asch's primary aim in writing this book is to provoke fundamental political change, we need to know more about exactly what it means not only to keep treaty promises, but also to honour them against forces—domestic and international, political and economic—that work against such a possibility. Tackling Settler skepticism is one thing, a critical and necessary first step if you will; getting them to abandon their comfort, indifference, and apathy is quite another.

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