[*JSRNC* 18.2 (2024) 217–229]
https://doi.org/10.1558/jsrnc.23942

JSRNC (print) ISSN 1749-4907
JSRNC (online) ISSN 1749-4915

Submitted: 2022-10-11 Accepted: 2023-11-28

Mother Earth, Cultural Authenticity, and Canadian Law

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Sam Gill's *Mother Earth: An American Story* played its part in the late-20th century transformation of the study of religion, helping to move the field away from the theological or patternist approaches of those he calls 'armchair scholars', such as Mircea Eliade and others whose work was long on theory and short on 'reliable accurate descriptions of cultural and historical reality' (1987: 8). A wealth of historically-sourced, nuanced and popular culture or community-based works have emerged over the last four decades and more, influenced by this transformation in theory and method. I think that Gill's present effort to situate the study of religion so that it can address the contemporary meme-based cultural currents unleashed by the internet is also valuable as it speaks to the overall aims and approaches to the study of religion.

However, I also find myself troubled by what seems to be his work's more practical—although perhaps unintended—implication regarding Indigenous peoples. I think that he might have damped down the 1990s controversy over his work that many readers may recall by addressing the question of his argument's practical implication more directly than he did in *Mother Earth*, or than he seems to do even within the scope of his present essay. But with what follows I hope that I can gain clarity on this point. I think the question of scholarship's practical implication is especially germane, because, as the English physicist and novelist C. P. Snow reputedly put it back in the days of the nuclear arms race: 'A scientist has to be neutral in his search for the truth, but he cannot be neutral as to the use of that truth when found. If you know more than other people, you have more responsibility, rather than less'.[1]

1. The quote is itself something of a meme, found on lots of websites featuring catchy quotations with colorful backgrounds. For an overview of these issues, or a refresher depending on the reader's age, see Guillemin (2018).

I can understand that Gill's commitment to the academic study of religion would lead him to make a strong distinction between the scholarly search for truth and political advocacy—a point he emphasized in his 1997 JAAR debate with Chris Jocks (Gill 1997; Jocks 1997). At the same time, however, scholarly searches for truth in contentious areas might best lead those scholars to acknowledge how their searches fit in with and affect the surrounding contests of the political world, if only to ensure that their work is not appropriated in ways that misconstrue their conclusions. What Snow also referred to as the 'moral un-neutrality of science' (Snow and Baker 1961: 255) has as much relevance to the continuing pursuits of the humanities as it did to Cold War production of plutonium bombs.

In what follows I address *Mother Earth*'s practical implication by considering how references to Mother Earth in the case law on Canada's obligations under sec. 35(1) of the *Canada Constitution Act, 1982*—which entrenched 'Aboriginal and treaty rights' within the country's constitutional framework—might stand up under the 'integral to a distinctive culture' test that Chief Justice Antonio Lamer developed in his influential 1996 ruling *R. v. Van der Peet* (2 SCR 507).[2] By my counting, Mother Earth appears within the trial records associated with over fifty Aboriginal and treaty rights cases. Thus, whatever questions invoking Mother Earth may raise for scholars, her place within Canada's courtrooms indicates that she has plenty of practical significance as well.

Put bluntly, the practical upshot I fear readers will draw from Gill's work is the conclusion that Indigenous people invoking Mother Earth in various contexts are being inauthentic. Creative, perhaps, but a sympathetic reader can easily suspect that something deceptive is at work when Indigenous activists, for instance, rally public support for a pipeline protest by appealing to their obligation to defend Mother Earth. At best, although Gill doesn't use the term, on his account Indigenous invocations of Mother Earth would exemplify one of Eric Hobsawm's 'invented traditions' (Hobsawm and Ranger 1983). In this essay Gill expresses the hope that his 'memetic' approach will provide readers with the opportunity to 'appreciate Mother Earth as relevant to many peoples and cultures and situations across the globe' (2024: 2). However, I don't think that appreciating Mother Earth's 'relevance' to North American Indigenous people's 'situations' is an adequate way

2. The overwhelming majority of cases pursuing Indigenous interests in Canada have avoided thematizing the issue of religion. For a look at recent efforts to pursue claims along the religious freedom/sacred site lines developed by American tribes, see Bakht and Collins (2017). For a recent overview of this issue within the context of American tribes, see McNally (2020).

to frame the practical outcome of a project that Gill readily acknowledges is controversial.

As Gill (2024) frames 'the situations' of Indigenous people, a reader cannot escape the suspicion that he has fatefully characterized these 'so-called Indigenous cultures' (167) as deep wells of subjective quests for personal and collective identity. Throughout the essay he uses the language of subjectivity to frame Indigenous motivations, interests, actions, and rhetorical stances. For instance, he speaks of 'many persons who self-identify…' (167), of Indigenous people who 'appear as victims…' (164), and 'portray their people in the role of victims making statements to claim some high ground and moral superiority…' (168), who articulate a 'claim to kinship with the land…' (168), and draw (anachronistically) on local traditions to provide 'a sense of primordiality and spirituality for Mother Earth' (174). In each of these sentences, Gill's verbs function like wedges, highlighting a degree of distance between Indigenous self-perception and the surrounding contemporary world in which Indigenous communities exist.

These perhaps passing characterizations of the subjectivity of Indigenous behavior are merely a prelude to the more fundamental conclusion of subjectivity that unavoidably derives from his focus on Mother Earth as meme. Memes, for Gill (2024), are not grasped through the search for 'meaning' (177). They are absorbed through a sense of coherence, and 'coherence cannot be rationally determined; it is a feeling kind of knowing. It is something we experience as just-so' (178). This memetic operation enables Indigenous invokers of Mother Earth, 'by means of this name circulated through social media', with opportunities to 'in time…feel a common identity' (179).

This common identity, as subjectively absorbed and displayed, Gill (2024) frames as a 'conspiracy'. He says his aim is to help readers come to see conspiracy, etymologically as a common breathing, 'redeemed and reinvested' (183), although I am not sure what that reinvestment might accomplish. I find it hard to see how our coming to recognize the conspiracy of Mother Earth in which Gill has Indigenous people participating will provide them with much capital in our collective world. Instead, like Q-Anon, the Mother Earth conspiracy seems fated to lead Indigenous people down a rabbit hole. Gill underscores this collective potential for delusion:

> The absence of elaboration, the hints of banality, and the presence of contradictory or incompatible evidence that characterize memes are quelled by emotional protectiveness, by accusations of insensitivity, by the defense that only certain folks can comprehend. (2024: 183)

If my reading is fair here, it leads me to suspect, as I said above, that the practical implication of Gill's argument is the necessary conclusion that Indigenous invocations or references to Mother Earth are inauthentic expressions of their beliefs, practices, and histories. It would be one thing if this conclusion remained something for scholars to consider and debate. However, it has a far more direct impact on the surrounding world. Here in Canada, the implication of Gill's argument fits squarely within an extensive body of law regarding recognition and affirmation 'of existing Aboriginal and treaty rights' entrenched within the constitution in 1982. At the time of this entrenchment, Pierre Elliot Trudeau's government led First Nations communities to understand that this provision would yield sufficient dialogue to create a workable framework for these rights to be protected.[3] This never happened. Instead, by default Canada's courts have become the battleground for roughly a thousand claims brought by Indigenous parties of various capacities, and by provincial governments pursuing summary prosecutions against Indigenous hunters, trappers, fishers, or occupiers of non-reserve traditional lands exercising Aboriginal and treaty rights. The courts struggled to respond to this onslaught of cases by laying out a series of tests to determine whether Indigenous claims had enough merit to gain a hearing, and to then guide courts in determining how to rule after granting claims a hearing.

In the *Van der Peet* case, the Supreme Court of Canada held that successful Indigenous claims needed to meet a test demonstrating cultural authenticity. As Chief Justice Lamer put it, to be an aboriginal right an activity must be an element of a practice, custom or tradition integral to the distinctive culture of the aboriginal group claiming the right' (1996: 46).[4] The case concerned Dorothy Van der Peet, a member of the Stó:lō Nation in British Columbia's Fraser Valley, who had sold ten sockeye salmon in 1987 that her husband and brother-in-law caught under their valid Indian fishing licenses (for food and ceremonial purposes). Her claim maintained that trade in fish was a traditional part of Stó:lō culture. As Lamer wrote, however, for her sale of $50 worth of salmon to be an exercise of an Aboriginal right, she needed to demonstrate more than that trading fish was part of Stó:lō culture. Lamer was concerned that the claims Indigenous people had begun to make under sec. 35(1), and first addressed in 1990 in *R. v. Sparrow* (1 SCR 1075),

3. A first-hand account of the crafting of sec. 35 of the Constitution Act, 1982 is Dawson (2012). See also Carlson (2014).

4. Although the court has refined the test in subsequent decisions, in neither *R. v. Sappier*; *R. v. Gray* (2006 SCC 54) nor *R. v. Desautel* (2021 SCC 17) did it modify Chief Justice Lamer's basic standard for measuring the cultural authenticity of an Indigenous practice or tradition: its pre-contact origin, as I lay it our here.

needed 'to be defined' (1996: 2). His test was thus a significant development in limiting the kinds of claims that Indigenous people could bring before the courts. The purpose of his test was to 'identify the crucial elements of the distinctive aboriginal societies that occupied North America prior to the arrival of Europeans' (1996: 45).

The test's various components pose an extremely high hurdle. Key among them, as they relate to the invocation of Mother Earth, is the determination that Indigenous claimants need to show that 'a practice, custom or tradition must be of central significance to the aboriginal society in question' (1996: 54). That is, the practice or tradition cannot be merely a part of the culture, nor simply significant to the culture in the present. Instead, the culture could not really manage to exist without them. As Lamer put it: 'A practical way of thinking about this problem is to ask whether, without this practice, custom or tradition, the culture in question would be fundamentally altered or other than what it is' (1996: 59).

A second relevant component of the test is continuity: 'The practices, customs and traditions which constitute aboriginal rights are those which have continuity with the practices, customs and traditions that existed prior to contact' (1996: 59). Prior to contact, Lamer wrote, means 'the relevant time period is the period prior to the arrival of Europeans, not the period prior to the assertion of sovereignty by the Crown' (1996: 61). He did also hold that if Europeans themselves engaged in similar practices or traditions, this would not in itself necessarily diminish an Aboriginal right:

> ….. the fact that that practice, custom or tradition continued after the arrival of Europeans, and adapted in response to their arrival, is not relevant to determination of the claim; European arrival and influence cannot be used to deprive an aboriginal group of an otherwise valid claim to an aboriginal right.

At the same time, however, he saw cultural development as a force that was shaped by external factors: 'where the practice, custom or tradition arose solely as a response to European influences then that practice, custom or tradition will not meet the standard for recognition of an aboriginal right' (1996: 73).

The demonstration of authenticity has been a difficult challenge in the years since *Van der Peet*. Clearly, in its light Indigenous cultures are only authentic to the extent that they maintain direct continuity with practices and traditions 'integral to a distinctive culture'. Their centrality and significance prior to European contact only meets the burden of proof if this can be established through rigorous cross-examination of courtroom testimony regarding textual sources which

are weighted more heavily than oral sources. Lamer did say that he was not concluding that Indigenous claimants had to 'accomplish the next to impossible task of producing conclusive evidence from pre-contact times about the practices, customs and traditions of their community' (1996: 62), and he did urge trial judges to remain 'flexible' in weighing evidence regarding cultural continuity (1996: 65). In Canada's courtrooms, however, that has not really served as much of a bulwark. Despite Lamer's qualification of the test's employment, it has solidified the conviction that real Indigenous culture is something that can only be understood as stemming from the timeframe prior to the incursion of Europeans onto North American soil. This conviction yields the conclusion within Canadian courtrooms that for practical purposes Indigenous cultures are not capable of historical development or change.[5]

Canada's courts have frequently rejected claims seen to insufficiently demonstrate the steady links between past and present as measured in particular by means of historians' provision and confirmation of written sources. For instance, in *R. v. Marshall* (2001 NSPC 2)—the first iteration of a timber harvesting treaty rights case that went to the Supreme Court—Nova Scotia Provincial Court judge Patrick Curran dismissed testimony from Stephen Augustine, a hereditary chief of the Mi'kmaq Grand Council and a curator of ethnology at the National Museum of Civilization. Chief Augustine had testified that a wampum belt held at the Vatican conveyed significant Mi'kmaq understandings of their law and was created shortly after Grand Chief Membertou's 1610 conversion to Catholicism. The province commissioned anthropologist Alexander von Gernet (frequently employed as an expert witness for the Crown in these cases) to recover documents from the Vatican that showed the wampum belt referred to by Chief Augustine was actually obtained by the Vatican in 1831 and had been crafted by Iroquois rather than Mi'kmaq beadworkers. The trial judge held that although he believed Chief Augustine was 'a man of great dignity' (2001: 63), he could not consider his testimony truthful (2001: 61).

Instead, Judge Curran found Von Gernet's testimony about the limitations of oral traditions persuasive. As he characterized it, Von Gernet:

5. The hegemony of this test was challenged in late 2023. In R. c. White et Montour (505-01-137394-165) Quebec Superior Court Judge Sophie Bourque held in a case regarding two Kahnawake Mohawk men accused of cross-border transport of tobacco that *Van der Peet* imposed an unreasonable standard on Indigenous claimants seeking to protect sec. 35(1) rights. Depending upon the results of subsequent appeals, however, the test will remain in use.

> …. testified at length about oral traditions. He said beliefs in themselves must always be respected, but when offered as proof of historical fact, they can't be accepted uncritically. They must be examined for accuracy. He said aboriginal memories are not biologically superior to those of non-aboriginals. He said there were ways of improving the accuracy of oral traditions, such as training and group validation. There was no evidence of those or other methods of improvement being used by Chief Augustine and the Mi'kmaq. He referred to the "feedback effect" by which ideas generated outside a culture are adopted by the culture. He pointed out that Mi'kmaq are literate and many have been for generations. He said after exposure to written materials it becomes increasingly difficult for the individual or the culture to distinguish between ancient traditions and those more recently arrived from the outside. (2001: 62)[6]

For Judge Curran, then, Chief Augustine's literacy (and likely his position as curator of ethnology, for that matter) meant that he could not be considered a reliable interpreter of historical truths regarding Mi'kmaq culture. 'We don't know whether the traditions he relates were influenced by his own literacy or that of his forebears' (2001: 65). This sort of analysis of legal testimony is often damning of Indigenous claims. As Anishinaabe legal scholar John Borrows (2010) has argued, it misconstrues culture by elevating the discernment of historical facts rather than assessing the scope of normative principles.[7] As many other legal scholars have noted, when it comes to considering Indigenous claims, it runs counter to standard common law approaches to assessing the scope of precedent.[8] Given Sam Gill's characterizations of Mother Earth, this judicial strategy would likely play an effective role in dismissing Indigenous claims that incorporate the invocation of Mother Earth.

By my count, claimants in over fifty Aboriginal and treaty rights cases argued in Canadian courts have invoked Mother Earth in seeking to demonstrate the seriousness and merit of their claims. While some of these cases deal with criminal or family law, or disputes regarding matters such as band administration, many of the cases focus on access to, control over, or continued uses of traditional lands. Although in the wake of Canada's recognition and affirmation of 'Aboriginal and treaty rights', courts do display a degree of sensitivity to Indigenous claims

6. For an extended presentation of his views on oral history, see Von Gernet (2000). For contrasting positions of other Canadian ethnohistorians, see Arthur Ray (2016) and Bruce Miller (2011).

7. See Borrows (2010: 65–72) for an analysis of the court's dismissal of Chief Augustine's testimony in terms of the tension between the methodologies of common law and historiography.

8. For an important and long-running debate on this issue, see McNeil (2014) and McHugh (2014).

uncommon in earlier years, in the light of the *Van der Peet* test, Mother Earth's appearance in Canadian jurisprudence remains shaky at best.

For example, two ongoing matters demonstrate the role Mother Earth invocations play in framing Indigenous claims. In *Kawacatoose First Nation et. al*. (2019 SCTC 3), a preliminary hearing before Canada's Specific Claims Tribunal in 2019, several First Nations sought to resolve a dispute regarding beneficiaries to the creation of the Last Mountain Indian Reserve (80A) for adherents to Treaty 4, near present-day Regina, Saskatchewan. While seeking to determine which of the claimant nations had standing to participate in the claim, Judge Whalen considered the statements from various elders providing the tribunal with their traditional knowledge. He summarized their statements:

> As described by the witnesses, the land sustained their ancestors. It provided food, medicines, shelter, and water—and was deeply spiritual in nature. Their way of life produced a shared view of how they related to the land and the larger world around them, including each other. The result was a belief system based on sharing. Thus, when Treaty 4 came under negotiation and Alexander Morris promised: '[t]he animals and the plants that are here are yours', it was taken as a solemn affirmation that the people would continue to be able to maintain themselves on the land as they always had, and in a sharing way. The fundamental importance of Cree/Saulteaux and Dakota/Sioux relationships with the land was communicated forcefully in the testimony of a number of the Elders, when they referred to 'Mother Earth'. The land was and continued to be a 'Mother'. … It is a powerful image. (2019: 222)

In *Saugeen First Nation v. The Attorney General of Canada* (2021 ONSC 4181), regarding a unique 'Aboriginal title' claim to the waters of Lake Huron that surround Ontario's Bruce Peninsula, Vernon Roote, a former chief of the Saugeen First Nation, testified, according to the trial judge:

> That it was their job to keep Mother Earth clean, including the land, air and water, which had equal importance. He explained that water was important because it gave them life in childbirth, and by providing food through fish. He said that his people did not look at boundaries because they were all there as part of Mother Earth. That was their belief system. (2021: 200)

In their respective rulings, the judges in these cases clearly accepted the testimony of elders regarding Mother Earth. References to Mother Earth clearly added moral weight to the claims of the Indigenous parties, much as Gill has said. The judges give no indication that they needed to consider any challenge regarding Mother Earth under cross-examination from government counsel in reaching their conclusions. My search of other cases referring to Mother Earth demonstrates the same respectful inclusion of Indigenous testimony in the trial records

and the courts' rulings, and lack of challenge from opposing counsel. I also find no mention of Gill's work in either CanLii (the database of Canadian case law) or HeinOnline (the leading database of legal scholarship), and conclude that, as of yet, no Indigenous elders have been subjected to cross-examination on their invocations of Mother Earth, and no scholars or lawyers have detected another route to disputing Indigenous claims.

However, although the merits of these and other cases do not hinge on appeals to or references to Mother Earth; to be damning, such invocations don't need to be the foundation of a claim. As is clear in the 2001 *Marshall* case, a factual misstatement from a respected cultural leader or political figure regarding an incidental detail is sufficient for a trial judge to dismiss their testimony, enough to cripple a case altogether. Chief Augustine was the only witness brought to testify in *Marshall* concerning Mi'kmaq culture, and the Mi'kmaq claim collapsed when his testimony was disregarded. In the same way, a lawyer for the Crown who reads Gill's characterization of Mother Earth as an inauthentic Indigenous tradition could easily find an argument sufficient to lead to otherwise meritorious claims being dismissed. That is the practical, though perhaps unintended, implication, of Gill's work here in Canada, I fear.

Consequently, it seems to me that Professor Gill could help remove any unclarity about this practical implication by addressing it directly. As I see it, three choices loom to the fore for him. One, rather like some back in C. P. Snow's day, he could maintain that scholarship, along with science, is neutral in regard to social and political matters. The sawdust falls where it falls when one is uncovering truth, and no practical impact derives from his work on Mother Earth. Among Snow's set of Oxbridge scientists in the '40s and '50s, many of his friends and acquaintances claimed that their theoretical work was not related to the engineering aims of bureaucrats and nuclear weapons designers. Snow found this unacceptable, arguing instead that anyone interested in nuclear physics had to also be interested in arms control. Given what I have tried to show above, I think the same sort of appeal to neutrality is equally implausible when it comes to Mother Earth.

A second choice might be for Professor Gill to acknowledge that the practical impact of his work on Mother Earth does entail moral and political questions. Here in Canada, more directly so than in the US, a sizeable group of citizens, academics, and political figures makes no bones about articulating the moral and political concerns they hold in response to continued Indigenous pursuit of their interests through courts and political channels. We could characterize this moral and political concern simply by referring to the title of Frances Widdowson

and Albert Howard's (2008) controversial and widely read *Disrobing the Aboriginal Industry: The Deception Behind Indigenous Cultural Preservation*.[9] A 2018 Angus-Reid poll shows that Canadians remain deeply divided about how to deal with the legal and political challenges Indigenous people continue to pose for the nation. According to that poll, for instance, 53% of the Canadian public rejects the idea that Indigenous people should have some sort of special status denied to other Canadians—i.e., 'Aboriginal and treaty rights', including title to traditional lands and sovereignty over them, among many other flash points (Angus Reid 2018). As I have characterized the potential practical impact of Professor Gill's work, were he to agree that his project has amounted to the 'disrobing' of Mother Earth, he would readily find allies among that close majority of Canadians who are inclined to continued suspicion of the 'Aboriginal industry'.

On the other hand, a third choice: perhaps I am wrong about Professor Gill's underlying assumptions regarding his work's practical impact. If I am, then I think it would help reduce my unclarity—and perhaps that of other readers—if he were to indicate how he might imagine his work leading not simply to our coming to 'appreciate' the subjective play of a meme, but rather also relating to the ongoing efforts of Indigenous communities struggling to address their many political and legal challenges, while continuing to invoke Mother Earth as they do. How they might best do this is a question that Professor Gill could address directly.

Yet the question is awkward. It casts the relation between scholarship and the law in a way that might well make sense to scholars themselves. However, it provides no traction within the courts as Indigenous claimants and their counsel appear before them. If the goal of humanities scholarship is to encourage interpretation, analysis and ongoing conversation—perhaps something like Professor Gill's idea of appreciation—that is not the goal of the courts, nor the goals of those who enter into them to pursue or oppose claims. Humanities scholars might voice some unease with the very concept of Mother Earth's authenticity as I have employed it here, rightly pointing to the deeply contested nature of her appearance in areas such as art, religion or politics.[10] That

9. Widdowson and Howard wrote from a Marxist materialist perspective, casting Canada's Indigenous communities as pre-modern backwaters impoverished by their own cultural elites and liberal government spending programs. More widely read still was political scientist and Harper government advisor (and Harper's college professor) Thomas Flanagan's (2000) *First Nations? Second Thoughts*, a scathing neo-liberal attack on the Aboriginal rights movement.

10. See, for instance work such as Chidester (2005), which examines the construction of authenticity as a source of religious creativity in American life, or

open, multi-valent, socially constructed picture of Mother Earth as the result of scholarship has no role to play in illuminating the work of the courts. There her authenticity will solely be a question about standards of evidence. There the work is to come to conclusions that will stand up under judicial review, providing either-or, win-or-lose remedies that will affect the lives of many people and communities. As Canadian Supreme Court Justice Ian Binnie emphasized in another Mi'kmaq case:

> …the law sees a finality of interpretation of historical events where finality, according to the professional historian, is not possible. The reality, of course, is that the courts are handed disputes that require for their resolution the finding of certain historical facts. The litigating parties cannot await the possibility of a stable academic consensus. The judicial process must do as best it can. (*R. v. Marshall* [1999] 3 SCR 456 at 37)

Historians, anthropologists, religious studies scholars, philosophers, all of these might wish to add nuance and depth to the work of the courts. But courts will never be able to fulfill that sort of wish. Consequently, the best that scholars can do is to make their insights and truths as clear as possible, for inevitably their work will be torn to pieces under cross examination and simplified in service of the judiciary's need to reach binding decisions.[11] Given the courts' relentless and necessary pursuit of closure, it seems unrealistic to imagine that they will rest content with appreciating the historical play of Mother Earth. If that's the case, then as C. P. Snow might have put it to Professor Gill, those who know the truth of Mother Earth have a responsibility 'as to the use of that truth when found'.

References

Angus Reid. 2018. 'Truths of Reconciliation: Canadians Are Deeply Divided on How Best to Address Indigenous Issues'. https://angusreid.org/indigenous-canada/

Umbach and Humphrey's (2018) focus on authenticity from the standpoint of political theory.

11. Arthur J. Ray, a Canadian historian of the fur trade, who has appeared as an expert witness for First Nations parties in several crucial cases, sums up his frustration in work before the courts by saying that the courts 'use history to bury the past rather than to continually revisit it' (Ray 2011: 152). Ray has said that while he approached the task of providing expert testimony as a kind of classroom lecture for educating judges, the presentation of his insights was thoroughly controlled by the agendas of competing lawyers, and the judges themselves protesting that the material of Ray's 'lecture' was irrelevant to their tasks (2011: 150). If courtroom settings demolish the organized presentation of relatively straightforward subjects such as the fur trade, they are perhaps even less likely to preserve sophisticated interpretations such as Mother Earth as meme.

Borrows, John. 2010. *Canada's Indigenous Constitution* (Toronto: University of Toronto Press).
Bakht, Natasha, and Lynda Collins. 2017. 'The Earth is Our Mother: Freedom of Religion and the Preservation of Indigenous Sacred Sites in Canada', *McGill Law Journal* 62.3: 777–812. https://doi.org/10.7202/1042774ar
Carlson, Kirsten Matoy. 2014. 'Political Failure, Judicial Opportunity: The Supreme Court of Canada and Aboriginal and Treaty Rights', *American Review of Canadian Studies* 44.3: 334–56. https://doi.org/10.1080/02722011.2014.941153
Chidester, David. 2005. *Authentic Fakes: Religion in Popular American Culture* (Berkeley and Los Angeles: University of California Press).
Dawson, Mary. 2012. 'From the Backroom to the Front Line: Making Constitutional History or Encounters with the Constitution: Patriation, Meech Lake, and Charlottetown', *McGill Law Journal* 57.4: 955–1000. https://doi.org/10.7202/1013035ar
Flanagan, Thomas. 2000. *First Nations? Second Thoughts* (Montreal Kingston: McGill-Queens University Press).
Gill, Sam. 2024. 'What is Mother Earth? A Name, A Meme, A Conspiracy', *Journal for the Study of Religion, Nature and Culture* 18.2: 162–88. https://doi.org/10.1558/jsrnc.19924
———. 1997. 'Rejoinder to Chris Jocks', *Journal of the American Academy of Religion* 65.1: 177–81. https://doi.org/10.1093/jaarel/LXV.1.177
———. 1987. *Mother Earth: An American Story* (Chicago: University of Chicago Press).
Guillemin, Jeanne. 2018. 'C. P. Snow, Sputnik and the Cold War', *European Review* 27.1: 80–86. https://doi.org/10.1017/S1062798718000546
Hobsawm, Eric, and Terence Ranger. 1983. *The Invention of Tradition* (Cambridge: Cambridge University Press).
Jocks, Christopher. 1997. 'American Indian Religious Traditions and the Academic Study of Religion: A Response to Sam Gill', *Journal of the American Academy of Religion* 65.1: 169–76. https://doi.org/10.1093/jaarel/LXV.1.169
Kawacatoose First Nation et. al. and Star Blanket First Nation and Little Black Bear First Nation and Standing Buffalo Dakota First Nation and Peepeekisis First Nation v. Her Majesty the Queen in Right of Canada. 2019. SCTC 3.
McNally, Michael D. 2020. *Defend the Sacred: Native American Religious Freedom Beyond the First Amendment* (Princeton: Princeton University Press).
McNeil, Kent. 2014. 'Indigenous Rights Litigation, Legal History, and the Role of Experts', *Saskatchewan Law Review* 77.2: 173–204.
McHugh, Paul G. 2014. 'Time Whereof—Memory, History and Law in the Jurisprudence of Aboriginal Rights', *Saskatchewan Law Review* 77.2: 137–72.
Miller, Bruce. 2011. *Oral History on Trial: Recognizing Aboriginal Narratives in the Courts* (Vancouver: University of British Columbia Press).
Ray, Arthur J. 2016. *Aboriginal Rights Claims and the Making and Remaking of History* (Montreal Kingston: McGill-Queens).
———. 2011. *Telling It to the Judge: Taking Native History to Court* (McGill-Queen's University Press).
R. c. White et Montour. 2023 QSC 505-01-137394-165.
R. v. Desautel. 2021. SCC 17.
R. v. Marshall. 1999. 3 SCR 456.
R. v. Marshall. 2001. NSPC 2.
R. v. Van der Peet. 1996. 2 SCR 507.
R. v. Sappier; *R. v. Gray*. 2006. SCC 54.
Saugeen First Nation v. The Attorney General of Canada. 2021. ONSC 418.

Snow, Charles P., William O. Baker, Theodore M. Hesburg, and Warren Weaver. 1961. 'The Moral Un-Neutrality of Science', *Science* 133.3448: 255–62. https://doi.org/10.14452/MR-012-10-1961-02_2

Umbach, Maiken, and Mathew Humphrey. 2018. *Authenticity: The Cultural History of a Political Concept* (New York: Palgrave MacMillan).

Von Gernet, Alexander. 2000. 'What My Elders Taught Me: Oral Traditions as Evidence in Aboriginal Litigation' in Owen Lippert (ed.) *Beyond the Nass Valley: National Implications of the Supreme Court's Delgamuukw Decision* (Calgary: Fraser Institute): 103–27.

Widdowson, Frances, and Albert Howard. 2008. *Disrobing the Aboriginal Industry: The Deception Behind Indigenous Cultural Preservation* (Montreal Kingston: McGill-Queens University Press).