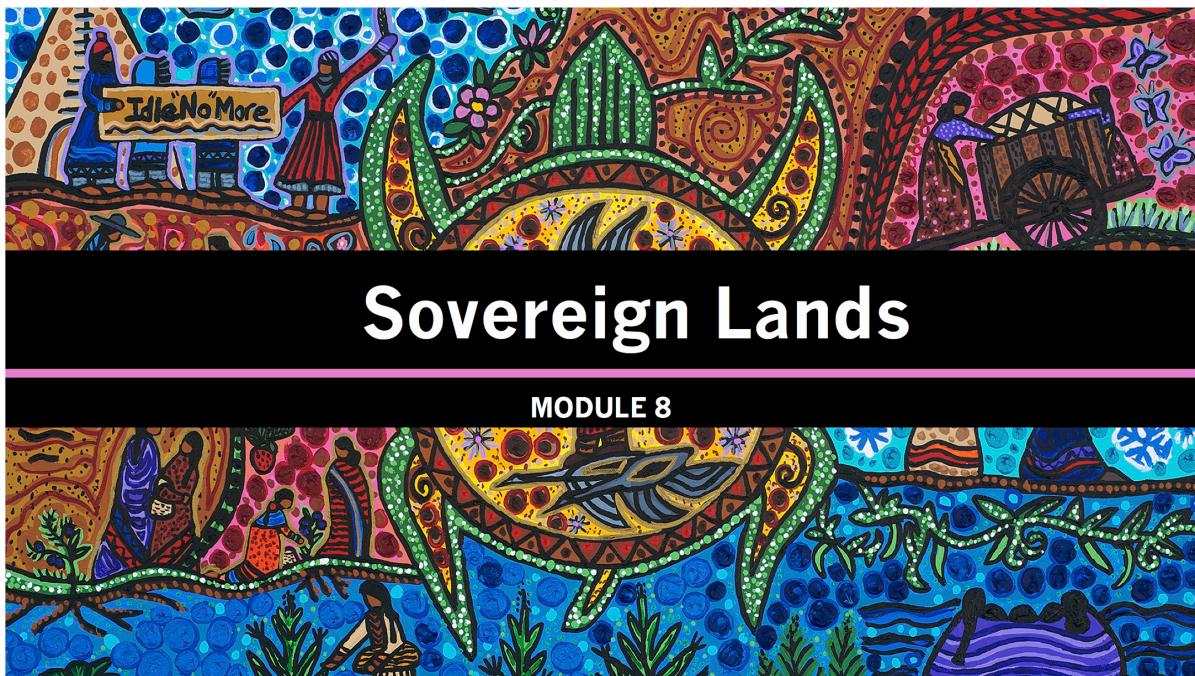




UNIVERSITY OF ALBERTA
FACULTY OF NATIVE STUDIES

Indigenous Canada: Looking Forward/Looking Back



Sovereign Lands

MODULE 8

Cover Image: Artwork by Leah Dorion

The University of Alberta acknowledges that we are located on Treaty 6 territory and respects the history, languages, and cultures of the First Nations, Métis, Inuit, and all First Peoples of Canada, whose presence continues to enrich our institution.

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Module 2 Introduction

This two-part module is focused on issues related to Indigenous peoples' relationship to the land and how that relationship has been impacted by historical settlement patterns and contemporary resource development. Indigenous perspective of the land is unique, and many Indigenous worldviews focus on oral tradition and the interconnectedness of beings.

While Western worldviews may see the land as the physical ground that we stand on, Indigenous cultures have many ways of talking about the land. From an Indigenous perspective, the land is a much larger concept more equated to the term ecosystem, which describes the interconnected relationships between the physical environment, biological organisms, atmosphere, and, in the case of Indigenous worldview, spiritual realm. The land is often described as sentient, meaning it has its own agency, spirit, and rights that are to be respected as much as those of humans and other beings. This view is a difficult concept within Western perceptions, since rocks, minerals, and water are described as inanimate objects, often thought of as resources for exploitation by people.

Prior to the arrival of settlers to Canada, Indigenous nations had clear methods of land and resource management within and between nations and regions. Examples from a northern context of Inuit (Arctic) and Dene (sub-Arctic) illustrate Indigenous ways of knowing in relation to land and resource management and to give context to current conflicts around land management in Canada.



Figure 1 UFV International Education Week, 2014;
Credit: University of the Fraser Valley

Section One: Indigenous Relationship to the Land

Relationship to the Land

An appreciation of Indigenous peoples' relationship to the land begins with an understanding of Indigenous worldviews. Although Indigenous worldviews vary significantly between cultural groups, there are some common themes that differ from Western worldviews, especially in relation to the land. The role of human beings, our connection to other living beings, and the land are fundamentally different in an Indigenous context. Stories play a key role in communicating legal principles, our relationship to the land, and our roles and responsibilities.

An Indigenous worldview places humans in an interconnected relationship with the rest of living and nonliving beings. Indigenous peoples see human beings as the caretakers of the land, recognizing that our survival depends on how we interact with each other and everything around us. A dominant Western worldview, on the other hand, places humans atop a hierarchical structure, and the land is seen as an inanimate thing from which we can take what we want without giving anything back (Usher 1986; Cruikshank 2005).

Why are Place Names Important?

This is the story of Uvajuk the first people/mountains (Crockatt et al. 1999). The three mountains found in Nunavut (which means “our land” in the Inuktitut language) were made by the first three Inuit. They were giants, and their names were Uvajuk, Amaaqtuq, and Inuuuhuktu. These giants were looking for food across the barren lands of the North but could not find enough to feed themselves. One after another, they fell from hunger and laid there to rest forever. These mountains are named after these first peoples to remind Inuit of their story (Crockatt et al. 1999). All lands in the North are named by Inuit as a way of describing not only the landscape but the stories that are passed down to each new generation. Inuit can navigate their way to a hunting place,

camping place, or away from danger according to the descriptive names of places (Müller-Wille 2000).

The name of a place is also a communication tool. People can understand where the place is located, and other information may be contained that helps to know why that place is important. For example, the name of the Denésoliné community of Lutsel K'e translates to “place of small fish”, and refers to the location of the town site near the Snowdrift River (Parlee and O’Neil 2007). Ciscoes, small herring-like fish that are the primary diet of lake trout, spawn in the fall time and fill the Snowdrift River.

Cultural Connections to the Land

There are many cultural practices that are central to maintaining a strong connection to the land (Basso 1996; Cruikshank 2005; McAdam 2015). Being “out on the land” for purposes of harvesting is commonly referred to in both Inuit and Dene communities.

The connection that comes with practicing traditional harvesting activities, observing the animals and weather, praying for safe travel, and giving thanks for what is being harvested and for our health are common cultural practices that symbolize the deep and interconnected relationships that Indigenous cultures have with the land (see Parlee and O’Neil 2007).



Figure 2. The community of Lutsel K'e, 2006; Credit: Leslie Philipp

Defining Traditional Ecological Knowledge (TEK)

Defining traditional ecological knowledge (often referred to as TEK) in the context of Indigenous worldview is not a simple task, TEK is a western concept. A commonly referenced definition of TEK is “a cumulative body of knowledge, practice and belief, evolving by adaptive processes and handed down through generations by cultural transmission, about the relationship of living beings (including humans) with one another and with their environment” (Berkes 2012, 8; Inglis 1993).

When referencing TEK, Indigenous people often talk about their culture, way of life, traditional teachings, and relationship to the land. From an Indigenous perspective, TEK is not a pool of data or discipline of study. Instead, it is a way of life, a way of being and doing, a connection to the land, laws, roles and responsibilities that are embedded in stories. According to Marie Battiste, an Indigenous professor of Education, TEK is a dynamic form of knowledge that incorporates new learning, and the traditional component is the means of transmission (Battiste 2013).

TEK and Land Use

TEK is often used in environmental assessment processes, and its consideration and inclusion is increasingly becoming a requirement for the approval of new resource development projects. Despite this growing desire to include Indigenous knowledge in resource management and environmental decision-making, it is proving extremely difficult to accomplish this, as the whole process involves trying to fit TEK into existing Western models of scientific study and management (Binder and Hanbridge 1993; Notzke 1995).

Many communities across Canada have undertaken their own traditional land use (TLU) and traditional knowledge



Figure 3 Three Inuit hunters, 1927;
Credit: J.A. McDougal/Canada
Dept. of Indian and Northern
Affairs/Library and Archives
Canada

(TK) studies to document current and historic land use in their territories. These studies involve interviewing hunters and gatherers, knowledge keepers, and elders about where they have travelled, lived, hunted, and held ceremony, both now and in the past (McDonald, Arragutainaq, and Novalinga 1997). Maps are often used, along with audio and video recording, to document important cultural areas for the purpose of conservation from development, and also to teach the younger generations about their history and culture. Much of this work has been prompted by resource development pressure as communities look to assert their rights over lands and resources and Aboriginal rights to harvest wildlife and fish so as to maintain an independent livelihood are under threat as a result of extensive development in some regions (Notzke 1995).

Denésoliné Knowledge of Caribou Movements

Prior to European contact, the Denésoliné were recognized to be the most widely travelled and populous of all northern Athapaskan language groups with movement patterns that mirrored migrating barren-ground caribou herds. Despite their more settled lifestyle in recent years, many Denésoliné people continue to hunt, trap, fish, and otherwise travel across large distances of their traditional territory in and around the east arm of Great Slave Lake in the Northwest Territories (Parlee, Manseau, and Lutsel K'e 2005). The Dene people refer to the Northwest Territories as Denendeh, the land of the people.

The Artillery Lake (?edacho tué) area and the Lockhart River that flows from Artillery Lake into the east arm of Great Slave Lake have been the core of Denésoliné territory for thousands of years, and these places are deeply intertwined with individual and community identity and spirituality . Oral history accounts and archaeological evidence show that people have been hunting for caribou at ?edacho tué since at least 3000 BCE. Many Denésoliné stories are suggestive of Denésoliné knowledge of the area dating back to post-glacial periods (Gordon 2003; Parlee, Manseau, and Lutsel K'e 2005).

The Legend of Ts'anTui Theda – The Old Lady of the Falls

Told by late Zepp Casaway; translated by Archie Catholique, Lutsel K'e Dene First Nation (LKDFN)

I will tell you a true story about how it was in the beginning and how Ts'anTui Theda (the “old lady of the falls”) came to be. This story was passed on to me as it was passed on from generation to generation. The “old lady of the falls” has been there since the earliest of times.

It started in the place called Kaché (Fort Reliance) and ?edacho tué (Artillery Lake). It used to be called Beaver Lake in those days because there was a beaver living there. You could see the beaver's lodge if you happened to be out at ?edacho tué. People were often in that area because that is where they went caribou hunting in the fall time. Even today Dene people still go there to hunt caribou.

In those days there used to be a man. His name was Hachoghe. He was a big man. One day Hachoghe saw the beaver's lodge. He could see it because it was on top of a small hill. He decided he wanted to kill the beaver but saw that he would have to get the beaver out of the lodge. So he started to push the dirt to one side. (Today you can even see where he pushed the dirt to one side.) He was so busy digging and moving the dirt that he didn't notice that the beaver had another lodge in the narrows close to the mainland. It wasn't far from the main route that the Dene people used when they traveled in that area. But the beaver did not stop at that lodge. Instead, he went down the Lockhart River to the main lake – Tue Nedhe. The people there were starving. When they saw the beaver they thought they may be able to kill him. It was then that Hachoghe saw the beaver and ran after him with a shovel. He threw the shovel into the water but the smart beaver swam away. The handle of the shovel broke and Hachoghe had to leave it there, sticking out of the water. That is why when you go to the north end of ?edacho tué you see a rock sticking out of the water. That is the handle of Hachoghe's shovel.

After Hachoghe broke his shovel, he didn't give up. He continued to follow the smart beaver back up the Lockhart River. By then the Dene people from Tue Nedhe were following Hachoghe. The river was strong and the beaver soon got tired and Hachoghe killed him. The Dene people were so hungry they went after the meat right away. There was enough meat from that beaver for all the Dene people for two or three days. But there was one woman who asked for the beaver's blood. Hachoghe told her he could not give her the beaver blood because there was not very much left. So the woman sat down at the falls and waited.

All of the other Dene people followed Hachoghe who was chasing another beaver down the river. They were heading toward the east arm of Tue Nedhe. After a while, the people noticed that the woman was still back at the falls. So Hachoghe picked two healthy people to go back and look for her. They went all the way back up the Lockhart River and they found her sitting at the falls. She had been sitting there a long time and so she was stuck in the earth. The two people told her that Hachoghe was asking for her to return to Tue Nedhe. She said, "I cannot return with you. I have been sitting here too long and now I will be here for all eternity." Then she said, "Go back to where you came from. Go back to Hachoghe and the others and give them this message." So the two people returned to Hachoghe and the others and gave them the message. This is how the Dene people learned about the "old lady of the falls" (Ts'anTui Theda). From that day forward the Dene people have gone to visit the Ts'anTui Theda to pay their respects, share their worries, and to ask for help.

Denésoliné Understandings

Stories provide us with insights into the traditional knowledge that exists about Denésoliné territory and the Denésoliné understanding of events that occurred in the

distant past. While some dominant Western perspectives on the land may describe landscapes in purely physical terms, stories include the spiritual, social, and living dimensions of landscapes (Kulchyski 2005 and Abel 2005).

In addition to stories that teach about Denésoliné worldview, contemporary observations continue to inform people's knowledge of the land (Parlee, Manseau, and Lutsel K'e 2005). As with many northern communities, the cost of food in Lutsel K'e is exceptionally high. Because of expensive imported food and people's deep love for traditional country foods, the predominant components of diet in Lutsel K'e continue to be caribou, moose, fish and muskox, as well as berries and medicines harvested from the land.

Since people practice their traditional subsistence lifestyle, they continue to accumulate knowledge about the land. In the context of changing caribou populations, the Denésoliné and other northern Indigenous people have a vast amount of knowledge and wisdom to offer contemporary management efforts. The inclusion of TEK in the management of caribou populations in the Northwest Territories and Nunavut is required through legislation and land claims agreements; however, there are many challenges that prevent the meaningful inclusion of community knowledge and perspectives in decision-making.

Western science is often held at the forefront of how caribou population change is understood. It can be argued, however, that the knowledge of hunters and elders follows a process similar to scientific study, since many observations are made over time and are verified through a peer-review process in the community. Not just anyone's knowledge is



Figure 4 Caribou; Credit: Zak Richter/NPS Climate Change Response

taken at face value; only the most respected hunters and elders who are recognized to be knowledge holders in their communities are given the status to speak to these topics (Abel 2005, 221-230).

Section Two: Aboriginal Title and Rights to Land

Aboriginal Title

Since 1973, a number of key legal cases have recognized Aboriginal title and other rights to land and resources. These cases have set the terms of engagement between the Crown and Indigenous peoples around subsistence harvesting, and access to and development of land. Aboriginal title refers to the right that Indigenous peoples have to land, as opposed to mere privileges to certain practices, such as hunting and fishing. Canadian law has recognized Aboriginal title as a unique right held by constitutionally recognized Aboriginal peoples over the use and jurisdiction over specific parcels of land (Ahenakew 1985; Kulchyski 1994; Christie 2003). Like all Aboriginal rights, Aboriginal title is an inherent right. This means that it exists because Indigenous peoples have occupied and used their territories since time immemorial according to their own legal systems. Thus, Aboriginal rights are not granted by the Canadian state, but recognized and affirmed by it (Kulchyski 1994).

Calder v. Attorney General of British Columbia (1973)

The Calder case was a landmark case led by Frank Calder and other Nisga'a elders. They sued the Government of British Columbia, claiming that title to their lands had never been extinguished by treaty or any other means (Hurley, 2000; Foster, Webber, and Raven 2007). The B.C. Court of Appeal rejected the claim. However, the appeal to the B.C. Supreme Court ruled that Aboriginal title to land had existed at the time of the Royal Proclamation in 1763.

The ruling in Calder held that Indian title was rooted in occupation, position, and land use. Specifically, “Indian title” was a legal right independent of any form of enactment and rooted in Aboriginal peoples’ historic “occupation, possession and use” of traditional

territories. As such, title existed at the time of first contact with Europeans, whether or not it was recognized by them" (Hurley 2000, 2). This was a significant improvement in the law, but the Supreme Court also indicated that the Crown could extinguish Aboriginal title.

R. v. Guerin (1984)

In 1956, the Musqueam Indian Band was approached by the Department of Indian Affairs (DIA) for consent for the lease of reserve lands to a golf course. The band was told they would receive revenue from the lease, and they agreed to the deal. After the agreement was made, the DIA went back to the golf course and renegotiated very different terms than what Musqueam had agreed to. These changes were kept from the band for twelve years, and when the band found out what had happened, they sought a lawyer to take on the case (Kulchyski 1994). The case was finally filed in 1975 and went through three courts before a ruling in favour of Musqueam resulted in the compensation of \$10 million to the band. The government appealed the ruling, and compensation was withheld. The band then appealed to the Supreme Court of Canada.



Figure 5. Supreme Court of Canada, 2013; Credit:
Robert Linsdell

In 1984, the Supreme Court ruled that the Crown (federal government) did not fulfill its fiduciary duty to the band (Kulchyski 1994). Fiduciary duty is the responsibility of the government to act in the best interest and in a trust-like relationship with Indigenous peoples. Future Aboriginal rights cases and the protection of Aboriginal rights have been subsequently influenced by the concept of fiduciary duty as set out in this case.

What are Aboriginal Rights? R v. Sparrow (1990) and R v. Van der Peet (1996)

The Sparrow case was another precedent-setting court ruling by the Supreme Court of Canada. It determined the criteria for proving the existence of an Aboriginal right and whether or not government infringement of Aboriginal rights was justifiable (Kulchyski 1994). It is important to understand that Section 35(1) of the Constitutional Act of 1982 granted an additional constitutional layer of protection to the Aboriginal rights over and above any recognition by the Canadian common law (Christie 2003; Kulchyski 1994; Sharma 1998). Infringement means that the government is impacting these constitutionally protected rights. Violating constitutional rights is not a light matter, and the government must prove that it is absolutely necessary. The Sparrow test includes the criteria for both proving an Aboriginal right and justifying an infringement (Sharma 1998).

In 1984, Musqueam band member Ronald Sparrow was caught fishing with an illegal net and was arrested for fishing with a net longer than his subsistence fishing license permitted (Sharma 1998, 39). The band went to court to defend Sparrow and outlined five main arguments: (1) the band retained the right to fish on the territories they had inhabited and fished on for centuries; (2) Musqueam's rights to land and resources had never been extinguished by treaty; (3) Section 35 of the Constitution Act of 1982 reinforced Musqueam's right to fish; (4) any infringement on Aboriginal fishing rights was invalid unless justified as being a necessary measure of conservation; and (5) a restriction on net length infringed on Musqueam's fishing rights and was not justified by reason of conservation.

After initially losing, the band appealed, and in 1988 the Supreme Court of Canada eventually heard the case. In 1990, the Supreme Court ruled that at the time of his arrest Sparrow had an existing right to fish. Specifically, prior to the 1982 Constitution, the Aboriginal right to fish had not been extinguished. In the final Supreme Court decision, the justices argued that while "Section 35(1) does not promise immunity from government regulation in contemporary society, it does hold the Crown to a substantive

promise" (*R. v. Sparrow*). In this case there was a governmental onus to prove extinguishment of Aboriginal rights. In addition, the case required the government to justify any legislation that infringed on any Aboriginal right protected under Section 35(1).

The Sparrow test allows the Crown to infringe upon existing Aboriginal rights provided that its actions are consistent with its fiduciary relationship with Aboriginal peoples and that certain conditions are met. An Aboriginal right may be infringed on if: (1) the infringement serves a valid legislative objective, such as the conservation of natural resources; (2) there has been as little infringement as possible to meet the government's goal; (3) fair compensation was provided; and, (4) Aboriginal groups were consulted, or at least informed. The Sparrow case did not set out clear guidelines for identifying the nature of an Aboriginal right. This was determined in the Van der Peet case in 1996 that also involved fishing rights in British Columbia.

The Van der Peet case set out the criteria for determining whether an Aboriginal right exists. To understand the nature of the claim, the court will look at the actions of Aboriginal peoples and the nature of Crown legislation that gave rise to the dispute. The purpose is to identify a particular activity, custom, or tradition. Once the right is properly characterized, the Aboriginal litigant is responsible for showing that the right is integral to their distinctive culture. Finally, the court will ask if there is continuity between the claimed right and the pre-contact practice upon which it is based (Weir 2013).

Delgamuukw v. British Columbia (1997)

In most of British Columbia, neither historical nor contemporary treaties were ever signed with First Nations. Exceptions include the historical treaties (Treaty 8 in northeastern British Columbia and the Douglas Treaties on Vancouver Island) and the modern agreements including the Tsawwassen Treaty and the Nisga'a Treaty. This is significant, because the Canadian constitution states that the Crown can only acquire land from First Nations through treaty making. Otherwise, First Nations are not to be disturbed in their use of the lands.

In 1984, a group of Gitksan and Wet'suwet'en hereditary chiefs made claim to ownership of and jurisdiction over up to 58,000 square kilometres of land in British Columbia, an area which encompassed traditional territories of the Wet'suwet'en people, and much of that of the Gitksan as well (Tennant 1990 and Borrows 1999). They argued that since they had not signed treaty, they had never given up their rights. The provincial government of British Columbia argued for an exclusive ownership of the contested territories. They asked the court for a declaration that the Gitksan and Wet'suwet'en had no right or interest in and to the territory (Borrows 1999).

This case was at the time the largest in Canadian legal history and was eventually heard by the Supreme Court. When they handed down their decision, they made no decision on whether Gitksan and Wet'suwet'en had Aboriginal title, indicating that a new trial must be held. However, although the land claim was not decided, the Delgamuukw court made a number of significant statements about Aboriginal title to guide future courts in shaping how future cases might be approached (Borrows 2010, 32). Delgamuukw acknowledged that Aboriginal title is a communal right based on First Nation's cultural relationship to the land. The Supreme Court also stated that not enough consideration of the First Nations oral histories was given in the first trial, raising its status as a legitimate form of legal evidence (Borrows 1999).

The framework established in the Delgamuukw judgment was relied upon to establish a right to Aboriginal title in 2014. In the case of Tsilhqot'in Nation v. British Columbia, the Supreme Court of Canada declared that the Tsilhqot'in had title to an area of land approximately 1600 square kilometres. This declaration was the first of its kind in Canada and comprised 40% of the area claimed by the Tsilhqot'in. Achieving the first declaration of Aboriginal title while simultaneously having 60% of its claim rejected serves to illustrate both the potential and the significant risks involved for First Nations people in pursuing rights through Canadian law.

The court cases summarized above are part of a growing legal doctrine that pushes back against other legal doctrines that seek to deny a greater boundary for Aboriginal

rights. In the case of the latter, the Van der Peet case, decided by the Supreme Court of Canada in 1996, underlines that the rights protected are only those integral to a distinctive culture. Through the complex Van der Peet legal test, the court undercut the broad scope promised by the Sparrow case (Barsh and Henderson 1997).

The Settling of Canada

However, in the eyes of the government, both of these legal doctrines ultimately legitimate the original settlement of Canada by Europeans. This settlement began in the east and moved west and northward, systematically removing Indigenous peoples from their lands for the purposes of colonization. Settlement patterns followed the fur trade and progressed to the opening of lands for new settlers arriving from Europe for the development of agriculture and eventually timber and mineral resource extraction.

(Miller 2000, 148)

It was thought that if the Indigenous peoples were removed from their land base and assimilated into the broader Canadian society that all of the lands would be open for development, for the benefit of the Crown and new Canadians. The Crown set out to negotiate treaties with Indigenous peoples with the expressed intent of opening up land for development (Miller 2000, 197 and Miller 2009, 166-225). The numbered treaties were the foundation of the agreements that allowed for the development of new lands for settlement and resource extraction. However, modern treaties and land claims negotiations were not initiated until the 1970s through 1990s in parts of British Columbia, Quebec, Labrador, and northern Canada. They continue to be negotiated today.

Canadian Pacific Railway

Settlement was facilitated with the extension of new technologies. With the construction of the Canadian Pacific Railway beginning in 1881, new settlements began to pop up across the country, mostly concentrated in the western portions of what is now known as Canada (Innis 1971 and McKay 1992). The locations of trading posts and forts across the country became centres for not only Indigenous settlement but also for the building of major centres including Winnipeg and Edmonton, and smaller communities such as Fort Qu'Appelle in Saskatchewan.



Figure 6 Canadian Pacific Railway at Calgary during a snowstorm, 1907; Credit: Dept. of Mines and Resources/Library and Archives Canada

The settlement of large numbers of Europeans in newly founded towns and cities resulted in the displacement of the Indigenous peoples who had traditionally occupied those lands (Harris 2002, 199). In Edmonton, for example, the site of the interpretative Fort Edmonton Park was built close to a traditional crossing of the North Saskatchewan River. Archaeological evidence suggests that a number of Indigenous nations, including in particular the Nehiyawak, had used this site for millennia. This type of displacement was not limited to sites of intense settler occupation, but also happened in Canada's north.

Inuit Relocation

In the Arctic, some Inuit were relocated south and into new northern communities for decades as a part of government policies to force Inuit away from their traditional, mobile lifestyle and for ease of official administration. However, other Inuit exercised their own agency and shifted toward living in northern hamlets in order to take advantage of settled life. During the time of the Cold War in the 1950s, some Inuit families were relocated from their low arctic homes to the more northern high arctic (Tester and Kulchyski 1994, 136). This was a strategic plan to affirm Canadian

sovereignty in the North through occupation by Canadian citizens and military presence. The government misrepresented the availability of wildlife in the high arctic, provided inadequate supplies and shelter, and reneged on their promise of allowing the Inuit to return to their original homes. The Inuit suffered great hardship in places such as Grise Fjord and Resolute, and in 2010 the Canadian government apologized to the Inuit for this sad chapter in its history. Inuit were offered enfranchisement and citizenship, while other Indigenous peoples in Canada, unless they gave up their rights, would not be considered full, voting citizens under Canadian law until 1960 under Prime Minister John Diefenbaker.

Land Claims: Nunavut as a “Success Story”

First Nations, Inuit, and the Canadian government have tried to address the political, economic, and cultural challenges facing Indigenous peoples through a range of strategies involving the transfer of jurisdictional and territorial powers (Kulchyski and Tester 2007, 165). These strategies can be mapped onto three geographical scales in Canada – the reserve, the municipality, and the territory. Since the 1960s, varying levels of control over matters covered by the Indian Act, such as health, have been transferred to First Nations through a policy of devolution. More dramatically, comprehensive land claims involving the transfer of land and jurisdictional powers have also been pursued beginning in the 1970s.

The Nisga'a Treaty (1998) represents a final statement of all treaty and Aboriginal rights, as envisioned under Sections 25 and 35 of the constitution. Under this treaty, the Nisga'a dissolved their reserves and transitioned out of the Indian Act as they acquired new jurisdictional powers, adopted communal fee simple property, and established a municipal style of government within the province of British Columbia (Borrows 2010, 99–100). The treaty also



Figure 7. Signing the Nisga'a Treaty in New Aiyansh, B.C., August 4, 1998; Credit: The Canadian Press/Nick Procylo

provides for surface and subsurface rights, as well as the transfer of funds and other financial benefits to the Nisga'a.

At the larger geographic scale of territory is the establishment of Inuit rights and Nunavut, a new territorial entity carved out of the Northwest Territories. This bold decentralization strategy toward providing Indigenous self-government and resource development for the benefit of all Canadians was likely inspired by other agreements, such as: the Alaska Native Claims Settlement Act in 1971, which was the first modern land claim agreement in North America; the granting of home rule for Greenland and its Inuit population by Denmark in 1979; and the emergence of Aboriginal rights at common law in Canada and Inuit political organizations, such as Inuit Tapirisat of Canada (Shadian 2014, 55–89).

As a result of a 1992 referendum, the division of the Northwest Territories and establishment of Nunavut received public consent from the Inuit. In 1993, the Nunavut Land Claims Agreement provided new rights to the Inuit in exchange for their rights to Aboriginal title, and the Nunavut Act (1993) established the new territory (Shadian 2014, 76–77). Similar to other comprehensive claims, new legal entities were established to manage communal monies and lands. In this case, the settlement compensation of \$1.14 billion was entrusted to the Nunavut Trust.

Additionally, the corporation Nunavut Tunngavik Inc. was established not only to ensure the full implementation of the Nunavut Land Claims Agreement and defend the rights of the Nunavut Act's Inuit beneficiaries, but also to hold all Inuit-owned land. This land comprises more than 350,000 square kilometres, including some 40,000 square kilometres for which mineral rights are also held. For the development of natural resources on Crown land, the Inuit also receive royalty payments.

Nunavut

Distinct from other comprehensive claims, the Nunavut Act of 1993 contained a provision for the territorial government (Shadian 2014, 77). In 1999, Nunavut was established as a territory with three official languages, Inuktitut, English, and

French. While it has a legislative assembly, cabinet, and court system that functions similar

to the public governments found in the Yukon and Northwest Territories, Nunavut has de facto Inuit self-government owing to the fact that the territory's population is 85% Inuit. This would appear to suggest that Inuit interests would be assured through the government's responsibilities for health and social services, justice, education, and economic programs. Although Nunavut is not a province, given the increased devolution of province-like powers to the territories, an argument can be made that it is incrementally taking up a position within Canada's federal constitutional structure.



Figure 8 Stylized Nunavut flag; Credit: Nicolas Raymond

It may be considered to have significant advantages over other self-determination strategies, such as the municipal model under the Nisga'a Treaty. However, there are critics of the Nunavut Land Claims Agreement. Some Inuit believe that the land and compensation were sorely inadequate. Furthermore, the Agreement also provides for new institutions, such as the Nunavut Wildlife Management Board and the Nunavut Water Board. These were designed to give greater ambit for the use of Inuit knowledge – or Inuit Qaujimajatuqangit (IQ) – in the decision making over the development of resources. Thus, beyond the structures of government, Inuit intellectual resources (here in the form of values surrounding the land, water, and ice) were intended to direct its operation. However, similar to integrationist approaches found in co-management regimes elsewhere, Inuit have been frustrated to find that Western science continues to dominate over IQ. The relative success of the Agreement for improving the lives of Inuit can further be questioned given that Inuit have social and health outcomes markedly

worse than the general Canadian population, including shorter life expectancy and higher levels infant mortality, poverty, overcrowded housing, and suicide.

Section Three: Disconnection from Indigenous Lands

Disconnection

Northern Indigenous communities and some First Nations in British Columbia have had success in gaining control over decision-making of resource management (Harris 2002). There are significant differences in the extent that Indigenous nations have been disconnected from their land base. For example, the Mississauga First Nation community in the Greater Toronto area has very different competing interests for land use in their traditional territory as compared to a remote northern community. Southern communities face urban sprawl, agricultural development, and recreational land use by non-Indigenous peoples, whereas remote northern regions tend to have more extractive resource development.

There are a number of comprehensive land-claim agreements in Canada's north, such as: the Nunavut Land Claims Agreement that resulted in the creation of Nunavut in 1999; the Inuvialuit Final Agreement (1984); the Gwich'in Comprehensive Land Claim Agreement (1992); the Sahtu Dene & Métis Comprehensive Land Claim (1993); the Tlicho Land Claim and Self-Government Agreement (2003); and the Yukon Umbrella Final Agreement, finalized in 1999 (Canada 2007). Many other land claim and self-government agreements are in ongoing negotiations in the Northwest Territories. These agreements define how the land and resources will be managed in collaboration with the Dene and Inuit.

Modern treaties have also been negotiated in parts of British Columbia, as well as land claims in northern Quebec (or Nunavik, meaning place to live), and Labrador (or Nunatsiavut, meaning our beautiful land). While these modern treaties do not give complete control over land management to Indigenous peoples, they do have the potential to allow for a stronger Indigenous voice in important issues, like land-

management decisions (Usher 2000). This is not often the case in many of the southern provinces. For example, involvement of many communities is restricted to development in a much-reduced area of their traditional territory, confined to either on-reserve or small parcels of land nearby. Currently, many First Nations have no formal agreements in place for self-government and co-management of resources.

Despite this history, the idea that Indigenous peoples are disconnected from their lands and resources is often overemphasized. This overemphasis remains a source of conflict between Indigenous peoples and settler governments. Indigenous knowledge continues to be marginalized with respect to resource management and decision making over the last number of decades, particularly in the north (Ellis 2005; Nadasdy 1999; Usher 2000).

There have been an increasing number of conflicts around land and resource development. With flare-ups like the Oka Crisis in 1990 to the Idle No More movement that began in 2012, Indigenous peoples continue to demonstrate their claims for control over their land in the face of ever-encroaching development.



Figure 9. Idle No More, 2014; Credit: OFL Communications

Many contemporary Indigenous peoples maintain deep material and spiritual connection to their homelands. These include traditional subsistence activities like hunting, fishing, and gathering of medicines, and other cultural practices and ceremonies that reinforce their connection to the land (McAdam 2015). Although traditional territories of many communities have been reduced to a small fraction of their original size, Indigenous communities remain resilient. Aboriginal rights and title are entrenched in the Canadian constitution and provide a foundation for Indigenous management over traditional territories where title has been established.

Threats and Implications

Today, aggressive development of natural resources threatens to seriously impact local Indigenous populations, and also to have grave global ramifications. These natural resources include renewable resources, like timber or commercial fisheries, and non-renewable resources, like oil, gas, coal and other mineral mining (Notzke 1994 and Tough 2008). Many Indigenous communities in Canada are overwhelmed by the number of new development applications that come in each year. Quality of water, availability of wildlife, and the ability for current and future generations to continue to exercise treaty rights are the primary concerns of many communities.

Climate Change

The impacts of climate change have been highly evident in the polar regions of the planet. While temperatures are already increasing, the biggest temperature changes are projected to occur in the upper regions of Canada. The global rise in temperature has already caused a decrease in summer sea ice in the Arctic (Thériault 2013). In the fall, bodies of water take longer to freeze. In the spring, the ice along the coastlines melts more quickly along the Arctic Ocean and inland on the freshwater lakes and rivers. These impacts affect the habitat of Arctic animal populations, such as polar bears, walruses, and seals. As such, they also affect the ability of Inuit and Dene to travel safely in the fall and spring to hunt and fish.

Environmental Impacts

Many Arctic communities are also experiencing significant infrastructure challenges as the permafrost that supports their roads and buildings begins to melt (Leduc 2010 and Wright 2014). These impacts are exacerbated by existing challenges, including poor and inadequate housing in remote communities. Changes in temperature and climatic patterns also impact the annual migrations of species like barren-ground caribou and cause changes in species distributions of whitetail deer, magpies, and various types of plants and animals.

The Dene and Inuit have intimate experiential knowledge about the changes affecting their lands and have been voicing their concerns for many years (Kulchyski and Tester 2007, 122). Arctic scientists are also documenting the extensive changes happening in the North and are working more closely with Inuit and Dene people. They are working towards combining the best tools from Western science and Indigenous knowledge to understand how the land is changing. Dene and Inuit teachings are also proving central to developing plans of how people can adapt to climate change. Indigenous peoples have always adopted new ways of surviving in the face of change and are continuing to do so in modern contexts. Today, Indigenous peoples are adapting by shifting the harvest to other species and altering how and when to safely travel on the land and ice.

Oil Sands Development

The development of oil sands deposits in northern Alberta has grown rapidly since advancements in the technology to process bitumen – the oil and sand composition commonly referred to as oil sands or tar sands (Chastko 2004; Shrivastava and Stefanick 2015). Advances in technology in the early 1990s began to make oil production through bitumen processing more cost effective. The booming growth of the industry has had significant social and environmental consequences for Indigenous communities in the region. This includes the regional municipality of Wood Buffalo and the city of Fort McMurray. The community of Fort Chipewyan is approximately 200 kilometres downstream of the oil sands where the Athabasca River flows into Lake Athabasca. Fort Chipewyan is home to the Mikisew Cree First Nation and the Athabasca Chipewyan First Nation. Fort Chipewyan is one of the oldest European settlements in Alberta and was established in 1788 as a trading post.

Contaminants from the oil sands developments near Fort McMurray have had negative implications for aquatic health. This includes deformities in fish due to the contamination of the sediment, which disrupts the development of fish embryos. When fish lay eggs on the river bottom, toxins in the sediment affect the soft membrane of the eggs and cause the fish to develop abnormally as they mature. Environmentally unsound practices have serious impacts on human health, as the toxic fish and wildlife are ingested. Since all

living beings are connected, the health of the land is directly related to the health of the people. One study conducted in 2010 in the Fort McMurray region showed that levels of various mineral by-products of oil sands development – cadmium, lead, mercury, zinc, and others – exceeded the guidelines set in Canada and Alberta for aquatic wildlife health (Kelly et al. 2010). The implications of large scale, intensive development in the oil sands region for local Indigenous communities is profound. Large areas of land have been completely stripped of all vegetation for open pit mining, and even larger areas have become restricted for industrial safety reasons. These impacts to significant



Figure 10 Tar Sands in Alberta, 2008; Credit: Howl Arts Collective

portions of local communities' traditional hunting areas force people to travel far from home to hunt and gather medicine and food. This raises the question about who benefits most from large-scale development, and who bears the brunt of the costs. There are trade-offs between economic development based in extractive industries and the social and environmental implications of such developments.

Health Impacts Due to Loss of Land

Indigenous peoples understand health in a holistic and interconnected way, seeing the well-being and health of bodies as related to the land. While Western medicine has historically reduced definitions of health to physical symptoms and treatment of disease, some Indigenous cultures understand health to be connected with emotional, mental,

spiritual and physical well-being. It is often said that if the land is not healthy, then the people cannot be healthy.

Access to Traditional Foods

As people were forced or willfully decided to adopt a more settled lifestyle, there was a shift away from consumption of traditional foods for many families. Increased consumption of processed food has resulted in an increase in diabetes and has had other negative health impacts in Indigenous communities. Although many Indigenous people would much prefer to consume country foods, like moose and fish, it has become increasingly expensive to go out on the land to harvest. The cost of gas and ammunition for hunting make harvesting of traditional foods unattainable for many families.

Transmission of traditional hunting skills to younger generations has been disrupted, which has also created a barrier for some families to practice subsistence lifestyle (Aboriginal and Northern Affairs, 2013).

In addition to the difficulties accessing country foods, there are increasing concerns about the level of contaminants being found in meat and fish. This is especially true for the Arctic regions where contaminants bioaccumulate in the fatty tissue of large marine mammals. Bioaccumulation refers to the progressively increasing levels of contaminants that are found in plants and animals up the food chain. Many toxic chemicals are stored in the fatty tissues of animals, and since larger animals eat many smaller animals, they consume all of the contaminants and take them up into their own tissue. When people eventually eat the meat of animals, they will also absorb those chemicals into their systems.



Figure 11 Inuit boy with drying fish, 1951; Credit: Wilfred Doucette/National Film Board of Canada/Library and Archives Canada

Mental and Spiritual Health

In addition to physical impacts, disconnection from the land has negative impacts on the mental and spiritual well-being for many Indigenous communities. Losses of cultural practice and transmission of traditional skills is a result of colonial policies that focused on assimilation.

Increasing resource development in the North and other more remote areas of Canada have impacts beyond the primary effects on the land caused by extraction. There are often wider social implications that come with a transient workforce, increases in income, and shift work (Wachowich 1999). Many studies have shown that there tends to be increases in negative social indicators of health such as domestic violence and substance abuse in resource-based rural economies. Shift work and being away from one's family for extended periods often places increased stress on the family at home. In Indigenous communities there are additional, culturally specific impacts.

Community Action

Many communities have undertaken their own initiatives to address the negative environmental, cultural, and health related implications that are associated with increased resource development. Government run programs often fall short in addressing community needs. The legacy of colonial practices and attitudes impedes good relations between government departments and Indigenous communities. Government management over lands and resources are disconnected from Indigenous experiences. Patriarchal methods of prescribing solutions to Indigenous communities is not the right way to move forward.

Community-Based Monitoring

Many Indigenous communities have begun to respond to the ongoing threats and challenges by monitoring their lands. Communities are monitoring their own health, water, fish, and wildlife distributions and populations, and industrial development. Each monitoring program is unique, reflecting the variation of the challenges being faced, but also in the cultural approach of different groups. Indigenous people have always

watched the land, observed patterns of animal movement, weather, and species distribution. Indigenous knowledge is key in land and resource management.

Language Revitalization

Loss of language may not seem initially like something that is directly related to the land and resources. However, when we look at how indigenous languages are structured and the role language plays in the transmission of knowledge about the land and traditional way of life, we can see the connections (Paupanekis and Westfall 2001 and McAdam 2015).

Many Indigenous peoples have words that are embedded in their worldview that do not easily translate into English. For example, Inuit have “inuusiq”, meaning “life cycle”. Inuit Qaujimajatuqangit (IQ) is the term used to describe Inuit traditional knowledge or epistemology (Tagalik 2010). Also, Inuit use the suffix “muit” after the name of the land they belong to, which describes them as a person from this land. For example, people from the Kazan River are known as Harvaqtuurmiut whose territory was Harvaqtuuq - the lower Kazan River (Keith 2004).

The Denésöliné concept of “Dene chan’ie” could generally be defined as “Dene way of life” or “community well-being or living a good life” and refers to the complex interrelationship between the people and the land (Parlee and MacNeill 2007). This relationship also includes animals, plants, and the spirits of the ancestors, and represents living life according to the natural laws. These are Dene laws on Dene land. There are some concepts that simply do not translate into English terms. There is much information and detail about Indigenous cultures and ways of life that is tied up in language (McAdam 2015). When English is used, much of that meaning is lost. This is one of the primary reasons that language revitalization is a priority for Indigenous peoples. Language contains histories, cultures, identities, and knowledge.

Conservation

In addition to language revitalization, the preservation or protection of lands has become a priority for Indigenous people. A good example is Gwaii Haanas National Park Reserve and the National Marine Conservation Area in Haida Gwaii, off the northwest coast of British Columbia (Thomlinson and Crouch. 2012). This park was the first cooperative management agreement between a First Nation and the Government of Canada to establish and manage a nationally protected area (Thomlinson and Crouch 2012).



Figure 12 Windy Bay forest in Gwaii Haanas National Park Reserve, 2008; Credit: Sam Beebe/Wiki Commons

The Denésuliné community of Lutsel K'e has undertaken a similar initiative and has been in negotiations with Parks Canada over the last number of years to establish a National Protected Area in their traditional territory. "Thaidene Nene", or the Land of the Ancestors, would protect over 30,000 square kilometers of Denésuliné homeland for future generations (Holmes et al. 2016). Other communities across Canada are also working to conserve key areas of land to ensure adequate land for wildlife, freshwater resources, and the practice of traditional skills.

Co-Management and Community-Based Resource Management

Described earlier in relation to land claims was the premise for co-management in northern regions of Canada and in British Columbia. By participating in co-management,

Indigenous communities express their sovereignty over their traditional lands (see Notzke 1995; Manseau, Parlee, and Ayles 2005). However, given the challenges of getting Indigenous knowledge accepted by decision makers, this is a diminished right). That is, the unfettered sovereignty of Indigenous peoples to their territories is not recognized by the nation-states they reside in. Indigenous peoples have resisted the unitary claims of nation-states to sovereignty and the various attempts at integrating Indigenous peoples into colonial states. Indigenous peoples' resistance occurs within individual nation-states and includes international Indigenous resistance and alliance building. A longstanding example of this alliance building culminated in the creation of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP).

UNDRIP

UNDRIP was ratified in 2007, and although not international law, it does set out the recommendations for the international recognition of Indigenous peoples. It also recognizes Indigenous peoples' relationships with state governments, their traditional lands, and their rights as distinct peoples by the UN member countries. There are a total of 46 Articles in UNDRIP that define Indigenous peoples' rights. Articles 25 through 28 specifically address issues related to lands and traditional territories.

Article 25 states: *Indigenous peoples have the right to maintain and strengthen their distinctive spiritual relationship with their traditionally owned or otherwise occupied and used lands, territories, waters and coastal seas and other resources and to uphold their responsibilities to future generations in this regard.*

Article 26 states: *1. Indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired. 2. Indigenous peoples have the right to own, use, develop and control the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired. 3. States shall give legal recognition and protection to these lands, territories and resources. Such recognition shall be conducted with due respect to the customs, traditions and land tenure systems of the indigenous peoples concerned.*

Article 27 outlines the State's responsibilities to: *establish and implement, in conjunction with indigenous peoples concerned, a fair, independent, impartial, open and transparent process, giving due recognition to indigenous peoples' laws, traditions, customs and land tenure systems, to recognize and adjudicate the rights of indigenous peoples pertaining to their lands, territories and resources, including those which were traditionally owned or otherwise occupied or used. Indigenous peoples shall have the right to participate in this process.*

Article 28 states: *1. Indigenous peoples have the right to redress, by means that can include restitution or, when this is not possible, just, fair and equitable compensation, for the lands, territories and resources which they have traditionally owned or otherwise occupied or used, and which have been confiscated, taken, occupied, used or damaged without their free, prior and informed consent. 2. Unless otherwise freely agreed upon by the peoples concerned, compensation shall take the form of lands, territories and resources 11 equal in quality, size and legal status or of monetary compensation or other appropriate redress.*

Initially, 144 members of the UN signed on to UNDRIP, but four countries voted against the declaration - Canada, Australia, New Zealand and the United States. These four countries were apprehensive about signing the declaration, and Canada in particular, was concerned that "free, prior and informed consent" could be used by Indigenous nations to veto government and extractive business activities. Given their shared colonial histories, while disappointing, this came as no surprise to Indigenous peoples. Eventually in 2010 Canada endorsed UNDRIP but refused to recognize it as a legally binding document. In 2014, Canada remained the sole UN member refusing to adopt the "outcome document". The full implementation of UNDRIP would result in significant shifts in power around land and resource management decision-making in Canada. Acknowledging rights to lands and the traditional legal and governance systems of Indigenous nations could change the face of Canada (Mitchell, Coates, and Holroyd 2014).

Credits

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- Figure 7. 1182221 Minister of Indian Affairs and Northern Development Jane Stewart, Nisga'a Tribal Chief Dr. Joseph Gosnell Sr. and B.C. Premier Glen Clark celebrate after signing the historic Nisga'a Treaty in New Aiyansh, B.C. in this Aug. 4, 1998 file photo. THE CANADIAN PRESS/Nick Procyaylo
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