Environment, race and nation reconsidered: reflections on Aboriginal land claims in Canada

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The course of development in Northern Canada has been transformed in the last 30 years by the comprehensive land claims process. For much of the twentieth century, the settlement and development of northern Canada was experienced by Aboriginal people as a continuing process of encroachment on (and sometimes transformation of) their traditional territories, and of restriction of their customary livelihood. Examples of this process included the alteration of river systems by impoundment and diversion, the pollution and contamination of river systems, government restrictions on hunting and fishing and population relocation and sedentarization. Aboriginal political and legal action led, in the 1970s, to the establishment of a formal process for resolving Aboriginal land claims, and to revised judicial interpretation of Aboriginal and treaty rights. The paper describes how geographers have contributed to documenting those claims, and how land claims settlements have altered the land and resource regimes in northern Canada, and concludes with some observations on the effectiveness of those remedies, and on the changes in Canadian perspectives on Aboriginal northerners, the northern environment and northern development.

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It is appropriate to recall the work of Griffith Taylor, one of the founders of geography as an academic discipline in Canada, on this 50th Anniversary meeting of the CAG. Although his books were no longer standard course texts 40 years ago when I was in university, the concepts of environment, race and nation that he and other geographers used in the first part of the twentieth century were still in evidence, and carried rather different implications than they do now. And even if we no longer talked about the prospects for ‘white settlement’ in the same way as Taylor did in *Environment, Race, and Migration* (1937) and *Canada* (1947), university-level Canadian geography texts continued to be very much concerned with the progress and problems of settlement and development on the northern frontier, with barely a nod to the situation or the future of its Aboriginal inhabitants. The northern environment (a term not then in vogue) was to be overcome, not protected.

I want to share some observations with you today on the rise and evolution of Aboriginal rights and claims, whose role in changing the face of northern Canada (and our understanding of such notions as environment, race and nation), was not at all foreseen when the CAG was young. Yet, since the early 1970s, Canada has been committed to a process of land claims settlements for dealing with Aboriginal title and rights. How did that happen? What was the problem? Where are we? How successful are land claims settlements? Where are we going? In answering these questions, I will illustrate how geographers have contributed to the documentation and implementation of land claims in Canada, and offer some personal reflections on the process.

The Setting

In 1961, I was on a survey crew constructing the Little Long Rapids hydro dam on the Mattagami River in northern Ontario. The job was good money, and it got me up to the land of my grandfather's stories of mining country, river travel, forest fires and bunkhouse life. Our worksite appeared to us as nothing but muskeg and black fly country, with no sign of habitation except a couple of apparently abandoned Indian trapping cabins nearby. Flooding the area seemed like a perfectly good idea, and it fitted right in with John Diefenbaker's 'northern vision' of Canada and, for that matter, Griffith Taylor's vision of northern settlement.

For the purposes of this discussion, let us think of Canada as arranged into several tiers, south to north. The southern-most tier is what is sometimes called the settled ecumene (Gajda 1960), the zone of continuous urban, industrial and agricultural habitation. North of this we find the near North and mid-North (more or less coinciding with the boreal forest and the Subarctic), and the far North (or Arctic). To the extent that Canadian geographers have at least partially defined and depicted these zones using demographic and economic indicators (viz. Hamelin 1978), they have moved marginally northward over time, but broadly speaking have not changed much over the last 80 years.

I want to draw your attention to the relationship of these tiers of Canadian settlement and development to the treaty-making process with Aboriginal peoples, with particular focus on the upper tiers (Figure 1). Notice how the areas treatied for between 1860 and 1930 coincided with the imperatives of settlement: the upper Great Lakes watershed with the beginnings of mining and forestry, the prairies and the overland connection through NW Ontario following right on the acquisition of Rupert's Land, the northern parts of the Prairie Provinces at the time of northern boundary extensions and provincehood and northern Ontario and the Mackenzie Valley after WWI with the development of air transport and the prospect of mineral and petroleum development (Usher, Tough and Galois 1992).

North of the settled ecumene, Canada was inhabited by scattered small mobile groups of Aboriginal people, each occupying a large territory. By the early twentieth century, fur trade posts were the commercial foci of these territories, and by mid-century, these places were becoming seasonal if not year-round communities of a few hundred people who continued to make their living from a mix of subsistence harvesting, commodity production and seasonal wage work.

1 In which Taylor, noting his lack of personal knowledge of the ‘eastern Arctic lands’, commented that ‘Though these are very interesting, they can hardly be called important, since today there are barely 100 white folk living therein’ (1947, vii).
There are now about 200 of these largely Aborigi-
nal communities in the North. Several dozen
mostly non-Aboriginal communities were also
established across the North, usually of a few hun-
dred or thousand people, who made their living
from primary industries like mining, forestry and
energy and, as time passed, defence, administra-
tion and services. The Aboriginal people tended to
stay, the non-Aboriginals to come and go.

**The Problem**

What were these Indian treaties about? The Eng-
lish language versions as published by Canada

I use the term 'treaties' here for the old treaties and adherences
(1860–1930), in distinction from the current round of treaties
which are generally referred to as comprehensive land claims
agreements. I use the term 'Indian' in historical context, 'First
Nations' in the current context.
suggest they were about ceding the land and guaranteeing peace to settlers, in exchange for certain benefits including reserves (generally about 1 percent of the original land base), continued hunting and fishing rights subject to regulation, annuities and supplies and in some cases education and medical care. It is worth noting that the treaty boundaries had little to do with the traditionally occupied territories of the Indian signatories, but a lot to do with the needs of settlement and the emerging spatial configuration of political control. We can be pretty sure that the Indian signatories knew nothing of the actual metes and bounds of the treaties as mapped by Canada, and would in many cases have been astonished by them if they did.

The Indian understandings of treaty, especially north of the limits of agricultural settlement, were somewhat different. While they had certainly undertaken not to interfere with prospectors and government officials, they also considered that they had secured the necessary guarantees of their traditional livelihood, and to continue to benefit from and manage their own resources and activities. In the territorial North, where well past the middle of the twentieth century no reserves had been selected, many Indians understood the reserve concept to mean areas almost as large as the traditional territories themselves, in which they would have exclusive harvesting rights. This guarantee of separate livelihood was sometimes expressed later as two parties having agreed to travel on ‘parallel paths’.

In fact what happened in the years following the treaties, especially in the Subarctic in Indian country, was a process of progressive encroachment and restriction that led to the disruption of livelihood and community. Let me give you some examples of this process and what it meant for Aboriginal people.

1. Alteration of river systems by impoundment and diversion Treaty 3, signed in 1873 between Canada and the Anishinabe of the English and Winnipeg River basins (northwestern Ontario and southeastern Manitoba), covers an area of approximately 160,000 km². Beginning 14 years after the treaty, and continuing for another 70 years, a network of 18 dams was constructed to provide power for local mines, mills and towns, and for the City of Winnipeg. These installations were all of modest size by today’s standards, but their effects were not, and none of the major lakes or rivers of the system retains its natural flow or level regime.

Figure 2 is a photomosaic showing part of the Lac Seul reserve in northwestern Ontario, as it was in 1928 prior to impoundment. In the centre we can see meandering streams and adjacent low-lying areas connecting two lakes. The light coloured areas show a transition from a shallow aquatic environment to marsh and meadow, grasses and willows, all of which were completely and permanently flooded by the impoundment. These areas had provided habitat for moose, muskrats, wild rice and ducks, and parts of them were used as hay and pasture lands. There were also some houses near the mouth of the creek. As was the case with many of the dams in the area, many houses, whole villages, gardens and graveyards were flooded. The sandy beaches and other desirable shorelines were also lost. Although the non-forested and aquatic habitats were typically the lesser portions of the reserve lands, they were the most valuable from the point of view of economy, habitat and amenity. With the loss of these lands, what is left is mostly closed-crown boreal forest, good timber, but with the diversity of landscapes and shorelines greatly diminished. The new shoreline was soon degraded and eroded, and areas just above the flood line became waterlogged. Because the head ponds were seldom cleared, shoreline access became difficult or even impossible because of standing flooded timber, and floating debris made boating hazardous. As we can see from the photomosaic, the diversity of landscapes and shorelines was lost, and their multiple values reduced to upland boreal forest.

Flooding is an inadequate word to describe what happened, because it brings to our mind a spring flood, a hazard that subsides and allows us to clean up and get on with our lives. The real problem was not only the permanence of the flooding, however, but the consequent operating regime, which generally inverted the natural seasonal flow regime. In this case, the initial effect was compounded 20 years later by the diversion of the upper Albany River to augment storage and flow in the English-Winnipeg basin. This substantially diminished the biological productivity of the littoral zone, which is typical of large storage dams

3 Sometimes also characterised, particularly by the Iroquois, as the ‘two row wampum’ approach (RCAP 1996:123–24).
Figure 2
Part of Lac Seul, Ontario, 1928, prior to impoundment. All lake shorelines, the watercourse connecting the two lakes, and all of the adjacent light-coloured areas were subsequently flooded. The straight-line distance between the two lakes is approximately one mile. Composite aerial photograph prepared by Symbion Consultants and used here with the permission of Lac Seul First Nation and Canada.
whose operating regimes involve substantial and rapid fluctuations of flow rates and water levels. Fish spawning and wild rice cultivation are particularly adversely affected. Where the Crown recognised damages at all, for compensation purposes all this diversity was regarded in effect as just so much useless moose pasture, valued at $1 an acre\textsuperscript{4} in exchange for the permanent loss of the core areas of habitation, livelihood and amenity for which the Anishinabe had originally selected their reserve lands.

The hydro-megaprojects of the 1960s and '70s in the James Bay region of Quebec, on the Nelson and Churchill in Northern Manitoba, and on the Peace River in BC and Alberta, will be much better known to most readers, not least because of the public controversy over their effects on the environment and on Aboriginal people. Yet incremental impoundment and regulation had been proceeding on a much smaller scale for decades before, on the shield areas between the Red River and the St. Lawrence—not only the English and Winnipeg system, but the Moose system and the Lake Superior watershed in Ontario, and the Gatineau and St. Maurice Rivers in Quebec. As the English-Winnipeg case shows, a series of small projects could affect at least as many Aboriginal people, and at least as adversely, as those more recent megaprojects (Table 1), and with far less recognition of, or remedies for, the damage. But in every case the effects on landscape and livelihood were profound and, to all intents and purposes, irreversible.

2. Pollution and contamination of river systems

Perhaps the best-publicized example is the contamination of the English and Winnipeg Rivers by mercury discharged by local pulp and paper mills, and the catastrophic effects on the Grassy Narrows and Whitedog Indian Reserves. The commercial fishery was ordered closed in the spring of 1970, several fishing lodges soon closed due to adverse publicity, and by the mid-1970s, Health Canada was advising residents not to eat fish. The rivers—the source of food and livelihood—were declared to be poisoned. We estimated that prior to contamination the fishery had accounted for about half of all personal income on the two reserves, and had come to provide the material focus of social and cultural continuity. Adverse effects of the loss were not simply economic, but medical, social and psychological (Usher et al. 1979).

Figure 3 shows that a sharp spike occurred in violent deaths at both Grassy Narrows and Whitedog, precisely as the crisis of harvest disruption deepened, and which did not occur on a nearby reserve that we used as a control. Think of what 17 violent deaths in one year means to a community of a few hundred people.

Tragically, this story was repeated several times, although to a lesser degree, across much of the Canadian shield draining into Hudson Bay, not only because of point-source contamination by industry but also, as was later discovered, because one of the effects of river impoundment in a typical boreal forest environment is to enhance the methylation of mercury in flooded organic material, with the result that contaminant levels in fish muscle rise considerably (Bodaly, Hecky and Fudge 1984). Although these levels never reached those found adjacent to point-source pollution, the effect was an uncertain risk of chronic, low-level exposure from the basic food resource, more commercial fishing closures, and thus substantial anxiety and distress among the Crees of Quebec and

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\textsuperscript{4} In the 1930s. In 1961, Canada and Ontario Hydro agreed on a value of $15 per acre for land on the Whitedog Reserve (Usher et al. 1992:78, 93).

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Table 1
Hydro-electric development of three major river basins in central Canada

<table>
<thead>
<tr>
<th>System</th>
<th>Basin area (km\textsuperscript{2})</th>
<th>Generating and control structures</th>
<th>Installed generating capacity (MW)</th>
<th>First Nation communities adversely affected</th>
</tr>
</thead>
<tbody>
<tr>
<td>English-Winnipeg (Ontario-Manitoba)</td>
<td>ca. 159 000</td>
<td>21</td>
<td>864</td>
<td>ca. 13</td>
</tr>
<tr>
<td>Churchill-Nelson (Manitoba)</td>
<td>ca. 143 000</td>
<td>7</td>
<td>3 838</td>
<td>6</td>
</tr>
<tr>
<td>La Grande-Eastmain (Quebec)</td>
<td>ca. 177 000</td>
<td>9</td>
<td>15 237</td>
<td>2</td>
</tr>
</tbody>
</table>

SOURCE: National Atlas of Canada, Hydro-Québec
Manitoba (Usher 1992a, Usher et al. 1995). The interrelated and extensive consequences of the physical changes caused by impoundment and regulation are ramified through the effects on fish and wildlife, on harvesting, and on society and culture (Usher and Weinstein 1991, Rosenberg, Bodaly and Usher 1995).

Here is what I would like you to note about these examples:

1. They involve transformations of the environment that some Indians may have foreseen allegorically in prophecies, but their specifics were unimaginable to the Indian signatories of the treaties.
2. They all centre on water: water regimes in their natural state, and the bounty of living resources they sustain, versus altered water regimes that enable industrial and agricultural production. Water, sacred to Anishinabe, becomes an object to be manipulated in the service of something else. Or as former Quebec Premier Robert Bourassa claimed, in touting the James Bay project, water that runs uncontrolled to the sea is ‘wasted’ (1985:4). This is a cultural divide with serious consequences.
3. They all involve ‘harvest disruption’, a long term if not permanent degradation of the habitat of fish, aquatic mammals, birds and wild rice, that diminishes the peoples’ basic economic resources, and undercuts their livelihood and way of life.
4. They all involve people living in small, isolated and marginal communities.
5. Few in government or the public thought any of this was important. What did it matter if people were moved out of the way for progress? They would be better off in the end anyway. Of course, for a good chunk of the twentieth century, you did not have to be Aboriginal to be pushed aside for progress. Just ask the people who used to live along the St. Lawrence Seaway or the Arrow Lakes (Wilson 1973).

6. The key difference between Aboriginal peoples and most others in these situations, however, was that Aboriginals had no defence against them. Over time, both the courts and the polity...
took an increasingly restrictive view of what treaties were about and what force and effect they might have, and this certainly did not include any recognition of property rights in lands and resources. Hence, there were no remedies for damage, exclusion, trespass or nuisance (Waldram 1988, Usher 1992b).

The process of encroachment and restriction occurred in the Arctic later and differently, chiefly because of the greater impediments to settlement and development that environment imposed, but the process was no less significant for those on the receiving end. For example, in the 1950s and '60s, the so-called 'caribou crisis' on the central barrens provided justification not only for imposing hunting restrictions, but also relocation, sedentarisation and supervision, on both Inuit and Dene who lived on or near the range of the great barren-ground caribou herds, and for whom these herds were not only the staple food supply but also an important source of clothing. Governments saw these measures as critical requirements for both the modernisation of the people and the conservation of caribou herds. Thus, caribou management became an integral part of a broad program of social engineering (Usher 2003).

The period in which these things occurred, mainly the first two-thirds of the twentieth century, was thus a period of loss of livelihood and loss of rights, and a displacement of traditional management and property systems by 'scientific resource management'. The losses can be seen as property losses and losses to livelihood, and can be quantified and valued as damage claims.

You may ask, why does this matter? Economies change, surely people are better off for these new developments. Indeed, that was what all governments predicted and actively planned for. Yet, many northern Aboriginal people became more marginalised and dispossessed, and continued to mourn their losses. In 1991, I attended a meeting of Anishinabe and Cree people to prepare for the Environmental Assessment of Ontario Hydro’s Demand/Supply Program. One gentleman got up and spoke about how his family had lost a good livelihood of trapping, hunting and sturgeon fishing, displaced it turns out by the very hydro dam on the Mattagami that I had helped to build 30 years before.

Figure 4 provides one way of understanding the significance of these effects to the people who experienced them, and why the predictions of those who imposed the changes did not work as expected.

Not so long ago, the prevailing view among social scientists and policy makers was that industrial development in the North would induce Aboriginal people to leave their camps and villages for major resource development sites or planned development nodes. Emigration from the traditional economy (which would simply wither away) to the new economy would thus be the key route to modernisation and acculturation.

In fact, what emerged (or persisted), in Aboriginal communities all across the North, was a mixed, subsistence-based economy that integrates two spheres of activity, institutions and practices: market and subsistence, brought together, not simply side by side in a class-divided village, but directly within the household. Production and consumption are combined in one basic unit, the household, which functions in effect as a micro-enterprise (Usher et al. 2002).

Figure 4 shows how the household organises productive activity and allocates the factors of production (land, labour, capital) so as to optimise income flows from both the market and subsistence spheres of the economy. These income flows take four chief forms. Cash income accrues chiefly from wage employment, the sale of commodities (such as furs, fish or crafts) or transfer payments. Income in kind accrues from subsistence production (the harvesting of country food, firewood or other materials for household and community use). The institutions of kinship and alliance are at least as important as those of the market, in organising production and distribution in this system.

This model points to one strong reason that people stay in places that by conventional economic measures do not have much going for them. In this kind of economy, you do not have to go to the grocery store to put food on the table, you do not pay a mortgage, and the kinship-based social support network ensures that everyone’s basic needs are covered by the exchange of food, labour, equipment and personal care. You do not need the same income you would if you moved to the city, and accordingly you do not pay a lot of taxes. But you do need some cash, otherwise there is no way of reinvesting in the enterprise.
Figure 4
The household in the mixed, subsistence-based economy. The direction of flow indicates the path of income (cash and in-kind) from the major sectors of the economy via income categories to the household. The household factors of production are indicated in the 'household' box.

SOURCE: Usher and Weinstein 1991 (p. 12)
Secondly, the model shows how the collective title in land and resources is essential to the viability of this economy. Livelihood is dependent on that property, or at least on security of tenure and access to it. So we can see that the dispossession and disruption that I described earlier is not simply the violation of a human right, or an Aboriginal right of practice; not simply a matter of culture change or loss of tradition, important as those things are; it is a violation of a property right with measurable economic consequences.

Finally, this mixed, subsistence-based economy has persisted in its general form throughout the twentieth century, among Inuit, Indians and Metis alike, throughout the middle and far North of Canada, those 200 or so Aboriginal communities I mentioned earlier.

We know about this model chiefly from case studies by geographers and anthropologists. We also know a lot about some of the quantitative dimensions of this economy, otherwise unaccounted for by conventional economic and social statistical indicators. While the specific levels of activity and income by sector vary over time and place, we know that the subsistence or non-cash sector continues to be quite substantial. For example, harvest surveys conducted in the Inuvialuit Settlement Region show that, for the ten-year period 1988–97, the annual per capita availability of country food was 116 kg/year, higher than the national per capita availability of commercially sold meat and fish (Usher 2002). Valued at gross replacement cost, this harvest contributes over $3 million annually to the regional economy.

The Solution

The turning of the tide in the early 1970s is too complex a process to recount properly here (see Usher, Tough and Galois 1992; Usher 1993). It is enough to say here that three inter-related processes were particularly important. One was the rise of Aboriginal political activism, another was a growing public awareness of, and sympathy with, Aboriginal and environmental issues, and the third was the delivery of several key court rulings that forced the federal government to reverse its program of termination and assimilation. In 1973, the federal government proclaimed that it would negotiate comprehensive land claims settlements with Aboriginal groups whose title had not been extinguished by treaty or otherwise superseded by law, 'where their traditional interest in the lands concerned can be established' (Chretien 1973). Thus Canada revived the treaty-making process abandoned nearly 50 years before, and also committed itself to dealing with specific grievances in the treaty areas, where its lawful treaty obligations could be shown to have been breached.

The specific claims process was intended to deal with the past, and has been used at least in part to rectify the kinds of losses I outlined above. The comprehensive claims process was intended to deal with the future, not only to provide some defences against encroachment and restriction, but also to translate the concept of Aboriginal interest into concrete benefits and provide Aboriginal people with a material basis for integration and participation in Canadian society.

At the same time, in response to growing public (as well as Aboriginal) concerns about the environmental consequences of megaprojects in the North, Canada set up environmental review processes for major development projects. The first and still probably the best known was the Mackenzie Valley Pipeline Inquiry of the mid-1970s (Berger 1977), but there have been a dozen or so major federal or provincial reviews of large northern projects since, in which Aboriginal intervenors have played a key role.

So began a period of reclamation of Aboriginal rights and livelihood, of which I will give you a practitioner’s view.

Documenting the Claims

The proof of Aboriginal title in the courts, or its acceptance for the purpose of negotiating a comprehensive claim, is a matter of fact determination in each case. There are several key tests, each

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5 However, the indicators of personal activity and income and expenditure flows depicted in this model were used to develop the survey module on household activity and harvesting, in both Statistics Canada’s post-censal Aboriginal Peoples Survey (2001) and the associated circumpolar survey of living conditions in the Arctic (www.arcticlivingconditions.org). As a result, we will for the first time be able to quantify this model based on a mass survey, and draw inter-regional and international comparisons (Usher et al. 2003).
grounded in the evolving jurisprudence on Aboriginal law (Elias 1989). I will comment on only one, which is both the most fundamental and to which geographers have made the greatest contribution in documenting: What is the specific territory to which Aboriginal title is claimed?

Establishing the connection of people and territory in a modern context was first done by the Inuit Land Use and Occupancy Study in the early 1970s (Freeman 1976), and has been replicated many times since. These studies relied, in addition to the archaeological and anthropological record, on documentation of ‘recent and current’ land use and occupancy, that is within living memory, by means of the map biography method (Tobias 2000). It was not a large step from the kind of work I had already done in my dissertation research (Usher 1971). We tried it out successfully on a pilot basis in the summer of 1973, and we adopted it for the Inuit study that followed.

Figure 5 provides a simple example of what the map biography method reveals, in this case the land use and occupancy of the Denesuline (Chipewyan) people of Saskatchewan in the NWT (Usher 1990). The map at the top shows the record of land use, as indicated by lifetime travel for hunting, fishing and trapping, of experienced hunters at Fond du Lac, Black Lake and Wollaston Lake, Saskatchewan. The map at the bottom shows the record of occupancy, or habitation, as indicated by fixed and often recurrent sites of use: campsites, graves and the like known to these same hunters.

The methodological innovation was, first, in anthropological terms, from the etic to the emic. We were no longer mapping the ‘territories’ of Aboriginal people based on the cumulative observations by others of where they were (as one would for mapping the ranges of wildlife species), but instead mapping the Aboriginal peoples’ own recollections of their own activities. The second innovation was to record peoples’ own perceptions of the history and significance of their traditional lands. This was done through mapping geographical knowledge and oral history as exemplified by place names, and ecological knowledge, all of which were used as supplementary indicators of use and occupancy. The third was that documentation was based on systematic survey and sampling procedures, in contrast to the mix of reconnaissance research and participant observation that had previously characterised most human geographical and anthropological research in the North.

Unfortunately, as the system of land claims documentation became routine, Canada accepted claims based on recent and current land use alone, with neither verification nor consideration of the consequences of overlapping claims (Usher 1992c, Sterritt 1998). The problem is that when you compare the maps of adjacent land use and occupancy studies, it becomes very significant whether you are talking about use or occupancy, as Figures 6 and 7 indicate.

Figure 6 compares the results of map biography-based land use of the Saskatchewan Denesuline with the Inuit of Nunavut. The traditional territory claimed in each case is based on the outer limit of the documented use area as indicated by travel. As no consideration is given to intensity or frequency of use, each claim area may well include very occasional travel beyond the norm, that may have been due to curiosity, desperation or peculiar circumstance. The significant extent of the so-called ‘overlap’ is thus not surprising. But if we compare the occupancy results of the two surveys (Figure 7), based on habitation rather than travel, there is much less overlap. Also revealing is the correspondence of habitation to place names (Figure 8).

By arbitrarily relying on only one of several indicators, and by failing to establish clear standards of documentation, the federal government has allowed boundary controversies such as this one to fester without resolution. And although use and occupancy evidence has been brought to bear in the courts and in environmental review processes, the same lack of evaluative standards has limited the effectiveness of that evidence in dispute resolution. The test of establishing the specific territory to which Aboriginal title and rights apply remains, the practical tool for documenting it has been established, but the next step

6 The original purpose of the study was to document the extent of Saskatchewan Dene use and occupancy of areas beyond the metes and bounds of treaties 8 and 10, as the basis for their claim to areas in which Canada was at that time negotiating a land claim with the Inuit of Nunavut. The results demonstrated that the Saskatchewan Dene had sole use and occupancy of the southwest corner of Nunavut, and that Canada had no basis in policy for negotiating a land claim for that area with any other Aboriginal party. The matter is still unresolved.
Figure 5
Saskatchewan Denesuline land use (top, as depicted by travel routes) and occupancy (bottom, as depicted by habitation sites) in the Northwest Territories.
SOURCE: Usher 1990
of establishing common evaluation standards has yet to be achieved.

**Characterising the Right**

What rights and remedies flow from a validated claim? Eighteenth century colonial doctrine, as illustrated by the Royal Proclamation of 1763, acknowledged some form of pre-existing Indian title, but claimed that the Crown had acquired underlying title through discovery. In this view, the Aboriginal nations with whom Britain formed an alliance or offered protection could cede their title only to the Crown, not to other imperial powers or to individual subjects of the Crown. It also established treaty making as the lawful process whereby the Crown’s underlying title to Indian territories could be converted to a full and unencumbered title that would provide for disposal and regulation (Slattery 1987).

Canada (although not BC—see Harris 2002) assumed these obligations, but for the first century after Confederation it regarded them as an impediment to settlement and development, and indeed towards the stated goal of Indian assimilation. In the 1880s, the Privy Council characterised Indian land ‘tenure’ as ‘a personal and usufructuary right, dependent upon the good will of the sovereign’ (the *St. Catherine’s Milling* case).

Whatever the right might have been, it was widely held to have been effectively extinguished by the exercise of Crown authority in managing and disposing of public lands and resources. And so, Aboriginal hunting, trapping and fishing rights no longer constituted fundamental guarantees of livelihood, much less a proprietary right, but came to be seen as mere licences or privileges granted at the pleasure of the Crown. Further, the old characterisation of Indian ‘nations’ disappeared in official thinking, and was replaced by the term ‘band’, implying a lower order of social organisation.

Canada’s acknowledgement of ‘unresolved Native interests’ (Canada 1981:8) was followed by a growing recognition of Aboriginal ‘title and rights’ by the courts and, in 1982, the constitutional
protection of those ‘existing’ rights, whatever they might be. For some time after that, the Supreme Court shied away from defining Aboriginal title, preferring to characterise it as a property right ‘sui generis’, distinct but indefinite. In my view this had the effect of emptying it of the content necessary to provide a common-law defence against exactly the incursions I described earlier.

More recently, the Supreme Court has drawn a distinction between Aboriginal title and rights. Aboriginal title is clearly a property right arising from continued occupancy. Aboriginal rights are rights of activity, for example with respect to livelihood. Aboriginal title, as characterised in the Court’s Delgamuukw judgement, encompasses the right to exclusive use and occupation of land, and to choose the uses to which land can be put. Both title and rights can be infringed for compelling and substantial legislative purposes, but governments must meet certain tests in doing so. These include ensuring Aboriginal participation in resource development, consultation and in restricted circumstances, consent, and fair compensation. The law has thus come a long way towards recognizing Aboriginal title in a way significantly consistent with the nature of Aboriginal proprietary systems in land and resources.

Aboriginal title, seen as a property right, is most certainly not a ‘race-based’ right, as some critics (often otherwise great defenders of property rights) claim. Similarly the question of personal legal status—who is a beneficiary of the land claim or treaty, is not merely an issue of identity, much less one of race, it is also and I would say more importantly one of property. It speaks to who is a member of the collectivity entitled to the benefits that flow from title.

The Remedies

Canada’s objective in negotiating comprehensive land claim agreements was to provide, in exchange for ‘extinguishment’ (i.e. a final resolution of the claim that establishes certainty of Canada’s title and authority), a set of benefits whose foundation can be seen in the old treaty provisions, but with some very important differences in the outcome.

1. The amount of land in Aboriginal ownership is much larger—as much as 30 percent of the original land base in the case of the Inuvialuit Settlement Region—mostly in surface title but some with subsurface rights. These lands are held by Aboriginal corporations, albeit with some restrictions on alienability. They are not federal lands held in trust for the benefit of Aboriginals, thus the modern claims are negotiated on the principle that Aboriginal people are adults, not children. Where title is to the surface only, the beneficiaries may negotiate ‘Impact Benefit Agreements’ with the subsurface developer.

2. The economic benefits are much larger in both quantity and scope. They consist of one time capital transfer payments (that may be regarded as compensation for past damages or losses), ongoing development benefits in the form of resource revenue sharing, and guarantees of equitable access to government contracting, procurement, and economic programs.

3. Beneficiaries have preferential or exclusive access to fish and wildlife resources, and guaranteed harvesting rights within the limits of

Figure 8
Place names as an indicator of habitation. The area of Inuit habitation (Freeman 1976), compared with the number of Inuit place names per 1:50,000 NTS map sheet, as documented in an unpublished study by L. Muller-Wille (personal communication).

SOURCE: Usher 1992c
conservation, which is an overriding principle in all land claims settlements. There are also compensation provisions for the loss of these resources.

4. They create comanaged land, resource and environment regimes that have no parallel in the old treaties. Management boards are established with equal representation of governments and beneficiaries, which have jurisdiction throughout the settlement region. Conservation is no longer determined solely by government agencies on the basis of scientific management. The knowledge of both parties represented on the boards must inform board decisions. The wildlife and fisheries management boards provide the basic direction of resource management, and planning, screening and review by the environmental management bodies are mandatory steps in the development permitting process. Ministers of the Crown retain ultimate authority because they can reject or vary (but not ignore) board decisions or advice. However, where there are strong and effective boards, this is exceptional.

The comprehensive land claims agreements are not once and for all real estate transactions. They establish a continuing relationship between Aboriginal people and governments, and so address matters not considered in the historic treaties. They do so by acknowledging and balancing both Aboriginal and non-Aboriginal interests throughout the traditional territory, and by providing an institutional framework for the joint governance of land, resources and environment. Some incidents of Aboriginal title are formally recognised on all lands (more in some categories than others) yet nowhere are they complete. These modern treaties provide for Aboriginal involvement in the management of the entire territory, but not their exclusive governance over any of it. This is a vision of integration and participation, rather than of separation and coexistence.

Effectiveness

So, what do these things do for Aboriginal people in the North? What works, what does not and what is missing?

In my experience, the comanagement arrangements work well in principle and in practice, for both humans and the environment. They are the antithesis of the parallel canoe approach. The state relinquishes exclusive authority over management and regulation and commits itself to a system of joint management. The Aboriginal parties recognise that there are not two separate spheres of jurisdiction, but that Aboriginals and non-Aboriginals share the same space and the same resources and need to cooperate in their management and use (Usher 1997). The spatial scale is also about right. The larger settlement regions encompass significant ecosystems and substantial parts of species ranges. There is still a need for transboundary management agreements but this too is manageable, and the fact of increased local authority seems to promote them.

It will be a challenge to extend these arrangements further south. Provincial governments and their constituents are more resistant, First Nations more wary. I expect it is not an accident that Inuit have put their faith in comanagement, because most of their key resources—caribou, marine mammals, waterfowl—have large ranges and are highly migratory. They know they cannot do it alone. In the Subarctic, where the home ranges and movements of fish and wildlife tend to be more restricted, self-management seems to First Nations like a more realistic and desirable goal.\(^7\) The commitment to engage in the comanagement of resources and environment is at least in part an expression of faith in common citizenship and purpose. It is a greater act of faith on the part of Aboriginal people than for the rest of us, because they have more to lose if it does not work. Let us not break that faith.

How do the claims agreements provide for community economic futures in the North? The good news is that they provide material resources, and access to programs and opportunities. It is also good news that the land base, resource access and resource management provisions provide for security of tenure and access for both subsistence and commercial use of fish and wildlife that the old treaties most obviously did not. This is an

\(^7\) Other factors include the longer and more devastating historical experience of First Nations in the provinces with progressive encroachment and restriction (see for example Chapeskie 1995), and the greater incidence of private freehold and resource tenures.
essential basis for the maintenance of the mixed, subsistence-based economy. We can also be sure that never again will government and industry representatives march arm in arm into the communities to tell people what will happen whether they like it or not. The settlement of land claims in the Mackenzie Valley that Justice Berger called for a generation ago, has led to a situation in which Aboriginal leaders are now advocates of developments they believe they can control and benefit from. And the size of land claim settlement regions open the possibilities for regional economic development beyond the scale available to any single First Nation reserve in the provinces.

I think that the focus on compensation for property and livelihood is the right one, but that too has its limits in practice. Both justice and deterrence demand it but the effect is, unavoidably, to transform a resource once freely available to everyone in perpetuity into a limited, scarce resource (cash) whose distribution is controlled by local elites. And because most cases take so long to resolve, those who experienced the losses most acutely often die before they are compensated, so their well being is never restored. The compensation goes instead to a wider pool of people only distantly related to the event, who thus receive a windfall. If compensation is really supposed to be an incident of a defensible property right in lands and resources, then administrative regimes should provide for efficiency of process as well as equity of outcomes. We are still a long way from this.

Resources and access are, in my experience, necessary but not sufficient conditions for real economic development in the contemporary world. The limitations of relying only on the flow of rents from resource extraction (or worse, one-time cash compensation payments in the case of specific claims or other awards for past damages), is that a rent-based economy is not an innovative or entrepreneurial economy. Neither is one in which the measure of leadership is in how much program funding you can obtain. Education (not just training), and the development of professional, managerial and entrepreneurial skills, are also necessary.

I think there are three pillars of community and regional economic development: resources, access and education, the last providing the capacity to make effective use of the first two. Without the third, there is a risk of becoming a rentier society, temporarily rich perhaps, but with neither innovation nor entrepreneurship, and always at risk of initiatives of the centre. Education is also essential for vigilance in maintaining and implementing the claims agreements and the benefits they provide. And there is a crying need for Aboriginals to gain more professional and technical expertise in law, resource management, business and economics, if they do not want to continue depending on a cadre of lawyers and technicians (like me) to do these things on their behalf.

For all the economic and social strengths of the mixed, subsistence-based economy in small communities, there is also a weakness. Households do manage to meet their needs, and household income, fully accounted for, is not always radically below national levels. But this economy does not generate much surplus or, in particular, tax revenue, especially at the local level. Consequently, the infrastructure that communities require nowadays must be financed from some other source, and that is generally senior levels of government. And administering and maintaining that infrastructure stretches community capacity to its limits. Rent- and fund-seeking behaviour is thus promoted over productive economic activity and wealth creation. This is not a route out of dependency.

We need to remind ourselves of the real problem in the North. We are talking about marginal communities on the periphery of the national and global economy. The risks and pressures they have faced have come from all parts of the dominant political spectrum. On the one hand, they were at risk from central planning, and of welfare state programs designed to take care of them, by well-meaning experts at a distance. On the other, they were at risk from untrammeled free enterprise and development, which by turn sought to mobilise local labour for its own purposes, to declare it unnecessary and seek imported labour, to take up existing resources by displacing local use and control, or to develop new resources without regard to the environmental disruption and degradation this might cause. Northern Aboriginal communities are vulnerable to these things as well as to natural and human-caused environmental catastrophes, distant social movements such as animal rights and the changing priorities of the national states to which they are peripheral. In other words, they
are always at risk of becoming poor and powerless, and the political preoccupations of Aboriginal northerners are to reduce that risk.

The extraordinary efforts and political achievements of Aboriginal northerners have greatly tempered the triumphalist ideas of settlement and development that prevailed when I began my career as a geographer. The results of that effort and achievement have profoundly altered how we see the North in Canada’s evolution—encapsulated in the title of the Mackenzie Valley Pipeline Inquiry report: Northern Frontier Northern Homeland (Berger 1977). We now know that there are diverse foundations and concepts of power and control in the political space we call Canada. We are more willing to accept the idea that jurisdictions and boundaries need not be mutually exclusive, but could accommodate shared interests. We are learning to accept this diversity and to recognise it as a basis on which people can come together for the common good. We have come to accept that the sense of nationhood, as a matter of identity if not of exclusive jurisdiction, can be a constituent element of Canadian citizenship. We have largely discarded old ideas of race as destiny. We now recognise that although our environment channels our ideas, activities and evolution in many ways, we ourselves have enormous and potentially dangerous effects on our environment. This we have yet to learn to control, but we may be able to learn something from the land, resource and environment regimes that are already in place in the North.

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References


BODALY, R.A., HECKY, R.E., and FUDGE, R.J.P. 1984 ‘Increases in fish mercury levels in lakes flooded by the Churchill River Diversion, Northern Manitoba’ Canadian Journal of Fisheries and Aquatic Sciences 41(4), 682–691

BOURASSA, R. 1985 Power from the North (Scarborough: Prentice-Hall)

CANADA. 1981 In All Fairness—A Native Claims Policy (Ottawa: Minister of Supply and Services)

CHAPESKIE, A. 1995 Land, Landscape, Culturescape: Aboriginal Relationships to Land and the Co-management of Natural Resources. Research Report, Royal Commission on Aboriginal Peoples, in Royal Commission on Aboriginal Peoples, For Seven Generations: An Information Legacy of the Royal Commission on Aboriginal Peoples (Ottawa: Libruxus [CD-ROM])

CHRETIEN, J. 1973 Statement on Indian and Inuit Claims (8 August 1973) (Ottawa: Department of Indian Affairs and Northern Development)

ELIAS, P.D. 1989 ‘Rights and research: the role of the social sciences in the legal and political resolution of land claims and question of Aboriginal rights’ Canadian Native Law Reporter 1, 1–43

FREEMAN, M.M.R. ed. 1976 Report, Inuit Land Use and Occupancy Project (Ottawa: Indian Affairs and Northern Development)


HARRIS, C. 2002 Making Native Space (Vancouver: UBC Press)


SLATTERY, B. 1987 ‘Understanding Aboriginal rights’ Canadian Bar Review 66, 726–783


TAYLOR, G. 1937 Environment, Race and Migration (Toronto: University of Toronto Press)

—. 1947 Canada (London: Methuen)

TOBIAS, T. 2000 Chief Kerry’s Moose: A Guidebook to Land Use and Occupancy Mapping, Research Design and Data Collection (Vancouver: Ecostrust Canada)

USHER, P.J. 1971 The Bankslanders: Economy and Ecology of a Frontier Trapping Community (Ottawa: Indian Affairs and Northern Development)

—. 1990 Recent and Current Land Use and Occupancy in the Northwest Territories by Chipewyan-Denesoline Bands (Saskatchewan Athabasca Region) (Prince Albert: Prince Albert Tribal Council)

—. 1992a ‘Socio-economic effects of elevated mercury levels in fish on subarctic native communities’ in Contaminants in the Marine Environment of Nunavik, ed Société Makivik, Collection Nordicana no. 56, Centre d’études nordiques (Quebec: Université Laval) 45–50

—. 1992b ‘Property as the basis of Inuit Hunting Rights’ in Property Rights and Indian Economies, ed T. Anderson (Lanham, MD: Rowman & Littlefield) 41–65

—. 1992c Affidavit of Peter J. Usher, re Beanoine v. Canada, Federal Court of Canada

—. 1997 'Common property and regional sovereignty: relations between Aboriginal peoples and the Crown in Canada' in The Governance of Common Property in the Pacific Region, ed P. Larmour (Canberra: Australian National University)

—. 2002 'Inuvialuit use of the Beaufort Sea and its resources, 1960–2000' Arctic 55(Suppl. 1), 18–28


USHER, P.J., DUHAIME, G., and SEARLES, S. 2003 'The household as an economic unit in Arctic Aboriginal communities, and its measurement by means of a comprehensive survey' Social Indicators Research 61, 175–202


USHER, P.J., and WENSTEIN, M.S. 1991 Towards Assessing the Effects of Lake Winnipeg Regulation and Churchill River Diversion on Resource Harvesting in Native Communities in Northern Manitoba. Canadian Technical Report of Fisheries and Aquatic Sciences no. 1794 (Winnipeg: Department of Fisheries and Oceans)

WALDRAM, J.B. 1988 As Long as the Rivers Run: Hydroelectric Development and Native Communities in Western Canada (Winnipeg: University of Manitoba Press)