

ALGONQUIAN LAND TENURE AND STATE STRUCTURES IN THE NORTH

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ABSTRACT/RESUME

This paper examines the differences in Indian hunting territory use, and state recognition of them, between the Eastern James Bay area and Southern Labrador. The hunting territory system was not as rigidly developed in the latter area as in James Bay, and government did not recognize Indian land tenure there as readily as they did in Quebec. The author suggests that the long refusal to recognize Labrador Indian rights and needs stems from the fact that there was no Hudson's Bay Company commercial advantage, and thus political need, for the recognition of hunting territories in Labrador, as opposed to Quebec.

L'auteur de cette étude examine les différences dans l'utilisation des terrains de chasse indiens dans la région à l'est de la baie James et dans le sud du Labrador, ainsi que les différences dans la reconnaissance accordée à cette utilisation par les gouvernements des deux régions. Au Labrador, le système des zones de chasse a été moins développé qu'à l'est de la baie James, le gouvernement du Labrador étant moins porté que celui du Québec à reconnaître les droits des Indiens en ce qui concerne la possession des terres. L'auteur indique qu'au Labrador, la reconnaissance des zones de chasse ne comportait pas d'avantage commercial pour la Compagnie de la baie d'Hudson, et que par conséquent il n'y a pas eu, dans cette région, la même raison politique de reconnaître ces droits qu'au Québec.

INTRODUCTION

The view which anthropologists present of non-western peoples often seems to adopt one of two positions. Either they are seen as following a special way of life based on local conditions and a distinctive culture, or, at the other extreme, portrayed as minorities who are dominated, shaped or have been absorbed by a larger colonial or industrial society. In studying Indians of northern Canada I have in the past been critical of the way they are seen as passive people whose lives are determined by others. For example, much historical work on the fur trade unjustly presents the view of European traders as being the major determinant of Indian society (Tanner, 1988). As well, contemporary Indians living on Reserves are portrayed as having little more than a culture of poverty, so that their claims to be recognized as distinct cultures, or even nations, within Canada are seen as empty political rhetoric. These positions overlook the active creative response of Indians to the influx of Europeans (Tanner, 1963a).¹

Yet in the case of the classic controversy over the origin of Algonquian hunting territories, both sides of this argument seem to have taken it for granted that, whatever its origin, the institution was entirely in the hands of the Indians themselves. In the case of those who argued that territories resulted from the fur trade, Europeans are seen as only having introduced the idea of property, and specifically the treatment of animal fur as property. It was the Indians who then supposedly applied the property idea to the animals, and finally to the land which the animals occupied (Rogers, 1963; Leacock, 1954). Both sides of the hunting territory debate fail to consider the traders' attitudes towards the Indians' land use pattern as influencing the development of the hunting territory institution. Yet we do have evidence of changes in hunting territories during the 20th century, some of which have been the result of formal recognition by the State, for example in beaver conservation and trapline regulations, and in the James Bay Agreement, which includes reference both to community land rights and to the existing trapline system.

As part of his theory of the aboriginal territory, Speck apparently first believed that this form of land tenure was common to all northern Algonquians. He also believed that the existence of this institution was, and ought to be accepted by the State as validation for Indian rights to the land (Deschênes, 1981). The first contention received much discussion, and many have pointed out that the hunting territory system is not in fact uniformly distributed, a point which Speck himself came to concede. Unfortunately, far too little attention was paid to his second point. If territories are not used by some groups of Algonquians, does this lessen the strength of their claim to land rights?

In this article I will examine differences in the pattern of land tenure among two groups of Northern Algonquians, and look at some of the factors that explain differences in the way in which traders and the government have recognized, misrepresented or ignored Indian land tenure in the two regions. Because of a lack of historical data I will look at the regions of the eastern side of James Bay and southern Labrador only over the past sixty years, which also happens to coincide with the period since the hunting territory debate among scholars

first began.

It may be thought that the reasons why hunting territories existed in some areas and not in others has by now been adequately debated. However, I believe we need further explanatory principles. We have two theories. Speck's modified position is that hunting territories were a feature of the more southerly boreal forest ecosystem, but that further north and east in the Quebec-Labrador peninsula a different ecosystem with nomadic caribou as the principle game animal made a semi-sedentary small group land tenure system inappropriate (Speck and Eiseley, 1942). The alternate theory, represented by Leacock, is that hunting territories were adopted through a gradual process which spread outward from the earliest centres of the trade (Leacock, 1954). Thus an area today either has or does not have hunting territories due to the length of time and the degree to which it has been engaged in the fur trade. Between the two I find the ecological explanation more convincing than the acculturation/diffusion idea. However, in what follows I will suggest that neither can account for differences that have taken place during the 20th century.

JAMES BAY

The East Cree of the Quebec side of James Bay have had hunting territories since at least the 18th century (Morantz, 1978). The hunting territory system did offer traders some potential for influencing the activities of Indians for their own purposes. For example, as one of the functions of territories was to distribute resources among hunters, it was possible for traders to persuade especially-skilled and successful trappers to move or to join groups which occupied a territory with a large concentration of a particularly valuable fur species. I have observed this kind of manipulation in recent times, and it well could have been used earlier.

It is known that the Hudson's Bay Company (HBC) rather belatedly did play an active part in incorporating the existing hunting territory system into a system of beaver preserves and registered traplines. There are two versions of the HBC's role. One version emphasizes the activities of the HBC factor at Rupert House, James Watt, and his wife Maude, in the late 1920's and early 1930's. The HBC later cooperated with the Canadian government's Department of Indian Affairs and the Quebec Wildlife Department to relieve a chronic shortage of beaver, and the scheme's aim was to reintroduce and maintain a stable beaver population (Anderson, 1961; Denmark, 1948). The alternate, or perhaps I should say parallel theory, since it might constitute an additional factor, is that the beaver preserves and traplines were supported by the HBC in order to protect its monopoly over the Indians, which was then in danger as a result of the influx of White trappers into the southern part of the region (Knight, 1968, 1974). According to this explanation, each beaver preserve was made the exclusive area of a specific Indian band, and each part of the preserve was assigned to a specific member of that band for exclusive trapping rights, so that White trappers could be legally excluded from the whole area. A contiguous band of such beaver preserves was eventually extended across the northern

boreal forest of Quebec. The idea was supported by the HBC for three reasons. First, White trappers sold their furs at southern auction houses or dealers, not the local HBC store. Second, it was feared that the White trappers would start trading with local Indians in competition with the HBC. Third, White trappers were believed to use harmful trapping methods, such as the use of poison. According to this view anthropologists who argued for the aboriginality of the hunting territories were aligned with the HBC in helping it maintain its monopoly.

The actual evidence which has now been published so far for this viewpoint is admittedly mainly circumstantial. Following the boom in fur prices during and after the First World War, White trappers moved north in increasing numbers. Interestingly enough, one of these was Archie Belaney who, before he metamorphosed into the beaver conservationist Grey Owl, trapped in the southern regions of the James Bay Cree area. However, fur prices had already begun to fall by the time the beaver preserve scheme was in place.

SOUTHERN LABRADOR

In contrast to James Bay, in southern Labrador no recognition of an exclusive land tenure system of Indian hunters emerged among either the traders or the government. One explanation might be that, had they wished to, they would have found the actual pattern of Indian land use too difficult to grasp. Because of the ecological conditions in southern Labrador a very flexible system existed. We do have a good idea of how White traders and trappers in the area around Lake Melville viewed the Indian land tenure system early in this century. In preparing its legal case for the dispute with Canada over the Labrador boundary, Newfoundland collected affidavits between 1909 and 1921 from Labrador residents (Great Britain, Privy Council, 1927, and in The McGrath Papers, Newfoundland Archives, St. John's) and one particular point of interest was the regions hunted by the Indians who traded at Northwest River. Unfortunately, no Indians were interviewed. These accounts described the total area over which the Indians hunted in very approximate terms. Moreover, only a limited acknowledgement was given to the fact that the Indians themselves were subdivided into regional groups each of which ascended a different river valley to reach its trapping area. Present-day informants recall some of the elements of a territory system, in the sense that some groups of families returned year after year to the same areas to trap and hunt. However, in contrast to James Bay, larger winter gatherings also took place in the interior for the purpose of group caribou hunting. Individuals and families did identify with specific regions, however, and this was recalled by means of place names, grave sites and rock cairns. None of this appears to have been known or considered important by the Europeans (Tanner, 1977).

The actual flexibility of a land tenure system does not rule out the possibility of it being incorporated by the State, even if in a distorted form. Recent studies in the James Bay region have shown that the year-by-year actual operation of the beaver preserve/trapline system is far more flexible than the

officially-recognized version would make it appear (Tanner, 1979:182-202). Europeans have not been noticeably reluctant to interpret other peoples' conception of land tenure in their own terms. The actual flexibility of the system is insufficient to explain why some kind of Indian land tenure was never recognized in Labrador as it was in James Bay.

One part of the explanation was that in Labrador a trade monopoly did not become established early on. Despite being one of the first areas in North America where furs were traded between Indians and Europeans, the fur trade in its developed form was late in arriving. During the French period Labrador was effectively a distant hinterland for the posts of the *Domaine du Roi*, and the first traders to establish on the lower north shore and in Lake Melville were small traders operating under competitive conditions. When Europeans, such as Cartwright, first settled on the Atlantic coast of Labrador they preferred to utilize European fishermen as well as Indians to trap during the fisherman's idle winter season, rather than rely totally on the Indians to supply them with furs. The fishing merchants in the region were small companies or partnerships based in the west of England, Newfoundland or Quebec (Whiteley, 1977). Not until about 1840 did the HBC establish a trade monopoly in the Lake Melville area.

The HBC monopoly in Lake Melville and along the Gulf posts did not last more than sixty years. In Lake Melville they experienced difficulties with the Indians, some of whom would travel to the St. Lawrence posts to trade instead. Meanwhile, the HBC came to rely more and more on White Trappers, first their own servants, and later the European and mixed White-Eskimo settlers who began to occupy the shores of Lake Melville. These settlers fished in summer and trapped in winter. At times during the period from 1860 to 1900 the HBC at Northwest River relied more on Whites than Indians as a source of fur.

The land tenure system introduced by these White trappers was in sharp contrast to that used by the Indians. It was a system of fixed individually-owned traplines. Several detailed descriptions of the system exist, starting with that of Low, based on observations in 1893 (Low, 1896), up to the one made around the Second World War (Tanner, 1944).

The settlers were mainly interested in marten and other fine fur, rather than beaver which interested the Indians because of its additional value as food. They trapped for short periods during the winter, one in early winter and the other in late winter. They were organized for maximum mobility and speed; their families remained behind, they ate mainly store food, and spent most of the time trapping. Each trapper had a trapline extending from the shore of the lake or main river towards the hills, along which were built permanent cabins. By 1920 all the major river valleys flowing into Lake Melville were filled with traplines. There were strict rules of trespass and the opening and closing of seasons, rules which were not imposed by the government. In fact, although Labrador was administered by Newfoundland there was very little in the way of formal law enforcement until well into the 20th century. Where disputes did arise local justices of the peace upheld the traditional rules of the trapline system.

There is ample evidence that the White trappers' trapline system impinged

upon the land tenure system of the Indians. Disputes and some cases of violence between Indians and White trappers have been recorded during the period from 1900 to 1950 (Tanner, 1977). These cases show that while the White trappers were mainly concentrated in the large river valleys, Indians also used these valleys as they traveled between Northwest River and the plateau where they spent most of the winter. Indians continued to hunt and trap as they traveled through the valleys, leading to disputes with irate White trappers, who claimed exclusive rights to the animal resources on their trapline, game animals as well as fur. More serious disputes began after 1920 when some White trappers began to establish traplines on the plateau land west of Churchill Falls, after all the valley land was occupied.

In 1901 competition between traders reappeared at Northwest River with the opening of a Revillon Frères post, and others followed. Competition later appeared at Sept-Iles also, where furs began to be purchased by a system of sealed bids.

In the case of James Bay, I have argued that the monopoly of the HBC made it worthwhile for them first to recognize and later to encourage recognition by the State of the exclusive rights of Indians to hunt and trap. The recognition by the State can be seen as consistent with the policy of a special 'encapsulated' relationship between the Indians and the federal government of Canada (Tanner, 1980).

In Labrador, which was not part of Canada until 1949, no such special relationship existed between the State and the Native population. In fact, they were disowned. Prior to the 1920's when Newfoundland began to press its claim to the interior of Labrador, even the rations given to starving Indians were supplied through the HBC which forwarded the bill to Ottawa. Newfoundland did supply welfare after this, but thanks partly to the cajoling of the Catholic missionary. By the 1940's, when Indians were facing dire game shortages, a division of opinion became apparent among Newfoundland officials over how to handle the problem. Some officials who had first hand experience of Indian life favoured special aid programs to assist Indians while they continued to pursue a hunting way of life. However, such policies were not supported, and even after joining Confederation the pattern was to avoid special programs for Indians, including recognizing them as being status Indians, and therefore eligible for special federal programs. Instead Indians were forced to settle in existing settlements in order to obtain the same health and welfare services as White settlers.

The lack of any special relationship between the national government and the Indians of Labrador resulted in them not being included when beaver preserves for Indian bands along the north shore on the Quebec side of the border were established during the 1950's. It is ironic that during the 1970's a *de facto* separate administrative system for Labrador Indians did emerge, and that through their federally-funded political association they are now attempting to obtain official status as registered Indians.

CONCLUSION

In both James Bay and in Labrador there was, prior to the arrival of Euro-

peans, an organized pattern according to which Indians distributed the natural resources. Because of the nature of most of these resources, this involved dividing themselves up into regional groups. For several centuries after contact with the European traders Indians in both areas remained in control of land-based resources. Only within the past 100 years has the State begun to extend its jurisdiction over the system of land tenure, and in both areas this process is hardly yet completed.

The process by which the land tenure of the regions has been and is being incorporated into the State legal and administrative structure is quite different in the two areas. In James Bay recognition in various ways was given to earlier patterns of Indian land tenure, while in Labrador Indian patterns have hardly been acknowledged.

Differences in the ecology of the two areas explain why Labrador Indians did not historically have hunting territories in the developed form that existed in James Bay. However, White trappers were able to successfully introduce a system of fixed territories in Labrador. Even in James Bay the hunting territory system existed alongside other, entirely different, patterns of resource distribution, such as the use of resources in the summer, with fishing camps, berry-picking areas and goose hunting territories which utilize overlapping systems of land use to that of the winter hunting territories. Thus it would have been possible to recognize overlapping areas covering trapping and small game hunting by small groups, and caribou hunting by regional bands. Ecosystem differences between the two regions do not explain the State's acceptance of Indian land tenure in one area and its rejection in the other.

It appears to me that during the present century, at least, the more important factors were the political relations between Indians and the State, and political competition between Indians and European settlers. Under conditions of monopoly trade the HBC effectively was the State, and later it was able to work in conjunction with State agencies. But in Labrador, without such a monopoly and with its interests more aligned with the White trappers, the HBC was not inclined to use its influence to recognize Indian land tenure.

When competition did appear in James Bay between Indians and White trappers a conjunction of interest arose between the HBC and the government. Canadian Indian policy in the 19th and early 20th centuries was basically protective, especially in the hinterland. Situations of competition between Whites and Indians were seen as to be avoided. For its part the HBC wanted the beaver restored and White trappers excluded for commercial reasons.

Finally, we draw some conclusions from the foregoing comparative study regarding current Indian policy. Some have argued that the continuation of a policy of special status for Indians, and the recognition of special rights by means of land claims, is discriminatory and not in the interests of the Indians. These policies are seen as having the effect of keeping Indians separate from other disadvantaged groups in Canada, groups who might otherwise join in an alliance to bring about more fundamental changes in society (Knight, 1974; Elias, 1976). Labrador appears to be a case in point. Between 1860 and 1960 Indians were given no special status or protective policies to separate them from

the general population. No recognition was given to their land tenure system and they were expected to survive on an equal footing with Europeans. In fact no alliance of interest of any significance emerged, even though the White trappers were almost as poor and exploited as the Indians themselves. A few friendships were made and some favours exchanged, but little more. Hardly a single marriage took place between these two groups during this period. Labrador Indians emerged from this period with much of the same disadvantageous relationship with Whites as has emerged in other parts of Canada where the two groups live side by side (e.g., Braroe, 1975). By contrast, in James Bay, where Indians have been both isolated from Canadian society and had 'protective' government land tenure policies, the result has been that they have been able to retain some part of the land, and have a reasonable hope of making their way in Canadian society.

NOTES

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