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# Family Territories, Community Territories: Balancing Rights and Responsibilities through Time

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**Abstract:** This article focuses on the somewhat neglected phenomenon of band-level territoriality and its implications for understanding the much more extensively debated family hunting territory system. The organisational levels of the family and the band are part and parcel of a customary tenure system that has endured the proliferating entanglements of fur trade history and the modern industrial period through a dynamic balancing of the rights and interests of families within those of the larger band – and more recently of the regional nation. It is through participation in larger collectivities that families' prerogatives are recognised and reproduced.

**Keywords:** family territories, band territories, James Bay Crees, customary tenure, land stewardship, rights and responsibilities

**Résumé :** Cet article concerne le phénomène quelque peu négligé de la territorialité des bandes et ses implications pour comprendre, de manière plus approfondie, les débats concernant le système de la chasse familiale. L'organisation de la famille et de la bande participe au système foncier coutumier, qui s'est maintenu tout au long de l'histoire de la traite de la fourrure et de la période industrielle moderne grâce à une dynamique balançant les droits et les intérêts des familles avec ceux de la bande, et, plus récemment, de la nation. C'est au travers de leur participation au sein de collectivités plus larges que les prérogatives et les droits des familles sont reconnus et reproduits.

**Mots-clés :** territoires familiaux, territoires de bande, Cris de la baie James, régime foncier coutumier, intendance des terres, droits et responsabilités

## Introduction

This article examines the interaction of band and family levels of territorial organisation, with emphasis on the Crees of Eastern James Bay – today a federation of 11 communities in the regional territory of Eeyou Istchee, 10 of which fall within the provincial boundaries of Quebec (see map of Eeyou Istchee, on page 9 of this issue). With this focus in mind, I review what is known about their territorial organisation from a historical trajectory beginning with earliest contact with Europeans and moving through a series of adaptations to the fur trade and more recent industrial resource extractive activities in Eeyou Istchee.

“Family hunting territories” have drawn major anthropological attention as aspects of Cree customary tenure, but their operation depends on the more inclusive social collectives, known in the ethnographic literature as “bands,” in which families are embedded – and with which, to invoke a motif of the current special issue, family territorial practices have always been intimately “entangled” (see, as well, Dussart and Poirier 2017). Collective rights, interests and responsibilities of property and governance become intelligible on the scale of band community, where the territorial practices of families intertwine and are mutually defining. While important aspects of territorial governance are accomplished through family hunting groups and territory leaders, these institutions rely on a system of principles, rules and decision making that inhere at the level of the band, and indeed extend to inter-band relations. In short, family-level dimensions of customary tenure have been complementary and integral to those at the level of the band throughout history, and yet the phenomenon of band-level territoriality in its complex interactions with family-level territories has been a relatively neglected dimension of the literature.

Alongside changes in Algonquian hunting and Algonquian societies' articulation to shifting conditions and practices of the market economy and Canadian state

institutions, shifting theoretical tides and currents have influenced anthropological perception and interpretation of territorial practices. Harvey Feit (1991) has demonstrated that ethnographers' engagement with policy issues raised by colonial intrusions onto Algonquian peoples' lands in the first decades of the twentieth century biased ethnologists' framing of Algonquian customary tenure toward a "private property" analogy as a strategic way to inure policy-makers to Indigenous hunters' rights and interests. At the same time, this development focused attention on family-level territorial organisation and away from band- or community-level organisation, fuelling a somewhat polarising reaction by Marxist theorists/ethnographers early in the second half of the twentieth century, who were theoretically disposed to defend the collective territorial motif of "primitive communism." With the "rediscovery" of Aboriginal rights in Canada post-1960s, the question of community- and regional-scale territorial rights resurfaced, accompanied by theoretical developments in global and trans-disciplinary common property research that opened conceptual space for the dissolution of simplistic polarities. These shifts will be noted as the discussion proceeds.

This article first reviews early contact sources and early twentieth-century ethnography on territoriality among Crees and some of their next-door Algonquian neighbours for perspectives on the contact and fur trade periods. Present-day iterations of "Cree hunting law" are then considered, mainly through the lens of a project undertaken by the Cree Trappers Association to render territorial custom in documentary form. Finally, the proliferating entanglements of Cree territoriality in the context of industrial resource extraction over recent decades, and the attendant institutional development of contemporary Cree political organisation, are assessed.

## Historical Perspectives

A system of community and family hunting territories among the Crees of Eyou Istchee was first witnessed by Europeans in the early years of the fur trade. The social organisation, leadership and conservation functions of this form of customary tenure, referenced in the archives of the Hudson's Bay Company from the late seventeenth century (Francis and Morantz 1983, 97, 129; Morantz 1986; Oldmixon 1708, 389), were first analysed anthropologically in the early twentieth century (Davidson 1928; Speck 1915a, 1915b, 1923, 1927, 1931; Speck and Eiseley 1942).

The earliest records of explorers, missionaries and traders offer important clues, though Rogers (1963, 69n2), for example, perceives ambiguity in one of the earliest

historical reports, as to the precise nature of territorial practices witnessed:

Albanel in 1672 reported that he was stopped by three Mistassini men, one of whom said, "Black Gown, stay here; our old man, the master of this country, must be notified of thy arrival. I will go and tell him." Albanel continued, "It is no new thing for the Savages, obeying a maxim of their policy or of their avarice, to be extremely cautious in granting strangers a passage by way of their rivers, to distant Nations. The rivers are to them what fields are to the French, their sole source of subsistence – whether in the form of fish and game, or in that of traffic" ([*Jesuit Relations*] Vol. 56, p. 173).

Albanel's account implies that some notion of land rights was in existence, but it is not clear exactly what was involved. Was it at the band or hunting group level? If "our old man" or "master of this country" referred only to the family hunting territory level, one wonders at Albanel's reference to "granting strangers a passage by way of their rivers, to distant Nations"; the assertion of collective domain on major routes such as Albanel used on his way to James Bay suggests band-to-band territorial practices.

Another report of late seventeenth-century practices – this from the journal of Thomas Gorst at Charles Fort (later Rupert's House) on southeastern James Bay – offers insight into the dynamic between band and family levels of organisation:

The Indians of certain Districts, which are bounded by such and such Rivers, have each an Okimah, as they call him, or Captain over them, who is an Old Man, consider'd only for his Prudence and Experience. He has no Authority but what they think fit to give him upon certain Occasions. He is their Speech-maker to the English; as also in their own grave Debates, when they meet every Spring and Fall, to settle the Disposition of their Quarters for Hunting, Fowling, and Fishing. Every Family have their Boundaries adjusted, which they seldom quit, unless they have not Success there in their Hunting, and then they join in with some Family who have succeeded. (Oldmixon 1708, 389)

Effectively, a larger "District" collectivity, later the "band," was involved in considering the needs of each and all: "Every family have their Boundaries adjusted, which they seldom quit," and the adjustment of their hunting "Quarters" is the subject of "grave Debates." The *okima*/captain/elder role endured through most

of the traditional fur trade, though not all bands at all periods had a singular chief.

The earliest professional ethnographers regarded the family hunting territory system as predating the fur trade. In his article "Mistassini Hunting Territories in the Labrador Peninsula," Frank Speck (1923, 459) presents arguments and evidence for the aboriginality of the system, concluding:

It is quite evident, I believe, not only from the widespread nature of the family land divisions throughout the north, but from the testimony of history itself, that the coming in of the trading posts was not responsible for the inception of the territorial idea, but that they came in and adjusted themselves to such conditions, which were aboriginal to the northern tribes in general.

Contrary arguments were put forth during the mid-twentieth century by anthropologists for whom the family territory system seemed at odds with Marx and Engels's conception of primitive communism. According to these authors, Algonquian family hunting territories must be innovations generated by the commercial fur trade and/or state administration (Knight 1965; Leacock 1954; Murphy and Steward 1956). Their contemporary Rogers (1963, 82), a prominent ethnographer who worked at Mistissini, argued that at the time of contact, a "hunting area" system was probably in operation, and at Mistissini certainly existed by the early 1800s: in this system, the hunting group "returns to the same general area each year but possesses no exclusive rights to the resources" Rogers (1963, 83) believed that more rigidly defined hunting territories with a regime of more exclusive family rights, at least with respect to fur animals, "evolved with the introduction of a fur trade economy," in response to "sedentary, solitary, and dispersed fur-bearers," "weak political authority" at the level of the band, and the new practice of conservation, which "it is believed, encourages a sense of proprietorship in the resources conserved and a desire to prevent others from interfering." Rogers's argument is supported by the special focus on beaver and other fur animals when Cree hunters speak about trespass, but seems misplaced in other respects. Key food animals such as moose and beaver (also the most important fur animal) were always vulnerable to over-exploitation, not to mention the capacity of a hunting group to locally deplete a wide range of species, so there is no a priori reason to expect that Cree conservation practices were relevant only to the fur trade. And the idea of "weak political authority" at the level of the band seems inconsistent with the earlier observations of Albanel and Gorst.

Contemporary anthropologists (see Bishop 1986; Feit 1979, 1991, 2004; Morantz 1986;<sup>1</sup> Morantz and Bishop 1986; Scott 1986, 1988; Tanner 1986) have moved toward a consensus that the Algonquian hunting territory system in its core structural manifestations and conservation purposes is continuous with Aboriginal conditions and not reducible to commercial fur production. Feit (2005, 281) aptly summarises:

Ethnographic research starting in the late 1960s has radically changed our understandings of *Ndoho Istchee* [hunting territory] and related forms of Cree tenure from those which prevailed when Cooper<sup>2</sup> circulated anthropological accounts of hunting territories among governments and fur traders. The new post-beaver reserves studies show that hunting territories are not forms of private property, nor results of commodification or assimilation as had been assumed by some mid-century analysts and commentators. Hunting territories are both expressions and means of reproduction of Algonquian social relations, symbolic meanings and relations to the land and wildlife, i.e., they are integral to social reproduction broadly construed ... This is not to deny their long histories in the fur trade and beaver reserves, or the changes that those histories have brought, but the principles and values that inform these cultural practices do not themselves obviously derive from market ideas of property, or from the fur trade or beaver reserve ideas or practices, they are rooted in recognition of reciprocity between humans and animals, and in Cree ways of negotiating the tensions between collective and individual claims of access to lands and control of the products of one's labour.

This consensus is consistent with a body of evidence from hunter-gatherers worldwide, whose institutions of common property and customary tenure typically involve a more complex and differentiated distribution of rights among persons and kin groups than the open access imagined by nineteenth-century evolutionists as "primitive communism." Such institutions, in fact, are practised by a diversity of hunting, foraging, fishing, pastoral and agricultural societies, typically embodying conjoined functions of governance and property that are often institutionally separated in state-level societies (Ostrom 1990).

Some of the earliest and most comprehensive research on the Indigenous law and custom of hunting territories (Lips 1947; Speck 1923, 1927) is based on anthropological fieldwork among the Mistissini band and their immediate neighbours, who shared a common system. The fundamentals of the system are articulated in several key passages:

Let me define the family hunting group as a kinship group composed of folks united by blood or marriage, having the right to hunt, trap, and fish in a certain inherited district bounded by some rivers, lakes, or other natural landmarks. These territories, as we shall call them, were, moreover, often known by certain local names identified with the family itself. The whole territory claimed by each tribe was subdivided into tracts owned from time immemorial by the same families and handed down from generation to generation. The almost exact bounds of these territories were known and recognized, and trespass, which, indeed, was of rare occurrence, was summarily punishable. These family groups or bands form the social units of most of the tribes, having not only the ties of kinship but a community of land and interests. (Speck 1915b, 290)

As this quotation implies, territory was claimed by a larger social group here referred to by Speck as a “tribe,” but “subdivided” into heritable family tracts. Equating “family group” with “band,” however, as Speck does in this passage from one of his earliest articles, was misleading. In his later work (see Speck 1923 and 1931, as well as Figures 1 and 2, taken from those publications), it is clear that Speck comes to recognise the “band” as the collective group whose territory is divided into several family territories. In Lips’s nomenclature, similarly, the band is the functional larger collectivity, though a synonymous sense of “tribal” remains at play:

The well defined hunting-ground of the band is subdivided into family hunting-grounds; and a communal hunt by the band does not ordinarily take place. The individual family is the hunting unit. Thus, the economic unit, too, is the family although as we shall see later the band will in cases of emergency subsidiarily come to its aid ... Judging by the sources, the subdivision of the tribal land into family hunting grounds is very old indeed and certainly can be dated back prior to the establishment of the Hudson’s Bay Company posts. (Lips 1947, 387)

Hence, it seems, a nesting of family territories within band territories was a feature of Cree social organisation from pre-European times to the early decades of the twentieth century.

### **The Affiliation of Family Hunting Territories within Bands: Family and Community Rights**

The proprietary or territorial rights of families are products of participation in larger social groups, for reasons that are virtually axiomatic. First, a family

could not enjoy rights to a territory if families on adjoining territories did not recognise those rights, expecting recognition of their own rights in return. Second, the maintenance of this regime of rights requires practices of social control on the scale of a larger collectivity. These may be vested in the authority of a chief, but even in the absence of a chief they are maintained by social dynamics of consensus, reputation, respect, honour, shame, gossip, taboo, fear of sorcery, et cetera.<sup>3</sup> The collectivity may be shifting and permeable – both fusion and fission of bands have occurred across time<sup>4</sup> – but all persons and families are affiliated with a band identity, and occasionally more than one identity, as for example when smaller bands amalgamate into a larger band, or when marriages between bands produce dual identities. Marriages within and also between bands maintain, from generation to generation, networks of near and more distant kin with whom households may be involved in geographically proximate and remote reciprocal relations of sharing, respectively.

The greater ease of travel and density of interaction between people occupying a watershed, as well as the ready access to seasonal gathering places such as large fishing lakes, resulted in the tendency for bands and band territories to be associated with their respective major watersheds. However, local circumstances of topography and proximity to social gathering places as well as contingencies of cultural history meant that band territorial boundaries need not conform precisely to heights of land.

The disposition of rights as between the larger community and the family is manifest in three principles underwriting Cree property rights that I have proposed elsewhere (Scott 1988, 37–38):

First, a household has certain primary or initial rights in relation to the product of its own labour ... A second balancing principle ... refers to the rights of the collectivity, to the effect that no household may use, restrict, or accumulate resources and products in ways prejudicial to the interests of others; and as a corollary, households are expected to cooperate in particular productive contexts when collective benefit results ... The third principle is ... that ungarnered resources, “the land,” cannot be alienated for the private benefit of any privileged individual or sector of the community.

Consistent with these principles, the rights of individuals and households are not isolated from the rights and interests of the larger collectivity. A family’s rights in its hunting territory are significant and enduring, but



Figure 1: Approximate location, since about 1850, of local groups or bands of Montagnais-Naskapi (polygons) and Eskimo (oblique lines) (Speck 1931, 565)

the legitimate authority of the family and its hunting territory leader depends on sharing practices and unselfish attention to the needs of the community as a whole. Resources can be neither hoarded nor wasted. The community, through a process of consensus building that involves, in principle, all member families, can decide priorities and policies for its territory as a whole.

A seasonal opportunity for information sharing about resource distributions and decisions about terri-

torial adjustments of hunting effort, along with other purposes of socialising, ceremony and exchange, was the summer gathering of the band. Rogers and Leacock (1981, 170) describe the pattern common throughout the Quebec-Labrador subarctic:

During the short summer, everyone came out of the mosquito-infested woods to gather on the shores of large interior lakes, or at the mouths of rivers

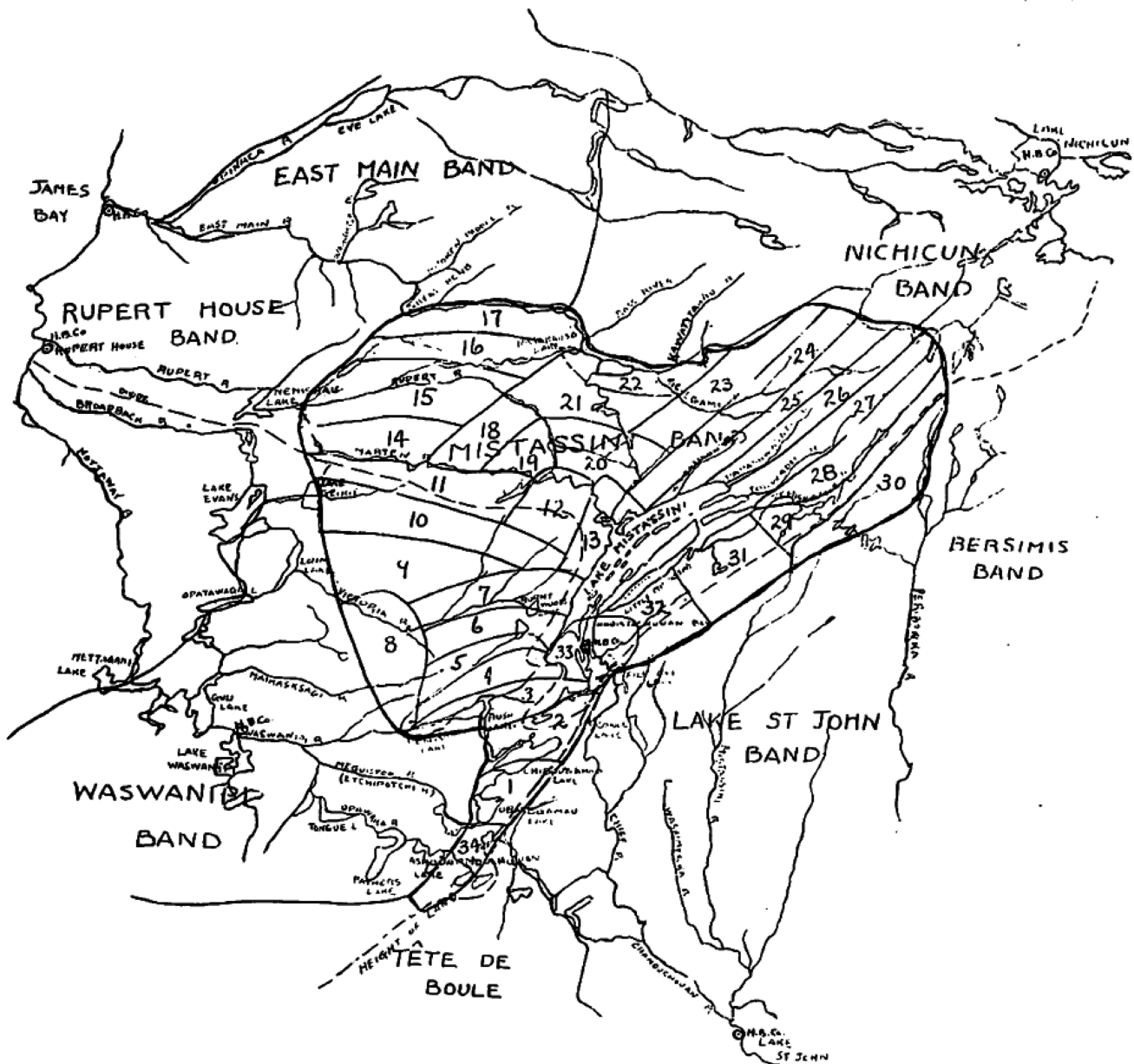


Figure 2: Mistissini hunting territories (Speck 1923, xi)

that emptied into the Saint Lawrence River or Gulf, Hudson or James bays, or Davis or Hamilton inlets. The summer season was one for festive gatherings and, judging from the assemblages that came together in later times at summer mission stations, also a time for courtship.

While there could be some flexibility of movement of individuals between bands from year to year, the regular seasonal convergence of a community of hunting families on a summer gathering place anchored distinctive band identities, which tended to be defined territorially by larger watersheds that facilitated the summer

gatherings, which were followed by dispersals to winter hunting grounds.

Lips (1947, 399) writes: “The territory of the band is rather well defined and its borders are respected by the neighboring bands.”<sup>5</sup> The band’s territory is not simply the sum of its family territories – band-level territorial identity is transcendent. The chief of a band would, as a last resort, mediate conflicts over trespass where parties to the conflict were unable to resolve matters, and “in the case of a family dying out, the chief saw to the distribution of the hunting-ground among the remaining families of the band” (Lips 1947, 403). Abandonment of a

family territory “for any long period” (1947, 435) could also result in its occupation by other members of the band.<sup>6</sup> Lips (1947, 428) further notes the prerogatives of the band in regard to lands in border areas with neighbouring bands:

In the regions near the boundaries between the hunting lands of two local groups the legal practice seems especially to imply that the local group, rather than the family, was the original holder of the hunting rights. Settlement of disputes concerning hunting rights in such lands is reached not by the individual family but rather by the band as a whole through its representative, the chief.

Lips’s view, however, was at variance with that of Davidson, who thought that the system among the Grand lac Victoria Algonquins did not differ from that of “other northern bands” (1926, 82), including the Waswanipi Cree band, where he worked and which bordered both the Grand lac and Mistassini bands. Davidson (1926, 80) wrote:

The band, itself, it must be emphasized, is not a land owning unit and therefore its limits cannot be indicated as being permanently fixed, for they may fluctuate slightly from time to time, according to the ownership of the various districts and the affiliation of the owners, as they succeed each other, with one band or another. I do not wish to imply that there is a promiscuous changing of affiliation of either members or territories from one band to another. This does not take place. With very few exceptions a man, who is the land-owning member, always remains a member of the band in which he is born. A woman, on the other hand, may marry out of her band and subsequently take up residence with and become affiliated with the band of her husband. Such a union, unless influenced by other factors, would not affect the territorial distribution. Ownership of land among these people is such a fundamental and well established principle that the band may not even influence the disposition which the owner may wish to make with his property.

In this passage, Davidson appears to have in mind a notion of ownership analogous to private property in European and Euro-settler states,<sup>7</sup> yet he does consider the implications of this comparison for an acephalous society. Such societies are integrated by shared laws and customs exerting the authority and conferring the legitimacy that Europeans associate with a “sovereign.” In systems of common property, institutions of customary tenure may afford strong rights to persons, families, lineages, clans, et cetera, but these rights depend on

the institutional life of the larger society, not the individual kin group (Ostrom 1990). In reality, as we have seen, there are definite limits, imposed by the larger collectivity, on “the disposition which the owner may wish to make with his property” (Davidson 1926, 80, above).

Rogers’s (1963, 24) view resembles that of Davidson, though it is not entirely consistent with aspects of his own findings:

The band was not, nor is it today, the land-owning unit. This was the prerogative of the hunting group or nuclear family. The hunting lands of all individuals who considered themselves Mistassini formed a continuous block of territory which can be said to represent the territorial extent of the band. The territorial limits were not stable as a family on the border might join a neighbouring band and become identified with it.

The first two sentences of this quotation leave no conceptual space for the interplay between the rights of the band and those of the family. For related reasons, it is also problematic to suggest that when a family “on the border” joins a neighbouring band, the family territory necessarily changes band affiliation.<sup>8</sup> Existing extended family relations and reciprocal obligations guarantee that other band members will have something to say in the matter.

Rogers (1963, 26) states too categorically: “There is no concrete evidence that the band as a unit ever entered into any disputes regarding the boundaries of individual hunting group territories. The hunting groups involved appear to have been the ones who arranged a settlement.” Yet in a footnote he acknowledges Lips’s (1947, 428) observation, cited earlier, that “settlement of disputes concerning hunting rights [in areas near the boundaries of the disputing families’ territories] is reached not by the individual family but rather by the band as a whole through its representative, the chief.”

Information from both Lips and Rogers indicates that members of the band had rights beyond their own family territories. Rogers (1963, 70) writes that “the hunting group does not have exclusive rights to all the resources of the territory.” Rogers distinguishes between goods “traded to the whites” as “generally considered the property of the hunting group,” versus resources for personal and familial use, which are “free goods,” including “fishing grounds, berry patches, firewood, boughs, waterfowl, and wood for the manufacture of various items.” Rogers says he obtained little information in regard to mammals, but his few instances of information lead him to believe that “hare, moose, perhaps caribou, and muskrat are communal property.”

Lips (1947, 429), too, notes certain rights on any particular family territory that are enjoyed by the larger collectivity:

Equal fishing rights are granted on any hunting-ground to all, even to strangers, since the Indians assume that a man will fish only when he is in need of food . . . It is permissible, similarly, to pick berries on any hunting-ground without securing the owner's consent. If the occasional berry-picker, fisherman or hunter happens to encounter the owner of the hunting-ground, it is as customary for him to share with the owner the meat, fish, or berries, as it is for the owner to invite the stranger to a meal.

Further,

any stranger passing the territory may do sufficient trapping and hunting to provide for his immediate needs without, however, having the right to gather furs or meat for the purpose of selling them. The traveling Indian may catch as many animals as he needs to appease his hunger while within the territory. Should the intruder into the hunting-ground be near starvation he may even kill a beaver – the most treasured of animals – the shooting or capture of which is otherwise strictly reserved to those entitled exclusively to hunt on the grounds in question. (1947, 432)

The qualified and shared rights of family territory owners seem to contradict Rogers's refutation of the band as an exclusive "land-owning unit." If rights to key resources and activities are vested in a larger social body, it would seem that this body is the band. And, as argued earlier, there must logically be a collectivity beyond the local group to validate and reproduce even the special territorial rights of families.

### **Eeyou Hunting Law Today**

Contemporary restatement of territorial rules and practices is reflected in a document titled *Eeyou Indoh-Hoh Weeshou-Wehwun (Traditional Eeyou Hunting Law)*, prepared by the Cree Trappers Association (CTA; 2009) on the basis of consultation with hunting territory leaders and other CTA members, together with legal and anthropological input. The aim was to set forth in writing broadly agreed tenets of the hunting territory system as it operates today, not as an instrument for codified regulation but as a means of contributing to a process of communication and education that would support the continuity and effectiveness of the customary system. The document is explicit about its traditional foundations as well as the accommodation of contemporary circumstances (2009, 21–22):

10.5 Traditionally, Indoh-hoh Eeyou [Cree hunters] had to travel long distances to reach their Indoh-hoh Istche [hunting ground] which required in some cases numerous days of travel and the crossing of other Indoh-hoh Istchee [hunting grounds] and, therefore, the following practices were followed:

- a) an Eeyou [Cree person] could without prior authorization fish or hunt for game including big game, but could not place traps while travelling through an Indoh-hoh Istchee to reach his own Indoh-hoh Istchee or one to which he had been invited, but only to the extent necessary to meet his immediate needs for food;
- b) if expecting to hunt and fish while travelling through another Indoh-hoh Istchee an Eeyou had to notify the Kaanoowapmaakin<sup>9</sup> [hunting territory steward/leader] of that Indoh-hoh Istchee that he intended to do so and what his activities would be;
- c) an Eeyou who took game while travelling through another Indoh-hoh Istchee had to take steps to notify the Kaanoowapmaakin of that Indoh-hoh Istchee of the number and species of animal that he had taken and, if possible, to share with him the meat obtained in accordance with Eeyou tradition and, if any fur-bearing animals were killed for food, the meat could be consumed but the fur had to be given to the Kaanoowapmaakin.

10.6 The traditional practices respecting Indoh-hoh activities while travelling through Eeyou Istchee continue to apply but have evolved over the years, mainly as a result of the development of a road infrastructure in Eeyou Istchee and improvements in transportation. Currently, the following additional rules apply to the hunting of big game:

- a) an Eeyou who intends to hunt big game along the side of a road shall inform the Kaanoowapmaakin of the Indoh-hoh Istchee in which he intends to hunt of his intentions;
- b) an Eeyou who kills big game along the side of a road shall take steps to notify the Kaanoowapmaakin of the Indoh-hoh Istchee concerned of the number and species of animals that he has taken;
- c) if the Eeyou does not know on whose Indoh-hoh Istchee the animal was killed, he shall contact the local Cree Trappers Committee to obtain the name of the Kaanoowapmaakin;
- d) in all cases where possible, the Eeyou shall offer to share the meat from the animal killed with the Kaanoowapmaakin; and
- e) in all cases, the Eeyou shall ensure that the meat taken will not spoil and be wasted and that no animal remains will be left along the road.

In my fieldwork from 1976 to the present at Wemindji (whose eastern boundary adjoins Mistassini



territory), I learned of similar rules, including the proviso that the traveller who killed a beaver on another family's territory was and is obliged to return the pelt to the hunting territory leader, and where practical, meat from large kills would be shared with the customary owners of the territory. In the days of travel by canoe and snowshoe, the normal seasonal round of travel between fur trade posts and one's own family territory required travel through the territories of others. However, visitation of someone else's territory for specific purposes of killing fur animals or, without permission, large game such as moose, was and is not legitimate. The rights of territory owners are not, however, absolute or unconditional. They depend on owners maintaining reasonably regular occupation of their grounds. If they are perennially absent, and animal populations are underutilised, other hunters do come in, more readily for big game than for fur animals. In such instances, the acknowledged rights of the owners to re-occupy their historical territories persist for quite some time, and resumption of active surveillance of a territory is sufficient to cause non-owners to desist.

The most poignant example of something approaching "exclusive" ownership is fur rather than meat. As Tanner (1979, 183), however, suggests,

the significance of this distinction between types of resources is rather limited, and its purpose must be mainly ideological, since it has little practical everyday relevance. This is because the normal process of production involves the use of multi-family hunting groups, which exploit limited areas during the course of the winter, and to survive these groups must have access to both of the above kinds of resources. Thus, if a group was not able to exploit those resources used for trade in a particular area it would not be able to pass the winter there at all. At most, the distinction would allow the group to make use of a few subsistence resources on a journey passing through such a territory to which it had no right to the market resources. Thus, despite the above distinction in rights, the hunting group in practice must virtually always enjoy exclusive use of all resources. But, at the same time, the ideology of hospitality, and the symbolically significant idea that game meat, as opposed to fur, is always subject to free distribution, is maintained.

Nowadays, with greater ease of communication, "as a general rule, no Eeyou [Cree person] may harvest in any *Indoh-hoh Istchee* [hunting territory] without first having been invited to do so or having first obtained the authorization of the *Kaanoowapmaakin* [hunting territory steward/leader] to do so, whether on a regular or

... occasional basis. However, the *Kaanoowapmaakin* may not withhold authorization unreasonably" (CTA 2009, 18) and may not require payment for granting access. Notwithstanding the general rule,

an Eeyou does not need permission from the *Kaanoowapmaakin* to hunt for small game or fish in quantities reasonably necessary for his personal and immediate food needs, where and when such game and fish are plentiful. However, wherever possible, any person hunting for small game or fishing must acknowledge the authority of the *Kaanoowapmaakin* of the *Indoh-hoh Istchee* in which he intends to hunt or fish by notifying him of his intended activities and must respect any direction regarding areas of the *Indoh-hoh Istchee* that are, for *Naacatawaayatacano*/conservation purposes, closed to small game hunting or fishing. (CTA 2009, 20)

In short, generosity is expected of family territory leaders in authorising any Eeyou's request to hunt big game for food or subsistence purposes, subject to restrictions or bans on harvesting determined by stewards for conservation and safety reasons, and stewards may decide what level of harvesting is consistent with subsistence purposes. To gather fruits, berries and other plant materials, to conduct harvesting education activities with Eeyou youth, to engage in ceremonial and spiritual activities, to camp overnight or to cut wood, the authorisation of the hunting territory steward is not required; however, "wherever possible, any person intending to conduct such activities must acknowledge the authority of the *Kaanoowapmaakin* by notifying him of his intended activities. This right of access does not include the right to build camps, cabins or other structures" (CTA 2009, 22).

Lapses in the generosity of territory owners do, of course, sometimes occur, and these can have quite negative consequences for the territory leader's ability to regulate the activities of hunters on the family territory. In the course of my fieldwork at Wemindji, for example, a story was told about a territory leader who a few years earlier had advised hunters to stay away from a large bay where migrating geese were staging. Hunters had complied, as is customary, in the expectation that when the time was right to harvest these flocks, they would be invited to participate. However, the territory leader then selfishly conducted a drive of these flocks and took large harvests for himself and immediate family members without notifying others. This action led to disorganisation of the hunt on that territory, as hunters afterward ignored the wishes of the leader, hunting individualistically as they chose. The management of

thousands of geese on a territory requires coordinated rotational use of space and hunting methods, in order not to frighten flocks away. Selfish behaviour therefore led to progressively poorer hunting on that territory compared to better managed ones, in the long run injuring the interests of both the family owners and the larger community.

The expectation of generosity on the part of the territory leader has precedent in historical conditions and traditional practices. Survival in the subarctic, given the typically low-density spatial distribution of resources, demanded during the winter months the dispersal of relatively small hunting groups over the landscape (exceptions to this were bountiful summer fishing places, spring and fall migrations concentrating waterfowl along the coast of James Bay, or large mid-winter aggregates of migratory caribou, able to sustain larger Cree hunting groups in some seasons and places). Yet the hunt could fail, and the simultaneous challenge was to reduce the risk of starvation by keeping in touch with other groups scattered over a vast landscape, in cases where a more fortunate group was in the position to share a kill of large game, such as a black bear or moose, with neighbours. Along key travel routes where the trails of hunters from different camps might intersect, or that could be visited in times of bounty or emergency, hunters would leave signs of hunting success or failure to which people in other groups could appropriately respond. Certain camp elders and leaders were also renowned for their ability to sense or to dream about the circumstances of a neighbouring group that might suffer starvation and require help.

The rules and principles stated in *Eeyou Hunting Law* – that the prerogatives of the family holding a hunting territory, and of their hunting territory leader/steward, are conditional upon and balanced with those of the band as a whole – are not new. They are continuous with earlier statements of customary law, such as those of Lips and Burgesse cited in the previous section.

An important restriction on the rights of the family with respect to its territory is that underutilisation can lead to the territory being taken over by other members of the larger collectivity. According to Tanner (1979, 202), cited above, an “abandoned territory can be taken over by others, usually by neighbouring owners who may expand their activities into the area,” echoing earlier and similar observations by Burgesse (1945, 5) of practice among Lac-Saint-Jean Montagnais. Hence, measures associated with conservation, along with active use, validate in the eyes of the larger collective the claim to rights of family heads and families. Indeed, Burgesse

(1945, 9) takes this condition of active use of a family territory as a possible indicator of primary ownership at the band level.

I am not aware in my decades of work in Eeyou Istchee of instances of a territory being simply “abandoned,” although portions of certain territories have sometimes been left unused for periods of several years, as patterns of land use have come to emphasise road-accessible areas. Particular family lines do sometimes die out, but in instances where a territory leader is without heirs, there is a larger network of cousins and in-laws, or friends who have hunted with the leader, from whom a successor can be chosen. In such cases it is not uncommon for disputes to arise among competing claimants to territory leadership, especially if the wishes of an outgoing leader have not been made clear or are disputed by others who assert rights in the territory. These disputes can sometimes lead to a vacuum or a stalemate in family territory leadership, and in such cases authorities at the level of the community council and/or the CTA intervene to confirm a territory leader. This decision, in turn, reinforces the territorial rights of the extended family to which that leader belongs.

## Territories and Contemporary Industrial Resource Extraction

The rights and interests of the larger collectivity in its territory have implications for contemporary forms of resource extractive development:

Each Eeyou First Nation has a collective interest in the Indoh-hoh Istchee of the Nation. Therefore, any project or activity, including pre-development or exploratory activity, situated on the Indoh-hoh Istchee of an Eeyou First Nation or that might effect [sic] it is subject to approval in a manner which involves the Eeyou First Nation Council and the community. (CTA 2009, 40)

Formulations of the collective interest of whole communities, and of the Cree Nation of Eeyou Istchee, have had to adjust to modern realities of resource extractive industrial development.<sup>10</sup> The *kaanoowapmaakinch* remain

the stewards, guardians and custodians of the land for the benefit of the Eeyou Nation and one of the roles of the Kaanoowapmaakin is to monitor access to the Indoh-hoh Istchee. Therefore, any project or activity, including pre-development or exploratory activity, situated on an Indoh-hoh Istchee or that might affect it, is subject to approval in a manner which also takes into account the Eeyou system of

Indoh-hoh Istchee and which involves the Kaanoowapmaakin of the affected Indoh-hoh Istchee. (CTA 2009, 40)

For example, mining exploration companies are routinely advised by Cree community councils and by the Cree Mineral Exploration Board to notify family hunting territory leaders of activities planned for their territories. The stakes for family territory owners and communities are twofold. First, there is the environmental impact on family and community-land-based lifeways and livelihoods, and second, the distribution of benefits at various levels – family, community and regional Cree Nation – from resource extraction. Decisions whether to accept or oppose a mine and, if to accept it, then the negotiation of an agreement with the mining company, involve representation from each of these levels. In recent years, a mine development near the territorial limits between two communities sparked controversy between the owners of the two adjacent family territories most affected, one in each community territory. These owners were from two branches of the same extended family, and anticipated benefits from allowing the mine to go forward were at stake. The two community councils stepped in to mediate, and when it was resolved which community's territory the actual mining operations were situated on, that community council along with the regional Grand Council and the primary land users led the negotiation of an agreement with the mining company.

When Cree Nation Government representatives consult Cree communities in matters of conservation and land use planning, community councils and local committees of the Cree Trappers Association (in which hunting territory leaders are front-line members) are consulted simultaneously. Similarly, family hunting territory leaders are typically strongly represented in community assemblies called to consider issues in conservation and development policy and planning.

Notwithstanding the importance of the *kaanoowapmaakin* in representing the family and its territory, his or her consent to a project or activity affecting that family territory “does not constitute consent for the Eeyou First Nation concerned” (CTA 2009, 40). The *kaanoowapmaakin* “keeps the interests of all members of the community in mind and consults them concerning their wishes regarding the proposed use of the land or resources” (2009, 40) and is expected to inform the community chief and council when a proponent has approached the *kaanoowapmaakin* for direct approval of a project or activity. This perspective is both consistent

with customary principles and emergent from experience in recent decades with resource extractive development. It has proven necessary to protect against deals made with outsiders that would benefit only certain Cree families or individuals, that could be opportunistically inequitable and that would fragment collective rights in the land.

Under these circumstances, and with resource extractive industries putting greater demands on Cree lands in general, the defence of family hunting territories, as well as larger community interests in them, has become ever more urgent. People occupying the role of hunting territory leader reflect the status of hunting as an important activity in a larger mixed economy and in the reproduction of Cree social relations and identity. We are now witnessing the inheritance of the role by a generation who are largely wage employed and well schooled in mainstream institutions, but at the same time include many devoted hunters who spend substantial portions of their time on the land and who are looked to by their extended families to ensure continued access to a healthy and productive family territory.

Under contemporary conditions of pressure on land, hunting territory leaders and their families have faced new challenges in maintaining and regulating access to resources. Industrial resource extractive development has reduced the productivity of many family territories, competition from non-Cree recreational hunters and fishers has increased dramatically, and road infrastructure associated with hydroelectricity, forestry and mining has concentrated Cree and non-Cree access in certain areas. It has become more difficult for many hunting territory leaders to accommodate guests to hunt in choice areas or for choice species.

Given these challenges, the importance of the territory leader's oversight, for conservation reasons, is undiminished. These leaders, and other active land users, are the eyes and ears of the land. In parallel, there is broad consensus in Cree society about the urgency of protecting the land and land-based livelihood; the conservation practices of families on their territories must be supported with steps taken by representatives of the larger collectivity. Community and regional Cree leadership feel political pressure and responsibility to weigh carefully any development that could further erode the availability and quality of hunting and hunting habitats. In collaboration with community-level councils and Cree Trappers Association committees, the Cree Nation Government (2014) has embarked on land use research and

planning processes, within a comprehensive *Cree Regional Conservation Strategy*. We are seeing the institutional elaboration of territorial governance at community and regional political scales in which family hunting territories remain vital fixtures.

An instructive case for considering the dynamics between family territory, community and regional Cree Nation levels in conservation practice is industrial forestry. Feit (1986, 60–61) describes the dilemmas posed by forestry operations as they made their way northward into Waswanipi hunting territories:<sup>11</sup>

Extensive clear-cutting has been going on with increasing intensity since the 1960's, and without consideration for the Waswanipi hunting territories and systems of wildlife management. Companies, and often governments, simply argue that a regenerated forest is good for wildlife, that clear-cutting is efficient, and that adequate protection for wildlife can be made by leaving uncut areas of immediate moose yarding and shoreline habitat; a total uncut area which represents a few percent of the total cut-over area. The result is that nearly whole hunting territories are being cut-over ... Waswanipi hunters find these forestry practices devastating for their own use of wildlife ...

Stewards say that they conserve and respect wildlife not only for their own benefit, but to be able to pass the land on to the next generation of hunters. This involves not only passing on the territory but educating the next generation, passing onto them the knowledge of the history of the land and of the game, so that they can continue to manage the wildlife. This knowledge is not learned in the abstract, but concretely by learning how to hunt a particular territory and particular game populations. This is how the Waswanipi reproduce the system of management, and it is this link in the social transmission of knowledge and skill from one generation to another which is broken when a trapline is cut over and must be abandoned for several years.

In the 1990s, provincial government policies calling for public participation in forest management planning motivated forest companies to enter into discussion with Cree land users. Feit and Beaulieu (2001) have analysed the negative consequences of forest companies concluding contractual agreements directly with family hunting territory leaders at the community of Waswanipi in the decade before the signing of the New Relationship Agreement (aka "Paix des Braves"; 2002). These agreements specified payments to be made to the leaders whose lands were cut in a given year. "The companies' motivation for making such payments,"

according to Feit and Beaulieu (2001, 140), "appears to be that it enables them to claim that they consulted with Cree hunters. It is also possible that they intend to say that they had received the consent of stewards to cut the forests on their hunting territories (given that these stewards accepted payments specified in the agreements)."

Such contractual payments, appealing to the rights and interests of particular hunting territory leaders without consideration of the rights and interests of the larger community, threatened to weaken and destabilise the latter:

The agreements generated diverse responses in Cree society and *inevitably caused divisiveness*. Many Cree fear the agreements and payments would legally compromise Cree land rights in general – *especially the collective aspects of Cree systems of tenure*. Many hunting stewards think the agreements indicate that the forest companies have recognized Cree authority, and, therefore, they support these documents as being at least a partial recognition of Cree rights. They also appreciate the needed cash. Some Cree re-asserted their own claims of stewardship; some sought recognition for having arranged the payments; and some contested the very unequal distribution of payments within families and within the community. (Feit and Beaulieu 2001, 140, emphases added)

Feit and Beaulieu go on to describe the efforts made by Waswanipi community leadership to work with stewards to develop a common vision and unified approach to agreements with forest companies. The First Nation administration hired staff to work closely with stewards to negotiate and achieve fulfillment of contractual obligations with respect to improved forestry practices and benefits. Most stewards, realising that First Nation involvement strengthens their own position, collaborated, while companies generally accepted to deal with the First Nation, recognising its ability to orchestrate collective action against them.

However, forestry company proposals for protecting habitat and Cree hunting were limited in scope and "clearly of limited utility" (Feit and Beaulieu 2001, 143). Community-level leadership at Waswanipi and neighbouring Cree communities affected by forestry, together with support from the Grand Council of the Crees (Eeyou Istchee), was needed to negotiate new forest co-management standards and procedures as part of the New Relationship Agreement. These arrangements include formalised consultation and decision making at three levels: individual hunting territories as represented by family hunting territory leaders, joint working

groups in each community, and the regional Cree-Québec Forestry Board (Scott 2005, 145). Hence, the resolution reached in the New Relationship Agreement reflects the principled imperative of dealing with the rights and interests of holders of family territories in the context of larger collective rights and interests.

There is no substitute for the knowledge and experience with specific hunting territories of family territory leaders and other senior hunters. No one at the level of Cree community and regional leadership would imagine that issues regarding resource extractive development could be well decided without input from these leaders and their families. Careful and informed consideration by senior land users and stewards of the in situ specifics of resource extractive projects and their potential impacts is therefore essential, and resource developers are routinely encouraged by community leaders to communicate with family territory leaders early in the decision-making process. The insights and opinions of these senior land users and stewards and their families reflect an important interest to be taken into account, as well as a large part of the ground-level knowledge needed, in community- and nation-level decision making. However, family territory leaders and their families do not make such decisions independent of band- and regional-level governance, representing collective interests that both transcend and reinforce those of particular families.

## Conclusions

The institution of the family hunting territory has featured strongly in the anthropology of the Algonquian subarctic, to the point that it has sometimes been regarded as the primary if not sole institution of land tenure. Yet such a view, I argue, neglects the ubiquitous relations of exchange and co-dependence of neighbouring family groups on the land, in particular those relations that comprise the collective entitlement of band communities, or nationally federated band communities. Strong assertions of exclusive family property also neglect fundamental cultural tenets; as elders have often stated, since we are mortal, only the Creator can truly own the land. It is truer and more respectful from this perspective to say “we belong to the land” than to say “the land belongs to us.” Upon death, human bodies go back to the land, and as new life emerges from the land, a recycling of ancestral presence reinforces a timeless connection and collective identity in the land. By the same token, Crees collectively “belong to” Eeyou Istchee in a way that non-Crees do not, and this translates into prior rights of ownership and governance vis-à-vis outsiders.

To be sure, the reproduction and continuity of Cree society relies in several respects on the family hunting territory system, an indispensable institution for the contemporary mixed economy, where hunting, fishing, trapping and gathering are major sources of high-quality, relatively low-cost food, nutrition and medicine. These activities are foundational to the cultural ideal of *miiyuupimaatisiun* (Adelson 2000), living well and being healthy within the larger community of life comprising the land. Family territories, furthermore, are the social matrix within which Cree knowledge of their environment endures – this knowledge can be transmitted only from generation to generation and adapts to changing circumstances through participation in the community of life on the land. Cree land users, and especially those charged with responsibility as family territory leaders, are the eyes and ears of the land, vital to conservation throughout a range of Aboriginal, historical and contemporary circumstances. In the culturalised landscape of the family territory, stories are connected to places, and Cree social history is to a significant extent configured in the experience of families on their territories.

At the same time, Cree history is made up of stories of sharing and cooperation in larger collectivities. This was the case for the pre-contact summer gatherings that were focal points for regional bands and held at resource-rich fishing areas where ceremonies, marriages, land allocation discussions and general socialising could be supported for a period of several weeks. It was the case during the traditional fur trade, when such locations often became strategic sites for fur trading posts, where the members of regional bands added commercial trade to their seasonal rendezvous. And it has been the case in the modern period, when many trading posts became sites for permanent villages. Although these historical shifts were accompanied by a certain amount of merging, fission and relocation of summer residential band groupings, rooted and relatively enduring band identities are visible throughout, each with their collective institutions of common property. These institutional arrangements, as a matter of ethnographic and historical fact, and indeed of socio-ecological necessity, have always involved the nesting of family territories within larger band territories. The common rights and interests of the band community are well served by the institution of family territories, and at the same time the collective common interest, expressed as a community right, qualifies all members' rights in their respective family territories. Any issue affecting the band community's collective rights in its territory cannot be decided by the owners of a family territory alone. The knowledge and opinions of

the latter are respectfully taken into account in decision making, but decisions are a matter of negotiation and consensus building between the collectivity of all families comprising the band.

Regional bands have themselves never been corporate isolates, with many strands of relationship connecting them across permeable social and territorial boundaries. Collective undertakings have always involved the association of Crees across bands, including, for example, long-distance trade that took the form of canoe brigades during the historical fur trade, military alliances, and frequent intermarriage and visitation between bands – all of which generated a social universe extending well beyond the home band. Not infrequently, members of any given family or band visited and settled in far-flung locations throughout the Quebec–Labrador Peninsula and westward into present-day Ontario, in social networks that included Crees together with neighbouring Algonquian bands.

The consolidation of the Grand Council of the Crees as a regional political organisation in the 1970s and a sense of collective territory in Eeyou Istchee are relatively new phenomena, but were prefigured in shared cosmology and collective experience and an extensive social network with deep historical roots, able to respond to modern forces, entanglements and opportunities through new institutions of regional solidarity. The constituent bands of the regional Cree Nation of Eeyou Istchee have declared a common interest in their contiguous territories, for which they have delegated substantial authority to regional entities, including the Grand Council and the Cree Trappers Association, among several others. Today, we are witness to an evolving balance and distribution of collective rights and decision making at family, band and regional territorial levels.

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## Notes

- 1 On the basis of archival evidence, Morantz (1986, 87) concludes: “Practices pivotal to the functioning of family hunting territories [for example, conservation, rules against trespass] were already in play some 250 years ago. That is the earliest period for which we have records.”
- 2 John M. Cooper was a priest and professional anthropologist with a position at the Catholic University of America in Washington, DC. A prolific ethnographer, he worked with a number of Indigenous peoples in northern North America, including the James Bay Crees (Cooper 1932, 1938). A contemporary and close colleague of anthropologist

Frank Speck, whose work on hunting territories at Mistissini is discussed in this article, Cooper was convinced by his own work on the family hunting territory system at communities to the south and east of Mistissini that government support for the Indigenous system was required to stem the invasion of mostly non-Indigenous commercial trappers in the 1920s and 1930s and the attendant game shortage and starvation that befell some coastal Cree communities.

- 3 Burgesse (1945, 10) gives an example of such dynamics: “The force of public opinion has been sufficient, in the past, to prevent any serious trespassing on the part of other hunters. The very fact that such a trespass would be looked upon with disapproval by the rest of the tribe, and that the culprit would probably not care to have other hunters commit a trespass on his own lands, seems to have been a sufficiently strong deterrent.”
- 4 For example, in the 1960s “the present-day Mistassini band” (Rogers 1963, 24) was an amalgamation of several bands: “The five groups at Lake Mistassini (Nichicun, Neoskweskau, Nemiskau, Chibougamau, and Mistassini) are considered bands although, as noted previously, they may be in a state of fusion.” Since the signature of the James Bay and Northern Quebec Agreement in 1975, two of these bands, Nemiskau and Chibougamau, have established separate villages on their traditional territories. Burgesse (1945, 1) writes of similar amalgamation among the Lac-St-Jean Montagnais: “Nowadays ... the Indians of this region are a conglomeration of the original Porcupines and a number of neighbouring bands, such as the Chicoutimi (ciGuDimi) and the Ashuapmouchuan (acuaBmucuan), together with a few Mistassini (micDasini), Bersimis (BeDsiamite), Tetes-de-Boule, and a handful of Abénaquis.”
- 5 Lips (1947, 399) adds: “However, it is considered permissible to trespass the border line and to pass through the territory of a foreign band, without any legal or bodily harmful consequences.” Also, in the case of neighbouring bands, “many circumstances indicate the existence of a neutral hunting-ground on which members of both bands are entitled to hunt” (1947, 428), and joint hunts by members of neighbouring bands “seem to have led further to an interchange of certain hunting privileges between the bands: the right to hunt under certain circumstances on the territory of the neighboring bands” (1947, 429).
- 6 In the contemporary context, the Cree Trappers Association (2009, 16) deems that a hunting territory “should not be left unused (unharvested) for a period of more than three (3) consecutive years,” after which the territory may be made available by community leadership to other families of the community.
- 7 Feit (1991; 2005, 281) notes the tendency of some professional ethnographers and other observers to view Algonkian family territories through the lens of private property, a tendency that has been corrected in more recent ethnography.
- 8 According to a contemporary statement of hunting law (Cree Trappers Association 2009, 30), a band retains its rights in a family territory, even if the family territory leader/steward relocates to another community: “When a Kaanoowapmaakin [the CTA’s choice of terminology for

the family territory steward/leader] moves to another Eeyou community he shall retain title as the Kaanoowapmaakin for the Indoh-hoh Istchee as long as he carries out his responsibilities as Kaanoowapmaakin. However, the Indoh-hoh Istchee remains part of the Indoh-hoh Istchee of the Eeyou community with which it has historically been registered.”

- 9 This term is a synonym for *nituuuuu uuchimaau* (hunting leader; also rendered *ndoh-hoh oujimaou*), denoting the same leader of a family territory, but as a choice of words, *kaanoowapmaakin* expresses more directly the role and responsibility for stewardship of the family territory.
- 10 It should be noted that formulations of Cree collective rights and interests had previously adjusted, in the mid-twentieth century, to the organisation by provincial and federal government authorities of band and family territories into beaver preserves and registered traplines. This episode involved a partial and official usurpation by state bureaucratic authority of roles that band leadership and community processes formerly served, and new rigidities at both band and family territory levels. With the signature of the James Bay and Northern Quebec Agreement in 1975, Cree hunting territory stewards and band administrations formally resumed authority for the family territory/trapline system, now also supported by the regional Cree Trappers Association, as well as the regional Grand Council of the Crees' capacity to defend rights in family territories, for which significant recognition had been negotiated under the agreement.
- 11 See also Feit and Beaulieu (2001) for a thoroughgoing analysis of negative consequences of industrial forestry for moose populations, Cree harvesting and the ability of Cree hunters to manage their territories.

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