Afterword

Two World Views of Eeyou Family Hunting Territories

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Abstract: The article looks at the origins and the importance for Quebec Eeyou hunters of the recognition of family hunting territories in the Paix des Braves. The testimonies of Eeyou hunters are a rare victory for Indigenous knowledge. In both the 1973 injunction brought by the Cree and Inuit against the Quebec government and the 1999 Mario Lord case, hunters' evidence resulted in favourable judgments for the Eeyou and for the recognition of family hunting territories. Even though both were overturned on appeal, I argue that these judgments led to two out-of court settlements, establishing and solidifying gains for Eeyou hunting and land management rights. These rights not only benefit each Eeyou First Nation collectively, but they also provide for the rights of certain individuals and families. Since the territories cover most of the traditional homeland, they represent renewed Indigenous land rights in lands over which Aboriginal title had previously been extinguished, and may represent a precedent for other Indigenous groups that also have family hunting territories.

Keywords: family hunting territories, Paix des Braves, Indigenous rights, Quebec Eeyou, James Bay Agreement

Résumé : L'article porte sur les origines de la reconnaissance des territoires de chasse familiaux lors de la Paix des Braves et sur l'importance de cette reconnaissance pour les chasseurs Eeyou du Québec. La prise en compte des témoignages des chasseurs Eeyou a constitué une rare victoire pour le savoir autochtone. Dans l'injonction de 1973 intentée par les Cris et les Inuits contre le gouvernement du Québec, ainsi que dans le dossier Mario Lord de 1999, les preuves avancées par les chasseurs ont donné lieu à des jugements favorables aux Eeyou et à la reconnaissance des territoires de chasse familiaux. Bien que les deux jugements aient été annulés en appel, l'auteur affirme qu'ils ont été suivis de deux règlements extrajudiciaires qui ont renforcé les droits de chasse et de gestion du territoire Eeyou. Ces règlements extrajudiciaires ont non seulement profité collectivement à toutes les Premières nations Eeyou, mais ont aussi garanti les droits de certains individus et familles. Dans la mesure où les terres concernées couvraient la majeure partie du territoire traditionnel, les règlements ont permis de réactiver des droits fonciers là où les titres autochtones étaient tombés en désuétude. Ils ont ainsi pu constituer un précédent pour d'autres groupes autochtones dotés de territoires de chasse familiaux.

Mots-clés : territoires de chasse familiaux, Paix des Braves, droits autochtones, Eeyou du Québec, Convention de la baie James

Introduction

One simmering issue implicit in many of the articles in this issue is whether the 2002 Agreement Respecting a New Relationship Between the Cree Nation and the Government of Quebec, aka the Paix des Braves (hereafter PDB), represents a step in the direction of de-colonisation and an enhancement of Eeyou autonomy and self-determination, particularly with respect to the changing role of the family hunting territories (*Indoh-hoh Istchee*). Or does it entail a deepening dependency of the Eeyou on the institutions and forms of thought of neoliberal mainstream Canadian society, forms that are inimical to traditional Eeyou values and traditions? If "the FHT [family hunting territories] [have been] a place of resistance and affirmation of Cree cultural identity" (Chaplier and Scott, this issue), how successful has this resistance and affirmation been? Can this recognition be a precedent for other First Nations living to the south and west of the Quebec Eeyou who have a culturally equivalent system of family hunting territories?

I approach these questions with the awareness that two world views are at play in my attempt at understanding family hunting territories – one, *Indoh-hoh Istchee* (family hunting territory), that in which land is seen and acted on by Eeyou hunters, especially *Eeyou Indoh-hoh Oujemaaou* (hunting territory leaders), and the other, "hunting territories," or "traplines," in which land is seen and acted on by non-Eeyou game managers, miners, foresters, et cetera. Moreover, neither of these perspectives have been static over time. In parallel with the paper by Morantz (this issue), it is useful to underline a few historical landmarks in how recognition came about, and how hunting territories fit within the larger framework of the recognition of Indigenous land rights in Canada. The term "recognition" shows how we can be entrapped by terminology. The term assumes that land rights in Canada are a commodity that needs to be formally acknowledged within the framework of land

titles and state sovereignty. By contrast, for many Indigenous groups land is not owned, or is owned by the animals, and relations with animals are at the core of the hunting group leader's relationship with the land and the animals. And the Eeyou would prefer that *Indoh-hoh Oujemaaou* be left to manage their *Indoh-hoh Istchee*.

In my opinion, the limited recognition by the province of Quebec of the Eeyou family hunting system was a major achievement for the Eeyou and their legal team. This recognition came about in stages, gradually, and its shape has become fully evident only in the long run. Most significant for me is that both the James Bay and Northern Quebec Agreement (JBNQA) and the PDB, and the state recognition in these agreements of the territories, stand as rare examples in which Indigenous knowledge won out in a direct confrontation with the powerful interests of both government and industry, thanks to the Eeyou hunters' testimony in two court cases.

The traditional Eeyou spiritual relationship with animals and the ecology of the James Bay region of Quebec together provide very suitable conditions for family hunting territories, conditions that predate European contact. Like some areas to the west and south of Eeyou lands referenced in the papers by Éthier and Poirier, Inksetter, and Lessard (this issue), the ecology of the region is especially appropriate for this kind of system of resource management and sharing. This is partly because the main species harvested are relatively sedentary, unlike, for example, in the eastern and northern parts of the Quebec–Labrador Peninsula, where migratory caribou, both the woodland and barren land varieties, is the predominant food animal and the family hunting territory system is largely absent. In the Eeyou homeland (Eeyou Istchee), any Eeyou could hunt anywhere, but the territories gave certain individuals, that is, *Indoh-hoh Oujemaaou*, people with a long-standing or family attachment to a particular area, a form of priority in harvesting, and also gave them stewardship responsibilities over the territory. When analysed, as noted in Scott's paper (this issue), this "priority" is with relation to the rights of other Eeyou hunters, thus effectively with the community, and only in more recent times, and reluctantly, with the government. Before mining, forestry and non-Eeyou angling and sports hunting interests entered the region and added new impacts on FHTs, a hunter's relationship with land was an aspect of their understanding of the animals as autonomous "persons." Even so, long ago the colonial powers granted mercantile monopolies trading rights over large areas encompassing many Indigenous homelands, rights that in time became recognised as a form of ownership, in the sense that they were eventually sold to Canada. Only in the twentieth century did a more complex layering of land rights emerge, with such phenomena as subsurface mineral rights, forest harvesting permits and non-Eeyou fishing and hunting permits, all potentially covering parts of a single family hunting territory. As a result, the non-Eeyou perspective is that recognition means that the rights of family hunting territory leaders and their families to their land are just one part of a multilayered system of state-sanctioned kinds of land rights.

Steps toward Government Recognition

Compared with some other Indigenous peoples of North America, the Eeyou experience with the fur trade prepared them to stand up for their interests in dealing with non-Eeyou. During that trade, group leaders acted as, and were accepted as, community representatives in relations with traders and other outsiders (Morantz, this issue). Moreover, the Eeyou were able to significantly influence how the trade was conducted, such as through their initial insistence on trading ceremonials and through their demands that trade be conducted using the credit system. Also, during the fur trade years and continuing well into the twentieth century, Quebec Eeyou hunters and trappers remained for most of the year on their territories and thus outside the ambit of the agents of Canadian colonial jurisdiction.

An early form of government recognition of Eeyou family hunting territories occurred when the beaver preserve system was established in the 1930s. For many other First Nations and Inuit hunters across Canada, encounters with government game laws tended to directly pit them against biologically trained game managers, who often had little knowledge of or sympathy for the environmental knowledge of local Indigenous people (Usher 2004). Among the Eeyou, their first encounter with game laws was with the setting up of the beaver preserve system, a scheme that depended very much on Eeyou hunters', particularly *Indoh-hoh Oujemaaou*'s, knowledge and participation (Morantz, this issue, Feit 2010, 56–57). Moreover, the system had the effect of excluding non-Indigenous trappers from Eeyou Istchee. However, when non-Eeyou towns began to spring up on these lands, attempts were made to impose provincial game laws on those Eeyou who harvested in the bush anywhere around these communities.

When the James Bay Hydroelectric Project was first announced in 1971, a large proportion of the Eeyou population were still engaged as full-time hunters/trappers, meaning that the family hunting territory system was

still fully functional. Each of the Eeyou communities also had leaders who together mounted a very effective opposition to the proposed hydroelectric project, raising a wide range of concerns about which the general Eeyou population were very articulate (Feit 2017). These leaders became key players in the legal proceedings for an injunction to halt the massive project and in the negotiations that followed. The Eeyou case opposing the project was presented most eloquently through the voices of the many Eeyou and Inuit hunters who testified at the injunction hearings (Richardson 1975, chapter 11, Carlson 2008, chapter 7). To a large degree, they were able to convince the court of the continuing importance of hunting to their way of life (Feit 2017, 34), and thus Judge Malouf granted the injunction.

Even though the injunction was quickly overturned by the appeal court (but could potentially have been referred to the Supreme Court of Canada), when the time came to negotiate an out-of-court settlement of the case in the form of a comprehensive land claim settlement, Quebec understood that, because hunters had contributed to the victory, the agreement had to address their concerns. The whole notion of a comprehensive land claim agreement was very new at the time. In late 1973, after the James Bay injunction case had been heard, meaning that it was not a factor in the judgment of the injunction, the federal government reversed its position and announced that Indigenous people within Canada whose land had never been subject to a treaty that had extinguished their Aboriginal title could, in the future, make a land claim. Such a claim would be negotiated and settled by means of a legally binding "comprehensive land claim settlement."

The Eeyou negotiators did all they could to make the James Bay Agreement as comprehensive as possible, considering that they had no precedent to follow. The paper by Awashish (this issue) recalls, with the particular authority of a negotiator, the detailed undertakings achieved in the agreement on hunting and fishing. As he shows, several provisions in the agreement were intended to allow for the continuation of the hunting way of life for those who wished. These included the continuation of the Eeyou system of family hunting territories for the management of wildlife harvesting, the Eeyou having the right to harvest wildlife in the territory, hunting being financially supported with an income security program, certain species being reserved for Eeyou hunters, a guaranteed level of harvest, and Category 2 land being set aside so that at least some hunting lands would be preserved in perpetuity. In many cases the wording was not as detailed and precise as the Eeyou might have wished, meaning that a lot was left to the implementation of the agreement.

The very rapid increase in commercial tree harvesting on Eeyou lands that was to occur in subsequent years was not taken into account in the agreement. This increase followed from changes to Quebec forestry laws and practices and the use of new forms of machines for rapidly clear-cutting large blocks. Forest harvesting also moved northward into areas where the trees had previously been considered too small for commercial use. This new form of forest harvesting proved to have serious impacts on the environment, in some areas causing irreversible ecosystem change, and in many cases undermining the effectiveness of the family hunting territory system of wildlife stewardship. Even after extended talks with the forestry companies and the government of Quebec, nothing substantial was done to address the concerns of the hunters. Finally, the Eeyou launched a court case against the forestry companies and the government of Quebec, known as *Mario Lord et al. v. The Attorney General of Quebec et al.* (Grand Council of the Crees n.d.). The Eeyou argued that the family hunting territory system of Eeyou game management, as agreed to under the JBNQA, should take precedence over the incompatible forestry regime that had emerged since the agreement had been signed.

Again, the testimonies of hunters and other Eeyou who had been impacted by forestry activities were crucial in the outcome of the case (Feit 2010, 65–66).[1] Before rendering his final judgment, Justice Jean-Jacques Croteau of the Quebec Superior Court made a preliminary ruling on 20 December 1999. This ruling, as summarised by a journalist, was that

> Quebec's Forest Act contravened Cree rights that are enshrined in the JBNQA. [Croteau] said these rights are protected by the Canadian Constitution, which takes precedence over other laws such as the provincial Forest Act. He said further that the forestry operators were violating the Crees' constitutional rights and they had until July 1 to bring their forestry practices into line with the JBNQA. (Black 2000)

However, rather than complying, the Quebec government filed a motion to have Judge Croteau removed from the case. By eventually opting for an out-of-court settlement of the Mario Lord case, rather than allowing the ruling to stand, Quebec made sure that some of the implications of the judgment could not be used as a legal precedent for the other Quebec First Nations with FHTs, such as those referenced in the papers by Éthier and Poirier, Inksetter, and Lessard (this issue).

In the end, Croteau's preliminary ruling set the stage for the negotiation of one part of the PDB, forestry, as an out-of-court settlement of the Mario Lord case. The PDB required the province to make significant changes to Quebec's forestry laws and practices and gave an enhanced role in harvest planning to the hunting territories and the *Indoh-hoh Oujemaaou*. The papers by Chaplier and Scott and by Chaplier (this issue) speak to the active debate and exchange of ideas within and between Eeyou communities on the issues raised by the PDB.

Family Hunting Territories and Indigenous Rights

Although the courts have never ruled on the question (particularly given that we do not have the benefit of the Croteau judgment), a strong argument could be made that Eeyou *Indoh-hoh Istchee* (family hunting territories) qualify as "an activity [that is] an element of a practice, custom or tradition integral to the distinctive culture of the aboriginal group claiming the right" (*R. v. Van der Peet*) and thus would possibly qualify as an Aboriginal right that should be protected under section 35 of the 1982 Constitution Act.

In addition to being a legal victory for an Indigenous ontological perspective, I consider government recognition of family hunting territories to be important in the wider context of Indigenous rights in Canada, because of two features. First, the recognition of family hunting territories acknowledges individual and family rights in land, not just rights to be shared by a collectivity, as is more common in the case of Indigenous reserve lands, whether or not these lands were set aside by the terms of a treaty. In general, in both the nineteenth- and early twentieth-century Canadian treaties and the modern land claims agreements, governments acknowledge only the collective rights in land of the First Nation in question. At one time federal Indian Affairs policy and land administration included provisions, in cases where agriculture could be practised, for individuals to be assigned farms from within the reserve lands, farms these individuals could eventually own, although not in fee simple. The initiative eventually failed, as it became tied to a process, unpopular among Indigenous communities, of "enfranchisement"; that is, individuals participating in the plan would lose their Indian status (Carter 1990). Another kind of recognition of individual land rights involves designating land on which individual houses are located on an "Indian reserve" as being occupied by a specific family.

In the United States during the late nineteenth century, there was a much more serious attempt, by means of the Dawes Act of 1887, to replace the collective form of Indigenous land tenure in Indian reservations with private tenure. Until it was repealed in 1934, under its terms many Indigenous landholders could lose their assigned land to non-Indigenous people, creating, on many reservations, a checkerboard of private landholdings, some held by local Indigenous people and some by non-Indigenous people. This happened, for example, to much of the reservation lands in Minnesota and Wisconsin (Treuer 2012). However, in Canada Indian Affairs land policy never moved very far in the direction of individual land tenure in fee simple, as it was feared that this might incur further costs to government in the event that the Indigenous peoples became landless and homeless. But recognition by Quebec of FHTs raises no such fears, particularly given that, as Scott's paper (this issue) shows, FHTs do not entail exclusively private rights, but involve a balance between individual and community interests.

The second important aspect of government recognition of Eeyou family hunting territories is that the territories cover virtually all of each Eeyou First Nation's homelands (Eeyou Istchee) and not only land retained by each of the Eeyou First Nations included under the JBNQA (that is, Category 1 land). Most hunting territories are located within the area where Aboriginal title was "extinguished" under the terms of the JBNQA. For governments the whole basis of Indigenous treaties and land claims agreements was supposedly to provide "certainty" of land tenure, and thus most treaties and modern land claims agreements, with the exception of those of the "Peace and Friendship" variety, required Indigenous nations to give up Aboriginal title to most of their homelands. Some of the earlier treaties allowed for continued use of the homelands after extinguishment for hunting and fishing outside the reserves as long as it was practical to do so, that is, until the province approved their use for other purposes. However, this did not prevent undeveloped lands being divided into registered traplines, some of which could, in time, become assigned to non-Indigenous trappers. Moreover, in the past First Nations who had signed treaties were not compensated when some of their traditional lands outside their reserves were taken for industrial development.

Yet First Nations and Inuit in Canada, including those whose signed "land cession" treaties and land claims agreements, continue to maintain their attachment to the whole of their traditional lands. For example, the Moose Cree First Nation in Ontario, a signatory of Treaty 9, has issued a "Homeland Declaration," asserting that Moose Cree consent is required for any future developments on its homelands (Hale 2016). This First Nation has mapped all its family hunting territories

and, along with other First Nations in northern Ontario, are engaged in land use planning for their homelands. It is also hoping to obtain forest harvesting rights to some stands of trees outside its reserve but within its homelands. Indigenous communities continually lobby for their interests in their homelands when these are threatened, whether or not Aboriginal title has been extinguished. The recognition of Eeyou family hunting territories is significant in that the Eeyou interest in land has been officially recognised despite the extinguishment of Aboriginal title. For the First Nations located to the south of the Eeyou (see the papers by Éthier and Poirier, Inksetter, and Lessard [this issue]), their FHTs continue to connect them to all of their homelands.

Finally, government recognition of family hunting territories was a rare victory for Indigenous knowledge. The courts ruled in favour of Eeyou understandings about the land and the animals, and in opposition to the government's arguments. By contrast, in other Canadian cases Indigenous knowledge has tended to be sidelined. There is a common requirement, in contexts such as environmental impact assessments and wildlife co-management agreements, that local Indigenous knowledge must be taken into account alongside scientific findings where there is an Indigenous interest. However, the experience of many Indigenous participants in such fora suggests that the policy has largely failed, mainly because it has proved impossible to give balanced consideration to both Indigenous knowledge and scientific thinking (Nadasdy 2004). The Eeyou themselves have experienced this kind of difficulty (Scott 2005). Yet under different circumstances Eeyou hunters were able to convince two judges, Malouf and Croteau, that their vision of land management can be given due consideration, even if alongside other forms of tenure also recognised by the state.

Conclusion

Across the Canadian north there are two visions of hunting lands – that of local Indigenous hunters, for whom relations with animals are at the centre of their ideas and practices, and the vision of non-Eeyou that, in effect, seek to surround and squeeze hunting territories within Western Procrustean forms of thought and practice on land rights. In my view, the "recognition" by Quebec of Eeyou family hunting territories, limited as it may be, marks a victory for the protection of Indigenous hunting lands, and this deserves to be celebrated. However, it represents only one small step toward the decolonisation of Eeyou lands. In the context of the endless appetite of a neoliberal economy for new industrial developments, in my view the values and practices of environmental stewardship underlying FHTs could actually provide a basis for good public policy for environmental protection in the region, and not merely a concession to the narrow interests of Eeyou hunters.

The PDB could not undo the environmental damage brought about by years of inappropriate forestry practices. It does not include the requirement for Eeyou consent for future development projects in Eeyou Istchee. And it did not reverse Quebec's frightening violation of the principle of separation of powers in a democracy, with its blanket rejection, rather than appeal, of the Croteau ruling.

Some of the achievements of the PDB are that, building on the ongoing dialogue between hunters and government officials that began with the beaver preserves, it includes some better protective measures for FHTs, particularly in the context of further colonisation through the industrialisation now underway in the Eeyou homeland. It recognises *Indoh-hoh Istchee* and the authority of *Eeyou Indoh-hoh Oujemaaou* more clearly than was the case in the JBNQ Agreement and sets precedents for continued Eeyou influence in the future. However, one major point about FHTs has less to do with the PDB and more to do with the two court cases that led up to it, even though both judgments were not allowed to stand. In my view, these cases were a significant step forward in decolonisation, in the sense that Indigenous knowledge was acknowledged and affirmed in the face of the contrary arguments of a powerful coalition of government and industry, with both cases leading to important out-of court settlements.

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Note

1 *Mario Lord et al. v. The Attorney General of Quebec et al. and Domtar Inc. et al*, 1999, Affidavits, vols. 1–3, Canada, Province of Quebec, District of Montreal, Superior Court, No. 500–05–043203–981.

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