
On Nation-to-Nation Partnership and the Never-Ending Business of Treaty-Making: Reflections on the Experience of the Crees of Eeyou Istchee (Eastern James Bay)

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Abstract: This article discusses the successes of the Crees of Eeyou Istchee in the continual negotiation and renegotiation of their treaty relationship with the Quebec and Canadian governments but also queries how arrangements reached during more than four decades of treaty relationship, charting a course of proliferating entanglements with resource-extractive capitalism and state administration, both express and diverge from the “community of life” relational ontology of Cree activity on the land. While the Crees of Eeyou Istchee have achieved important successes in negotiating economic equity and territorial self-government and have not allowed themselves to be trapped in a once-and-for-all “settlement” of their rights, their negotiations with the state and with corporate entities reward certain Cree interests and positions over others. Compromises have occurred and development pathways chosen that increasingly challenge those who maintain as political priorities the defence of ecological diversity and integrity and accompanying Cree lifeways. Incommensurable premises of liberal capitalism and statehood have inhibited the conditions for the reproduction of Cree relationality, however nimbly the latter grapples with the former in reaching successive treaties and agreements

Keywords: treaties, relational ontology, structural violence, contract, community of life, ecological harms, resource extraction

Resumé : Dans cet article, je me penche sur les succès obtenus par les Cris de Eeyou Istchee dans la (re)négociation perpétuelle de la relation de traité qu'ils entretiennent avec les gouvernements du Québec et du Canada. En même temps, j'explore comment la relation de traité, qui a dessiné pendant plus de quatre décennies des enchevêtrements proliférants avec le capitalisme d'extraction et l'administration étatique, reflètent tout en s'en distinguant l'ontologie relationnelle de type « communauté de vie » qui caractérise l'activité des Cris sur le territoire. Bien que les Cris de Eeyou Istchee aient engrangé d'importants succès dans la négociation de l'équité économique et de l'autonomie territoriale, et bien qu'ils ne se soient pas

laissés piéger dans un « règlement » définitif de leurs droits, les négociations engagées avec l'État et les corporations ont favorisé certains intérêts et positionnements Cris par rapport à d'autres. Les compromis réalisés et les voies de développement empruntées mettent de plus en plus au défi ceux dont les priorités politiques restent la défense de la diversité et de l'intégrité écologiques et l'accompagnement des modes de vie cris. En ce sens, les présupposés incommensurables du capitalisme libéral et de l'État entravent la reproduction de la relationnalité crie, même si cette dernière lutte habilement contre les premiers dans la conclusion des traités et des ententes successives.

Mots clés : traités, relationnalité, ontologie, violence structurelle, contrat, communauté de vie, dommages environnementaux, extraction des ressources.

Introduction

The *James Bay and Northern Quebec Agreement* (1976), signed in November of 1975, is remarkable, perhaps less as the first comprehensive claims settlement of late twentieth-century Canada than for the many complementary treaties and agreements that the Crees of Eeyou Istchee have secured subsequently. Notwithstanding an adverse language of extinguishment, to “cede, release, surrender and convey all their Native claims, rights, titles and interests, whatever they may be, in and to land in the territory and in Quebec” (para. 2.1), over the ensuing four decades, the Grand Council of the Crees went on to negotiate numerous “complementary” agreements, consolidating greater and greater recognition of proprietary and governmental rights throughout their traditional territory, including rights to share revenues from “natural resources.” This article considers how a Cree relational ontology – or perhaps it would be

better to speak of an *ontogeny* of dynamic and emergent relations (Ingold 2018) – is expressed in this treaty-making trajectory. I ask how both state institutionality and Cree relationality have been converted through serial inter-agentive encounters.

Treaty making is an instance of what Povinelli (2001, 327), following Espeland and Stevens (1998), terms the practice of “commensurating divergent or diverging moral and epistemological worlds.” The power of such communication, Povinelli writes, “lies at the heart of liberal hopes for a nonviolent democratic form of governmentality” (326). But the pursuit of these hopes engenders and disguises a certain violence, prompting Povinelli to ask not “how a multicultural or plural nation (or world) is sutured at the end of some horizon of liberal, institutionally embedded communication” but rather “how the incommensurateness of liberal ideology and practice is made to appear commensurate” (327–328). Liberal theory addressing radical worlds declares, “Be other so that we will not ossify, but be in such a way that we are not undone, that is make yourself doable for us” (329). How First Nations negotiate such an expectation is crucial. What incommensurables lie beneath the veil of treaty communication, and how do they define the contours of both radical contestation and persistent structural violence?

Projects of treaty making and treaty renewal, according to many Indigenous and non-Indigenous legal scholars and actors, aim at something beyond mere appearance: they intend a radical reform of late liberal statehood through nation-to-nation relations. From such perspectives, the intention of treaties has been and remains “to create the framework for a dynamic, political partnership between distinct societies,” which falls “outside the usual scope of judicial experience and the borders of traditional legal remedies” (Coyle and Borrows 2017, 8). Canadian society “must come to grips with the reality that treaty-making was more focused on building relationships and much less concerned with cataloguing rights ... It is these relationships that give rights their meaning” (13).

From such a standpoint, Indigenous legalities are anchored in distinctive relational ontologies, which animate autonomous socio-territorial orders of considerable institutional depth and breadth – “total social phenomena,” to invoke an older anthropology (Mauss 1966). Treaty making is trans- and inter-constitutional, and one of its effects is to protect and generate what Escobar (2008) has termed “territories of difference.” Such territories are everywhere entangled in the devices of capital and the state and under constant pressure of displacement, disintegration and absorption (Dussart and Poirier 2017); yet the collective life projects of their inhabitants (Blaser, Feit and McRae 2004), underwritten by relational ontologies, challenge the ubiquitous conditions of

subordination to which Indigenous Peoples, along with larger communities of interdependent life – human and more-than-human – are subject.

In Canada, structural violence involves an assault on the relationalities and interdependencies of living communities that need not resort to the assassination of Indigenous land defenders or the physical genocide of resistant communities, measures viewed as aberrations pertaining to less liberal or well-functioning state regimes. Canadian capital and political interests may benefit from such measures abroad, but at home, we eschew even “non-lethal” physical clashes, arrests and jailing, tending to interpret these as failures in technologies of state power; although intrusive surveillance and actual or potential criminalisation of resistant Indigenous persons remain important features of these technologies. Rather, negotiations of rights culminating in treaties and comprehensive claims settlements, and/or a variety of more situation-specific agreements, together with discourses of “accommodation” and “reconciliation,” have been the state’s liberal response in the face of ongoing manifestations of structural violence – Indigenous poverty, elevated rates of incarceration, suicide, gendered violence, depletion of livelihood resources, environmental contamination and so on.

Within the Canadian regime, the Crees of Eeyou Istchee have fared better than most. They have done so via a remarkable journey of treaty making – initiated under duress, it must be remembered – with the 1975 signing of the *James Bay and Northern Quebec Agreement* (JBNQA 1976). The Crees were unsuccessful in stopping the hydroelectric megaproject carried out by Hydro-Québec on their territory but have gone on through the JBNQA and a series of subsequent agreements to build robust institutions of local and regional self-governance, and to accomplish a level of material wealth through compensation, government transfers and revenue sharing from resource extraction, that are in some respects the envy of neighbouring Indigenous and non-Indigenous communities. Many would consider the Crees of Eeyou Istchee a strong case for the achievement of political and economic justice.

But to what extent has this trajectory of treaty making escaped or modulated structural violence? Specifically, to what extent has it been able to maintain a Cree vision of relationship? Work by Harvey Feit (2004b) and some of my own writing (Scott 1989, 2013b, 2017) have noted the normative insistence of Cree elders on establishing and maintaining relations of respect and reciprocity, whether with government administrators, hydroelectric engineers, recreational hunters, or the plants, animals and geophysical agents whose interactions together comprise life on their territories. Relational

ontology and institutionality endure in the everyday lives and practices of Cree hunters, administrators and politicians, and certainly inform Cree approaches to treaty negotiation. Yet the stratagem of modern treaty making confronts serious limitations when it comes to inter-institutional arenas of relations with the state – and these relations are consequential for everyday lives.

Anishinaabe scholar Aaron Mills (2017, 208) has recently written that the proclivity of the Canadian state to approach treaties as a “unique species of contract” hinging on justiciable rights is itself a form of violence against Indigenous understandings of treaty as “the relationship itself,” as living “constitutional associations.” In Euro-Canadian imagination, a “contract” view of treaty presumes the otherwise hostile and mutually exclusive, zero-sum interests of unregulated individuals, while the sovereign state’s monopoly on the exercise of regulatory force is required to enforce a contractual peace. In contrast, an Indigenous, relational view of treaty assumes a prior and primary underlying community of interdependent persons in living relationships, empowering mutual aid. This community is denied by the assumptions of contract. “Beneath contract’s fiction,” writes Mills, there is “carefully contained violence, always threatening to irrupt the artificial peace and cause the settled majority to target minority parties whose needs and correlative demands surpass what the terms of the contract contemplate” (214). Where Indigenous parties emphasise treaty partnership, settler supremacy insists on focusing the discourse on rights, a “claiming-over” rather than a “being-with” (236). Against the backdrop of the state’s arbitrary and illogical claim of underlying sovereign title, the supremacist view of treaty entails at best “a second-order constitutional matter of distributive justice” (220). Furthermore, all forms of life, human and other-than-human, who are not party to the contract are excluded even from this second-order status and become, simply, material to feed the contract.

From Indigenous perspectives, writes Mills (2017, 225), “Treaties aren’t legal instruments; they’re frameworks for right relationships: the total relational means by which we orient and reorient ourselves to each other through time to live well together and with all our relations within creation ... They’re how we constitute ourselves as communities of communities, across our difference.” Constitutional dialogue between Indigenous and settler communities “must be open to change *over*, not merely *under*, the contract”; and “shared political community will be constituted in respect of the ways of being, knowing, and conceptions of value of the peoples who were already here, already constituted as political communities, already relating to one another across considerable difference” (225, emphasis added).

The inexorable march of the state’s version of treaty to a certain and final definition of rights, or what Mills (2017, 217) refers to as certainty, permanence and perpetuity, is one in which, he observes, “change, the pulse of life, has been negotiated out.” Mills’s take on the epistemological status of “certainty” could just as well have been written about Cree precepts:

From the internal view of Anishinaabe constitutionalism, the absence of certainty isn’t a structural failing in dire need of justification, but rather the only coherent position. For dynamic, living relationships, the *a priori* imposition of certainty is both incoherent and strangling. It requires an orientation to nonsense and death. Instead of the universality, abstraction, formality, and certainty of rights distributed through contract and policed by a sovereign, citizen behaviour is conditioned by substantive, living bundles of responsibility that empower and constrain the sharing of gifts. (235)

As explained by Cree elders (Scott 2013a, 163), it is in fact a kind of “lie” to posit with certainty a future plan or outcome because what happens will always be a shifting product of multiple actors’ intentions, given effect through evolving (if ideally positive) exchanges. Confidence in and attentiveness to the relationship take precedence over a plan, a promise or a fixed right.

And yet, in arenas of negotiation with a state, interpersonal relations with state agents are largely transitory, and catalogues of future-enforceable undertakings and promises cum justiciable rights would seem to be indispensable scaffolding from a pragmatic perspective. One response to this conundrum is the incorporation into treaty text of agreed “constitutional” principles that animate existing but renegotiable terms of treaty. But general principles, and their implications, can of course also be contested interminably, as we have long seen in the case of historical treaties of (ostensible) cession, surrender and extinguishment. In this light, relations of power between the parties are indispensable for understanding trajectories of treaty making.

The Treaty Journey in Eeyou Istchee

The perspective offered here has taken shape during my more than forty years of engagement with ethnographic, rights- and policy-related research in Eeyou Istchee. Many, many past and ongoing interactions with Cree people about diverse issues and aspects of life through that span of time have accumulated in ways that are difficult to source, specifically. This experience is, however, part of my method in considering the significance of successive treaty arrangements, their public representation

by Cree leaders, and the oftentimes politically sensitive conversations and arguments that they engender.

On its website, the [Grand Council of the Crees/Cree Nation Government \(n.d.\)](#) describes the JBNQA as “the basic Charter of Cree Rights,” addressing a comprehensive spectrum of rights: membership; categories of land involving differential proprietary and governmental arrangements; hunting, fishing and trapping resources and livelihoods; environmental protection; community and economic development; education, health and social services; justice and policing; and so on (for discussion of this regime, see [Feit 2004a](#); [Salisbury 1986](#)).

The emphasis on rights is nested within a discourse of positive relationship: the JBNQA “establishes a partnership between the Cree, Quebec and Canada in the governance and development of Eeyou Istchee.” Moreover, the JBNQA is described as “a living document: it continues to grow and evolve with the times. Over the past 40 years, the Agreement has been amended by 24 Complementary Agreements to adapt it to the changing needs of the Cree Nation” ([Grand Council of the Crees/Cree Nation Government n.d.](#)).

The history of partnership has involved significant conflict. By the late 1980s, the Grand Council had grown increasingly frustrated with what it understood to be important deficiencies on the parts of both provincial and federal governments in fulfilling some terms of the JBNQA. A pivotal conflict was the Cree struggle against the Great Whale hydroelectric project, a sequel to the original La Grande-Eastmain hydroelectric complex. It was a complex episode, one in which the Crees resorted to multiple legal actions, both domestic and international; acted creatively within the environmental and social review processes prefigured in the JBNQA and in Canadian and Quebec government procedures of general application; cultivated a broad network of environmental, human rights and economic nationalist allies; mounted a sustained and sophisticated media relations campaign at home and abroad; and brought their case directly to legislatures and community assemblies in the New England states, on whom Hydro-Québec depended for the major contracts underwriting their investment debt. This struggle has been amply documented ([Hornig 1999](#); [Jenson and Papillon 2000](#); [McCutcheon 1991](#); [Scott 2008](#); [Tanner 1999](#)), and I won't go into further detail here. But at its conclusion in 1994, the Cree Nation had successfully brought about the suspension of the Great Whale project.

It is notable that Crees largely succeeded in maintaining political solidarity against the Great Whale project, and a public face of unity, despite lines of internal political cleavage. There were those who opposed the project because they saw in it another unwarranted and

unsustainable intrusion on lands, waters and associated livelihoods, echoing the high priority placed on the protection of hunting, fishing and trapping environments, institutions, and livelihoods in the 1970s as the JBNQA was negotiated. And there were those for whom the future was tied to better terms for economic and social development through enhanced participation in resource-extractive and related forms of development. In either case, it was imperative that the Crees demonstrate their power – that a megaproject could not proceed on their territory without their consent. The divergence in Cree visions for the future would become more difficult in terms of resolution, and more publicly displayed, in later episodes.

The referendum on the sovereignty of Quebec in 1995 was a further occasion for the Crees to demonstrate to the Quebec government the high costs, political as well as economic, of acting on Cree territory without Cree consent. The same Parti Québécois (PQ) government that had just shelved the besieged Great Whale project pursued a sovereignty agenda that assumed that a popular “yes” vote via referendum would authorise the removal from Canada of Cree communities and territory, along with other Indigenous communities and territories throughout Quebec. Quebec territory, the PQ government declared, was “indivisible.” The PQ pretended that the JBNQA had cleared Aboriginal title to Cree territory once and for all. The [Grand Council of the Crees \(1995\)](#) prepared a strongly researched and reasoned critical rejection of the claim of extinguishment. And quite apart from the question of extinguishment, the JBNQA was inarguably a joint Cree-federal-provincial agreement, so it was anyone's guess what its legal status would be outside the constitutional, common law and legislative frameworks of Canada, and of Quebec within Canada. In parallel with several other Indigenous nations in Quebec, the Crees held their own referendum to declare their position in the event of a “yes” vote in the sovereignty referendum. Referendum wordings varied between nations, but all voted resoundingly that they themselves would decide the disposition of their communities and territories (whether to remain in Canada, go with Quebec or go their separate way). Through international media publicity led importantly by the Crees, the PQ was challenged to explain how they could claim sovereign rights to territory while denying First Nations and Inuit similar rights to their underlying and pre-existing territories. As Grand Chief Matthew Coon-Come (1994, cited in [Niesen 2009](#), 94) asked, “If Canada is divisible because of Québec's right to self-determination, why, then is Québec not divisible as well?” The vote in the Quebec sovereignty referendum was “no” by the narrowest of

margins – roughly one-half of 1 percent. Quite credibly (as Niezen 2009, 95–96, argues), public insecurities about the territorial integrity of an independent Quebec provoked by Indigenous counterclaims were enough to make the difference between the “yes” or the “no” prevailing.

From this very cursory recounting of these episodes, I want to draw four observations. First, the rights and principles spelled out in the JBNQA were no guarantee of compliance by the parties, who in any case often could not agree on what would constitute fulfillment of those rights and principles. Second, shifting nationalist politics could very well have dislocated the treaty project as a whole from the constitutional and legal context that gave it force. Third, the successful exercise of power by the Crees across these episodes could overshadow the specificities of the original JBNQA, as the New Relationship and other ensuing agreements would demonstrate. Fourth, and following from the third, the Cree view of treaty as a living and evolving relationship would probably not have been acted upon by provincial and federal governments in the absence of Cree power.

A pair of New Relationship agreements, first with Quebec (*Agreement concerning a New Relationship between le Gouvernement du Québec and the Crees of Québec* 2002) and second with Canada (*Agreement concerning a New Relationship between the Government of Canada and the Cree of Eeyou Istchee* 2008), built on the momentum established by the Crees through the Great Whale and 1995 Referendum controversies. By the late 1990s, now cognizant that the project of Quebec national independence hinged in some significant measure on the support of Indigenous nations, the PQ took the public position that it would not pursue new hydroelectric development on Cree territory without Cree consent.

This cleared the path for the negotiation of the *Agreement concerning a New Relationship between le Gouvernement du Québec and the Crees of Québec* (2002), dubbed the “Paix des Braves” in the Quebec media, a name that stuck. An explicit purpose of the Paix des Braves was to resolve disputes and clear a logjam of litigation arising from non-fulfillment of treaty commitments under the JBNQA, but in fact, the Paix des Braves went well beyond the terms of the original agreement in at least two major ways. First, it tackled the problem of Cree governance with respect to industrial forestry, a matter only weakly and indirectly dealt with in the original JBNQA. In the years since the signing of the JBNQA, large swaths of the southern third of Cree territory had been opened up to clear-cut forestry, with severely adverse impacts on Cree family hunting territories (Feit and Beaulieu 2001). Second, the Paix des Braves gave Cree consent (subject to environmental

review) to hydroelectric modifications on the Rupert and Eastmain Rivers, designed to supplement and stabilise the hydraulic regime of the existing La Grande-Eastmain complex. Notably, to gain Cree consent to this modification, and at the same time to satisfy Cree expectations of Quebec’s commitment to economic development as stated in principle in the original JBNQA, Quebec agreed to a minimum of \$3.5 billion in revenue sharing over the subsequent 50 years, at which time the formula comes due for renegotiation. For a modification involving about a tenth of the flooding caused by original La Grande-Eastmain hydroelectric project, the Crees in effect secured an order of magnitude greater financial commitment than they had under the original JBNQA; and the Crees became the first Indigenous nation in a provincial jurisdiction to secure specific treaty recognition of their right to revenue sharing from hydroelectric, mining and forestry extraction throughout their traditional territory.

Referring to enhanced Cree autonomy in economic and community development through resource revenues, an enhanced Cree role in forestry co-governance (see Scott 2005 for a more detailed discussion), and a new “high-level Cree-Quebec Standing Liaison Committee to promote harmonious relations and to resolve disputes relating to the *James Bay and Northern Quebec Agreement* and the *Paix des Braves*,” the Grand Council of the Crees declared the Paix des Braves to be “a turning point in relations between the Cree and Quebec. It opened the way to a new Nation-to-Nation partnership between the Cree and Quebec in the responsible development of Eeyou Istchee” (*Grand Council of the Crees/Cree Nation Government n.d.*).

Notwithstanding this optimism, support for the Paix des Braves within Cree society proved much less uniform than had Cree opposition to the Great Whale project a decade earlier. In particular, several family hunting territory owners and stewards and other community members at Nemaska, whose lands and land-based activities would be heavily compromised, led a spirited resistance against the Rupert River Diversion (Atkinson and Mulrennan 2009), with considerable regional sympathy and support in other Cree communities. Public exposure of the cleavage between Cree supporters and opponents of the Paix des Braves was experienced by some in the regional Cree leadership as an embarrassment, though it could not have come as a surprise – it was the fruition of contradictions that had been latent for some time in compromises between the socio-ecological values and requirements of hunters and the ambitions of those eager to capitalise on the enhanced Cree control of territory garnered between the late 1980s and the early 2000s, by way of new, market-oriented forms of economic

development. Besides, Cree society was in something of a demographic bind: the regional population has tripled since the signing of the JBNQA, and a shrinking proportion of that population could feasibly devote themselves to hunting as a primary livelihood, even had growing numbers not aspired, in the main, to jobs and entrepreneurial opportunities in the settled towns.

A few years after the Paix des Braves was signed, the Grand Council entered into the *Agreement concerning a New Relationship between the Government of Canada and the Cree of Eeyou Istchee – “Federal New Relationship Agreement”* (2008). As the provincial agreement had done, it aimed to resolve outstanding grievances over unfulfilled federal commitments under the JBNQA. Over its 20-year term, it would provide approximately \$1.5 billion in funding to implement federal responsibilities regarding community and economic development, enhanced bylaw-making powers for the Cree Nation government to give effect to these responsibilities, and a process for negotiating a further agreement on Cree Nation governance. Applying the model of the Quebec New Relationship Agreement, it establishes “a high-level Cree-Canada Standing Liaison Committee to foster exchange and coordination, promote harmonious relations and resolve disputes relating to the James Bay and Northern Quebec Agreement and the Federal New Relationship Agreement” ([Grand Council of the Crees/Cree Nation Government n.d.](#)).

The New Relationship agreements with Quebec and Canada prefigured further modifications to the JBNQA sought by the Crees. The Grand Council and local Cree community councils had grown increasingly unhappy with the growing institutional reach and ambitions of the *Municipalité de Baie-James*. Its boundaries included, in effect, all of Cree territory in Quebec, but thanks to the inclusion of non-Indigenous towns on the southern periphery of Eeyou Istchee, the Crees were in a minority position. The *Agreement on Governance in the Eeyou Istchee James Bay Territory between the Crees of Eeyou Istchee and the Gouvernement du Québec* (2012) brought about major modifications. A discourse of partnership again accompanies this important complementary agreement: “It builds on the *James Bay and Northern Quebec Agreement* and the *Paix des Braves* to establish a partnership between the Cree, Quebec and the Jamésiens [a regional identity adopted by the mainly Francophone residents of the non-Cree towns within the regional Municipality] for the governance of Eeyou Istchee” ([Grand Council of the Crees/Cree Nation Government n.d.](#)). Two main components for enhanced Cree governance throughout their territory were negotiated. First, on Category II lands defined by the JBNQA, which make

up about one-fifth of that portion of Eeyou Istchee that lies within Quebec, the Cree Nation government “has the right to exercise jurisdictions, functions and powers over Category II lands under Quebec laws with respect to land and natural resource planning and management; regional development; and municipal management” ([Grand Council of the Crees/Cree Nation Government n.d.](#)). Category II lands, under the original JBNQA, are lands on which Cree communities enjoy exclusive rights to traditional land-based resources, although Quebec retains a right to develop, conditional upon replacement of any lands that such development would subtract from traditional uses. Second, for the governance of Category III lands, comprising nearly all of the remaining four-fifths of Eeyou Istchee lands in Quebec, a new joint structure of governance is established, “composed of representatives of the Cree and the Jamésiens, in equal numbers. It exercises powers of municipal management, economic development and land and resource planning on Category III lands ... replacing the former *Municipalité de Baie-James*” ([Grand Council of the Crees/Cree Nation Government n.d.](#)).

The overhaul of governance arrangements was further extended through the *Agreement on Cree Nation Governance between the Crees of Eeyou Istchee and the Government of Canada* (2017), as committed to under the Federal New Relationship Agreement. The agreement on Cree Nation governance applies to that portion of Category I lands subject to federal jurisdiction, Category IA lands,¹ replacing the former Cree-Naskapi (of Québec) Act, adopted by federal statute in 1984. The federal Governance Agreement sets forth a regime of enhanced law-making power for local Cree First Nation councils “on a wide variety of local governance matters on Cree Category IA lands under federal jurisdiction, including environmental protection, public order and safety, land and resource use and planning,” together with federal funding arrangements ([Grand Council of the Crees/Cree Nation Government n.d.](#)). In tandem with the federal Governance Agreement, the new *Constitution of the Cree Nation of Eeyou Istchee* ([Grand Council of the Crees 2017](#)) “removes the supervision of the Government of Canada over Cree governance on Cree Category IA lands” and is itself a stand-alone “internal instrument of Cree self-governance,” which can be amended “without the participation of Canada” ([Grand Council of the Crees/Cree Nation Government n.d.](#)).

As I hope to have illustrated with this cursory review of major treaty amendments and innovations, the Crees have succeeded to an important degree in prying open locked doors of “certainty” and “finality” through successive political actions and negotiations. In the process,

they have helped to redefine, to some extent, Quebec identity and the character of the state (Desbiens 2013). At the same time, there are contractually underwritten losses to lives and relationships that are irremediable and beyond compensation. This circumstance has to do with the logic of the comprehensive claims process, whether in single or multiple installments: to establish certainty of property rights and jurisdiction for lands and resources, and to advance the unwavering imperative of economic growth.

Caring for the Land

As the foregoing narrative indicates, a great deal of the political energy invested in elaborating the treaty relationship between the Crees and the Quebec and Canadian governments has focused on developing state-sanctioned institutions for enhanced Cree control of Eeyou Istchee and conditions for economic and community development. Protecting ecological and other conditions for hunting, fishing and trapping livelihoods and lifeways was a major concern in the original JBNQA. Politically, this remains a high priority for the many Crees who live closely with the land; Cree identity in general involves a celebration of this connection in recent memory, even for the large majority of Crees whose livelihoods are now oriented primarily to village life and the money economy.

For many but not all Crees in the latter category, relationship with territory, and modalities of care for Eeyou Istchee, have become more bureaucratic and, in some cases, more distanced and abstract. On the one hand are the seasoned and committed land users, including especially those family hunting territory leaders and members who devote substantial time to land-based activities, who know the land through direct and personal relationship with the diversity of life it comprises. These people are the eyes and ears of the land, custodians of the Indigenous knowledge and customary tenure arrangements that represent a front line of care for Eeyou Istchee. They are represented, in the constellation of bureaucratic entities that have developed over the past four decades, by their local and regional Cree Trappers' Association bodies. On the other hand, Crees occupationally oriented to entrepreneurial, politico-administrative and other wage-earning pursuits find it difficult to maintain the same breadth and diversity of engagements on the land, and special concern has arisen about growing numbers of younger people who have had little opportunity for mentorship by their parents' and grandparents' generation in land-based lifeways. Strong sentiments of care for the land are widely affirmed, and several local and regional Cree government conservation programs

and initiatives reflect this popular support. But relationship with Eeyou Istchee, on an institutional level, is increasingly mediated by bureaucratic structures layered onto customary institutions of land stewardship – and at the level of knowledge and of land, by such devices as cultural mapping and remote sensing technologies.

Innovations through complementary agreements since the JBNQA reflect a tension between land-rooted relationalities embodied in Indigenous knowledge and customary institutions, and relationships brokered with the state. One of the more interesting innovations for mediating this tension took the form of the forestry management regime negotiated as part of the Quebec New Relationship Agreement (Paix des Braves). It connects the regional Cree-Québec Forestry Board to joint local working groups in the Cree communities affected by industrial forestry. The regional board and the joint local groups comprise balanced numbers of Cree and Québec appointees, while the local working groups are conduits for accommodating the knowledge and concerns of family hunting territory custodians about the ecological and cultural specifics of their territories. Although the power of the joint bodies is consultative, with final decision-making authority retained by the provincial minister, standards for permissible patterns and extents of forest cutting and for forest regeneration are built into the Paix des Braves (Scott 2005, 143–147).

The Cree Nation government regionally and Cree communities locally have also been working over the past several years toward the establishment of a network of Cree community-defined biodiversity reserves and other protected areas through processes not always specifically mandated by treaty arrangements (Hébert et al. 2019). This opportunity has arisen in the context of Québec's agenda, through the Service des Aires Protégées (Protected Areas Service), to meet Quebec-wide biodiversity protection targets. Most recently, the official goal is to place 20 percent of that portion of Quebec covered by the Plan Nord (north of the forty-ninth parallel) under strict forms of environmental protection by the year 2020 (Government of Quebec 2015, 32–33). Cree expectations for ample inclusion of Cree-defined protected areas were spelled out in its *Cree Vision of Plan Nord* (Grand Council of the Crees 2011) in response to an earlier iteration of Plan Nord (Government of Quebec 2011b), which in the title of its working paper on environmental protection (Government of Quebec 2011a) aims for “an equilibrium between types of development and forms of conservation, in a sustainable development perspective.”

The Cree Nation Government (2014) has developed a *Cree Regional Conservation Strategy* to frame protected area development and conservation initiatives more generally across Eeyou Istchee. In its statement

of purpose, the conservation strategy “is designed to ensure respect for Cree rights and protect Cree lands and waters and resources for today and tomorrow” (1), with reference to rights under a diverse set of authorities: the Constitution of Canada and customary Eeyou Hunting Law (Cree Trappers’ Association 2009), as well as the aforementioned New Relationship and Governance Agreements and the Eeyou Marine Region Land Claims Agreement (*Agreement between the Crees of Eeyou Istchee and Her Majesty the Queen in Right of Canada concerning the Eeyou Marine Region* 2010). This diversity is notable because it acknowledges the complex inter-legalities that, from a Cree perspective, condition relationships with state agencies.

Also notable is the fact that while the published discourse of both the Quebec and Cree Nation governments resemble one another quite vividly in extolling the virtues of relations of partnership toward a healthy balance between environmental protection and economic development, the parties differ on where to locate that balance in concrete negotiations. Within the zone of commercially harvestable timber, for example, the province has resisted pressure from the Crees to reach the goal of strict protection for 20 percent of northern territory and, recently, within this zone, agreed to less than 60 percent of the territory that two of the Cree communities, Nemaska and Waswanipi, wanted included in the Broadback River Watershed protected area (Indigenous Circle of Experts 2018).

Addressing Harms to Ecology, Cree Livelihoods and Lifeways in Coastal and Offshore James Bay

Participation in a relational discourse, from an Indigenous standpoint, promises to bring agents of the state into a shared normative space where mutual benefit might be negotiated, potentially converting a history of assaults on Indigenous relationalities into a more constructive path of re-institutionalisation. On the flip side, it exposes Indigenous parties to co-optation to the priorities and designs of the state when incommensurability is encountered. In the reciprocity of give-and-take, what the state can and cannot give may subvert the integrity of Indigenous socio-ecological orders.

Without question, major harm to hunting environments has occurred as a result of hydroelectric mega-projects (Scott and Ettenger 1994), notwithstanding remedial efforts at habitat restoration, compensation and promises to limit further damage to Cree hunting livelihoods and lifeways. For example, the JBNQA (1976, para. 24.6.2) recognised the “principle of priority

of Native harvesting,” meaning that “in conformity with the principle of conservation and where game populations permit, the Native people shall be guaranteed levels of harvesting equal to present levels of harvesting of all species in the Territory.” These guaranteed levels were to be “based principally upon the results of the ‘Research to Establish Present Levels of Native Harvesting’ project” (as reported in James Bay and Northern Quebec Native Harvesting Research Committee 1976, 1978, 1979, 1980, 1982). Other measures included the Hunting, Fishing and Trapping Coordinating Committee (JBNQA 1976, s. 24.4), the Environmental Regime (s. 23) and an Income Security Program for Cree Hunters and Trappers (s. 30).

The JBNQA (para. 8.9.1) also recognised that “some of the potential impacts and many of the remedial measures related to Le Complexe La Grande (1975) cannot be determined at this time and that remedial measures shall need to be studied, planned and executed during the construction and operation period of Le Complexe La Grande.” A “continuing relationship between the Crees and La Société d’énergie de la Baie James [SEBJ] is necessary to further assess the impacts from the project on the Cree way of life and to carry out alleviating measures.” The vehicle for this “continuing relationship” was, for a number of years, La Société des Travaux de Correction du complexe La Grande (SOTRAC). The purpose of the remedial works and programs to be carried out by SOTRAC was “primarily to alleviate negative impacts of Le Complexe La Grande (1975) on hunting, fishing and trapping of the Crees and on activities related to such hunting, fishing and trapping” (para. 8.9.2). Specifically, “works to improve habitats and increase the productivity of the environment” are intended, including “works to improve existing or create new waterfowl feeding, staging and nesting habitat” and, in general, “physical works that could lead to improvement of the habitats of fish, wildfowl, fur bearer animals and big game” (s. 8, schedule 4, para. 6).

In fact, as passing years would prove, impacts on the marine environment of James Bay appear to be far more widespread and severe than foreseen when the JBNQA was negotiated. There has been a radical decline in the numbers of waterfowl migrating along the coast, and Cree hunters have reported several other species of flora and fauna in serious decline. For many years now, from regular anecdotal reports of coastal hunters, my impression is that they now take perhaps ten percent of what they would have considered normal harvests prior to the 1990s. Apart from the economic losses, important aspects of sociality and ritual, and the reproduction of

Cree knowledge of the coastal and marine environment, have been harmed.

Central to this decline has been the regional collapse of eelgrass, formerly present in great abundance along the James Bay east coast. Eelgrass beds are an important resource for Canada geese, and crucial to Brant geese as specialised feeders on eelgrass in this environment. Eelgrass beds were nurseries for several species of fish taken by such birds as red-throated loons and guillemots, two species whose numbers have also been decimated, according to Cree hunters' reports.

Many Cree hunters see a connection between the first declines of eelgrass in the late 1980s, a more severe collapse in the late 1990s and the growing operations of the La Grande-Eastmain hydroelectric complex. The cyclical waxing and waning of various species is considered normal, but no one remembers such a massive and enduring collapse of eelgrass, which has lasted nearly 30 years in more northern and nearly 20 years in more southern coastal areas.² Several interacting factors are cited in efforts to understand changes in habitat and waterfowl populations, but the loss of eelgrass is key, and this in turn, according to many Cree hunters, is due to observed increases in turbidity of James Bay waters, as well as altered salinity, as hydroelectric generating capacity – and unseasonable reservoir outflows – have increased in stages since the 1980s.

The means for addressing the calamity are by no means straightforward. SOTRAC's responsibilities were assumed by the James Bay Eeyou Corporation under the *La Grande Agreement* (1986; para. 5.2). In addition to unused SOTRAC funds, Hydro-Québec paid an additional \$15 million “for the purpose of carrying out remedial works and programs such as those described in Schedule 4 of Section 8” of the JBNQA (paras. 5.4–5.5). The terms of this transfer of responsibilities contemplates claims against Hydro-Québec by James Bay Eeyou Corporation on behalf of Cree claimants for “special compensation:”

Hydro-Québec shall reimburse James Bay Eeyou Corporation within ninety (90) days of payment by it of any claim settled pursuant to 5.12.1 and 5.12.2 to a maximum of 5 000 \$ and, if the justifications given by the James Bay Eeyou Corporation are satisfactory, Hydro-Québec shall also reimburse the excess over 5 000 \$ of any claim so settled. (para. 5.12.3)

This language suggests that there may be no limits (if “justification” is provided) on special compensation, broadly applicable to “any claims of Crees for damage to their facilities, equipment, supplies and harvest against Hydro-Québec that has been caused by the activities of Hydro-Québec or its contractors, agents of employees

in connection with the construction or operation of Le Complexe La Grande (1975)” (para. 5.12.1).

A practical difficulty in establishing “justification” for a regional-scale settlement of damages would be that no regionally comprehensive baseline of ecological knowledge was assembled prior to hydroelectric development, and notably, four decades hence, various methodologies that might have been employed to reconstruct such a baseline have not been implemented. Furthermore, no broadly interdisciplinary, regionally comprehensive and temporally sustained scientific monitoring has occurred of the changes to which Cree hunters refer, and hence there has been no system-wide tracking of cumulative impacts, although a variety of more localised studies have been done on various environmental components.

A second practical difficulty is legal uncertainty over the liability of Hydro-Québec, in view of amounts paid and the relations established under the *La Grande Agreement* and the terms of the *Agreement concerning a New Relationship between Hydro-Québec/SEBJ and the Crees of Eeyou Istchee* (2004). This latter agreement echoes the relational discourse of the Paix des Braves concluded two years earlier. One of its purposes is to establish “a long term funding mechanism to address impacts of Le Complexe La Grande (1975) on the activities, economy, environment and social well-being of the Crees” (para. 2.4-b). A Cree/Hydro-Québec Standing Liaison Committee has been established, with general responsibility for “economic and social relations between Hydro-Québec and the Crees” and “harmonious implementation and efficient follow-up of this Agreement” as well as previous agreements, and “to act as a privileged forum between the Crees and Hydro-Québec in order to find mutually acceptable solutions to disputes arising out of the interpretation and implementation” of the various agreements (paras. 11.6-a, b, c). A dispute resolution mechanism is established with the intention of ensuring that “recourse to courts or other forums only occurs as a last resort” (para. 8.1).

A few months later, the *Agreement concerning the Administration of Cree-Hydro-Québec Agreements and the Niskamoon Corporation* (2004) was concluded. This agreement reorganised the implementation, administration and management of multiple previous Cree/Hydro-Québec agreements under the aegis of Niskamoon Corporation, with a joint Cree and Hydro-Québec appointed board. Central to its mandate is

designing, developing, approving, managing, and implementing remedial works projects in close collaboration with land users and beneficiaries. The objectives of these projects are to alleviate the long-term

impacts of hydro-electric development in Eeyou Istchee, promote traditional Cree land-use practices, encourage the transfer of traditional knowledge to younger generations, and help communities adapt to the ongoing impacts of development. (Niskamoon Corporation n.d.)

Interestingly, Niskamoon Corporation relies heavily on Hydro-Québec money, and on Hydro-Québec in-house and consulting scientists – perhaps not ideal conditions for holding the corporation accountable.

Complementing the institutional processes for dealing with marine impacts, specifically, is the *Agreement between the Crees of Eeyou Istchee and Her Majesty the Queen in Right of Canada concerning the Eeyou Marine Region* (EMR) (2010). Under this agreement, the Eeyou Marine Region Wildlife Board, with joint membership appointed by the governments of the Cree Nation, Canada and Nunavut,³ may

in its discretion ... identify wildlife management zones and areas of high biological productivity and provide recommendations to the EMRPC [Eeyou Marine Region Planning Commission] with respect to planning in those areas; ... approve plans for management and protection of particular Wildlife habitats or critical habitats including areas within Protected Areas; ... approve plans for... restocking or propagation, cultivation or husbandry of species or populations of Wildlife; ... [and] provide advice to departments, the EMRIRB [Eeyou Marine Region Impact Review Board] and other concerned agencies and appropriate Persons regarding mitigation measures and compensation to be required from commercial and industrial developers which cause damage to Wildlife habitat. (para. 13.2.2)

The EMR also recognises “a requirement for general monitoring to collect and analyze information on the long-term state and health of the Ecosystemic and socio-economic environment in the EMR,” stipulating that “government, in co-operation with the EMRPC [Eeyou Marine Region Planning Commission] shall be responsible for developing a general monitoring plan and for directing and coordinating general monitoring and data collection” (para. 18.7.6.)

The roles, rights and responsibilities spelled out in these various agreements suggest a highly ambiguous set of options for dealing with such losses as those incurred due to eelgrass and waterfowl decline. A hard reality is that if the magnified and seasonally abnormal flows of peaking power generation are the cause of systemic decline in the James Bay ecosystem, nothing short of decommissioning, or at least radically modifying, flow

regimes could bring about genuine rehabilitation. In principle, it should at least be possible to ascertain the probable role of hydroelectric generation in northern Quebec and elsewhere around James Bay and Hudson Bay on the regional ecology, but the pattern of research, funded principally by Hydro-Québec in eastern James Bay and southeastern Hudson Bay, is such that even this goal has remained out of reach. Hence, questions of suitable compensation, and social responsibility for ecosystem rehabilitation, remain unaddressed in any robust fashion.

Continuing treaty obligations of the Quebec and Canadian governments and of Hydro-Québec with respect to habitat restoration, mitigation and compensation have become the business of co-governmental structures and processes involving the Crees. While these institutions appear to embody principles of nation-to-nation relationality empowering Crees, to what extent is this empowerment dependent on pursuing paths commensurable with state and corporate agendas? The plethora of agreements and multiplicity of boards and committees required for their implementation and ongoing negotiation pose real challenges of communication and translation of grassroots priorities into coherent policy at and between community-level and regional leadership, opening opportunities for some members of the Cree political elite to pursue particular interests that align more with those of the corporation.

At the same time, the gap between elite and grassroots interests should not be overstated. The circumstances of economic life have been shifting over the last four decades, such that wage and entrepreneurial opportunities are demanded by people in the communities. Notwithstanding strong attachments to land and the continued importance of land-based activities in a mixed economy, a large majority of Crees are now reliant on business- and job-oriented livelihoods. The platforms of Cree politicians running for election nowadays tend to highlight such concerns as economic development, housing, community infrastructure and services, education and health, with protection of environment and traditional livelihoods less prominently featured.

Conclusion

I agree with Mills's (2017, 229) statement that “we have to transform [Canada's otherwise uninterrupted constitutional order] to allow Indigenous legal traditions to stand within their own constitutional worlds, not contain and re-express them post-fact within the existing terms of the settler contract.” But in what measure can these constitutional worlds, born of distinctive ontologies, achieve functional coexistence, where each makes

material demands on the same territories and communities of life? The calamities of hydroelectricity and other forms of industrial extractive development for Cree hunting lifeways have been modulated by vigorous, creative and continuous political action through relationship building on the part of the Cree Nation. Thanks to Cree proactivity, these developments have not yet engendered “unimaginable risk” and “ontological uncertainty” on a scale overwhelming or irreparably damaging Cree society’s resilience (Howitt, Havnen and Veland 2012, 49–50; Stoffle, Arnold and Van Vlack 2015).

But between the incommensurable relationalities of liberal capitalism and statehood on one hand and Cree hunting lifeways on the other proceeds a slower structural violence that tends to erode and undermine Cree relationality in its full setting of socio-ecological community. The risk to this community and attendant relationality will persist, short of a profound interruption and conversion not just of Canada’s constitutional premises but of capitalist relations and the premises of indefinite economic growth embodied in state policy. My concern is simply that partnerships with the Quebec and Canadian governments and resource-extractive corporations – while they might accomplish economic justice and political empowerment according to liberal metes and values – reward some forms of Cree agency (that is, those accommodating and contributing to growth economics) over others and demand compromises on the part of Crees that contradict and incrementally dismantle healthy diversity, both cultural and ecological, in Eeyou Istchee.

The Cree Nation has had exceptional success, through the resourceful and judicious accumulation of power, at both resisting state designs at certain critical junctures and coaxing the Quebec and Canadian governments into normative relations of positive reciprocity at others to establish a dynamic treaty relationship that defies logics of extinguishment, certainty and finality. At the same time, however, relationship building through successive episodes of litigation, negotiation and agreement has drawn Cree society into profound interdependencies with an extractive capitalist economy, consumer goods and state-upheld visions of neoliberal development. For the Crees’ part, a collectivist project for such development is a notable innovation, but with the passage of time, these interdependencies may undermine other critical relationships, including those with other-than-human dwellers of Eeyou Istchee so valued by those engaged in hunting, fishing and gathering. The contradiction between endless growth and ecological (or biocultural) sustainability that afflicts global society finds particular expression in Cree society, producing internal

political divisions not easily resolved, but generative of innovation.

Some Cree insiders have remarked on the occurrence in recent years of a shift from a rights-based to a capital-based view of the sources of Cree power on their territory. While in following Mills’s argument we may welcome a turning-away from contractual rights-based approaches, more fluid and negotiable relationalities face their own hazards: the translation of a Cree ethic of positive reciprocity into an “equitable” exchange of capital flows anchored in resource extraction, and the reduction of relations of mutual respect to institutions of Indigenous/state/corporate co-governance that manage and lubricate that exchange. This trend may represent economic and political justice in some narrow sense but could progressively erode difference, diversity and interdependence in the greater community of life making up Eeyou Istchee. The critical question is where these dynamic relationships are headed, and whose ontology or what collaborative ontogenetic process will prevail.

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Notes

- 1 Category I lands on which each Cree village is located are under community collective ownership, totalling less than 1 percent of Eeyou Istchee lands in Quebec, having a federal portion (Category IA) and a provincial portion (Category IB).
- 2 In some more northerly coastal areas in Chisasibi community territory (areas, possibly, of lower cumulative turbidity), Hydro-Québec-sponsored research (Consortium Waska-Genivar 2011) reports some partial recovery

of eelgrass beds since the precipitous decline of the late 1990s. However, hunters' reports from more southerly communities of Wemindji and Eastmain, and observations made during my own frequent travels along the coast over past decades, indicate no substantial recovery, while scientific monitoring in these areas has been too scant to speak to decadal trends.

- 3 See the website for the Eeyou Marine Region Wildlife Board: <https://www.emrwb.ca/>.

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