

## **Cree Autonomy: a re-examination of domestic dependence**

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*Indian Act of Canada 1888:*

*"The Minister of the Interior, or the head of any other department appointed for that purpose by the Governor in Council, shall be the Superintendent General of Indian Affairs, and shall, as such, have the control and management of the lands and property of the Indians on Canada." 46 V., c.6, s.1 (<http://epe.lac-bac.gc.ca/100/205/301/ic/cdc/aboriginaldocs/m-stat.htm>).*

*Cherokee Nation v. Georgia:*

*Justice John Marshall handed down the decision that the Cherokees constituted a "domestic dependent nation...in a state of pupilage." As with other Indian Nations, Marshall wrote, the Cherokees' "...relation to the United States resembles that of a ward to his guardian" (Cherokee Nation v. Georgia, 30 U.S. 1 (1831)).*

Considering the above policies of two Colonial Nations, links can be drawn through the paternalistic language that subjugates First Peoples as non-agents. First Nations' status definitions construed by the Indian Act of 1888 in Canada bring to mind U.S. Supreme Court decisions stating that tribal nations were considered domestic dependents or wards of the Federal Government. The Cree of Northern Québec have challenged these paternalistic definitions through their litigation of the James Bay Hydroelectric Project. I offer in this paper that the Cree independently define their status of nationhood as an act of resistance against colonialism engendered in part through their relationship with the Hudson's Bay Company and their relationship with the land. Retention of their commitment to their existing relationship with the land has informed the Cree Nation's decisions regarding their autonomy while interacting with Governments intent upon dichotomizing human and other-than-human interactions.

The Cree of Northern Québec live in the sub-arctic, boreal forest. Cree nation-building strategies within this environment are based on the protection of their traditional relationships with the land that places them in a uniquely independent position to outside governments. These mechanisms of self-governance and autonomy that sustain community have acted in opposition to individualistic property ownership enforced by the Canadian Government. Their situation is distinct among First Nations because until the 1960s, the Cree never ceded lands to the Canadian or provincial governments through any treaty process. Prior to this period, neither the State nor the province of Québec had shown significant interest in developing northern Québec for natural or energy resources. For practical reasons, the region was too remote, with the sub-arctic climate and landscape making development and associated infrastructure too costly. In contrast, since 1670 the Hudson's Bay Company (HBC) had been engaging

the Cree in an economic relationship with the fur trade. Until recently this relationship constituted the only significant form of resource extraction in the region. The HBC's efforts facilitating the creation of the Beaver Reserves in the 1930s acted as policy to protect Cree hunting lands and their way of life on Cree terms until 1971.

When the James Bay Hydro Electric Project began in 1971, the Cree could not ignore the obvious threat this project posed to their way of life. Millennial tenure in the region by means of hunting and trapping, and paired with land rights recognition under the Beaver Reserves, the Cree have defended their self-determination by recounting documentation of their rights. In an address of the Deputy Minister of Indian Affairs, the Commissioner explicitly acknowledges Cree rights to the land by stating publically that

*When it is borne in mind that a Tallyman is the head of a family; that a district is a family trapping ground; that a section is the area trapped over by a whole tribe or band and that all boundaries are laid out by the Indians themselves, it is apparent that we have not only adhered strictly to Indian custom but have actually improved on it since, through our Supervisor, we have maps of the districts and written records, which we can use to settle future disputes over trapping grounds (Deputy Minister of Indian Affairs 1942: PAC, RG10, Vol. 6750, File 420-10-5, reel C8106).*

This statement of official correspondence affirmed Cree usufructory rights within the boundaries of the Beaver Reserves (Feit 2005: 279).

The Beaver Reserves were initiated as a way for the Hudson's Bay Company to ensure consistent fur returns provided by the Cree. This management system solidified resource control in the region by placing 362,598 km<sup>2</sup> under exclusive control of the Cree (Carlson 2008: 186). For comparison, the Cree lands were equivalent to the area of Maine, New York, and Pennsylvania combined. Under the Beaver Reserve system, the Canadian Government recognized Cree rights to land use because no treaties had been negotiated ceding those rights (Feit 2005: 271). Thirty years after the Beaver Reserves were created, the Cree opposed the Hydro-Québec project, signing the James Bay Northern Québec Agreement (JBQNA) in 1975, re-affirming their right to self-determined use of the lands.

In 1971, the Cree were "informed" that the James Bay Development Corporation would begin developing the Cree homelands into one of the largest hydroelectric dam projects in history. Hydro-Québec's project entailed the diversion of small rivers and tributaries into the major river systems in northern Québec. The dams expanded the flow of the major rivers to produce electricity for all Québec's residents at low rates and then sell the surplus to the United States at an inflated rate. In the first and largest of three proposed phases, the La Grande River would be dammed, flooding Cree hunting lands (Warner and Coppinger in Hornig 1999: 24). Initially, environmental impact was not assessed in the planning of this project and the La Grande reservoirs, along with the other phases of the project, have flooded roughly 15,600 km<sup>2</sup> of Cree lands to date, an area equaling the State of Connecticut (Warner and Coppinger 1999: 24). The response of the Cree to these actions places the project within an historical context allowing a window into how and why Cree resistance developed so

successfully in a political framework of the dominant society that consistently works to derail Indigenous sovereignty.

The Cree found out about the Project via newspaper the day after the official announcement by Québec's Première, Robert Bourassa (Richardson 1975: 80). It took some time for the news to sink in because it appeared to the Cree that this project was impossible without their consent (Richardson 1975: 80). Even though the Cree had been experiencing rough times because of other resource development projects, e.g. mining based out of Chibougamau, the Cree had been consistently engaged with the government attempting to hold onto their now tenuous position on the land (Richardson 1975: 98). As the Cree began to realize what would happen to their lands, the decision was reached through community consensus that new and more extreme methods would have to be implemented to save their way of life. The Cree decided their only option was litigation.

The first step the Cree used to halt the project was imposing an interlocutory injunction until the Court decided whether to hear the case determining if infraction of their rights on their hunting territories had taken place (Richardson 1975: 19). Litigation began in November 1972 concluding with a decision in November 1973, initiating the longest case of its type in Canadian history (Richardson 1975: 20). If the Court recognized Cree rights, the decision would set a precedent unequalled in any Supreme Court decision in history for Canada and the United States combined. It meant recognizing that First Peoples actually controlled land as sovereigns, challenging "domestic dependency" precedent.

James O'Reilly, the lawyer acting as defense for the Cree, had originally been legal council for the James Bay Corporation who quit the corporation due to conflicts of conscience, deciding instead to defend First Nations (Richardson 1975: 24). O'Reilly's statement of defense for the Cree invoked their aboriginal territorial rights to the land expressing Cree tradition in its totality. For roughly 6,000 years the Cree had occupied this landscape now known as part of Québec. The Cree had consistently used the land's resources to provide for themselves, adapting with the environment in such a way that a relationship with the landscape based on kinship systems with humans and non-humans fully defined their culture in time and space. Quoting Timothy Ingold, this relationship "At its most intense, [is where] the boundaries between person and place, between the self and the landscape, dissolve altogether" (Ingold, T. 2000: 56). Culture, as defined by the Cree on these terms, became a tool for the Cree to defend their way of life in the face of circumstances set to destroy it.

That way of life was thoroughly expounded over 78 days as the Court heard the case. In the words of 20 Cree band members, the court heard their position regarding their relationship with the land. This testimony was substantiated by 16 additional defense witnesses including, anthropologists Harvey Feit, Adrian Tanner, and Edward S. Rogers (Richardson 1975: xvii-xviii). The testimony of Cree witnesses was the most influential, expressing the interests of the Cree for maintaining control of the region's resources, and clarifying to the Court the cultural disconnect between the Canadian Government and First Nations peoples within its borders. Cree testimony implied that the Canadian Government had no real comprehension of what a true relationship to the land meant, placing modern societal structures of the Canadian state at a disadvantage to First Nation's traditional knowledge systems. Cree qualitative statements proved inconvenient for the defense, which required quantifiable answers to show that the

Cree no longer lived in a ‘traditional’ manner (Richardson 1975: Court proceedings). The defense had underestimated the Court’s sympathy for ‘traditional’ human testimony.

After the case was heard, and after 5 months of deliberation, Justice Malouf handed down a decision in favor of the Cree ordering the James Bay Development Corporation, the James Bay Energy Corporation, Hydro-Québec, their contractors, and any other parties to halt all work on the project (Richardson 1975: 296). Within a week the decision was overturned, and the Cree and Inuit began negotiations with Ottawa, Hydro-Québec, and the James Bay Development Company to reach a settlement agreement (McCutcheon 1991: xi). The James Bay and Northern Québec Agreement (JBQNA ) was signed in 1975 and all parties agreed to terms of compensation for resource loss incurred by the Cree and Inuit because of the project. The terms of settlement gave the Cree and Inuit monetary compensation and exclusive and joint access to hunting grounds in areas providing usufructory rights on lands designated Categories I, II, and III (Richardson 1975: 321). Although the project went forward, the Cree had negotiated their position in the face of a massive development project, and emerged with their land rights recognized by the Court. By adopting political and legal tactics, the Cree were able to maintain their way of life resulting in the controversial and contested James Bay and Northern Québec Agreement that lasted until 1991. At this time, the proposed Grande Baleine phase of the project was opposed by the Cree and outside environmental organizations leading to its indefinite suspension (Warner and Coppinger 1999: 24).

In 2002, an amendment to the original JBNQA was signed by the Cree and Québec governments that resolved disputes over the old agreement and solidified the boundaries of Cree land; the amendment stated that “the parties enter into a nation-to-nation Agreement” (*Agreement Concerning a New Relationship* 2002: 1). Following the original 1975 Agreement, the Cree represented themselves as a nation consisting of nine bands. Each of these bands agreed on a tiered system: the Cree Commission, and the Cree Regional Authority, all under the Grand Council of the Cree that acted to protect their traditional lifestyle. However, to defend this system, the Cree needed to assert a symbolic connection to the land in opposition to Québec’s nationalistic rhetoric.

Québec had declared --almost as a mantra-- in the 1970s that “James Bay belongs to all the Québécois,” a cultural reference excluding the Cree (Le Projet 1975). In reply, Cree Grand Chief Bill Namagoose, dispelled romanticized notions of Indians as caretakers of the land stating, “We are owners, not the janitors” (Namagoose 2002: 4-5). This statement symbolically asserted that the Cree had firmly established themselves as a national force to be reckoned with. More recently in co-governance/co-management strategies implemented in the Waswanipi Cree Model Forest Project and the new agreement reached in 2008, Cree autonomy has become a reality.

In February 2008, a new agreement was established between the Cree nation and the Canadian Federal Government relinquishing control of federal infrastructure i.e. roads, government agencies, etc. to the Cree (Bill Namagoose, 2008). The agreement was reached recognizing the Cree as a nation within Canada affording them rights to self-determination and sovereignty. Critical to Cree sovereignty assertions are the ways in which the Cree have envisioned their relationship with the land they now protect from outsiders, quoting the Cree, “it is our garden.”

To protect their “garden,” the Cree have chosen to adopt a nation-state political organization. This recently acquired system of government does not replace traditional Cree social organization, but instead adds to existing systems protecting traditional land-use. Cree use of the land’s resources illustrates how they perceive their relationships with the land as a network of inter-related beings. Those interactions in turn have helped them adapt to the constraints imposed upon them and the land’s resources from within and outside the system. Interaction with the land has enabled the Cree to view their position in the larger context of European encroachment upon the landscape by how it allows them to perceive threats and solutions to changes within that context. This frame of being has empowered the Cree with the tools to adapt their political organization in defense of their ownership of the land with their assertion of nation status countering the imposition of outside forces that threaten their way of life. Currently the Cree system is successful and its continued success depends on their actions, but as an un-named Cree hunter stated aptly, “...in the bush, everything changes all the time” (Peloquin and Berkes 2009: 538).

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