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ALGONQUIN NOTIONS OF JURISDICTION: INSERTING INDIGENOUS VOICES INTO LEGAL SPACES

By
Bettina Koschade and Evelyn Peters

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ABSTRACT. Aboriginal and non-Aboriginal notions of geography, nature and space sometimes compete, and these differences can create barriers to joint environmental problem-solving. This paper examines the Ardoch Algonquin First Nation and Allies (AAFNA) and the strategies they used in juridical and legislative settings to make their voices heard. In the Tay River Ontario Environmental Review Tribunal (2000–2002), AAFNA attempted to introduce their knowledge of the environmental deterioration which would be caused by a Permit To Take Water issued to a multinational corporation by the Ontario Ministry of Environment. The paper is divided into two parts: first, it describes the concepts of Algonquin knowledge, jurisdiction and responsibility; second, it explores the strategies used to integrate their perspective into legal proceedings constructed by the Canadian government. This case reveals how some Algonquin people conceive of space and responsibility in deeply ecological, rather than narrowly juridical, terms. It establishes that their broad concepts of knowledge, land and jurisdiction are incompatible with existing Euro-Canadian divisions of legal responsibility and ecological knowledge, but at the same time can serve as the means by which they challenge the current structure of Aboriginal and Canadian relations.

Key words: Indigenous, knowledge, jurisdiction, legal space, Alonquin

Introduction

Legal geography is an emerging field in human geography. Its main tenet is to challenge the orthodox linkages between law, space and power (Blomley, 1994). These linkages assume that both law and space are measurable and objective, and that there is a divide between law, on the one hand, and social and political life on the other. Law is presented as ‘innocent’, a technical act; and space is empty, a backdrop to the legal process. Critical legal scholars argue that law is in fact relational in important social and political ways, revealing law’s contingent and contestable qualities. Nicholas Blomley and other critical legal geographers’ contributions add a spatial component to the legal critique (Blomley, 1994; Chouinard, 1995; Shaw 2003). Blomley (1994) demonstrates how legal representations of space are constituted by and constitutive of social and political

life (Blomley, 1994). Pervasive conflicts in local communities against the formalized legal culture of the judiciary show that “‘space,” like “law,” is capable of diverse meanings’ (Blomley, 1994, p. xii). Local contestations against legal decisions demonstrate that there are diverse perspectives on appropriate jurisdictions in the same locality. In other words, ‘alternative legalities can occupy the same jurisdictional space’ (Blomley, 1994, p. 56).

Blomley’s (1994) analysis is a useful beginning, though he has been criticized for falling short in his explorations of the oppositional geographies in his case studies while emphasizing the dominant legal discourse based on official and media accounts (Chouinard, 1995). Chouinard insists that besides official written accounts of legal struggles, one ‘must turn to sources like interviews in order to capture “grassroots” resistance’. The case study presented in here focuses on the geography of an oppositional group that captures the way different legal geographies can coexist in the same territory. It investigates competing Aboriginal and Euro-Canadian conceptions of jurisdiction over land through an examination of the ideas of jurisdiction and relationship to land of the Ardoch Algonquin First Nation and Allies (AAFNA) living in south-eastern Ontario, on the one hand, and the expression of jurisdiction evident in the environmental legislation and an Environmental Review Tribunal of the province of Ontario, Canada, on the other. Members of AAFNA had Algonquin indigenous knowledge of the region to contribute to the decision-making process of the Tribunal and, from their perspective, they had jurisdiction over the watershed in question which required the government to consult with them before a final decision about the environmental management of the area was made. Like the Gitksan and Wet’suwet’en First Nations described in Sparke’s (1998, p. 470) paper, the AAFNA attempted to insert their perspectives of their knowledge and jurisdiction into the ‘terms of

reference of the dominant discourse'. The 'oppositional' concept of jurisdiction of the Algonquin group became the reason for the Tribunal to resist including a full account of Algonquin knowledge into the evidence of the hearing. The Tribunal revealed a 'selectivity of inclusion' (Shaw, 2003, p. 317) that would have misrepresented Algonquin knowledge and Algonquin interest in the watershed in question had the Algonquin members not subverted the space.

The paper begins with an overview of the literature on concepts of indigenous knowledge and jurisdiction. There follows a description of Ardoch Algonquin history and the nature of their intervention into the Ontario Environmental Review Tribunal hearing. The documents presented at the Tribunal and interviews with the AAFNA participants in the Tribunal form the basis for an analysis of differences between Aboriginal and non-Aboriginal concepts of jurisdiction over land. By way of conclusion, the paper summarizes implications for legal geography. It is important to note that the study does not document traditional ecological knowledge. Instead, we are looking at the experience of AAFNA members in attempting to include their voices and knowledge into a Euro-Canadian environmental appeal court. It is also important to note that we are not First Nations people, nor are we connected to the AAFNA community. Our position as academics challenged us to attempt to think through and write about the diverse legalities that this particular environmental review tribunal represented. This process provided us with some insight into the experiences of those regularly forced to challenge the legal and conceptual status quo of the environmental decision-making in Euro-Canadian legal structures.

Indigenous knowledge and competing concepts of jurisdiction

This section begins with a review of definitions of indigenous knowledge and its qualities. It then summarizes what researchers have written about the relationship Aboriginal people have with their territories, including the idea of assuming responsibility for the land that has been granted to them by the Creator. Finally, there is a comparison of Aboriginal and Canadian legal concepts of jurisdiction over territory. Before we proceed, though, it is important to note that we use the term 'Aboriginal' to refer to the indigenous people of Canada, following common usage in that country.

Indigenous knowledges

It is difficult to find unproblematic language to talk about the knowledges of Aboriginal people. We have chosen to use the term 'indigenous knowledges' in this paper for several reasons. While the terms 'traditional ecological knowledge' or 'traditional environmental knowledge', also known as TEK, are used by many academic researchers, the word 'traditional' can be misleading. Often mainstream uses of the word 'traditional' imply a static and nonadaptive form of knowledge. They suggest an historic way of doing things that is rigid and has not adapted to current needs and realities. In contrast, researchers argue that indigenous knowledges are diverse and malleable (Berkes, 1999; Usher, 2000). We use the term 'indigenous' so that these knowledges cannot be confused with the traditional knowledges that non-Aboriginal people such as farmers and fishers have as a result of their own close relationship and experiences on the land. We use the plural form to indicate that indigenous people are not a homogeneous group, and that as a result, their knowledge systems are also not homogeneous.

At the same time, it should not be assumed that all Aboriginal people automatically 'have' indigenous knowledge as some kind of birthright. As Aboriginal academics and other Aboriginal activists have stated, their peoples' assimilation into Canadian society has often proven to be the demise of their personal connection to the land (Henderson, 2000). On that ground, many Aboriginal activists find it important to foster a return to their Aboriginal practices and teachings to reconnect with the wisdom of nature, as well as continue to challenge the structures of the Euro-Canadian society in which they live.

While the limitations of terms such as 'indigenous knowledges' need to be recognized, they nevertheless signal to a Western audience that these knowledge systems have some unique features. Usher (2000) uses a four-part definition to explain the complex connection between people and place in indigenous knowledges. Focusing specifically on environmental knowledges, he notes that they consist of:

Category 1. Factual/rational knowledge about the environment.

Category 2. Factual knowledge about past and current use of the environment.

Category 3. Culturally based value statements

about how things should be, what is fitting and proper to do, including moral or ethical statements about how to behave.

Category 4. Culturally based cosmology – the foundation of the knowledge system – by which information derived from observation, experience, and instruction is organized to provide explanations and guidance (Usher, 2000, p. 186).

All the categories combined describe an Aboriginal worldview, an understanding of life and a way to conduct life. While they can be divided into categories, the categories are not independent of each other.

Western knowledge is a term used in this paper to describe the knowledge generated within science: that is, knowledge created within the scientific academic field that is widely accepted by Western society as the source of truthful explanations about life and the world. Of course, Western knowledge is also not homogeneous. It is also more than scientific knowledge, for as with all knowledge systems, it is based on a distinct cultural system. This Western cultural system embraces scientific knowledge as an indispensable source of truth. Hence in this study, the Environmental Review Tribunal is situated within Western cultural and political systems that search for answers to specific questions about the environment primarily from science that is formed within the Western academic system.

Much of the academic work on indigenous knowledges has focused on identifying the differences and similarities between indigenous and Western knowledge systems. Recognizing that both Western science and indigenous knowledges are not monolithic, Agrawal (1995) suggests three areas in which indigenous and Western knowledge systems differ, although he warns that emphasizing differences rather than similarities can create an artificial dichotomy between the two. Agrawal (1995) describes these differences as: methodological and epistemological, in that they employ different methods of investigating the world through different worldviews; contextual, in that indigenous knowledge is more rooted in context or place than is Western knowledges; and substantive, in that there are differences in the characteristics of indigenous and western knowledge.

Indigenous knowledges are based on observation, though the observations do not necessarily focus on individual organisms and subsystems in isolation from the rest of the ecological system as

Western scientific research often does. Instead, indigenous knowledges are a systematic accumulation of observations that are then evaluated within an ecological system which is made up of 'systemic relationships' that influence each other (Freeman, 1992, pp. 9–10). In other words, individual components of nature cannot be separated from each other, and neither can the human component; 'all life-forms must be respected as essentially conscious, intrinsically valuable and interdependent' (Coriglia and Snively, 1997, p. 23).

Context is another important aspect of indigenous knowledges. A number of researchers describe indigenous knowledges as 'high-context' forms of knowledge (Kuhn and Duerden, 1996; Stevenson, 1996). In other words, meaning relies on context and place. Stevenson (1996) argues further that indigenous knowledges must therefore be communicated in their original context to reveal their deeper meaning. This is often impossible since not only is the local context often remote and far away from where legal discussions take place, but the outdoors is not the place where formal decision-making takes place; legal processes in Canada have formal settings and structures to conform with. Yet one must at least be *aware* of the 'unnatural' scale and context in which indigenous knowledges are being used by non-Aboriginal people in order to try to maintain the integrity of the knowledge system and foundation. As the scales of indigenous knowledges move from the local to the global arena, they become increasingly abstract, they are translated into a more scientific format, and they may be used more selectively (Kuhn and Duerden, 1996; Duerden and Kuhn, 1998). These changes run the risk of losing essential messages and guidance inherent in these knowledges.

The links between indigenous knowledges and jurisdiction have not been a focus for researchers in this area. However, there is some recognition that the role which indigenous knowledges play in non-Aboriginal systems and processes such as environmental assessments, environmental decision-making, co-management boards and other legal settings are related to the ability to exercise jurisdiction as much as they are related to the characteristics of indigenous knowledges. The word 'jurisdiction' has many different nuances, but the general idea is about who has the final say on a matter or a place. Because concepts about proper ways of behaving are part of indigenous knowledges, and because indigenous knowledges emphasize the connections between humans and

their environments, indigenous knowledge and jurisdiction are fundamentally linked.

Agrawal (1995) points out that the ability to influence decision-making is a fundamental difference between indigenous and Western knowledge systems. He suggests that one of the key differences between them is not quality, structure, nor the history of the knowledge: it is the political force of knowledge and the connection it has to the governing state. Western knowledge has a close connection to, and is the basis for, governmental decision-making. If they were viewed differently, indigenous knowledges and worldviews could provide a basis for governmental decision-making. Hence, he argues:

It might be more helpful to frame the issue as one requiring modifications in political relationships that govern interactions between indigenous or marginalized populations, and élites or state formations.

(Agrawal, 1995, p. 431)

Nadasdy (1999) insists that forcing indigenous knowledges to be expressed in a manner that conforms to state institutions takes the control *out* of the hands of people who produce these knowledges and keeps the power *in* the hands of government organizations. In this context indigenous knowledges are treated as supplementary sources of information to Western science, and Aboriginal worldviews that shape decision-making are dismissed (Nadasdy, 1999).

Henderson (2000) also argues for the need to examine Aboriginal–government relationships in order to create a society that respects Aboriginal peoples and their knowledges. He sees indigenous knowledges as the means through which all people could learn to understand, envision and create better relationships with each other. He explains that the Canadian legal profession has to accept ‘multicultural law’ to meet the needs of all Canadians and to provide a new framework of ‘difference on equal terms’ so that an acceptable vision of the Aboriginal–Euro-Canadian relationship may be explored (Henderson, 2000, p. 252). Within a new respectful relationship between Aboriginal nations and the Canadian government, indigenous knowledges will have a chance of being understood and properly respected by non-Aboriginal people.

Several researchers have addressed the ways jurisdiction and indigenous knowledges are connected and the ways that jurisdiction is defined in this

context. Jurisdiction over land, which some Aboriginal people embrace through indigenous knowledges, is based on a worldview that conceives of all living beings, including humans, as one entity (Sallenave, 1994; Sherry and Myers, 2002). The relationship conjures up a profound sense of responsibility. As legal scholar Patricia Monture-Angus (1999) puts it, the Aboriginal notion of land rights ‘is essentially the right to be responsible’ (Monture-Angus, 1999, p. 60). Aboriginal people see themselves as being responsible for their clans, families, relations, themselves and their future (Boldt and Long, 1985). These obligations are linked to land because ‘land is seen as part of the “human” family’ (Monture-Angus, 1999, p. 60). Therefore, while ‘rights’ and ‘title’ have been used in legal settings to describe Aboriginal people’s relationships to land, the word ‘responsibility’ may be a more accurate description, though it does not have the legal weight that the other labels have.

From the perspective of Canadian law, jurisdiction has a different meaning. It has to do with the division of powers between federal and provincial governments, set out in the Constitution Act 1867, and assigned through legislation. This is a perspective that sees jurisdiction as linked to legal statutes or constitutional structures rather than as responsibility linked to knowledge. Monture-Angus (1999) notes that even where progressive judicial processes have begun to structure ‘a comprehensive and respectful theory of Aboriginal rights’, the idea of responsibility has been evaded (Monture-Angus, 1999, p. 84).

In the Canadian legal and political system, Aboriginal people have been excluded from the distribution of jurisdiction. Asch and Zlotkin (1997) note that the Constitution Act 1867 specified the legislative jurisdiction of the federal and provincial governments while taking no account of Aboriginal peoples’ jurisdiction and responsibility to the land. Moreover, sections 91 and 92 of the 1867 Constitution establish that the federal and provincial governments cover all the areas of legislative jurisdiction in Canada. As such, Aboriginal peoples were left with the problem of establishing recognition of their ‘unspecified jurisdiction against the explicit constitutional recognition of the jurisdiction of the other levels of government’ (Asch and Zlotkin, 1997, pp. 226–227).

Augie Fleras (2000), a scholar on Aboriginal–state relations, proposes an approach to combining the two ideas of jurisdiction into one cooperative relationship through a system of ‘*multiple yet over-*

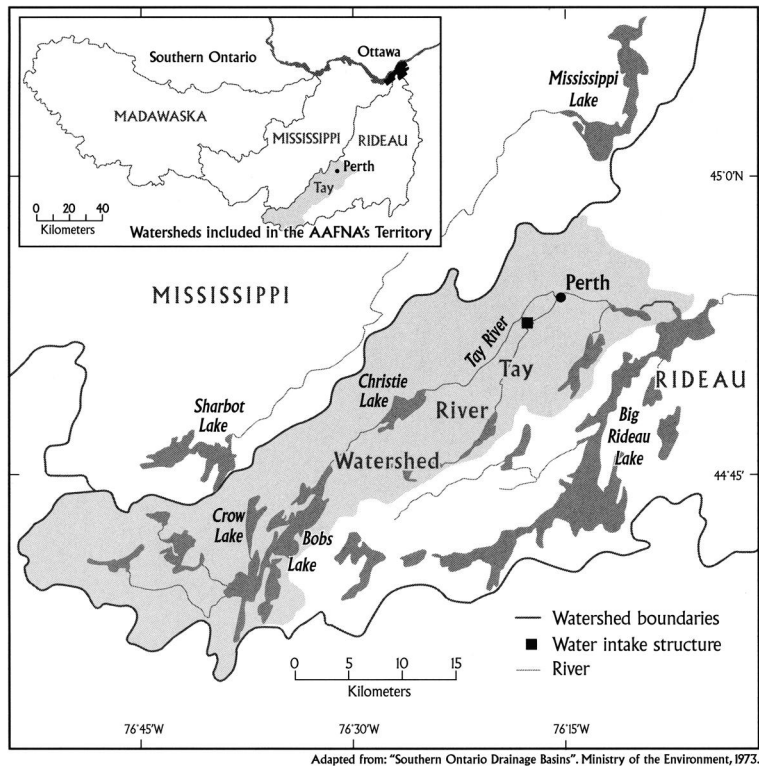


Fig. 1. Map of Tay River watershed and AAFNA territories.

lapping jurisdictions' (Fleras, 2000, pp. 109 and 113, emphasis in original). Fleras (2000) argues that the problems with Aboriginal–state relations in Canada are not going to be solved by emphasizing Aboriginal rights or by addressing historical grievances within a framework that promotes a national interest and claims an inclusive Canada. There has to be a new space created in the exclusive network of federal–provincial jurisdictions to legitimize Aboriginal ideas of jurisdiction pertaining to land, identity and political voice. This could then also lead to a respectful understanding and exchange of indigenous knowledges and worldviews. Until this happens, though, Aboriginal peoples face challenges in representing their knowledges in the juridical arena.

Case study and method

The case study revolves around an Ontario Environmental Review Tribunal that took place from November 2000 to February 2002, initiated by an Application to Take Water from the Tay River, filed by the company OMYA (Canada) Inc. in February

of 2000. OMYA (Canada) Inc., a multinational corporation that mines and processes calcium carbonate, needed additional water for its processing plant near Perth, Ontario. The Environmental Review Tribunal functions as a provincial quasi-judicial body adjudicating applications and appeals under various environmental and planning statutes. The Tribunal hearing consisted of the OMYA party, the appellant party (local concerned community members), and the party of the Ardoch Algonquin First Nations and Allies (AAFNA). The part of this environmental appeal we are focusing on here is the involvement of this local Aboriginal community, AAFNA, and their contributions to the hearing.

The Tay River is just west of Perth, a town southwest of the capital city of Ottawa, and the river runs northeast, flowing into the Rideau watershed and ending ultimately in the Ottawa River (see Fig. 1). The Tay River watershed is part of the traditional territory of the Algonquin peoples. AAFNA members are descendants of the Algonquins who occupied the Ottawa River valley at the time of contact with Europeans (for more on Ardoch Algonquin history see Huitema, 2000). The geographically

scattered family groups of AAFNA live in the watersheds of the Madawaska River, the Mississippi River, and the Rideau River watershed which contains the Tay River watershed. This system of watersheds is part of AAFNA's traditional territories, lands they use and occupy today, and is the embodiment of their indigenous knowledge of the land. The members of AAFNA who were involved in the Environmental Review Tribunal, who were also interviewed for this research, all live within or on the boundary of the Tay watershed. Treaties between the British crown or Canada and the Algonquin people of the Tay River Watershed have never been signed, and only a few families were registered under the Canadian government's Indian Act and settled on reserves. The rest found ways to make a living in settler society. In recent decades, the Algonquins have initiated land claims negotiations that extend as far as North Bay, Pembroke, east past Ottawa, and that wholly include the Tay watershed. These claims have not been settled to date. At present, the AAFNA community comprises about 500 members.

In this case study AAFNA only represents a number of Ardoch Algonquin individuals who have seen it as their responsibility to make their voices heard in a legal process that they believe has the potential to significantly affect the environmental sustainability of a part of their traditional territory. These individuals have personal connections to the Tay watershed as either a place of residence, a place used for hunting, fishing, trapping and other traditional practices, and/or as a place about which they possess Algonquin indigenous knowledge. However, they never assumed to represent the entire AAFNA community.

During the process of the hearing, AAFNA requested and received party status. Party status provided them with equal legal standing before the Tribunal as the other appellants and the multinational company, OMYA. However, this status was awarded on the condition that AAFNA would not bring forward legal material that supported their Aboriginal rights, since this was seen to be outside the scope of the Tribunal. As a result, AAFNA eventually withdrew from the Tribunal and gave a presentation to the Tribunal explaining why they had to do so. The hearing proceeded without the AAFNA as a party. The specific details of the hearing are beyond the scope of this paper (but see Koschade, 2003).

The analysis that follows is based on all the official documents produced by the Environmental

Review Tribunal. The analysis also reviewed Ontario's environmental legislation. In addition, interviews were conducted with six of the members (two women and four men) of the AAFNA community who participated in this Environmental Review Tribunal, and these interviews constitute a major part of the analysis. There was a seventh AAFNA member who could not find time to participate in an interview. The chief of AAFNA, Robert Lovelace, gave his permission to conduct this research, and all questions were reviewed with him prior to the interviews. The completed study was reviewed by the AAFNA Family Heads Council. Interviews were transcribed and copies sent to interviewees so that they could make corrections if they wanted.

Qualitative content analysis was used to organize and analyse the data. Qualitative content analysis is loosely based on grounded theory (Crang, 2001). This method is often referred to as the '*constant comparative method*' because the main procedure requires the continuous interplay between data and analysis (Strauss and Corbin, 1994, p. 273, emphasis in original). For example, during the analysis of the Tribunal's documents, there was an evident gap in the deeper meaning of terms such as 'jurisdiction', 'Algonquin knowledge' and 'responsibility' that the AAFNA members used repeatedly during the hearing. These gaps formed the basis of the interviews, which in turn provided us with a clearer understanding of the meaning and reasons for the Algonquin arguments raised at the Tribunal.

Indigenous knowledge and jurisdiction in an Ontario Environmental Review Tribunal

The following analysis begins with Algonquin perspectives on the nature and definition of their knowledge, and summarizes how they describe their relationship to land. The final two sections compare perspectives on jurisdiction described by the AAFNA participants and the Tribunal.

Defining Algonquin knowledge

The terms 'traditional ecological knowledge' (TEK), 'indigenous knowledge' (IK) and 'Algonquin knowledge' were all used in the presentation which AAFNA gave at the Tribunal Hearing. The interviews explored how participants understood these terms. Indigenous knowledge was described by the respondents as 'a practical way of doing

things', 'the knowledge received from my ancestors' and 'what Elders know about how the land works and how we use it'. Knowledge is freely passed down, and it was explained in AAFNA's presentation at the Hearing that 'while we have a broad knowledge of the world it is not in our nature to desire others to be like us or to create other places in our image' (Lovelace, 2001).

Respondents noted that the use of the formal terminology distorted the basic concept of their knowledge. One respondent explained as follows:

Traditional knowledge means that we know the fauna of the river system, we know what lives there and we understand it, and that we know. But just the terminology may be a little above a lot of people.

Participants indicate that there were problems with the idea of defining indigenous knowledge and with labels such as 'TEK', because, as one AAFNA member expressed, they are seen as a 'restrictive' way of defining a multifaceted Algonquin way of life. The respondents explained that 'TEK' is not a term that makes sense to many of the Elders, and two respondents admitted that they themselves had not heard the term before the Tribunal had begun. However, they had chosen to use 'TEK' at the Tribunal to make their argument to a non-Aboriginal audience for the legal weight associated with it. One of the respondents explained that because it was an academic term, for AAFNA to use it at the legal level gave them 'more of an upper hand' because it would be seen as 'valid knowledge'. It was also a term that AAFNA thought the Tribunal chairperson would understand better than 'Algonquin knowledge' because, as one respondent explained, 'it's within her [the chairperson's] frame of reference'. AAFNA's use of this term at the Tribunal was done for strategic reasons.

Most respondents expressed concern about the ownership of these academic terms. First, the label 'indigenous knowledge' did not refer to the knowledge of any particular group of people. Second, one respondent explained that 'with "traditional ecological knowledge"... the adjective "traditional" doesn't give a sense of ownership of anyone except maybe the people who own the term, but you're not indigenous people'. Third, two of the respondents explained that 'its failing is that you can refer to indigenous knowledge in a global sense' and that the term is often used by non-Aboriginal people in a

political context internationally'. The drawback participants identified was that using the term 'indigenous knowledge' for their local context could bring with it all the unwanted baggage related to the international dialogue of indigenous knowledge. Nevertheless, the term 'indigenous knowledge' was seen by two of the respondents as being 'a better' and 'more familiar' term, as another respondent explained, in that it can:

include more general indigenous views cause there's a lot of similarities in all indigenous knowledge in terms of relationship to the land and the ways in which that knowledge comes out of Creation and forms your relationship with other people and your views about how that area should be treated with respect and all those kind of things, which is very similar no matter which indigenous community you're talking about.

Moreover, one respondent remarked that indigenous knowledge did in fact encompass the *ideas* of 'indigeneity and place, and a form of thinking around a particular place, so that the knowledge is rooted in a particular location'.

In the end, participants felt that the term 'Algonquin knowledge', best reflected the link that any indigenous knowledge always had to a specific place and people. One respondent explained this quality as follows:

When you talk about Algonquin knowledge, then you really talk about the Algonquin knowledge of Algonquin people, in a place that is Algonquin... then the knowledge becomes somewhat transportable outside of the place but it's still identified with a particular place. ... The knowledge is based on preservation of yourself, and of your family, and of your community.

Participants explained that the term 'Algonquin knowledge' belonged to the Algonquin people and there was 'more of a sense of ownership with the term Algonquin knowledge', even though indigenous knowledge and Algonquin knowledge 'can almost be mirror to each other to some degree'.

Participants also indicated that trying to explain Algonquin concepts in words, let alone in a language other than their own, was problematic and prone to misapplications. English terms, especially words that were commonly used by non-Aborigi-

nal people in other contexts, could create misleading associations when Algonquin people attempted to describe their own form of knowledge. The term 'Algonquin knowledge' reflected the content-specific nature of their knowledge, while 'indigenous knowledge' demonstrated that it had some similarities in structure and connectedness to the knowledge of other indigenous peoples.

Algonquin relationship to land and responsibility

The most prominent feature of Algonquin knowledge that all the respondents referred to was the sense of responsibility that is associated with being Algonquin and having Algonquin knowledge. Responsibility describes the behaviour derivative of having Algonquin knowledge over an area. Two respondents described this phenomenon:

We can't have knowledge over something that we don't have responsibility over.

The only reason to have knowledge about something is because you have a responsibility to take care of that, I don't know if you want to look at it like a stewardship or something like that ... it's impossible for us to talk about TEK or traditional ecological, Algonquin knowledge actually, without talking about our responsibility over that land base.

The responsibility which participants felt for their land came from the knowledge they had of the area. Yet, to take responsibility required that they had the ability to make responsible managerial decisions, and this must be recognized by all other users of the land. In essence, they saw their responsibility as a sense of duty. From an Aboriginal perspective that is steeped in oral history and indigenous knowledge, one explanation of the sense of duty these participants felt was explained as follows:

I don't like the term mythological, but on a mythological level, OMYA represents the Windigo. OMYA is the Windigo. And as an Algonquin you have no choice but to try to defeat the Windigo.¹

The condition of indigenous knowledge described as responsibility is something that comes from the Algonquin way of understanding the interdependent relationship between themselves and all parts of nature. The basis of understanding this

reciprocal and responsible relationship comes from a Creation story passed down through the generations from the Elders. The stories provide them with a worldview which places them in relation to every other part of Creation, as AAFNA explained at the Tribunal:

They [the Elders] tell us that we do not have the right as human beings to sacrifice the health and well being of all the other beings in the Tay River Watershed and beyond for the benefit of human beings. Whether they are the largest animals such as the bear or the smallest larva in a marsh on Bob's Lake [see Fig. 1], those species were created here to carry out particular and specific responsibilities, and we can not [*sic*] interfere with them.

(Lovelace, 2001)

The interviews with the respondents reflected this teaching:

Since we were created in this place, and we exist in this place, we were created with original instructions, which we were supposed to carry out and do, as part of our creation here. ... In terms of understanding what your place in the universe is, as human beings, we don't have the right... to make any kind of decision that's going to detrimentally impact other species on the earth. We don't have that right as human beings.

Responsibility is about understanding the consequences of one's actions. In the Tribunal presentation, AAFNA tried to explain the concept of interdependence and reciprocity in terms of the consequences one needs to consider when making environmental decisions:

Common sense requires actually thinking about how an action you might make as an individual, group, or corporation might affect the ecosystem in which you depend on to support not only your life, but also those of all your descendants.

(Lovelace, 2001)

In summary, the Ardoch Algonquin members' responses provided an insight into the way they saw their place in the ecosystem. As human beings, this role translated not simply into legal jurisdiction but ethical responsibility.

Algonquin concepts of jurisdiction

During the Tribunal, AAFNA members described their responsibility in relation to the Euro-Canadian concept of jurisdiction. The interviews revealed that the word jurisdiction in 'Algonquin jurisdiction' meant Algonquin responsibility to care for the lands and to have a part in making decisions about the management of their lands. They recognized that the term 'jurisdiction' already had a number of connotations and legal meanings. The AAFNA members were not keen on the term 'jurisdiction' because they saw it as a Western concept about having ownership over the land. They knew it is a legal word and they said that 'that's not a traditional Algonquin term for sure' and that 'it's very harsh'. Nevertheless, they transcribed their meaning of 'Algonquin jurisdiction' as follows:

It's a reasonable and responsible relationship with the world around you... it's a sense of responsible relationship between yourself and humans, all of your kinship, and the other parts of Creation.

From my point of view, jurisdiction means that your ownership of the land was never surrendered... jurisdiction, I think, in that particular case means our right to be there and our right to have a say in what's going on, and a right to have a big say.

Jurisdiction for AAFNA is something that's a little more flexible... in the sense of Indian people are sharing land, sharing resources... in the sense of having consensus among the people and living peacefully, it's important that there be some sort of boundary, but it's also important that that boundary be flexible.

The term 'Algonquin jurisdiction' expressed a clear sense of Algonquin ownership of the term that separated it from Euro-Canadian concepts of jurisdiction in governments' definitions. AAFNA members explained, in contrast, what they believed were the jurisdictional responsibilities of the Canadian government:

We believe that we have our own jurisdiction, we have our own codes of conduct and ethics that have to be followed, in which we do have laid out in our own constitution that has to be

followed. So jurisdiction is not a word that should be used lightly by the government, because really they don't have any over us. They can govern the non-Native communities but they really don't have it, especially when they acknowledge that the land isn't theirs and they're willing to go to a land claim.

According to the respondents, Algonquin jurisdiction was a clearly established code of conduct that Algonquin people must follow, and it did not fall under any category of the Canadian government's jurisdiction. Participants understood the power that lies within the Euro-Canadian definition of the word 'jurisdiction': 'What jurisdiction means really, is who has the ultimate say to dictate who does what, under what set of rules. ... You know, jurisdiction lies again back to power, and power dictates who sets the jurisdictional lines.' Another respondent tried to describe how federal and provincial jurisdiction took away AAFNA's ability to fulfil its responsibility to care for the land. If the other users of the land would not recognize AAFNA's jurisdiction as responsibility, then the responsibility would shift to those assuming the authority to make all the decisions. This understanding led AAFNA to withdraw from the Tribunal's proceedings in order not to subject themselves to a process that would not fulfil the duty of a responsible human and nature relationship.

It was the 'jurisdiction' of Algonquin people that made Algonquin knowledge a 'high-context' form of knowledge as described by Kuhn and Duerden (1996). High-context knowledge becomes more abstract at larger scales, which was a risk at this provincial setting. The Tribunal's decision to exclude jurisdiction from the presentation of evidence was an indication of a misunderstanding of the nature of the message the AAFNA party wanted to communicate. They wanted to provide direction and guidance on the management of the Tay watershed, which was intertwined in the concept of responsibility, jurisdiction and knowledge. The structure of the Algonquin knowledge of the land came from sustained experience, the survival of many generations, and the personal connection that each individual made to place. In other words, Algonquin jurisdiction was the manifestation of that knowledge which was the responsibility to continue the practices of the Algonquin people in relation to their environment, to fulfil the duty given to them by the Creator to care for all the other living beings in nature.

Tribunal concept of jurisdiction

In contrast to this Algonquin sense of jurisdiction was the sense of jurisdiction of the Environmental Review Tribunal. As used by the Tribunal, jurisdiction referred to the legal duty to act in accordance with the Canadian laws. Jurisdiction in this sense was interpreted within the Euro-Canadian context of laws, tribunals, and provincial and federal divisions of power. It was a tool used by both the Director for the Ontario Ministry of the Environment and the OMYA defendants to claim that the concerns raised by AAFNA were 'beyond the jurisdiction of the Tribunal' (Bryant, 2001). These arguments were based solely on Euro-Canadian legal interpretations and therefore by definition excluded all other possibilities. They did not allow for any divergence from this context.

Moreover, the Director of the Ontario Ministry of Environment shifted the jurisdictional level of responsibility regarding First Nations people to the federal level, stating that:

The AAFN is one of a group of Algonquin claimants who are engaged in a comprehensive land title negotiation and these matter of claim to title are being and are best raised there. ...
(Watters, 2001)

The Tribunal has no ability to make any determination as to the duty to consult in relation to matters such as those raised by AAFN. Such duties may arise in the context of negotiation or litigation concerning such claims to title where it has been established that such a claim is well-founded and may have been infringed...
(Watters, 2001)

In transferring the responsibility to the federal level, he was also suggesting that their claims belonged in a Canadian judicial court, and not in a provincial environmental appeal. By making the argument that legislation delegates and separates federal and provincial authority, the Director also argued that:

Neither the Tribunal nor the Director has jurisdiction in this matter over decisions under the Planning Act, the Environmental Assessment Act, federal law or any other law, or about matters governed under such law, for example, ... aboriginal and treaty rights, ...
(Watters, 2001)

The definition of jurisdiction referred to here does not bear any resemblance to the Algonquin concept of jurisdiction based on responsibility to the environment and the land. Instead, it is an argument about the law. The Tribunal has only to decide whether or not the water-taking permit should be suspended or revoked, and there is little leeway in the legislation, and no incentive for the Tribunal, to look at broader issues of the integrity of the legislation. This is an example of the incompatibility that exists between the Algonquin interpretation and the Euro-Canadian interpretation of the basis, meaning and duty related to jurisdiction.

Environmental review process

In the documents they produced for the Tribunal and throughout the interviews, members of AAFNA persisted in putting forward their interpretations of knowledge and jurisdiction. Even during the relatively passive process of the interviews, they resisted any generalizations about Algonquin knowledge, including dissatisfaction with English terms that did not embody their deeply rooted Algonquin ideas. From AAFNA's perspective, knowledge, jurisdiction and responsibility are inseparable. From the perspective of the Tribunal, Algonquin knowledge was potentially useful for the Tribunal, but there was no flexibility in the Tribunal to contemplate the related issue of Aboriginal jurisdiction. As a result, AAFNA withdrew from the hearings, explaining that:

It was also our intention to call Elders and others who possess Traditional Ecological Knowledge of the Tay River Watershed to further an understanding of the ecosystem. We withdrew as a Party to this Appeal because we were limited only to presenting evidence related to Traditional Ecological Knowledge. This was not a possibility, as we cannot separate jurisdiction and knowledge and if we did our position would be undoubtedly [*sic*] compromised.

(Lovelace 2001)

They viewed the limitation as disrespectful towards the Elders who they were prepared to present as witnesses of Algonquin knowledge. However, AAFNA did make a presentation to the Tribunal that summarized their position. This released them from 'party' status and limitations, allowing them to address issues of Algonquin jurisdiction.

In the end, the Environmental Review Tribunal made their decision based on all evidence brought forward by all parties, and by the presentations of participants and presenters. In February 2002, it reached a decision that allowed OMYA only to double their water-taking rather than the fivefold increase they had initially been permitted. This ruling included provision for community stewardship of local water and the use of a watershed approach for water management. The 'community' referred to does not clearly include, or exclude, AAFNA members, but it does suggest that advancing dialogue between members of the public and government would be beneficial. The implication for AAFNA in this case can only be known over time, and once again, their participation in further discussions involving the Tay River will depend on their own initiative. The Tay River question of water-taking continues among the residents of the Town of Perth, and the AAFNA community continues to defend their historical connection and ongoing responsibility for the watershed.

Conclusion

AAFNA's decision to enter into a Euro-Canadian legal space was based on a desire to contrast Algonquin knowledge with the dominant social organization of space provided by Canadian law, and to exercise their responsibility over their traditional territory. AAFNA felt that the Tribunal's claims to environmental jurisdiction could only be met publicly by refuting the epistemological foundations upon which Canadian ideas about land were juridically expressed. By that same token, the Tribunal's insistence on its authority over the Tay River's environment meant that the Algonquins could not recognize the Tribunal's definition of jurisdiction, even when they used it as a forum to explain their way of relating to the land in dispute.

Provincial environmental legislation has the authority to exclude certain voices through its highly regulated and ordered space. In this kind of setting, Aboriginal people have to be creative to find ways to insert their perspectives. In other words, law and power are engaged in the formalization of the space which, by their very nature, exclude certain other ways in which the space might be conceived and organized, for example, an Algonquin approach to addressing the issue of water-taking in the Tay River. The Tribunal's 'selectivity of inclusion' (Shaw, 2003, p. 317), based on its Euro-Canadian understanding of indigenous knowledge and jurisdiction,

meant that it was predisposed to reject certain levels of discussion. This was supported by the Tribunal space's highly structured rules of practice and legislative setting that gave them legal rights to exclude those discussions.

For AAFNA, the selectivity of what they were able to present in the Tribunal space constituted their Algonquin knowledge as 'data' for decision-making based on Euro-Canadian principles and Western science. Other ways of conceiving of the management of the Tay River watershed based on Algonquin knowledge and responsibility could only be heard by subverting some of the conventional rules of presentation of evidence. AAFNA members removed themselves from the confines of 'party' status. Instead, they made a presentation to the Tribunal that provided a concise account of their Algonquin position. This was a compromise for AAFNA. A presentation to the Tribunal allowed for greater leeway of 'evidence' but did not keep them on an equal footing with the other parties, nor did it allow them to bring in their witnesses, Elders of the AAFNA community. Nevertheless, AAFNA's participation in the Tribunal helped to obviate the laws and power relations that created a space where some perspectives were silenced.

AAFNA's participation in the Tribunal also demonstrated the existence of competing legal geographies over the Tay River watershed. AAFNA's interpretation showed that management of the watershed was disputed under competing concepts of jurisdiction, Algonquin and Canadian. While AAFNA raised these multi-jurisdictional issues about the Tay River territory, only one jurisdiction had a direct link to decision-making ability. The Tribunal's decision provided for community stewardship of the watershed, allowing an opening for AAFNA participation, but it did not acknowledge Algonquin knowledge and jurisdiction over the area. Under existing laws and legislation, the Tribunal could not recognize Algonquin jurisdiction. The only way to open doors for multiple ideas of jurisdiction to exist on shared lands requires a reinterpretation of the jurisdictional divisions of Canadian laws and legislation.

Notes

1. The Windigo in Algonquin tradition is a man turned into a spirit being that wanders the woods in search of humans to eat when there is no other food to be had. The appearance of a Windigo is meant to convey a warning of impending disaster that a community may be doomed if the figure does not cease its destruction of nature.

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