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Indigenous Rights and Multilevel Governance: Learning From the Northwest Territories Water Stewardship Strategy

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Abstract

States' increasing recognition of Indigenous rights in the realm of natural resources has led to a variety of co-management arrangements and other forms of melded authority, evolving over time into increasingly complex governance relationships. This article takes up such relationships within the analytical frame of multilevel governance, seeking lessons from the experiences of Indigenous involvement in water policy in Canada's Northwest Territories (NWT). It examines the way that effective collaboration in resource governance can emerge within the space of tension between evolving Indigenous rights regimes and the continued sovereignty of the state. At the same time, the analysis raises questions about whether multilevel governance can contribute to meaningful decolonization of relationships between settler states and Indigenous Peoples.

Keywords

Indigenous rights, multilevel governance, natural resources, water policy, Northwest Territories

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Indigenous Rights and Multilevel Governance: Learning from the Northwest Territories Water Stewardship Strategy

Indigenous Peoples and Natural Resources: From Rights to Governance

The emergence of an international framework of rights over the past 30 years has reshaped relationships between Indigenous Peoples and colonial states. This emerging international rights regime is especially associated with International Labour Organization Convention 169 (ILO, 1989) and the more recent United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP; UN General Assembly, 2007). Questions about the degree to which rights are effectively put into practice on the ground have received much attention in different kinds of forums and from various academic disciplines (Anaya, 2013; Aylwin, 2008; Barelli, 2012; Curtis, 2011; Hill, Lillywhite & Simon, 2010; ILO, 2013; Mitchell, 2014). In particular, this literature puts increasing attention on the nexus where Indigenous rights intersect with the management, exploitation, and conservation of natural resources. The preamble to the UNDRIP underlines Indigenous Peoples' "right to development in accordance with their own needs and interests" (UN General Assembly, 2007, p. 2). Nevertheless, reflecting historical patterns (Coates, 2004), contemporary economic development in Indigenous territories frequently entails the appropriation of natural resources by outside interests, often with a failure to respect Indigenous Peoples' inherent rights in relation to their traditional territories, as now enshrined in the UN Declaration (Anaya, 2013; Aylwin, 2008).

In the face of this tension between internationally declared rights and the socio-economically ingrained patterns of colonial relations, Indigenous Peoples have pursued diverse strategies to resist environmentally destructive development practices, lay claim to their share of the benefits from resource wealth in their territories, and assert their inherent autonomy (see for example Alfred & Cornthassel, 2005; Blaser, de Costa, McGregor & Coleman, 2010; Blaser, Feit & McRae, 2004; Boelens et al., 2012; Fenelon & Hall, 2008; Laplante & Nolin, 2014; Leifsen, Sánchez-Vázquez & Reyes, 2017; Stetson, 2012). As a result of these pressures, much has in fact changed, with state governments pursuing various kinds of constitutional and legislative measures that recognize degrees of Indigenous land and self-government rights. Critics argue, however, that such changes are often superficial, generally conserving the supremacy of state sovereignty, imposing Western models of land tenure, and in most cases continuing to leave Indigenous communities exposed to unequal economic power relations (see for example Coulthard, 2014; Irlbacher-Fox, 2009; Lemaitre, 2011; Milne, 2013; Pasternak, Collis & Dafnos, 2013; Reyes-García et al., 2014; Samson, 2016).

Closely linked to the evolving domain of Indigenous rights, new kinds of negotiated governance relationships have also emerged between Indigenous governments and different levels of the state, making way for participatory conservation planning, resource co-management regimes, and other forms and degrees of shared decision making over lands and resources. Often these negotiated relationships also include non-governmental actors, especially corporations. Scholars increasingly use the concept of multilevel governance (MLG) to describe these often complex arrangements for sharing decision making authority and responsibility (see for example Alcantara & Nelles, 2014; Alcantara & Spicer, 2016; Larson & Lewis-Mendoza, 2012; Papillon, 2012; Papillon & Juneau, 2015; Rodon, 2009). Though this literature is mostly focussed on the Canadian context, as an analytical framework it holds promise for generating lessons of wider relevance.

In the present analysis, I take up one such MLG relationship, the 2010 Water Stewardship Strategy (hereafter WSS or “the Strategy”) in Canada’s Northwest Territories (NWT). Well into its second implementation period at the time of writing, the Strategy is, by existing accounts, a successful example of innovation in state–Indigenous governance relations (Beck, 2016; Morris & de Loë, 2016). Through this case study, my aim is to probe the promise and shortcomings of this in-between space, where proposals and efforts towards collaboration in resource governance grow out of an active tension between Indigenous rights and the sovereignty of colonial states. In doing so, I build on a range of other such case studies that have probed specific instances of Indigenous MLG from various perspectives (see for example Alcantara & Spicer, 2016; Denny & Fanning, 2016; McGregor, 2014; Zurba, 2013).

As a non-Indigenous researcher and settler-citizen of Canada, my aim herein is to contribute to debates that help us better understand how to decolonize relationships. If there are reasons to be hopeful about the kinds of consultative and even collaborative governance practices that are emerging in the NWT around water—and I believe there are—it is also important to be honest about the limits to those practices and the further challenges that remain. How much does the WSS rebalance political agency vis-à-vis the conservation and management of natural resources? Where does the WSS fit within the broader landscape of Indigenous rights and governance in the NWT? Finally, what can we learn from this case about how MLG practices might pave the way for deeper structural changes in the relationships between states and Indigenous Peoples, not only in Canada but elsewhere as well?

The analysis is informed by research conducted within the context of a long-term research partnership agreement between Wilfrid Laurier University and the Government of Northwest Territories.¹ This relationship facilitated access to government officials in the Ministry of Environment and Natural Resources, who have in turn opened the space for me to engage with the Aboriginal Steering Committee (ASC) to the WSS. As part of the research, I attended the annual WSS Implementation Workshops in 2015 and 2016, and a special event at Wilfrid Laurier University shortly after the signing of the NWT–Alberta Transboundary Water Agreement. I also attended two ASC meetings and conducted a two-hour focus group on the second occasion, in June 2016. I had further discussions with two members of the ASC during an October 2016 workshop on consultation and consent hosted by Matawa First Nations in Thunder Bay. My arguments also draw on interviews conducted between June 2016 to March 2017 with six key informants who played (and in several instances continue to play) central roles for the Government of Northwest Territories and the Government of Canada during the evolution and implementation of the WSS.² Finally, I am indebted to other analyses of the Strategy and the related transboundary negotiations, including the authors of the 2015 Implementation Evaluation Report (*Independent Evaluation*, 2015), as well as recent work by other scholars (Beck, 2016; Morris & de Loë, 2016).

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Indigenous Rights and Multilevel Governance in Canada

In Canada, the Indian Act of 1876 provides a hierarchical and paternal legal framework governing the relationships between Indigenous Peoples and the federal government. Its backdrop is a constitution that recognizes only two founding peoples (English and French) and divides Canadian sovereignty into federal and provincial levels. Despite being effectively left out of the Canadian federation, Indigenous Peoples do enjoy constitutional protections, with Section 35 of the 1982 Constitution Act providing a key anchor for Indigenous and treaty rights for First Nations, Inuit, and Métis peoples. A series of Supreme Court decisions³ have contributed to confirming the status of these rights, and established that they must be protected in relationships between the Crown and Indigenous Peoples through the principle of honourable negotiation. More commonly known as the *duty to consult*, this principle obliges the Canadian government (or any subnational unit thereof) to consult Indigenous Peoples in cases where government decisions could affect the enjoyment of their constitutionally protected rights—with accommodation necessary “where appropriate” (Aboriginal Affairs and Northern Development Canada [AANDC], 2011, p. 5). Legal scholars have pointed to the need for more effective mechanisms to incorporate the right to consultation and accommodation into regulatory processes, and ultimately to secure more just outcomes (Mullan, 2009; Potes, 2006; Sossin, 2010). Further legal decisions have borne out these criticisms, contributing greater clarity to the Crown’s obligations (Mullan, 2011). Nevertheless, recent successful court challenges by First Nations, including *Tsilhqot’in Nation v. British Columbia* (2014) and *Coastal First Nations v. British Columbia* (2016), suggest that the state continues to fall short of the kind of robust consideration of Indigenous Peoples’ concerns necessary to uphold their rights.

Although the evolution of regulatory, administrative, and legal relationships and procedures has been significantly driven by the courts in Canada, this is not the whole story. Indigenous organizations and institutions have gained increasing importance as representatives of their peoples in policy processes and constitutional negotiations. Moreover, negotiated settlements creating new kinds of territorial and self-government arrangements have given birth to new layers of decision-making authority for Indigenous nations and also to new *intergovernmental* relationships. With this rising importance and recognition of Indigenous governments and organizations, federal and provincial governments, as well as other important political and economic actors, have increasingly entered into more horizontal negotiated relationships with Indigenous Peoples in order to address shared concerns and advance common or intersecting interests. Scholars in Canada have increasingly come to treat these new relationships as instances of multilevel governance (Alcantara & Nelles, 2014; Alcantara & Spicer, 2016; Ladner, 2010; Papillon, 2008, 2012; Papillon & Juneau, 2015; Rodon, 2009).

Originally developed within the context of the European Union, the concept of MLG has been employed by scholars working in various regions of the world. Of particular relevance to the present analysis, it has been widely applied in the sphere of environment and natural resources (Armitage, 2007, 2008; Berkes, 2010; Bisaro, Hinkel & Kranz, 2010; Cox, 2014; Ebbesson, 2010; Kluvankova-Oravska, Chobotova, Banaszak, Slavikova & Trifunovova, 2009; Koehn, 2008; Larson & Lewis-Mendoza, 2012; Newig & Fritsch, 2009; Rantala, Hajjar & Skutsch, 2014; Suškevičs, 2012; Wagner & White, 2009).

³ Some key decisions include *R. v. Sparrow* (1990), *Delgamuukw v. British Columbia* (1997), *Haida Nation v. British Columbia (Minister of Forests)* (2004), among others.

Curiously, there are only weak links between this scholarship and the literature on MLG in relations between Indigenous Peoples and colonial states (one notable exception is Larson & Lewis-Mendoza, 2012). Instead, these themes come together within the rubric of *collaborative* or *participatory* governance of natural resources (see for example Black & McBean, 2016; Bowie, 2013; Denny & Fanning, 2016; Dokis, 2015; McGregor, 2014; von der Porten, de Loë, & Plummer, 2015; Zurba, 2013), often linked to a longer-running literature on co-management (see for example Cundill, Thondhlana, Sisitka, Shackleton & Blore, 2013; Feit, 2005; Goetze, 2005; McGregor, 2011; Mulrennan & Scott, 2005; Natcher, Davis & Hickey, 2005; Stevenson, 2006; Zurba et al., 2012). Notions of collaboration and participation are certainly relevant to the present analysis, and co-management is a central facet of the broader environmental governance relationships I aim to discuss. Nevertheless, I argue that an MLG approach can contribute to the discussion by bringing key questions into clearer focus at the intersection of resource governance and Indigenous self-determination.

What is meant by MLG in relation to Indigenous Peoples in Canada has been refined in the recent literature. In an early contribution, Papillon (2012) noted that the term points to governance innovations that emerge as a result of the fact that “[I]ndigenous [P]eoples are considered politically and legally distinct, but they are not recognized neither as full constituent partners *within* the federation nor as separate political entities entirely *outside* of federal boundaries” (p. 292). Perhaps not surprisingly under these circumstances, Papillon asserted that emerging forms of MLG exist alongside (and often in tension with) the formal structures of government within Canadian federalism. They are a mode of adaptation “characterized by a multiplication of decision-making spaces and processes under which formal lines of authority, while remaining, are increasingly contested and replaced by negotiated rules” (p. 304).

A subsequent study by Alcantara and Nelles (2014) helps further refine the definition for MLG involving Indigenous Peoples in Canada. They set out three key criteria to distinguish instances of MLG from systems of intergovernmental relations within Canadian federalism, summarized as follows:

It is a policy process that engages a variety of *actors* (governmental, nongovernmental, and/or quasi-governmental) located at different territorial *scales*, the outcomes of which are the product of negotiation (*decision-making processes or negotiated order*) rather than traditional hierarchical orders such as delegation and devolution. (p. 189)

Together, these criteria highlight the need to understand what is going on *outside* the constitutionally prescribed system for decision-making within Canadian federalism, but they also beg an important question in this regard: Should we judge MLG in terms of specific policy processes and outcomes, or in terms of how it interacts with (and potentially reshapes) the federal ordering of political space? Some observers put a greater emphasis on the former dimension. Alcantara and Spicer (2016), for instance, suggested, “if the goal is to create a policy-making process that respects the underlying logic of the Canadian federation but creates space for nation-to-nation interactions within a policy-making process, then multilevel governance may be an ideal model” (p. 188). Others put the second criteria at the core of the debate. In this vein, Papillon (2015) underlined the importance of understanding both “the limits and the transformative potential of this new multilevel reality” (p. 5).

Without a doubt, MLG can be read as an example of the way colonial institutions adapt to new political pressures in ways that insulate themselves from radical challenges. As Ladner (2010) asserted, from an Indigenous perspective “most demands and aspirations involve decolonisation—internal (within nations) and external (within Canada) and rebuilding Indigenous nations economically, politically, culturally, linguistically and legally” (p. 68). She argued that many multilevel relationships have failed to escape the confines of the Canadian colonial structure provided by the Indian Act; instead, she called for the discussion to shift from one of MLG towards *international* models of relationship between sovereign entities. Nevertheless, others are less pessimistic about the potential of MLGs. Papillon (2015) suggested that although incremental in nature, the changes brought about by MLG arrangements may have larger impacts over time: “In the long run, their cumulative effects on Canadian federalism and on the future of Aboriginal governance may well be as significant as comprehensive land claims and self-government agreements, if not more” (p. 5).

Although the present analysis is certainly concerned with the prospect of better policy as a result of the relationships and negotiations that comprise MLG, it is equally preoccupied with this larger question of MLG’s transformative potential in relation to the structures of Canadian federalism. Does MLG open pathways towards *decolonization* and *Indigenous self-determination*? These concepts involve an inherent challenge to the legitimacy of the colonial state (Alfred, 2009; Alfred & Corntassel, 2005; Coulthard, 2014; Ladner, 2010). They also complicate claims to Indigenous rights, since in practice rights depend on constitutional or parliamentary recognition, and their application is adjudicated by Canadian courts. Indeed Corntassel and Bryce (2012) called rights a form of “state affirmation” (p. 153). Thus, if rights form part of the basis for practices of MLG, they are also part of the colonial relationship that conditions such practices. Alcantara and Morden (2017) draw out some of the other structural ways that power operates to shape MLG processes. For instance, working through the state’s prerogative to set the parameters for policy negotiations or through the unequal access to monetary and other resources that different parties can bring to the table. They characterize such factors as a “shadow of hierarchy” that hangs over MLG (Alcantara & Morden, 2017). As I set out to examine the interplay between the politics of rights and the politics of negotiated governance in NWT water governance, clearly the question of power relations is central.

The NWT Water Stewardship Strategy as a Case of Multilevel Governance

The Resource Governance and Management Setting

The WSS took shape in an already complex governance landscape for natural resources. The roots of that landscape can be traced to conflict in the 1970s over the proposal for a gas pipeline through the Mackenzie Valley, which dominates the western half of the NWT’s geography. A federal government inquiry was launched in answer to Indigenous Peoples’ opposition to the pipeline, with Justice Thomas Berger appointed as the inquiry’s commissioner. Berger’s 1977 report, *Northern Frontier, Northern Homeland*, called for the settlement of land claims as a prerequisite for resource development in the valley (Berger, 1977). The settlement of those land claims, some of which are still being negotiated, has created a patchwork of surface and subsurface land rights for Indigenous Peoples, along with royalty sharing measures and resource management frameworks. The claim settlements also include provisions for self-government or for subsequent self-government negotiations.

Integrated with the land claims process, the 1998 Mackenzie Valley Resource Management Act established resource co-management boards for the Mackenzie Valley. The Mackenzie Valley Land and Water Board and the Mackenzie Valley Environmental Review Board, as well as the regional Land and Water Boards linked to the Gwich'in, Sahtu, and Tłı̨chǫ comprehensive land claim agreements, comprise a regulatory regime where Indigenous governments hold 50% of the decision-making votes. That regulatory context falls outside the scope of the WSS, though the Land and Water Boards are included among the stakeholders. Whether we characterize the land claim agreements and regulatory boards themselves as examples of MLG—Alcantara and Nelles (2014) would argue that they are *outcomes* of MLG, rather than ongoing instances thereof—they certainly generate an ongoing need for coordination across actors at different scales. In this sense, they create a policy environment that arguably fosters further instances of MLG.

Finally, it is important to situate the WSS within the broader negotiated governance relationships in the Mackenzie basin. The *Mackenzie Valley River Basin Transboundary Waters Master Agreement* (1997), which came into effect in 1997, includes the federal government and all provincial and territorial governments in the basin as signatories. It established the Mackenzie River Basin Board, which includes Indigenous representation from each jurisdiction, and it set out basic principles for the subsequent negotiation of bilateral water agreements. It took almost two decades for those negotiations to finally come to fruition and it was principally the NWT, on the basis of its WSS, that finally drove that negotiating agenda forward. Hence, if the eventual negotiations between provinces and territories around transboundary waters were not strictly an instance of MLG at that interprovincial level of engagement, they occurred in a political space that was conditioned by MLG both at the broader basin level and, as we will see, within the NWT's WSS.

Introducing the Strategy

The foundational document of the WSS, *Northern Voices, Northern Waters* (2010), is the product of extensive engagement with *water partners*, broadly defined as “anyone that has a role in water stewardship” (p. 3), including various levels of government, regulatory boards, industry, and non-governmental organizations. The highly participatory approach to the Strategy's development is carried into its implementation, with all water partners invited to participate in an annual two-day implementation workshop. They are also called upon during third-party evaluations at the conclusion of each five-year implementation cycle. As per the criteria outlined by Alcantara and Nelles (2014), the WSS would appear to be a clear instance of MLG, especially in terms of the negotiated relationships between federal, territorial, and Indigenous governments that lie at its heart.

It is evident from the *Northern Voices* (2010) document that Indigenous Peoples (the language used here is *Aboriginal*) have a special role amongst the other water partners. Indeed, the Message from the Ministers, which acts as a preface, begins as follows: “On behalf of the Aboriginal Steering Committee, the Government of the Northwest Territories (GNWT) and Indian and Northern Affairs Canada (INAC), we are pleased to present . . .” (p. 1). Moreover, after brief introductory remarks, Section 1.1 is dedicated to “The Importance of Water to Aboriginal People in the NWT” (p. 4). Finally, it is worth noting that this section is concluded with a featured textbox that highlights Aboriginal rights, asserting that the WSS in no way infringes upon, and indeed is in every instance superseded by, rights recognized in “existing or future treaties or land, resource and self-government agreements” (p. 4). As an exercise in

MLG, the WSS clearly has a complex relationship with Indigenous Peoples in the NWT: They are placed on par with governments as authors of the initiative to build the WSS; their relationships with water are at the heart of the WSS's concerns; and the WSS must develop in accordance with their treaty and constitutional rights.

Northern Voices, Northern Waters (2010) set out a key guiding vision: “The waters of the Northwest Territories will remain clean, abundant and productive for all time” (p. 10). As a kind of master plan for water governance in the NWT, the Strategy itself did not prescribe any specific policy actions, but it did set the policy agenda *and* inform the concrete substance of policy development in crucial ways. For instance, the WSS provided the rationale for the development of a robust territory-wide community-based water monitoring program, which began operation in 2012. Perhaps even more clearly, the Strategy set out a watershed and ecosystem-based approach, which informed what was arguably the most important goal during the Strategy's first five-year implementation period: the negotiation of transboundary water agreements with neighbouring provinces and territories. In this way, the Strategy has constituted a space of highly consequential public engagement within the broader context of water governance in the Territory.

As a final point of context for the WSS, it is important to note that it took shape during federal-to-territorial devolution of powers. Devolution was already on the political agenda in the years immediately prior to the birth of the WSS and moved into formal consultations in 2010 (the same year the Strategy was launched). A negotiated devolution agreement came into effect in 2014, giving the territorial government powers over lands and waters similar to those enjoyed by Canadian provinces. At that point the federal government's role in the WSS became secondary, and they also withdrew from the transboundary water negotiations. In some ways, the Strategy anticipated this shift in authority. Though there was leadership and buy-in for the WSS across both federal and territorial government agencies, the GNWT provided the initial impetus for the initiative and continued to be its main driver. In particular, the WSS was a key priority for then GNWT Minister of Environment and Natural Resources (ENR), Michael Miltenberger. This context is important because it signals the way negotiated governance relationships—rather than clear lines of hierarchical federal authority—formed the overarching context for collaboration.

Indigenous Peoples in the Water Stewardship Strategy

Most research participants used the language of relationships and partnership to describe the involvement of Indigenous Peoples in the WSS. This perception is also borne out in the 2015 implementation evaluation report, which conducted independent consultations with WSS participants. The report noted, “the types of achievements that were most commonly identified were increased collaboration and improved relationships and trust” (*Independent Evaluation*, 2015, p. 7). Reflecting on the early and extensive participation of Indigenous representatives in the development of the Strategy, the official who coordinated federal involvement, Jennifer Dallman-Sanders, noted, “the Water Stewardship Strategy—for me as a federal employee—was a new way of doing business with Indigenous governments” (personal communication, November 10, 2016).

The strategy was also experienced as an important shift in approach by a long-sitting member of the ASC (ASC1).⁴ He described an initial Strategy meeting where the participation of numerous staff from both federal and territorial government ministries risked turning the process into a bureaucratic exercise. Instead, an impromptu huddle outside the main meeting between high-level representatives (himself, one federal, and one territorial) resulted in a personal commitment to approach the WSS differently. From that point onwards, Indigenous representatives had a permanent seat at the table in dialogue with a small group of senior government officials—unlike other “water partners,” who were involved in extensive consultations but did not play the same ongoing role to shape the Strategy. The ASC came into existence through this dialogue as a permanent fixture of the WSS. As ASC1 summarized, Indigenous Peoples were involved “right from the bottom up . . . in partnership with federal and territorial government. All the Aboriginal regional governments—they all had representatives” (personal communication, June 29, 2016). Several other members of the ASC concurred. ASC2 put it as follows: “The strategy itself as a framework policy document was done in a way that ensured ownership, and the sense of ownership over the process” (personal communication, June 29, 2016). Despite a degree of consensus on this point, it is important to clarify that some members of the ASC were more cautious in describing the character of the partnership that the WSS embodies. ASC3 remarked, “ultimately, this is their process; it is enabling them to make better decisions” (personal communication, June 29, 2016).

That public governments were willing and able to secure the involvement of Indigenous governments from across the Territory is significant for a couple of reasons. First, as several research participants noted, historical tensions between different groups often prevent this kind of collaboration. Second, there were (and continue to be) differences between the federal and NWT governments with respect to who they recognize as Indigenous governments. In the case of groups with settled land claims (the Inuvialuit, Gwich’in, Sahtu Dene and Métis, and Tłı̨chǫ), there is an officially recognized regional Indigenous government counterpart, which provides the basis for intergovernmental relations. Two key regions still had unsettled claims as the Strategy was coming together (and during the research): the Dehcho Dene and Métis, and the Akaitcho Dene. Moreover, some individual communities, like K’atl’Odeche First Nation, have opted out of regional land claims. Finally, formal recognition of Métis Peoples by public government has been uneven. What is striking about the WSS is how a diversity of groups had a place at the table—and were recognized by public government as having a legitimate stake there—even though a few Indigenous governments also opted out. To the extent that a collective Indigenous voice in the NWT is possible, the ASC embodies this, and hence provided a key interlocutor for public government in the formation of the WSS. As observed by the lead official from the federal government side during the formation of the Strategy, Teresa Joudrie, “The Steering Committee really was useful . . . it’s one of the rare times that all of the parties come together to work on a common goal. That does not happen frequently” (personal communication, November 10, 2016).

A shared interest in the long-term health and sustainability of NWT water systems was key to bringing together different actors in the WSS. Relatively early in the strategy, community-based water monitoring became one important vehicle for building on this common interest to develop relationships and build trust between Indigenous communities and the GNWT Ministry of Environment and Natural

⁴ As per my commitment to maintain the anonymity of quotes from the ASC members, I have designated each ASC participant a numeric value from 1-7.

Resources (ENR). ENR staff worked to set up protocols and train monitors in over 30 communities, with the communities closely involved in establishing priority monitoring locations. As ACS2 noted,

The GNWT—I think—has done a pretty good job of engaging with communities with respect to community-based monitoring, which is very dear to the heart of the communities. So there was also a bit of a trust relationship established both through the process leading to the Water Strategy and then through the implementation of the community-based monitoring. I think that was something that worked, and it was seen to work. (personal communication, June 29, 2016)

Although the monitoring itself collects data according to the principles of Western science, community input to monitoring locations rests significantly on traditional ecological knowledge (TEK). This established a precedent early in the Strategy around respecting and working with different kinds of knowledge, demonstrating commitment on all sides to the principles expressed in the *Northern Voices, Northern Waters* (2010) document. The ASC provided ongoing oversight as the community-based monitoring strategy emerged, while ASC members also often played an important role in facilitating community-level engagement.

Work with communities to develop the water monitoring program overlapped with community engagement on another key priority during the first five-year cycle of implementation: transboundary water negotiations. The NWT is the final downstream jurisdiction in the Mackenzie River Basin, receiving waters that originate in British Columbia, Alberta, Saskatchewan, and the Yukon. Upstream development, including the tar sands in northeastern Alberta, as well as shale gas development and hydroelectric installations in northern BC, figure large in people's concerns for aquatic ecosystem health downstream in the NWT. After little activity on bilateral water negotiations since the signing of the *Mackenzie Basin Transboundary Waters Master Agreement* (1997), the NWT began putting the issue back on the agenda even before launching the WSS. The first set of formal negotiations, with Alberta, began in 2011. It is within the context of the transboundary negotiations that we can gauge most clearly how the ASC, along with the broader engagement of Indigenous governments and communities by the federal and territorial governments, shaped the translation of the WSS into concrete policy measures.

Transboundary Water Negotiations

All participants in the research characterized Indigenous governments' influence on the negotiations as substantial and crucial. The Chief Negotiator for the NWT, Merrell-Ann Phare, underlined that the territory's negotiating position necessarily had to reflect commitments set out in the treaties and comprehensive land claims, and that it was further shaped by the priorities identified by the WSS. In this way, Indigenous rights and voices were central ingredients for negotiating positions. Those positions were shaped and refined through a series of engagements and consultations with Indigenous governments, as well as the ongoing involvement of the ASC. Phare especially highlighted the importance of the ASC for keeping the negotiating team grounded in the perspectives and interests of Indigenous Peoples in the Territory:

The committee was the primary point of contact for the negotiating team—for the whole team. So we routinely met with them . . . and we created a process that allowed us to engage the Aboriginal Steering Committee both before and after meetings . . . So you could see with each

step: interests, options, options refinement, and final agreements. (personal communication, Sept 2, 2016)

According to ENR records (Megan Beveridge, personal communication, June 23, 2016), the transboundary negotiations team engaged and/or consulted on 79 occasions with 11 different Indigenous governments while preparing the NWT negotiating position or as negotiations progressed with Alberta, British Columbia, Saskatchewan, and the Yukon. In addition, 18 meetings of the ASC also addressed the transboundary negotiations to varying degrees. It is important to note that most of the engagement and consultation meetings took place *in the regions*, and that the entire negotiating team was normally involved. Federal and territorial government officials who participated in the research underlined the significant expenditure of time and resources in order to create opportunities for meaningful dialogue.

To further ensure that Indigenous views were present at the negotiating table, an NWT and Aboriginal Affairs Advisor was hired for the negotiating team. Of Sahtu Dene origin, Bob Overvold is a former senior civil servant with both territorial and federal governments, who also spent seven years leading the Dene Nation in land claims negotiations during the 1980s. While his role was central, Overvold was quick to clarify that the members of the ASC “were the more legitimate voice” (personal communication, November 10, 2017). Erin Kelly, ENR assistant deputy minister, who acted as lead negotiator and technical advisor for the transboundary negotiations, echoed Overvold’s assessment: “Bob was the voice for a lot of things but we were *all* grounded in the perspectives provided by the Aboriginal Steering Committee” (personal communication, November 10, 2017).

There was also a broad consensus among the research participants that Indigenous governments’ input played a crucial role in the negotiations. The Chief negotiator noted, “in terms of leverage, I’d have to say that we were able to assert the significance of the things we were asking for by indicating, “before this meeting and after this meeting, we are speaking directly to Indigenous governments” (personal communication, Sept 2, 2016). ASC2 concurred from the ASC perspective: “The ASC has also helped or abetted the GNWT in its negotiations on the transboundary agreements . . . Where the GNWT could go to the table with the backing of the Aboriginal governments, that strengthened their hand in terms of negotiations” (personal communication, June 29, 2016). He goes on to describe this dynamic as a kind of symbiosis: The relationship really did advance the interests of all parties.

The influence of Indigenous Peoples’ interests and perspectives are clearly visible in the outcomes of the negotiations. In a public talk at Wilfrid Laurier University shortly after the conclusion of negotiations with Alberta, Minister Miltenberger and Chief Negotiator Phare highlighted the way that Indigenous TEK, including a holistic view of the natural environment, shaped an unconventional basis for the new bilateral water agreements. Where most transboundary agreements focus on water quality and quantity at the border, these instead make aquatic ecosystem health the centrepiece of bilateral management efforts. As Phare noted later in an interview, “that flowed directly from the significance of all parts of the ecosystem, including fish, bugs, muskrats, water plants to traditional lifestyles” (personal communication, September 2, 2016). The agreements also provide for the inclusion of TEK in the implementation of monitoring protocols. As Lead Negotiator and Technical Advisor Kelly affirmed, “I think there were a lot of positive steps made in those agreements related to multiple knowledge systems” (personal communication, July 25, 2016). Finally, the agreements stipulate the inclusion of an

Indigenous representative on the bilateral management committees (BMCs), a role played by a different member of the ASC for each of the concluded agreements.

Despite these positive outcomes, members of the ASC expressed outstanding concerns. One is the bilateral agreements' lack of regulatory teeth. As Beck (2016) highlighted, Indigenous governments in the NWT hoped that the agreements would contain binding mechanisms to protect water. Instead, they conserve the principle of "no unreasonable harm" located in the *Mackenzie River Basin Transboundary Waters Master Agreement* (1997) and provide conditions for triggering engagement (rather than prescribing action) if harms are detected. Second, while having an Indigenous representative on the Bilateral Management Committees for the agreements is viewed as a positive step, it is seen as an imperfect mechanism for ensuring representation of Indigenous governments. Finally, all members of the ASC concurred about the challenges of ensuring more fulsome engagement with water governance "on the ground" in their communities.

This final challenge relates to some of the more subtle ways that power relations remain present in spite of efforts to establish more horizontal working relationships. The difficulty of community-level engagement stems in significant part from the need for specialized knowledge of science, law, and policy in order to grapple with documents like the transboundary water agreements. Always a problem in public participation for environmental decision-making, the knowledge differential is especially marked for remote Indigenous communities, which face significant hurdles to access higher education. Members of the ASC are able to provide a degree of expertise to bridge the knowledge gap, but, as individuals, their own expertise is necessarily limited. As ASC3 observed, "Even I don't feel like I have a very strong understanding of what's in that agreement. And if I don't, then I know my community members don't and my leadership doesn't" (personal communication, June 29, 2016).

ASC members also remarked that even putting aside the issue of expert knowledge, they face steep challenges in their advisory function, given that most of them must liaise with multiple community-level Indigenous governments within their regions. As noted by ASC4, "For my region, places are far and in between . . . part of it is not enough time to get around to do anything at all. Basically, you are on your own, so that part is really difficult" (personal communication, June 29, 2016). ASC representatives come from offices with limited staff and a series of other day-to-day demands, and they are also called upon for multiple other engagement processes in addition to the ASC, around matters like protected areas, wildlife management, and resource development. In sum, despite GNWT's recognition that capacity building is crucial, as well as its dedication to addressing that issue through various supports and programs, this exercise in MLG does not occur on a level playing field. In a follow-up on her comment about the knowledge gap, ASC3 remarked, "we give advice, and it's in our interest to participate, which is why we all come to the table, but there is definitely an unequal balance when it comes to resources and capacity" (personal communication, June 29, 2016). This view was also borne out in the 2015 WSS implementation evaluation report, which highlighted capacity and resourcing issues as systemic challenges to the implementation of the WSS (*Independent Evaluation*, 2015, p. 11).

Significance of the WSS in the Broader NWT Governance Context

The WSS is part of an evolving culture and practice of governance within the GNWT, informed by a key set of principles set out in a 2012 document, *Respect, Recognition, and Responsibility* (Executive and

Indigenous Affairs, 2012). Several research participants underlined the importance of the 2014 creation of the Intergovernmental Council on Land and Resources, a high-level annual meeting that brings together the GNWT and Indigenous groups who are signatories to the 2014 devolution agreement. This Council is not as inclusive as the WSS ASC, since Indigenous groups with outstanding land claims were not part of the devolution negotiations and have not signed the final agreement, but it aims to eventually provide a high-level point of contact with the GNWT for all Indigenous governments (Intergovernmental Council of the NWT, n.d.). Itself an example of MLG, probing the Council's potential importance was beyond the scope of this research. Nevertheless, it is worth noting that one early assessment of the devolution process and outcomes characterizes this as a lost opportunity for more meaningful collaboration between Indigenous and public governments (Irlbacher-Fox, 2015). On the other hand, concrete examples where substantive collaboration *has* occurred are found in recent legislative processes. The Wildlife Act and the Species at Risk Act were developed through fully collaborative processes—something ASC5 referred to as having “a pen at the table” (personal communication, June 29, 2016). In the wake of the 2015 federal election, and the Liberal government's progressive discourse on Indigenous rights (including their commitment to implement the UNDRIP), Merrell-Ann Phare and Michael Miltenberger, together with former Assembly of First Nations Chief Phil Fontaine, presented a report to the Federal Minister of Natural resources touting the NWT's emerging practice of “collaborative consent” as a potential model at the national level (Ishkonigan, Phare Law Corporation & North Raven, 2015).

Among research participants, there were different views as to the relative importance of the WSS and the ASC within this broader governance landscape. Bob Overvold remarked, “this Water Stewardship Strategy probably in my mind was the single most important initiative that was about to help bridge and bring closer Aboriginal governments and the territorial government” (personal communication, November 10, 2016). On the other hand, speaking from where she now sits in the GNWT Department of Executive and Indigenous Affairs, Jennifer Dallman-Sanders, characterized the WSS as “an *example* of those [evolving] relationships” (personal communication, November 10, 2016). Other views fell somewhere between these two perspectives.

Despite frequent use of the language of partnership in reference to the WSS, the ASC is one-step removed from the policy-making function associated with co-drafted legislation; it is essentially an *advisory* body. Nevertheless, it was obvious throughout the research that ASC's advice is very influential. As Erin Kelly noted from her position as assistant deputy minister of ENR, “their input is definitely significant and highly considered in the decisions that we make”. The transboundary negotiations provide one obvious example of such consideration. During the June 2016 focus group discussion, ASC members pointed to another smaller but significant example of their recent influence, in this case regarding a mechanism to facilitate inclusion of TEK in ENR decision-making: Their advisory opinion sent the designers of the mechanism back to the drawing table. ASC participants also noted the way that their mandate was increasingly being stretched by ENR to include agenda items only tangentially related to water; the feeling was that because the ASC “works,” its advice was being sought out beyond the immediate concerns of the WSS. Regardless of whether this is appropriate or not, it points to the fact that government—or at least ENR—is increasingly seeking ways to factor Indigenous perspectives into its policy decisions.

Overall, the relationship between ENR and the ASC seems well characterized by the notion of symbiosis noted earlier, in which all parties have an interest in making the relationship work. At least in ENR (and the same is not always true across other government departments), there is a real *desire* to work with Indigenous governments. That said, interests alone cannot explain the emergence of the WSS, the influence of the ASC, and the shape of the transboundary process. Several of the research participants—both Indigenous and non-Indigenous—underlined that Indigenous constitutional and treaty rights, and especially the comprehensive land claims, are an ever-present context for these innovations in participatory or collaborative governance. In her analysis of the transboundary negotiations, Beck (2016) quoted Tim Heron, ASC representative for the NWT Métis Nation, “Aboriginal rights are always in our hip pocket” (p. 510). ASC5 put it even more plainly as follows: “I think it’s the federal courts that have driven this issue to us being here today and being at this table” (personal communication, June 29, 2016). But if rights and land claims shape the possibilities for the WSS and the ASC, it isn’t clear that this runs both ways. ASC2 reflected on the character of the ASC as follows:

We have to remember that this is ultimately an interest-based process. There is no authority here. . . . Certainly the aboriginal governments see it in their interest being in this forum, because there is the opportunity to . . . influence some of the decisions. But there has been no . . . the ASC does not represent any shift in governance. It doesn’t represent any shift in actual authority or systems (personal communication, June 29, 2016).

This observation echoes cautions in the literature about the way MLG depends on specific individuals, conjunctures, and intersections of interests, which are not necessarily stable over time (Alcantara & Spicer, 2016; Papillon, 2015). It also calls into question MLG’s ability to shift deeper colonial structures of hierarchy and power.

Conclusions: The Complex Dance of Multilevel Governance and Indigenous Rights

Recognizing the limits of my own non-Indigenous perspective, I confess that the findings of this research have left me hopeful that multilevel resource governance *can* promote forms of collaborative decision making that go beyond the more narrowly focussed technical and regulatory engagements of co-management regimes (for similar conclusions, see Bowie, 2013; Zurba, 2013). It is clearly a positive sign that public government in the NWT, and most particularly the GNWT, is seeking ways to proactively respect nationally and internationally enshrined Indigenous rights by working directly with Indigenous governments as counterparts in multilevel policy dialogue (see also Beck, 2016 on this point). As a result, it would seem that Indigenous Peoples in the NWT are more likely to escape the fate they so often suffer in other jurisdictions, where they are treated as just another “stakeholder” in environmental governance processes (von der Porten & de Loë, 2013; von der Porten et al., 2015). Certainly the WSS and related governance innovations are building important new levels of dialogue, trust, and influence in decision-making—adding a layer of policy engagement that addresses some of the limitations in the Mackenzie Valley Resource Management Act and associated co-management boards identified by other scholars (Coulthard, 2014; Dokis, 2015; King, 2015).

One key criteria for successful multilevel collaboration in the NWT, echoed by Denny and Fanning (2016) in their proposal for “collaborative co-existence” in Nova Scotia salmon co-management, could be the government-to-government level on which such relationships are being built. Nevertheless, if

high-level dialogue is important, it is certainly not enough. Denny and Fanning also call for the fulsome incorporation of Indigenous knowledge, laws, and management practices. The WSS only travels part way down this road. In addition, following Bowie (2013), the success of such approaches depends on further resources and capacity building for Indigenous self-government. Indigenous communities in the NWT need more political space and financial resources to build robust self-government at the community level, as well as cultivating further technical capacity to better engage Western science while advancing the role of TEK in land and water stewardship.

Of equal importance, we can't forget that the federal system continues to operate just below the surface of the new relationships emerging in the NWT. Sovereignty lies no less with the state today than it did in the early 1970s, when many of the processes that lead to the present governance context were put into motion. This is true *in spite* of advances in Indigenous rights and land claim processes over this period, and it means that the notion of nation-to-nation dialogue actually effaces the hierarchical relationships that persist. As Coulthard (2014) argued, land claims involve a not-so-subtle solidification of Canadian sovereignty over Indigenous territory, where broad claims to territorial rights are traded in for a much smaller package of collectively held private-property rights guaranteed by the state (see also King, 2015). Similarly, self-government negotiations involve exchanging fundamental claims to self-determination for strictly defined governmental powers delegated from federal and provincial authorities (see also Irlbacher-Fox, 2009). Meanwhile, the broader Indigenous rights regime evolves through the decisions of courts in a Western system of law. These are the underlying contexts for processes of multilevel governance. Hardly just a "shadow," hierarchy remains the foundational structure of relations between public government and Indigenous Peoples in Canada.

My aim with these assertions is not to detract from the important work done by both Indigenous and non-Indigenous leaders, legal experts, and scholars to envision and promote a culture of mutual respect and "working together" as the basis for doing things differently in the NWT. In Canada—and indeed internationally—the NWT stands out as a progressive example from which other jurisdictions have much to learn. Instead, my hope is to ensure that these deeper questions about the colonial state remain in view, as there is always the risk that progress in state-Indigenous relations can become a source of legitimation for the colonial structures that remain in place. Ultimately, it needs to be asked what would be possible in the NWT and elsewhere if Indigenous government were incorporated as another layer of *sovereign* authority in state constitutions, complete with significant territorial jurisdiction. Multilevel governance can perhaps point the way to what nation-to-nation relations might look like, and even at times provide a way of making policy as if between equal parties, but the mechanisms seem lacking for it to achieve more transformative change. In this sense, inherent rights to territory and self-determination remain an indispensable assertion as Indigenous Peoples respond to overtures from settler states for collaborative modes of resource governance. The governments of those states need to be reminded that such collaboration is just a step along the way to truly decolonized relationships between peoples.

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