

Indigenous Rights and Environmental Governance: Lessons from the Great Bear Rainforest

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Abstract

In British Columbia, conflicts over First Nations' rights to natural resource management have become a common feature of the political landscape. A range of emerging issues—such as private hydroelectric developments, a resurgent mining industry, oil and gas exploration and proposed pipelines—combine with increasingly robust legal grounds for First Nations' rights to suggest that significant challenges to effective regimes of environmental governance loom on the horizon, even as their necessity also looms large. This paper examines the negotiations that led to the novel forms of environmental governance being deployed in the Central and North Coast of British Columbia, also known as the Great Bear Rainforest. The process used to develop these ground breaking governance arrangements included a set of negotiations that took place between First Nations governments and the BC government, known as the “government-to-government” negotiations. The negotiation processes also produced tangible outcomes that have wider governance implications and signal a significant shift in the way First Nations are involved in land use decisions in British Columbia. The paper considers the character of these negotiations, exploring what their wider implications and applicability might be for First Nations, the environmental movement and the provincial government. Data were collected through semi structured interviews with individuals involved directly or indirectly in the negotiations; the analysis of the interview data situates their insights within a wider consideration of strategies for achieving forms of environmental governance that are responsive to Indigenous peoples' rights. While many challenges remain in implementing the outcomes of the Great Bear Rainforest Agreements, important lessons can be learned from the processes that were used to reshape the future of this region.

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Introduction

The role of First Nations in natural resource management in British Columbia has fundamentally changed over the past few decades. This change is a consequence of the interplay between a long history of tensions concerning Aboriginal rights and title claims, including rights to legally own, use and manage their lands (Tollefson *et al*, 2008), and conflicts over resource use and management in the province, including forestry, mining, fisheries, and energy development, including proposed oil and gas pipelines (Hoberg, 2009). Given the province of British Columbia's long reliance on a resource extraction-based economy, conflicts over resource management are hardly novel. Such struggles have always raised questions not only about the environmental impact of resource extraction activities, but also about who should manage, benefit from or bear the impacts of resource extraction (Nadasdy, 2003; Marchak, 1995). The increasing recognition of Aboriginal rights and title claims has raised the profile of these latter issues, forcing participants—industry, environmental organizations, and all levels of government—to address the concerns of First Nations directly. This in turn has shifted the terrain of the debate regarding environmental issues in important ways, bringing governance questions to the core of resource management in the province.

This shift and its wider implications are best illustrated in the decade long struggle over the North and Central Coast region, also known as the Great Bear Rainforest. Although often perceived as an “environmental” conflict, the struggles over the Great Bear Rainforest in fact express much more about what can and might happen when Indigenous peoples demand recognition of their rights and participate actively in the processes determining the future of their traditional lands and communities. As such they illustrate a much wider transformation of social and political realities than often assumed, providing a glimpse into the future of the governance of resource management in the province. We argue that the role of First Nations in the Great Bear Rainforest created a dramatically different situation for the region from what otherwise would have been envisioned by government, environmental groups and the forest industry. This suggests that the emerging role of First Nations in land use decisions has the potential to significantly affect the evolution of environmental governance in British Columbia.

The increasing prominence of governance questions in environmental politics—and the role of indigenous peoples specifically and diverse cultural and knowledge systems more generally in the negotiation of governance arrangements—is of course consistent with wider developments. Over the past few decades it has become increasingly clear that although some environmental issues fit well within existing institutions of governance, many pose considerable challenges to these institutions. Whether because of the complexity of the spatial expression of their causes and effects, the kind and character of scientific knowledge or technical expertise necessary to understand and manage them, or their imbrication with processes that are constitutive of the authority of these institutions, many environmental problems require and are effecting the development of new institutions and practices of governance. Examples include transnational governance arrangements emerging around issues such as species at risk, water management, biodiversity preservation, and climate change, but also sub-national and regional co-management practices, often involving negotiations between different cultures, values and knowledge systems. These latter cases arise most frequently in post-colonial

situations, including all of the Americas as well as much of Africa, parts of Asia, and Australia and New Zealand. Of course, environmental issues are not unique posing governance challenges that are facilitating the emergence of new forms of governance; however, the particular ways they implicate and integrate issues of spatiality, knowledge and authority—as well as their increasingly-recognized centrality to many more conventionally understood political problems—render them distinctive and important. It is in this context that the shift we focus on here is of wider relevance than might initially appear: there are a surprising number of resonances between the situation in BC and the evolution of environmental governance in other parts of the world. Part of our objective here is to provide a rich description of what appears to be an extraordinary case in such a way as to potentially activate these wider resonances.

We begin by presenting the current context of First Nations rights and title in British Columbia, before turning to the Great Bear Rainforest more specifically to provide a narrative of the conflicts as well as innovations that led to the remapping of its future through a set of agreements known as the Great Bear Rainforest Agreements. This leads to an analysis of the wider implications of the transformation of First Nations' roles in environmental governance, in particular for the environmental movement and the provincial government. After a discussion of remaining challenges in the region, we conclude with a consideration of the implications of this case for the development of environmental governance regimes more generally. The argument throughout is intimately informed by a series of eleven semi-structured interviews conducted with individuals directly or indirectly involved in negotiations over the future of the Great Bear Rainforest.

Indigenous Rights in British Columbia

Unlike elsewhere in Canada, most First Nations in British Columbia have never signed treaties with the government.³ This means that much of British Columbia is still under claim by First Nations. Until recently, the BC government refused to recognize First Nations title, which created considerable tension between First Nations and the BC government, especially when traditional territories were being slated for development (Markey *et al*, 2005; Tollefson *et al*, 2009). In 1982, the BC government was forced to reverse its non-recognition policy after the Canadian Constitution was rewritten to include the protection for “existing Aboriginal rights and title” (McKee, 2000: 29). Despite the Constitution, it was another ten years before the government established the BC Treaty Commission in 1992 to give contemporary definition to First Nations rights and title. The progress of the negotiations has been slow, as almost fifty BC First Nations have participated in the talks since 1992 but only two have signed final agreements, both in 2007 (Tollefson *et al*, 2009).

Along with the BC treaty process (some would argue in spite of it), the role of First Nations in natural resource management has been driven by judicial precedent on Aboriginal

³ The exceptions are those nations in the Northeastern corner of the province covered by Treaty 8, and those who signed the Douglas Treaties in what is now Greater Victoria. Thus far, two treaties have been signed as a result of the current treaty process: the Tswawwassen First Nation near Vancouver, BC and the Maa-Nulth Treaty Society, an organization representing five Nations on central Vancouver Island. Nisga'a Nation has also signed a treaty but it was initiated and completed outside of the current treaty process (Tollefson *et al*, 2009: 235).

rights and title issues (Tollefson *et al*, 2009). A series of court cases including Sparrow (1990), Van der Peet (1996), Delgamuukw (1997), and Haida Nation (2004) have confirmed that neither the province nor the federal government can unilaterally extinguish constitutionally protected Aboriginal rights; infringements of such rights must meet strict criteria that includes meaningful consultation with affected First Nations; and Aboriginal title exists as a distinct species of Aboriginal rights (Tollefson *et al*, 2009; James, 2009). The Haida Nation decision has had the most significant impact on the relationship between First Nations and the BC government. In it the Canadian Supreme Court ruled that provincial and federal governments have a duty to consult with First Nations where “it has the knowledge of a potential rights and title claim that could be adversely affected by government action” (Tollefson *et al*, 2009: 170). However, the scope of this duty varies, depending on the strength of the claim and the nature of the impact of the action on Aboriginal rights. Crucially, however, it is increasingly clear that the courts will force governments to include First Nations in British Columbia in consideration of a wide range of land use policies, even before their claims are settled (Howlett, 2001). The question of what this means in practice—how much and what kind of consultation is adequate, the conditions under which First Nations resistance to proposed development might carry the day, and similar issues—is now being worked out in practice.

Although there has been movement towards recognizing First Nations rights and title in recent years, the need for community economic development remains very evident. This need has a definite influence on First Nations’ approach to participation in negotiations over resource use, as well as land rights and title. First Nation communities are still deeply affected by colonization, a legacy that includes the devastating residential school experience. Today, First Nation communities experience high (and disproportionate) levels of poverty, violence, illness and unemployment, as well as growing populations. These challenges have been exacerbated by the decline of resource extraction industries, particularly fisheries but also forestry, which in many cases provided a primary or indeed the only source of employment in these communities. In ongoing fallout from the residential school experience, which often nearly destroyed intergenerational knowledge transfer, most First Nations are experiencing cultural hardships through loss of language, cultural and spiritual practices. All of these challenges are especially prevalent on the coast of British Columbia where communities are very isolated, often only accessible by air or water. This remoteness makes not only economic development, but even communication between Nations and government officials, industry and non First Nations people very difficult. It also creates barriers for effective communication between different nations. This has exacerbated the lack of capacity in many of the small isolated communities.

First Nations’ rights and title to their traditional lands have intersected in important ways with the environmental movement in British Columbia. In the past, the main approach of many environmental groups throughout the province has been to lobby for environmental protection through the creation of parks (Markey *et al*, 2005). Such an approach has frequently created tensions between environmental groups and First Nations. While many First Nation communities have a strong vision of conservation and environmental stewardship, they also need to develop local economies and build the capacity within their communities to improve their lives. This coincides with the traditional cultural beliefs that promote an approach to conservation where the land and people care for and sustain one another (Smith *et al*, 2007).

In other words, their argument has been that a vision of conservation must support the health and well being of the people who live in the ecosystems being protected. This need for economic development has challenged environmental groups in British Columbia to expand their vision of conservation to one that encompasses economic and community based strategies (Markey *et al*, 2005). While several prominent, and even more less-prominent, environmental groups have worked very hard to reconcile these potential tensions, it is still not uncommon for First Nations to severely chastise environmental groups who fail to adequately consult them, or to be responsive to First Nations concerns, as they develop their campaigns. It is also increasingly difficult for environmentalists to pursue campaigns focused on resource use or management without the support of affected First Nations, a situation which is already fundamentally transforming the terrain of environmental advocacy in BC.

One of the more prominent cases in which efforts were made to systematically reconcile concerns of First Nations and environmentalists was in Clayoquot Sound, which provided the model and launching pad for the campaigns pursued by environmental groups in the Great Bear Rainforest (Magnusson and Shaw, 2003; Shaw, 2004). One of the key lessons learned by environmental groups there was that collaboration with First Nations was an essential, and potentially powerful, element to crafting lasting solutions. However, it was also anything but straightforward. We turn now to a discussion of how this unfolded in the Great Bear Rainforest.

The Great Bear Rainforest and the Emerging Role of First Nations

The Great Bear Rainforest is a tract of temperate rainforest that stretches along the coast of mainland British Columbia, extending north from Bute Inlet to the border of Alaska. This region is roughly the size of Ireland (74,000 square kilometers) and has been recognized as the largest relatively intact temperate rainforest ecosystem left in the world. This region is very unique, as it supports vast and invaluable terrestrial and aquatic ecosystems, as well as a human population of approximately 35,000 inhabitants (Riddle, 2009). Apart of the largest city, Prince Rupert, the majority of the population is comprised of First Nations, many of whom live in small remote communities accessible only by water or air. The traditional territories of twenty seven coastal First Nations are located within this region (Armstrong, 2009).

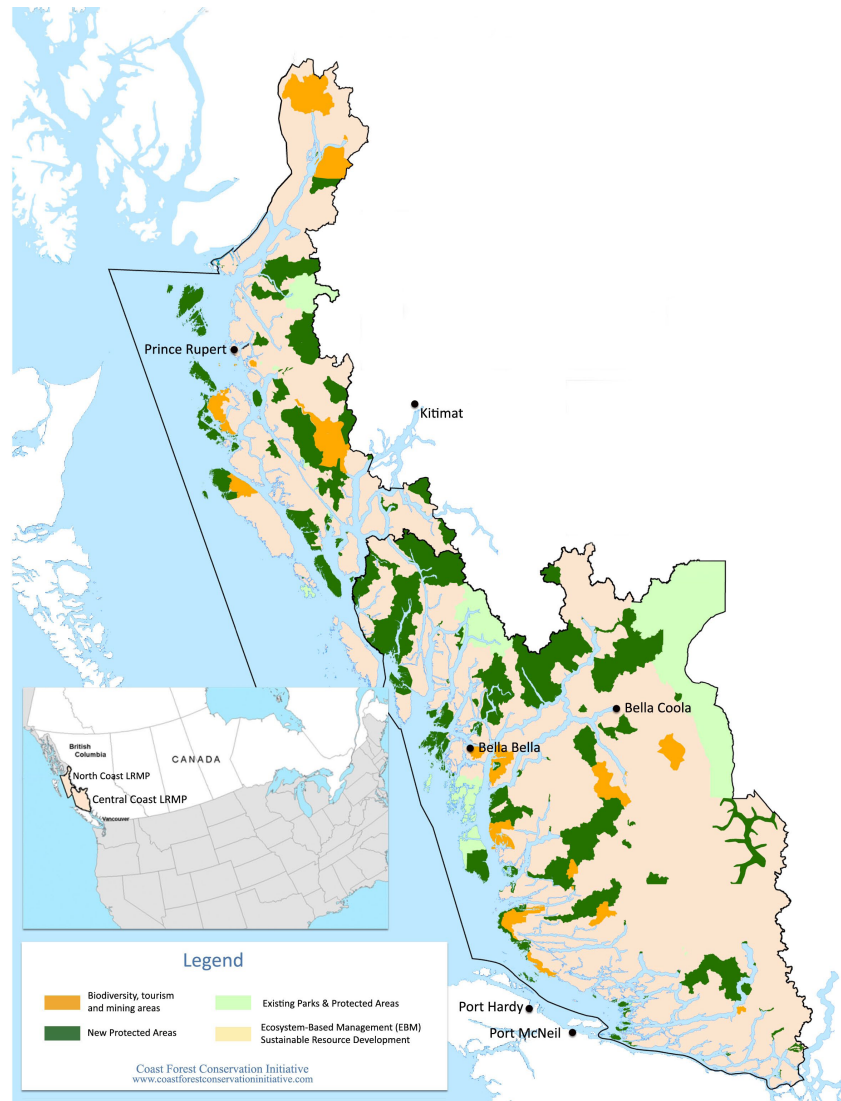


Figure 1: Map of Great Bear Rainforest (Armstrong, 2009)

Over the last 15 years, the Great Bear Rainforest has experienced many significant changes. In the early 1990s, there were many parties who had a stake in the future of this region, much of it concerning forestry practices. The BC government was interested in protecting the forestry industry because of the revenue, employment and rural riding support it provided. Similarly, the forest industry—under considerable competitive strain in the global marketplace (Marchak, 1995)—was interested in rebuilding a competitive forest sector which required access to high-value forests in the region and might be hindered by strict environmental regulations or protected areas. Concurrently, environmental groups were expressing major concerns over the way clear cut logging was destroying one of the world’s remaining temperate rainforests. Environmental groups had also learned important lessons from the environmental conflicts that took place in Clayoquot Sound a few years prior (Magnusson and Shaw, 2003). The most significant of these were the strategic shift to market

based campaign strategies and the need to address First Nations concerns in their campaigns (Shaw, 2004). Market-based campaign strategies begun in relation to Clayoquot Sound began to fully flourish when focused on the Great Bear Rainforest, when environmental groups⁴ launched an international markets campaign that targeted the buyers of BC timber. These companies included Staples, Ikea, and the German pulp and paper industry. The success of the markets campaign soon became evident, as the threat of substantial contract cancellation with BC forest companies forced several prominent timber companies to recognize that environmental groups were influential in the debate over old growth, and more importantly that their hostile relationship with both environmental groups and First Nations would need to change (Smith *et al*, 2007). In early 2000, five forest companies⁵ operating in the Great Bear Rainforest (the Coast Forest Conservation Initiative—CFCI) and three prominent environmental organizations (the Rainforest Solutions Project—RSP) began an effort to collaboratively negotiate a solution to their conflict over logging under the Joint Solutions Project (JSP). While these discussions occurred, logging in key ecological areas was put on hold and the markets campaign suspended. Concurrently, First Nation leaders saw this as an opportunity to pressure the BC government, forestry and environmentalists to negotiate the use of their traditional lands in ways that would directly benefit their communities.

In March 2000, leaders from several Nations met to discuss the development of a strategy to ensure their interests were included in the land use plans for the region (Hoberg, 2004). This was a new and crucial strategy, as First Nation communities have a past of working in isolation of each other (Smith *et al*, 2007). These meetings (and the help of the David Suzuki Foundation), initiated the alliance of First Nations now known as Coastal First Nations Great Bear Rainforest Initiative.⁶ Collectively, First Nations agreed that they needed to increase economic development opportunities to create employment while protecting the ecological values of the region. The goal of this new group was to “restore and implement ecologically, socially and economically sustainable resource management approaches on the central and north coast and Haida Gwaii” (Smith *et al*, 2007: 5). In the Southern region of the Great Bear Rainforest, First Nation leaders established the Nanwakolas Council.⁷ These two organizations were to have a profound effect on the negotiations over the region’s future, but also on the

⁴ During the early years of conflict, many environmental groups were involved in shaping the international markets campaign that targeted buyers of BC wood, including Greenpeace, Rainforest Action Network, Natural Resources Defense Council, Friends of Clayoquot Sound (who later helped form and transferred their participation to ForestEthics) and Markets Initiative (now Canopy). Several of these groups eventually shifted their focus away from the region while Greenpeace, ForestEthics and the Sierra Club of BC together formed the Rainforest Solutions Project and were the primary environmental groups involved in negotiating the Great Bear Rainforest Agreements.

⁵ In the beginning, the five forestry companies became the Coast Forest Conservation Initiative (CFCI). The current members of the CFCI include British Columbia Timber Sales, Catalyst Paper Corporation, Howe Sound Pulp and Paper, International Forest Products and Western Forest Products (Armstrong, 2009).

⁶ The Coastal First Nations Great Bear Initiative (formerly known as Coastal First Nations Turning Point Initiative) is an alliance of Nations along the central and northern region of the coast, including Haida Gwaii. They represent the Wuikinuxv Nation, Heiltsuk, Kitsoo/Xaixais, Gitga’at, Haisla, Metlakatla, Old Massett, Skidegate, and Council of the Haida Nation.

⁷ Nanwakolas Council was incorporated in 2007 to provide support to Nations members on various land and marine resource use, management and planning issues. It represents the following Nations: Namgis First Nation, Mamalilikulla-Qwe-Qwa Sot’Em First Nation, Tlowitsis First Nation, Da’naxda’xw First Nation, Gwa’sala Nakwaxda’xw First Nation, Kwiahah First Nation and Comox First Nation (Smith *et al*, 2007).

development of relations among different First Nations communities, and capacity building within these communities.

From 2001 to 2006, a set of negotiations took place that included a public land use planning process known as the Land and Resource Management Planning tables (LRMP) for both the North and Central coast. This two year process ended with a set of consensus based recommendations that were then used to inform negotiations between the BC government and First Nation governments, known as “government to government” negotiations (discussed in more detail below). In February 2006, milestone agreements were reached that laid the groundwork for an overhaul of the way land was used and controlled in the Great Bear Rainforest. Known as the Great Bear Rainforest Agreements, they were the result of over a decade of hard work by many parties (and individuals), including the BC government, First Nations, some environmental groups, and some members of the forest industry. They encompass several key elements, including:

- Protected areas that account for 1/3 of the region. Approximately 2 million hectares of land is protected from logging; of that 2 million, more than half has the designation of ‘conservancy.’ This is a new and legal designation that ensures the protected areas respect First Nations’ cultural and traditional use values.
- The implementation Ecosystem Based Management (EBM), which includes better, lighter touch forestry practices. As of March 31, 2009, low impact logging regulations will conserve 50% of the natural range of old growth forests in the region. There are ongoing negotiations to conserve 70% of the natural range by 2014.⁸
- The establishment of the Coast Opportunities Funds, a \$120 million dollar fund aimed at preserving the ecological integrity of the Great Bear Rainforest for generations while promoting economic development opportunities for First Nations with lasting benefits.
- The comprehensive involvement from First Nations in decision making and management over their traditional territory.

The substantial increase in protected areas garnered most of the newspaper headlines, although many commentaries also marveled at the unprecedented collaborative success expressed in the Agreements. Not only did it appear that the decades-long “war in the woods” between environmentalists, industry and government might have been resolved, the even more longstanding and increasingly threatening ones over the role of First Nations in resource management also appeared to be forestalled.

As this suggests, there were countless challenges to overcome to reach the Agreements, and more remain with their implementation. However, our focus here is on lessons to be learned from both the outcomes and processes of the negotiations themselves, and it is to this we turn next.

⁸ For an explanation of ecosystem-based management please see Price *et al* (2008)

Key Outcomes: Institutions

The Great Bear Rainforest Agreements themselves contained a number of innovative outcomes and a vision that is multifaceted. As suggested by the summary above, contained within the Agreements is the ambition to restructure the economy of the region away from unsustainable resource management towards an economy that can sustain and empower the people who live there, as well as presumably contributing to the provincial economy more generally. Insofar as the empowerment of First Nations also requires the reinvigoration of practices of resource management, it also requires management practices that protect the resilience of ecosystems while facilitating their sustainable use. And it must do this in a context of a population that will feel the impact of these changes in highly differentiated ways: however marginally, unsustainable resource extraction does support the non-First Nation, and some First Nation, communities in the region. Insofar as the transition seeks to invigorate First Nations, and transfer benefit from resource management towards their communities, the needs of the other communities remain pressing, raising important questions about governance, representation and accountability. The Agreements thus expressed noble ambitions, but not ones easily achieved. This suggests the need for institutions capable of realizing these ambitions, or at least facilitating a transition towards them.

While an extended analysis of the institutional network created and activated by the Agreements is beyond the scope of this paper, we focus here on two initiatives that were particularly focused on addressing the need for improved human well being in the communities that reside in the Great Bear Rainforest while at the same time protecting the ecological values of the region. These initiatives were both guided by and adhere to the conservation vision of the First Nations:

...there's a strong perspective within First Nation communities that it's not about dualism...where you protect the environment on one hand and develop on the other. It's more integrated in what they would describe in their culture, so instead of it being this tension, they're part of the ecosystem and so the notion of externalizing everything and maybe focusing on protection and leaving out the people makes no sense. You've got to have people and communities as part of the solution and the management system because if you don't, it's just alien. So that kind of sentiment and the need to have this solution be something First Nations believed in and supported and made sense to them, that was another factor.

We turn to these initiatives below, before exploring the implications and importance of the government to government process.

Coast Opportunities Funds

One of the most tangible and much needed outcomes of the negotiations was the establishment of the Coast Opportunities Funds (COF): a \$120 million dollar fund set up to manage ecosystems and invest in sustainable business ventures that will directly involve and support the communities in the Great Bear Rainforest (Smith *et al*, 2007). The fund is

comprised half of money donated by private (largely US-based) funders and half of provincial and federal government funding. Initially, First Nations were hesitant to agree to a conservation financing package that was funded by large philanthropic organizations and the provincial and federal governments. They “pictured the environmentalists using US foundation dollars to buy (and protect) tracts of land.” Their mistrust was also directed at the BC government because First Nation communities “knew they would be granted little to no access to these lands if they were protected.” However, through the hard work and creativity of First Nation leaders, the philanthropic community and environmental groups, an agreement was reached that articulated a conservation financing structure that satisfied all parties. The Coast Opportunities Funds are made up of two separate funds, one to protect and manage ecosystems through research, education and Watchmen programs, and the other to be used to support sustainable First Nations businesses and economic development. Currently, the Coast Opportunities Funds are ready to be spent, some already allocated to projects that will make good use of the investment including shellfish aquaculture, high end lodge tourism, forestry and some non timber forest products (Tjornbo *et al*, 2010).

The ambition of the Funds is to create capacity to facilitate the transition to a sustainable economy, with capacity understood to include everything from infrastructure to education, research to marketing.⁹ What is interesting and challenging here is whether such a fund can be managed to incent and facilitate the development of an economy that is sustainable in the long term, especially given the specific characteristics of the region—not to mention of the wider global economy. It’s not clear what kind of economy might be possible in the region, let alone how to make that sustainable in the longer run. Although there is a wealth of resources in the region, we have few models for how these resources can be exploited sustainably and in support of remote communities with little existing capacity for economic development. On the other hand, the First Nation communities have been embedded in these places for millennia, and explicitly plan to be for millennia in the future, which creates an unusual context for negotiating tensions between economy and environment.

Conservancies

The second initiative aggressively pursued by both First Nations and the environmental community was the creation of a new land designation called “conservancies.” These areas were created because the conventional definition of “protected areas” did not meet the needs of all parties in the negotiations, especially those of First Nations. While environmental groups wanted the protection of ecological values to take precedent, First Nations demanded that their cultural values such as hunting, trapping and fishing be respected within these areas, and that natural resource extraction be allowed to continue to support much needed economic development for their communities. As an individual heavily involved in the negotiations puts it:

And so we said ‘if you want any protection on this coast, you need to create a new form of protection that acknowledges our rights and title and gives us exclusive opportunity to enhance economic access to the area. So if you’re going to protect these big parcels

⁹ For in depth explanation of the Coast Opportunities Funds please see <http://www.coastfunds.ca/>

of land, or someone's going to build a lodge, they've got to work with us to build them. We can't just protect these pieces of land so everyone else can benefit from it because they get a permit from government. We have the first right to first refusal to these opportunities that are there.

The designation of conservancy also stipulated that the management plan for each conservancy will be co-developed by the First Nations whose traditional territory lies within that area (Smith *et al*, 2007). As of March 2009, 67 new conservancies had been legislated by the BC government under the Park Act and the Protected Areas Act (Armstrong, 2009).

In the creation of conservancies—a designation that required new Provincial legislation to enact—we see the emergence of what is hoped will become lasting legacies as well as wider resources for resolving the tensions among economy, environment, and historical injustices imposed upon First Nations. The creation of a new category of land use, one that authorizes particular kinds of interactions between communities and resources—and indeed between communities, insofar as First Nations are given preferential access to these resources—is intended not only to allow for the reinvigoration of traditional practices of land use and management, but also for the emergence of new economies and relations of governance. What they will mean in practice is still being worked out, but the ambition expressed in their creation is again intriguing.

Both the Coast Opportunities Fund and the conservancies can be considered somewhat novel institutional arrangements expressive of substantive goals developed by and through the innovation and creativity of those involved in the negotiations. Their conception is an excellent example of the determination of the people who have a stake in this region to develop a future for themselves that sustained both communities and their environments. For First Nations, these initiatives meant their needs were not only being recognized but realized in a tangible way, not just by government but also environmentalists and industry, through the creation of the formal infrastructures necessary for them to innovate. For the government (and government staff), these initiatives signaled more than just a change to the status quo but the need to be a leader and problem solver: a need that is yet to be taken up. While the provincial government and federal governments did contribute half of the amount of the Funds, this commitment was only fulfilled a year after the Agreements were announced. Subsequently, the BC government has been criticized for its lack of ambition and organizational capacity to engage creatively around initiatives like the Coast Opportunities Funds, and perhaps use it as a template for moving forward. While these tensions are being negotiated, there is a sense that “there isn't a creative nexus in government to actually drive this issue forward.” For environmentalists, both initiatives changed the way they were viewed by many First Nations, reinforcing the strength of their commitment to improving human well being in the Great Bear Rainforest. Lastly, these outcomes helped shape a more effective dialogue between often conflicting parties. What they will mean in practice is still being worked out, but the ambition expressed in their creation is intriguing.

Key Processes: Government to Government Negotiations

As described above, the Great Bear Rainforest Agreements were novel in many ways, including the use of “government to government” negotiations between the BC government and First Nation governments. These negotiations were the result of emerging legal precedents set out by the Supreme Court and the determination of First Nations to have these legal rights recognized in the decisions made over the use of their traditional lands. Not only did First Nations want to have their legal rights recognized, but they also demanded a “decision making” status rather than be considered an “interested party” in the Great Bear Rainforest negotiations. They argued that they were not interested in sitting at and participating in the LRMP tables as stakeholders. Instead, they were interested in completing the land use planning process on their terms, as governments in their own right. First Nations knew the BC government now had the obligation to negotiate with them because of the legal status of their claimed rights and title. In the words of an individual involved in the government to government negotiations:

But this was the first time we’ve ever had leverage going into a discussion because Delgamuukw was coming down the pipe too at this point. People were afraid of us. Before we were something that had to be addressed but now we were a force to be reckoned with.

The early stages of the government to government negotiations included a protocol agreement with eight of the Coastal First Nations, known as The General Protocol Agreement on Land Use and Interim Measures. This agreement facilitated the land use planning processes of First Nations that occurred simultaneously to the province-initiated LRMP tables (Smith *et al*, 2007). The land use plans created by First Nation communities were informed by both traditional knowledge from elders and hereditary chiefs in individual communities and western science (Smith *et al*, 2007). First Nation leaders also participated with an “observer” status in the LRMP process to ensure both processes were moving in similar directions and to avoid disputes between parties that would delay further negotiations. As someone involved described it, “If the table was going in a direction that was going to be opposite of what our land use plans were going to say, we made it clear at the table.” Once consensus had been reached at the LRMP tables, it was agreed that the BC government and First Nations government would return to government to government negotiations to reconcile the LRMP consensus plan with those plans of individual First Nation communities. Ultimately, the government to government negotiations provided a basic framework through which First Nations (who signed the protocol Agreement) could negotiate their own land use agreement with the provincial government.

The importance of the government to government negotiations cannot be underestimated, as this type of negotiation and the decision making power of First Nations was the first of its kind in British Columbia and what arguably shifted the outcome for Great Bear Rainforest most dramatically. The use of government to government negotiations changed the way in which the forest industry, environmentalists and other key stakeholders in the region could influence the land use decisions being made for this region. For environmental groups in particular, a vision of strictly protected areas and a ban on clear cut logging was not acceptable to First Nations, who desperately need a way to strengthen their local economies and create the capacity to do so within their own communities. First Nations in the Great Bear Rainforest

challenged environmentalists to not only change their thinking around environmental protection and conservation but also to demonstrate that conservation could promote economic activities and deliver benefits to communities rather than hinder economic development (Smith *et al*, 2007). Environmentalists responded to this challenge in creative and effective ways, including the development of the Coast Opportunities Funds described above.

The government to government negotiations also changed the way forest industry could influence policies regarding forests and harvesting methods. In the past, forestry companies were accustomed to a closely tied relationship with the BC government because of the revenue it generated for the province (Pralle, 2007). However, during the years leading up to the government to government negotiations, forest companies began working more collaboratively with environmental groups through the Joint Solutions Project. They were now being challenged further by taking on a different (and arguably less influential role) with the BC government regarding the creation of land use policies. As a member of the JSP described the negotiations:

We ended up constructing through some very difficult discussions with the provincial government what our, I'm talking about JSP, what our relationship was going to be to the government to government process and how that was going to work. It didn't look very promising but in practice it actually worked pretty well because we got to an agreement in 2009 that got us to a place that the First Nations could agree to, the province could accept and that we could accept.

For the BC government, these negotiations meant that the legal rights of First Nations needed to be addressed in a new way, one in which innovative processes were required to negotiate real, substantive land use agreements. Instead of "consultation" with First Nations, a loosely defined term with varying degree and scale, the BC government agreed to sign a protocol agreement with eight Nations that committed them to a new process. As an individual indirectly involved put it:

...First Nations in seizing the moment and seizing the opportunity and demanding effectively nothing less than a real role and this is only a part of a much broader process, that has been legal and political, but they seized the opportunity here to leverage their interests, in a really effective way and you know, in the beginning, the LRMP process, in 1999, First Nations were essentially marginalized, hardly participants and essentially marginalized. They were engaged but not, and certainly in 1995 there was no process. And now in 2009, actually 2006, after 2001 the protocol agreement...what a stroke of genius that was because it put them in a position where you know government wanted them on the podium but that means from now on it is "government to government" and that was a huge accomplishment.

While the government to government negotiations have proved to be a very effective tool in coming to agreements with which most parties are satisfied, especially First Nation governments, they have arguably marginalized other key stakeholders in the broader land use planning process. For example the government to government negotiations, which included

the decision making power of First Nations government, were informed by the LRMP table recommendations. However, once the LRMP process was complete and the recommendations were brought to the government to government negotiations, there was the potential for the consensus plan to be changed with little or any consultation from those who participated in its conception. That meant that stakeholders such as the JSP, representatives from small businesses, the tourism industry, the mining industry and others were reporting to a land use planning process that ultimately informed a government body that was and is not accountable to their interests. For the BC government, this poses difficult (and ongoing) challenges to reconcile with both First Nations and the general public.

So there's this tension in the system in reconciling the need to engage First Nations in a meaningful way, and for the province to engage with stakeholders in a meaningful way because the province is elected by the stakeholders. The province is their (stakeholders) government.

For First Nation leaders and communities, the Agreements that resulted from government to government negotiations are part of a larger picture to help reconcile First Nations claimed rights and title to their traditional territories. In the recent past, the BC treaty process has been the most notable attempt to reconcile Aboriginal rights and title; however, the treaty process has been heavily criticized by First Nations and practitioners for being slow, expensive and poorly designed to adequately implement the terms of the treaties (Alcantara and Kent, 2009). According to Art Sterritt (2009), a prominent leader and First Nations negotiator who has been involved in both the treaty negotiations and environmental and local economic agreements (such as the Great Bear Rainforest Agreements), the latter are “the best building blocks for First Nations prosperity, environmental sustainability and ultimately, treaties... not the never ending treaty process.” In this way the government to government process utilized in this case not only resulted in Agreements that have wider governance implications, they are also being held up as a desirable model for allowing progress to be made on a range of other governance-related issues. The implication is that by engaging First Nations governments in ongoing resource management negotiations outside the treaty process—i.e. by not waiting for the treaty process to define a more limited and concrete zone of authority for First Nations before engaging them in governance negotiations—progress could be made that might eventually have a positive effect on the treaty process, hopefully also bringing more immediate and lasting benefits for First Nation communities.

The innovation of government to government negotiations—of authorizing First Nations to participate directly, with a unique status, in decision making about their traditional lands—in this way posed immediate and direct challenges to both the BC government and other stakeholders. However, it appears that in this case they were extraordinarily successful at reconciling what had otherwise seemed to be impossible tensions. As this model is contemplated for other contexts, however, it will be important not to lift it too far from its wider context. The success of the negotiations is surely in part attributable to its wider context: it built on agreements emerging from extended negotiations between the two main antagonists—environmentalists and forestry companies—as well as an extended consensus-based public planning processes (the LRMP). While this complexity and intensity may not be

efficient or desirable in all cases, it does suggest the extent of engagement that may be necessary to craft forms of environmental governance capable of attracting broad-based support for change. Whether these forms of governance can maintain that support remains to be seen. Its potential for both facilitating a transformation of the economy of a region and responding to differentiated levels and kinds of authority in decision making is again intriguing. What is also interesting is arguably the most crucial aspect to realizing the vision embedded in the Agreements: the relationships that were created through the negotiation process itself.

Communication and Relationship Building

Perhaps the most important outcome of the negotiations is one of the least tangible: the evolution of a communication process within and between different parties involved in the negotiations. An individual involved in the government to government negotiations believes:

The biggest legacy that the Great Bear Rainforest leaves is the communication process. We've learned how to communicate with all the respective interest groups up and down the coast. And it's not even a consultation communication, it's a 'this is what we want to do and this is what we're trying to do.'

Certainly, the unprecedented role First Nations played in the negotiations fostered (and was fostered by) an improved communication process between First Nations and the BC government. Such sustained and direct communication between a variety of First Nations and the provincial government has rarely if ever before been realized at this scale in British Columbia. Furthermore, it seems as though this communications process is having positive implications for the implementation of the outcomes of the Great Bear Rainforest Agreements and wider reaching affects for the treaty process.

And now, 10-12 years after the fact, nobody's got any treaties done but we have this great land use planning work and can be a great framework or a foundation for future treaty negotiations and those sorts of things.

New relationships were also formed between environmentalists and First Nations throughout the negotiations and still exist today. While many tensions between the parties remain, their relationship is constantly evolving and proving that it can be advantageous for both parties to work collaboratively to find solutions to their disagreements:

...the environmentalists became huge, huge players because of the international campaigns that they brought. While they annoy me on a weekly, monthly basis, we never would have got the exposure to paint government into a corner, if the environmentalists didn't do the international campaigns that started to cripple the forest industry on the coast. Government wouldn't have put the resources that were needed into solving what we've solved. So very symbiotic at the end of the day.

The Great Bear Rainforest Agreements also fostered a more effective communication process between individual First Nations. While many challenges remain in developing more effective modes of communication between communities, the Great Bear Rainforest negotiations helped such processes to evolve. During the government to government negotiations, when trying to ratify the Agreements within communities, political leaders realized the inefficiency of their information and communication systems. They learned to communicate with people in different ways, for example “instead of me freaking out because people weren’t reading the memos I was writing, it was more, how can I make these memos more clearly understandable and help that process work.” Despite these improvements, it seems as though capacity within communities is still badly needed and much needs be addressed before implementation of land use agreements, or treaties, will deliver lasting effects.

Ongoing Challenges

While the innovations embedded in the process and outcomes of the Great Bear Rainforest Agreements are promising, immense challenges remain in implementing these new initiatives. Some were mentioned above: there is no clear template for how isolated, rural communities, with minimal capacity and weak transportation and communication links can insert themselves effectively into the structures of a globally-organized capitalism without exploiting local resources in problematic ways. The political implications—particularly in relation to representative democracy—of responding to historical injustices and legal imperatives around First Nations remain tricky, to say the least. And essential tensions remain between a government eager to remove a large but lightly populated region from its immediate attention and the scale and diversity of challenges that remain if the vision realized in the Agreements is to be realized. As a key example of this, negotiations over the definition and implementation of Ecosystem Based Management are ongoing, and environmental groups have recently stepped up their public campaign with concerns that the government is not giving the priority to these negotiations that will be necessary for them to succeed.

Challenges also persist for First Nations seeking to build the capacity in their communities necessary to receive lasting benefits from the Agreements. Efforts to implement the Agreements have stumbled at times on the disconnects that exist between the regional scale at which the Agreements were negotiated and what occurs in the communities themselves. One of the criticisms has been that while significant changes are occurring at the higher political levels, “the trickle down isn’t happening to people who are on the ground.” Lack of capacity and lack of a clear plan for developing capacity, remain significant blockages. Similarly, economic activities supported by the Coast Opportunities Funds are yet to be realized because “there is a lack of infrastructure to support other kinds of development. Just think how expensive and difficult it is to access.” While implementation of the outcomes of the Great Bear Rainforest Agreements is difficult, programs such as the Guardian Watchmen Program¹⁰ are currently underway and hoping to make substantive strides in achieving more sustainable and healthier local communities.

¹⁰ For an excellent description of the Guardian Watchmen Program, see <http://coastalguardianwatchmen.ca/>

Additional challenges for First Nations include divides between individual Nations on some of the terms of ecosystem based management (EBM) and the Coast Opportunities Funds (COF). These discrepancies exist because of the location and accessibility of many of the First Nation communities along the coast. As well, Coastal First Nations have been linking their traditional land management to ecosystem based management from the early stages of the Great Rainforest Agreement negotiations, whereas other Nations (more so in the southern and central region) are more hesitant to agree EBM and the COF because they feel it inhibits their ability to prosper and build their local economies.

The ambition expressed in the Agreements is substantial, in short, and although implementation efforts have also been substantial they may well continue to struggle. For now, it is too soon to assess the success or failure of the Agreements, but close attention to implementation processes is essential.

Conclusions: Wider Implications?

The struggles over the Great Bear Rainforest evolved simultaneously with the dawning realization—spurred primarily by legal precedents—on the part of government, industry and environmental organizations, that First Nations’ rights to land and resource management in BC must be recognized and accommodated. The importance of processes in the Great Bear Rainforest lies primarily in the ways in which they embraced and sought to realize this new reality. Other elements of the struggles there—the use of market-based campaigns to coerce industry and government to respond to environmental concerns, the collaboration between industry and environmentalists, the involvement and impact of US-based conservation foundation funding—are necessary to understanding the outcomes reached, and themselves raise important and interesting implications. However, the role of First Nations in shaping these Agreements, and the implications of their involvement, are essential to understanding the wider implications of the Agreements both for resource management in BC and more widely.¹¹

Attention to the role and impact of First Nations raises at least two issues with wider resonance. First, these Agreements have been hailed, analyzed and critiqued primarily as “environmental” agreements, with attention paid to how well they will protect the unique ecological characteristics of the region. This is both misleading and revealing. It is misleading in that the Agreements were shaped by more than environmentalists, bear the mark of all those involved in their creation, and aspire to a much more complex vision than only protecting the ecological characteristics of the region. Much of the critical commentary on the Agreements chastises the environmental organizations for compromising too much and settling for far too little.¹² However, what the Agreements express is the political reality that was possible given the context of negotiation, a political reality shaped by the increasing strength of First Nations participation in resource management in the province. According to those involved in the negotiations, the primary factor limiting the amount of “protected” land, and the character of

¹¹ A late-breaking example of their wider relevance is apparent in the recent announcement about the future of the boreal forest (<http://www.cbc.ca/canada/story/2010/05/18/forest-agreement.html>). The process that led to this agreement and the substance of the agreement itself were largely modeled on the Great Bear Rainforest process, with many of the same groups involved.

¹² See for example Stainsby and Jay (2009).

the protection, was the priorities of First Nations. Rather than understanding this as First Nations blocking the achievement of environmental protection, it's important to see it as another expression of the resistance around the world to the danger of the environment being an excuse for neo-colonialism. The ambition expressed by First Nations—to be able to sustain themselves from the resources that they in turn have a responsibility to sustain—is consistent with the expressed ambitions of indigenous peoples and others who depend directly upon their environments around the world. Environmental organizations who have begun to realize this is a potential point of alliance, rather than something to be fought, are those who will be able to make progress on achieving large scale environmental protection, particularly in a context like BC where recognition of First Nations rights and title is only going to strengthen. Thus understanding these Agreements as primarily about the environment is misleading in that they contain a much more wide-ranging vision and ambition, but revealing insofar as they do gesture towards what environmentalism must become if it is to effectively address the needs not only of indigenous peoples, but of all those peoples who rely upon the resources that surround them to sustain themselves (in the end, of course, all of us). As such, the Great Bear Rainforest Agreements not only help us to see the future of resource management in BC—with all its challenges, tensions, and possibilities—but also provide us with some hints about ongoing challenges and processes at other sites.

The second wider issue raised by this case is about the challenges of simultaneously responding to the emerging claims and needs of a previously colonized—and extremely economically disadvantaged—group while also addressing urgent needs to preserve the relatively intact ecosystems that they have a legal right to exploit. As if transitioning away from unsustainable resource management practices weren't challenging enough, the need to accommodate First Nations' desire for and rights to develop their economies might make it appear impossible. What is revealing here is the scale and character of processes that were able to develop environmental governance that might be successful in managing such a transition while simultaneously accommodating the needs of First Nations. Of course, it is far too early to judge the success of the Agreements. However, what is clear is that the processes used to craft them have thus far been far more successful at creating wide-ranging cross-sectoral agreement about paths forward and their institutional expression than has any other approach in BC. There is good news and bad news in this conclusion. Put most bluntly, the good news is that such consensus is possible; the bad news is the scale of effort required to achieve it, which many will view as prohibitively time and resource intensive. Regardless of the judgment, however, the architecture and characteristics of the process bear careful attention insofar as we continue to struggle with the need to make such difficult transitions and to sustain a commitment to doing this in a way that is responsive to the principles of legal order and democratic engagement. Although the processes and outcomes of the Great Bear negotiations are far from perfect, or even ideal, and daunting challenges remain, they certainly provide an instructive reference point.

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