

FIRST NATIONS RIGHTS AND ENVIRONMENTAL GOVERNANCE:

Lessons from the Great Bear Rainforest

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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, Gale, and Haley 2008), and conflicts over resource use and management in the province, including forestry, mining, fisheries, and energy development (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 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 wider 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 “environ-

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mental” conflict, the struggles over the Great Bear Rainforest in fact express much more about what can and might happen when Aboriginal 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 is often assumed, providing a glimpse into the future of the governance of resource management in the province. This emphasis on the impact of Aboriginal rights in the negotiation of governance and resource management has much to offer the diverse and wide-ranging literature on environmental governance, understood here as “the set of regulatory processes, mechanisms and organizations through which political actors influence environmental actions and outcomes” (Lemos and Agrawal 2006, 298).

The importance of this particular case has been emphasized by Hoberg (2004); Howlett, Rayner, and Tollefson (2009); and McGee, Cullen, and Gunton (2009) in their analyses of the negotiating processes used to transform land use in the Great Bear Rainforest. Each emphasizes the innovation and ambition embedded in these processes, although Howlett, Rayner, and Tollefson also express useful scepticism about the extent to which the outcomes themselves express a fundamental shift in the mode of governance of the region. This article furthers these analyses by arguing 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 Aboriginal peoples specifically and diverse cultural and knowledge systems 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 influence

development of new institutions and practices of governance. Examples include not only transnational governance arrangements emerging around issues such as species at risk, water management, biodiversity preservation, and climate change but also subnational 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 in posing 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 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 to be the case: there are a surprising number of resonances between the situation in British Columbia and the evolution of environmental governance in other parts of the world.¹ Part of our objective 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 eleven semi-structured interviews conducted with individuals directly or indirectly involved in Great Bear Rainforest negotiations. Interviewees were selected based on their representation of the different sectors heavily involved in the negotiations:

¹ This case intersects with the diverse and rapidly-expanding field of environmental governance along several axes, including not least the complex spatiality of both the negotiation and governance processes (Meadowcroft 2002; Karkkainen 2004; Bulkeley 2005; Cash et al. 2006), the collaborative character of emerging governance regimes (Koontz et al. 2004; Gunningham 2009; Newig and Fritsch 2009), and the intersection of knowledge systems and socio-economic priorities in new paradigms of environmental management (Bäckstrand 2003; Jasanoff and Martello 2004; Cash et al. 2006; Lemos and Agrawal 2006).

four participants represented environmental groups, one was from the forest sector, two were government staff, two were from First Nations governments, and two were mediators. The interview data is cited using a code followed by the year, for example “E1, 2009”.²

ABORIGINAL RIGHTS IN BRITISH COLUMBIA

Unlike elsewhere in Canada, in British Columbia most First Nations 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 Aboriginal 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, Gale, and Haley 2008). In 1982, the BC government was forced to reverse its non-recognition policy after the Canadian Constitution was rewritten to include the protection of “existing Aboriginal rights and title” (McKee 2009, 29). Despite the Constitution, it was another ten years before the government established the BC Treaty Commission in 1992 to give contemporary definition to Aboriginal 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.

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 rights and title issues (Tollefson, Gale, and Haley 2008). A series of court cases, including *Sparrow* (1990), *Van der Peet* (1996), *Delgamuukw* (1997), and *Haida Nation* (2004), has 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 included meaningful consultation with affected First Nations; and Aboriginal title exists as a distinct species of Aboriginal rights (Tollefson, Gale, and Haley 2008; James 2009). The *Haida Nation* decision has had

² Due to ethics approval for the project, we are unable to identify interviewees by name or occupational sector when using the interview data and have devised a code to protect interviewee anonymity.

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 Tsawwassen First Nation near Vancouver, and the Maa-Nulth Treaty Society, an organization representing five First 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.

perhaps 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, Gale, and Haley 2008, 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 when considering 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.

Although there has been movement towards recognizing Aboriginal rights and title in recent years, there remains a pressing need for community economic development. This need has a definite influence on how First Nations approach negotiations over resource use as well as land rights and title. First Nations communities are still deeply affected by colonization, a legacy that includes the devastating residential school experience. Today, First Nations 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 as well as 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 very difficult but also communication between First Nations and government officials, industry, and non-Aboriginal people. This has exacerbated the lack of capacity in many of the small isolated communities.

Aboriginal rights and title to 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 Nations 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, whereby the land and people care for and sustain one another (Smith, Sterritt, and Armstrong 2007). In other words, their argument has been that any conservation efforts 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 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, if not impossible, for environmentalists to pursue campaigns focused on resource use or management without the support of affected First Nations – a situation that is already fundamentally transforming the terrain of environmental advocacy in British Columbia.

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 in 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 kilometres) and has been recognized as the largest relatively intact temperate rainforest ecosystem left in the world. This region is unique, supporting vast and invaluable terrestrial and aquatic ecosystems as well as a human population of approximately twenty-two thousand inhabitants (McGee, Cullen, and Gunton 2009). Apart from 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.⁴

Over the last fifteen 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 forest 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 have been hindered by strict environmental regulations or protected areas. Concurrently, environmental groups expressed 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 previously (Magnusson and Shaw 2003). The most significant of these involved 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 initiated in Clayoquot Sound began to fully flourish when focused on the Great Bear Rainforest, when environmental groups launched an international markets campaign that targeted the buyers of BC timber.⁵ These companies

⁴ For a map of the region, see Armstrong (2009).

⁵ During the early years of conflict, many environmental groups – 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) – were involved in shaping the international markets campaign that targeted buyers of BC wood. Several of these groups eventually shifted their focus away

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 important, that their hostile relationship with both environmental groups and First Nations would need to change (Smith, Sterritt, and Armstrong 2007). In early 2000, five forest companies 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).⁶ While these discussions occurred, logging in key ecological areas was put on hold and the markets campaign suspended. Concurrently, First Nations 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 First 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 Nations communities have a past of working in isolation from each other (Smith, Sterritt, and Armstrong 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.⁷ 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, Sterritt, and Armstrong 2007, 5). In the southern region of the Great Bear Rainforest,

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.

⁶ 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).

⁷ 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, Kitasoo/Xaixais, Gitga'at, Haisla, Metlakatla, Old Massett, Skidegate, and Council of the Haida Nation.

First Nations leaders established the Nanwakolas Council.⁸ These two organizations were to have a profound effect not only on the negotiations over the region's future but also on the development of relations among different First Nations communities and capacity building within these communities.

Simultaneous with these negotiations, between 2001 and 2006 were government-sponsored land-use planning processes, which included all of the parties mentioned above and more, known as the Land and Resource Management Planning (LRMP) tables for both the north and central coast. The LRMP processes resulted in a set of consensus-based recommendations that were then used to inform negotiations between the BC government and First Nations governments, known as "government-to-government" negotiations (discussed in more detail below). In February 2006, milestone agreements were reached that laid the groundwork for a transformation of the way land was used and controlled in the Great Bear Rainforest. Known as the Great Bear Rainforest Agreements (hereafter 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 one-third of the region. Approximately 2 million hectares of land are protected from logging; of that area, 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 of Ecosystem-Based Management (EBM), which includes better, lighter-touch forestry practices. As of 31 March 2009, low-impact logging regulations conserved 50 percent of the natural range of old-growth forests in the region. Ongoing negotiations aim to conserve 70 percent of the natural range by 2014.⁹

⁸ Nanwakolas Council was incorporated in 2007 to provide support to First Nations members on various land and marine resource use, management, and planning issues. It represents the following First 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, Kwiakah First Nation, and Comox First Nation (Smith, Sterrit, and Armstrong 2007).

⁹ For an explanation of ecosystem-based management, please see Price, Roburn, and McKinnon (2008).

- The establishment of the Coast Opportunities Funds, a \$120 million fund aimed at preserving the ecological integrity of the Great Bear Rainforest for generations while promoting economic development opportunities with lasting benefits for First Nations.
- The comprehensive involvement of 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 marvelled at the unprecedented collaborative success expressed in the Agreements. Not only did it appear that the decades-long “war in the woods” (Wilson 1998) between environmentalists, industry, and government might have been resolved, but also that the even more long-standing and increasingly threatening wars over the role of First Nations in resource management might 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.

KEY OUTCOMES: INSTITUTIONS

The Agreements themselves contain a number of innovative outcomes and a vision that is multifaceted. As suggested by the above summary, contained within the Agreements is the ambition to restructure the economy of the region away from unsustainable resource management and towards an economy that can sustain and empower the people who live there as well as, presumably, contribute 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 within the 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 Nations, and some First Nations, 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 article, we concentrate 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. (M₂, 2009)

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 fund set up to manage ecosystems and invest in sustainable business ventures that directly involve and support the communities in the Great Bear Rainforest (Smith, Sterritt, and Armstrong 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" (N₁, 2009). Their mistrust was also directed at the BC government because First Nations communities "knew they would be granted little to no access to these lands if they were protected" (N₁, 2009). However, through the hard work and creativity of First Nations leaders, the philanthropic community, and environmental groups, an agreement was reached that articulated a conservation financing structure that satisfied

all parties. The COF are made up of two separate funds, one to protect and manage ecosystems through research, education, and Watchmen programs and the other to support sustainable First Nations businesses and economic development. The COF are now being deployed: as of June 2010, they had awarded approximately \$11 million, of which \$3.3 million went to conservation efforts and the remaining to economic development (Smith 2010, 36).

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.¹⁰ The COF are managed by a board of directors with representatives from First Nations, environmental groups, and businesses and development experts. What is interesting and challenging here is the question of whether such funds can be managed to incentivize 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 is not clear what kind of economy might be possible in the region, let alone how to make it 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 to support remote communities with little existing capacity for economic development. On the other hand, First Nations communities have been embedded in these places for millennia, and explicitly plan to be embedded in them 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 known as “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 precedence, 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

¹⁰ For an in-depth explanation of the Coast Opportunities Funds, please see <http://www.coastfunds.ca/> (accessed 13 December 2011).

much needed economic development for their communities. As one 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 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.
(NI, 2009)

The designation of conservancy also stipulated that the management plan for each conservancy would be co-developed by the First Nations whose traditional territory lay within that area (Smith, Sterritt, and Armstrong 2007). As of March 2009, sixty-seven 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 – we see the emergence of what is hoped will become lasting legacies and provide 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 to allow not only 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 COF and the conservancies may be considered somewhat novel institutional arrangements expressing substantive goals developed 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 sustains both communities and their environments. For First Nations, these initiatives meant their needs were not only recognized but also realized in a tangible way, not just by government but also by environmentalists and industry, through the creation of the formal infrastructures necessary for them to innovate.

For the government (and government staff), these initiatives signalled more than just a change to the status quo: they signalled the need to be leaders and problem solvers – a need yet to be taken up. While the provincial 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, which makes it difficult to engage creatively around initiatives like the COF and, perhaps, to 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” (M1, 2009). For environmentalists, both initiatives changed the way they were viewed by many First Nations, and reinforced the strength of their commitment to improve human well-being in the Great Bear Rainforest. Last, these outcomes helped shape a more effective dialogue between often conflicting parties.

KEY PROCESSES: GOVERNMENT TO GOVERNMENT NEGOTIATIONS

As described above, the Agreements were novel in many ways, including the use of government-to-government negotiations between the BC government and First Nations governments. These negotiations were the result of emerging legal precedents set out by the Supreme Court and of 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 “decision-making” status rather than simply “interested party” status 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. (N1, 2009)

The early stages of the government-to-government negotiations included a protocol agreement with eight of the coastal First Nations: the General Protocol Agreement on Land Use and Interim Measures. This agreement facilitated the land-use planning processes of First Nations, which occurred simultaneously with the province-initiated LRMP tables (Smith, Sterritt, and Armstrong 2007). The land-use plans created by First Nations communities were informed by both traditional knowledge from elders and hereditary chiefs and by the findings of Western science. First Nations leaders also participated with “observer” status in the LRMP process to ensure that both processes were moving in similar directions and to avoid disputes between parties that would delay further negotiations. Once consensus had been reached at the LRMP tables, it was agreed that the BC government and First Nations governments would return to government-to-government negotiations to reconcile the LRMP consensus plan with those plans of individual First Nations. 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.¹¹

The importance of the government-to-government negotiations cannot be underestimated as this type of negotiation, along with the decision-making power of First Nations, was the first of its kind in British Columbia, and, arguably, it is what 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. The environmentalists’ vision of strictly protected areas and a ban on clear-cut logging was not acceptable to First Nations, who desperately needed a way to strengthen their local economies at a community level. First Nations in the Great Bear Rainforest challenged environmentalists not only to 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, Sterritt, and Armstrong 2007). Environmentalists responded to this challenge in creative and effective ways, including the development of the coF described above.

¹¹ Not all First Nations in the region signed on to the initial protocol agreement or the later 2006 Agreements, which means that some First Nations are being “left out” of the benefits received from the coF. For an explanation of the position of one First Nation (Nuxalk) that declined to sign, see <http://www.firstnations.de/forestry/nuxalk.htm>.

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 close relationship with the BC government because of the revenue they 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 JSP. Forest companies 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. (F1, 2009)

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 First Nations that committed the government 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 JSP process, in 1999, First Nations were essentially marginalized, hardly participants and essentially marginalized. They were engaged but not, [engaged], 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. (M2, 2009)

While the government-to-government negotiations proved to be a very effective tool in coming to agreements with which most parties were satisfied, especially First Nations 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 governments, 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 no 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 reported to a land-use planning process that ultimately informed a government body that was not accountable to their interests. For the BC government, this posed difficult challenges that it must 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. (M2, 2009)

For First Nations leaders and communities, the Agreements that resulted from government-to-government negotiations are part of a larger process whose purpose is to help reconcile Aboriginal rights and title to First Nations 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 not only resulted in agreements that have wider governance implications but also produced 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 – that is, 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 and, it is hoped, also bring more immediate and lasting benefits for First Nations 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 – 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 push it too far. The success of the negotiations is surely, in part, attributable to agreements emerging from extended negotiations between the two main antagonists – environmentalists and forestry companies – as well as extended consensus-based public planning processes (the LRMP tables). 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. Their 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. 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 "this is what we want to do and this is what we're trying to do." (NI, 2009)

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 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 Agreements and wider-reaching effects for the treaty process.

And now, ten to twelve years after the fact, nobody's got any treaties done but we have this great land-use planning work and [it] can be a great framework or a foundation for future treaty negotiations and those sorts of things. (NI, 2009)

New relationships were also formed between environmentalists and First Nations throughout the negotiations that still exist today. While many tensions between the parties remain, their relationship is constantly evolving and it is proving 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 it was very symbiotic at the end of the day. (NI, 2009)

The 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” (NI, 2009). Despite these improvements, capacity within communities is still badly needed before implementation of land-use agreements, or treaties, are able to deliver lasting effects.

ONGOING CHALLENGES

While the innovations embedded in the process and outcomes of the 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 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 EBM are ongoing, and environmental groups have recently stepped up their public campaign because they are concerned that the government is not giving the priority to these negotiations that will be necessary if they are to succeed.¹²

Challenges also persist for First Nations that are seeking to build the capacity that their communities need in order 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 they 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” (E3, 2009). Lack of capacity, and lack of a clear plan for developing capacity, remain significant blockages. Similarly, economic activities supported by the COF are yet to be realized. While a \$120 million fund is a good start, it is not considered a lot of money to achieve the imagined transformation in the health and sustainability of communities. For example, economic

¹² A current depiction of the negotiations of EBM, as well as the implementation of other components of the Agreements, can be found at <http://greatbearwatch.ca/>.

activities supported by the COF are challenging for the practical reason that there is a lack of infrastructure and access to support other kinds of development besides forestry (FI, 2009). The difficulties associated with the remoteness of the region also present challenges as transportation by boat and air make it very expensive to conduct business.

Additional challenges for First Nations include divides between individual nations regarding some of the terms of EBM and the COF. Many of these tensions are consequences of colonialism (as discussed above) and result “from communities not finding a way to get over a lot of baggage that they’ve got” (NI, 2009). Informants explained that different communities have different interpretations of what their culture means and what principles that culture should be instilling in their governance systems (NI, 2009). There is also significant conflict among First Nations over the boundaries of their traditional territories and what activities should be taking place within these territories. For example, coastal First Nations have linked their traditional land management to ecosystem-based management from the early stages of the Great Bear Rainforest Agreements negotiations, whereas other First Nations (mostly in the southern and central regions) have hesitated to agree to EBM and the COF because they feel it inhibits their ability to prosper and build their local economies.

In short, the ambition expressed in the Agreements is substantial, and, although implementation efforts have also been substantial, struggles are likely to continue. For now, it is too soon to assess the success or failure of the Agreements, but close attention to implementation processes is essential.

CONCLUSION: 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 British Columbia 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 – 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 essential to

understanding the outcomes reached and, in themselves, have important and interesting implications. However, the role of First Nations in shaping these Agreements, and the implications of their involvement, are crucial to understanding the wider implications of the Agreements for resource management both in British Columbia and beyond.¹³

Attention to the role and impact of First Nations raises at least two issues that resonate widely. 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 simply protecting the ecological characteristics of the region. Much of the critical commentary on the Agreements chastises environmental organizations for compromising too much and for settling for far too little.¹⁴ 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’s 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 the protection, was the priorities of First Nations. Rather than understanding this as First Nations blocking the achievement of environmental protection, it is important to understand it as yet another expression of global resistance to the danger inherent in using the environment as an excuse for neocolonialism. 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) around the world who depend directly upon their environments. The environmental organizations that have begun to realize that this is a potential point of alliance, rather than something to be fought, are those that will be able to make progress in achieving large-scale environmental protection, particularly in British Columbia, where recognition of Aboriginal rights and title is only going to strengthen. Thus, understanding these Agreements as being primarily about the environment is misleading in

¹³ An example of their wider relevance is apparent in the Boreal Forest Agreement (<http://www.cbc.ca/canada/story/2010/05/18/forest-agreement.html>). The process that led to this agreement (and its substance) was largely modelled on the Great Bear Rainforest process, with many of the same groups involved.

¹⁴ See, for example, Stainsby and Jay (2009).

that they involve a much more wide-ranging vision; however, they do gesture towards what environmentalism must become if it is to effectively address the needs not only of indigenous peoples but also of all those who rely upon the resources that surround them to sustain themselves. In the end, of course, this includes all of us. As such, the Great Bear Rainforest Agreements not only help us to see the future of resource management in British Columbia – with all its challenges, tensions, and possibilities – but also provide us with some hints about ongoing challenges and processes at other sites.

The second issue raised by the Agreements concerns the challenges of simultaneously (1) responding to the emerging claims and needs of a previously colonized and extremely economically disadvantaged group and (2) addressing the urgent need to preserve the relatively intact ecosystems that this group has a legal right to exploit. As if transitioning away from unsustainable resource management practices were not challenging enough, the need to accommodate First Nations and their right to develop their economies may seem all but impossible. What is revealing about the Agreements is the scale and character of the processes involved – processes that yielded a form of environmental governance that might be able to manage 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 much more successful in creating wide-ranging cross-sectoral agreement about paths forward (and their institutional expression) than have any other approaches utilized in British Columbia. There is good news and bad news in this conclusion. Put bluntly, the good news is that such consensus is possible; the bad news is the scale of effort required to achieve it. However we judge the Agreements, it behooves us to pay close attention to the processes they involved as we continue to struggle with the need to make difficult transitions and in ways responsive to the principles of legal order and democratic engagement. Although the processes and outcomes of the Great Bear negotiations are far from perfect, and daunting challenges remain, they certainly provide an instructive reference point.

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