

GRAHAM WHITE

INDIGENOUS  
EMPOWERMENT THROUGH  
CO-MANAGEMENT

---

**Land Claims Boards,  
Wildlife Management, and  
Environmental Regulation**



**UBC**Press • Vancouver • Toronto

---

## Contents

Figures and Tables / ix

Preface / xi

Acknowledgments / xiv

Acronyms / xvi

### **Part 1: What Are Land Claims–Based Co-management Boards?**

- 1** A New Species in the Canadian Governmental Menagerie / 3
- 2** Northern Governments, Land Claims, and Land Claims Boards / 20

### **Part 2: Specific Land Claims Boards**

- 3** The Nunavut Wildlife Management Board / 55
- 4** The Yukon Fish and Wildlife Management Board / 98
- 5** The Mackenzie Valley Environmental Impact Review Board  
and the Mackenzie Valley Land and Water Board / 152
- 6** The Mackenzie Valley Boards and the Regulatory  
Improvement Saga / 209

### **Part 3: A Review of the Key Issues**

- 7** Issues of Board Independence / 247
- 8** Traditional Knowledge in Claims-Mandated Co-management Boards / 266
- 9** Indigenous Influence through Claims Boards? / 297

Notes / 324

Selected Bibliography / 363

Index / 369

## A New Species in the Canadian Governmental Menagerie

Among the pressing problems facing the Canadian federation, those involving the accommodation of Indigenous peoples' rights, interests, and aspirations arguably raise the most fundamental and most difficult governance issues. Political accommodation of Indigenous peoples is especially problematic because, even in Canada's highly diverse society, they constitute the most distinctive cultural minorities. And, as the plural "minorities" suggests, great variations are evident among the many Indigenous nations and communities across Canada. Moreover, essential precepts of Indigenous political culture – ways of conceiving politics, political values, and understandings about how those values should play out in practical politics – often differ fundamentally from prevailing Euro-Canadian values and approaches.

Crucially, what sets Indigenous peoples apart from all other cultural minorities in this country is the essential and compelling fact that their position within the federation is founded on an explicit and unique constitutional framework: the treaties they have signed with Britain and with Canada. What has been termed "treaty federalism" is increasingly understood as a fundamental element of the Canadian constitutional order. The Royal Commission on Aboriginal Peoples put it this way: "the terms of the Canadian federation are found not only in formal constitutional documents governing relations between the federal and provincial governments but also in treaties and other instruments establishing the basic links between Indigenous peoples and the Crown."<sup>1</sup>

In principle, the governance provisions in these treaties – implicit and explicit – offer the means and the opportunity for accommodating Indigenous

peoples within the Canadian political community. In practice, however, it is often uncertain how – or even if – relations between Indigenous peoples and the Canadian state are actually shaped by the treaties. In particular, the role of the treaties in advancing the Indigenous quest for self-determination is a matter of much empirical and normative dispute.

This book explores one important facet of treaty-based political accommodation of Indigenous people in Canada. It looks at the co-management boards established under the comprehensive land claims, which the Government of Canada recognizes as “modern treaties,” finalized in the territorial North. These boards, which have become key players in a host of environmental, economic, and cultural issues across the North, represent a compromise between Indigenous peoples’ desire for complete control over matters of crucial importance to them and the insistence of the federal government on established patterns of state control, exercised through the federal and territorial governments. Through the lens of treaty federalism, the book addresses the central question about these boards: *Have they been effective in ensuring substantial Indigenous influence over policies affecting the land and wildlife of traditional territories?*

Claims boards’ capacity for protecting and advancing Indigenous interests has been cited as “contributing to the reconciliation process in Canada” and to the realization of the United Nations Declaration on the Rights of Indigenous Peoples, to which Canada is a signatory.<sup>2</sup> Article 18 of the declaration states: “Indigenous peoples have the right to participate in decision-making in matters which would affect their rights.”

The thirty Northern claims boards are, in a term used mainly in Nunavut but applicable across all three territories, “institutions of public government.”<sup>3</sup> Yet they are not federal or territorial boards, nor are they a species of Indigenous self-government. Rather, they exist at the intersection of the three orders of government within Canada: federal, provincial/territorial, and Indigenous. They do not constitute anything like a fourth order of government in any formal way, but they can and do wield significant power over policies and decisions affecting not only day-to-day life in the territories but also the long term development of the Canadian North. Claims-based co-management boards exist or are emerging in at least three provinces; this book, however, looks only at boards in Nunavut, the Northwest Territories (NWT), and Yukon.

Northern claims boards warrant a close look not simply because they are new and unique features of Canadian federalism. Nor simply because of their political clout in the territorial North, which, though small in population, constitutes close to 40 percent of Canada’s land mass with vast stores of natural

resources. These boards carry great significance in terms of their potential for accommodating Indigenous peoples' political interests and perspectives within the Canadian state. Yet political scientists have paid little attention to claims boards. Lawyers have written about various boards, explicating their jurisdiction and processes, usually from a technical, legalistic perspective, while scientists, geographers, and environmentalists have produced a substantial literature examining the boards' activities relating to the environment and wildlife. Political scientists, however, have conducted very limited research on the boards and their place within the structures and processes of the Canadian state; they have published only one book-length study and a handful of articles and chapters.<sup>4</sup> To the limited extent that social scientists have considered claims boards as vehicles for Indigenous influence, the work has been carried out mostly by anthropologists.<sup>5</sup>

Accordingly, an important objective of this book is to draw political scientists' attention to a new and potentially significant set of institutions in the ever-evolving domain of Canadian federalism. To this end the case study chapters provide extensive detail on the structures and processes of selected boards, highlighting their organizational development. These chapters examine the nature and causes of the changes that have characterized boards over the course of their relatively short lifetimes (the first boards were created in 1984; most date from the 1990s).

## **Claims Boards: A Thumbnail Sketch**

Before proceeding, a brief sketch of Northern claims boards is necessary to provide context for the balance of the chapter. A more fulsome overview of comprehensive land claims and the boards established under them is provided in Chapter 2, while Chapters 3 to 6 look at several boards in detail.

Since the mid-1970s, the federal government, together with provincial or territorial governments, has been negotiating "comprehensive land claims" with various Indigenous organizations, almost exclusively in Northern Canada (the most notable exception being that of the Nisga'a of central British Columbia and the massive Algonquin claim in eastern Ontario). Agreements have been finalized in Labrador and in Northern Quebec, and with the Nisga'a, but they have been in areas literally peripheral to the provinces in which they are located. By contrast, the claims settled in the territories are of central political and economic importance to the people and governments "north of 60," not least because they cover all of Yukon and Nunavut and more than half of the NWT. As the name implies, comprehensive land claims encompass a wide range of provisions,

many of which directly or indirectly impinge on governance. The boards examined in this book carry significant governance provisions.

The Northern comprehensive claims are remarkable achievements, particularly given the limited resources available to the small Indigenous communities and organizations pursuing them. In little more than three decades, the claims have transformed politics and administration across the territories. The co-management boards analyzed in this book are but one element of the claims, albeit an especially important element. A comprehensive assessment of the multifaceted components of the Northern claims and their far-reaching effects has yet to be done. Suffice it to say here that many aspects of the claims beyond the co-management boards have profoundly influenced the North and the place of Indigenous people in it.

Boards established under the comprehensive land claims differ fundamentally from the myriad non-claims boards and political institutions permeating Northern governance. As “modern treaties,” comprehensive claims are constitutionally protected under section 35 of the *Constitution Act, 1982*. Accordingly, as integral components of the claims, the boards enjoy quasi-constitutional status. This status accords them importance and permanence far beyond that of run-of-the-mill boards.

The boards’ jurisdiction is largely limited to wildlife, land, and environmental issues. Few boards’ mandates extend more than marginally into more conventionally defined social and cultural policy such as education, health, and social welfare.

Claims boards fall into four broad categories. One group deals with wildlife management; its activities include advising on and setting policy as well as specific harvest levels for various species, directing and facilitating wildlife research and supporting local renewable resources councils and hunters’ and trappers’ organizations. The Nunavut Wildlife Management Board (NWMB) is an example. A second major set of boards is responsible for land use planning: such bodies as the Gwich’in Land Use Planning Board set the frameworks that govern economic development projects, location of transportation facilities, and the like. A third group, which is involved in regulating projects that might disturb or damage the environment, has two subsets. One subset, illustrated by the Mackenzie Valley Land and Water Board (MVLWB), issues licences and permits to projects ranging from small gravel pits to oil and gas pipelines. The other subset conducts environmental impact assessments on proposed projects, usually the larger ones, as part of the licensing process. The work of these boards is closely related to, though nonetheless separate from, the boards that issue permits and licences; an example is the Mackenzie Valley Environmental Impact

Review Board (MVEIRB). The claims boards that comprise a final group, represented by the Nunavut Arbitration Board, serve as dispute resolution bodies for claims-related issues. They have thus far been of little significance; some have yet to have any cases referred to them.

Wide variation in structure, mandate, and operation characterizes boards in the same fields across the three territories. The accounts of the wildlife management boards in Chapters 3 and 4 bring this home clearly. While a detailed analysis of the sources and implications of these variations is beyond the scope of this book, some attention is devoted to the factors shaping certain boards. Boards typically have between seven and ten members; a few are somewhat larger or smaller. All board members are nominees of one of the three parties to the claim (the Indigenous organization, the territorial government, and the federal government). In most instances the formal appointments are made by the federal government. Some boards are structured so that half the members are nominees of Indigenous governments or organizations and half are public government nominees.

Board members, however, are not (with a few exceptions) representatives or delegates of the parties that nominated or appointed them. Key to understanding the nature and role of the claims boards is the fundamental principle that they and their members are to act independently. The legal frameworks establishing some boards explicitly state that members are to act “in the public interest” and are not to take direction from the parties that nominated them. Like judges, members are expected to use their best judgment and to reach decisions on the basis of the evidence before them. As might be expected, however, the question of board independence is not so straightforward as this simple formulation would have it. Issues of board independence are examined in Chapter 7.

Save the little-utilized arbitration panels, the boards have permanent, full-time professional staff, some numbering only three or four, while others have a dozen or more. Many boards make extensive use of modern communications technology, for example, maintaining online registries containing the full text of submissions and technical reports pertaining to projects under review or webcasting public hearings.

Funding for claims boards – for large, active boards, several million dollars a year – comes almost entirely from the federal government (the territorial governments provide some funding, but by and large this is redirected federal money).

In a few cases, boards possess the legal capacity to make final, binding decisions on permits, harvest quotas, and the like. In most cases, however, and



certainly in almost all matters with far-reaching implications, the boards have only advisory powers. They make recommendations to government, which need not follow the boards' advice. Put this way, the boards appear to wield little real clout since governments would seem free to ignore their recommendations. This appearance is deceiving, however, and the reality, considered in later chapters, is quite different.

Claims boards decide, advise, and recommend. As a rule they have no powers of inspection or enforcement and rely on federal and territorial officials – wildlife officers, environmental inspectors, and the like – to put their recommendations into operation and to police the licences and plans they issue. An important exception here is the Nunavut Impact Review Board, which both under the Nunavut land claim and the *Nunavut Project Planning and Assessment Act* has substantial inspection and monitoring powers. Recent amendments to the *Mackenzie Valley Resource Management Act* potentially entail a similar monitoring regime for environmental regulatory boards in the NWT; as of early 2019, however, the process was still being developed.

Certainly, in these and other ways, the powers of claims boards are constrained. The boards are, however, important and prominent players in Northern politics that attract constant media attention. Few issues of the main weekly newspapers in the NWT and Nunavut, *News/North NWT* and *Nunatsiaq News*, do not carry substantial stories about some claims board or other; the boards are also frequent subjects of CBC Radio news stories. Yukon boards also receive a good deal of media attention.

## Treaty Federalism

“Treaty federalism” is an approach to Indigenous-state relations premised on the notion that treaties are defining elements of the Canadian federation. The concept was first articulated in Russel Barsh and James Youngblood Henderson’s book *The Road*, which examines the relationship of American tribes to the United States government. Barsh and Henderson’s central argument about US treaties runs as follows:

Intent, interpretation and practice combine to make these instruments something more than “treaties” as they are understood in international law. They are political compacts irrevocably annexing tribes to the federal system in a status parallel to, but not identical with, that of the states ... Treaties are a form of recognition and a measure of the consensual distribution of power between tribes and the United States.<sup>6</sup>

This argument applies with equal force in Canada. In the words of one Indigenous scholar:

First Nations in Canada formed treaty relations with several European nations which governed their intra-relations. Part of those intra-nation undertakings included the continuance of the right of First Nations governance ... Treaty federalism stands for “Indian consensus” and “Indian consent” in regard to the manner and form of our co-existence with the Queen’s white children under the Canadian constitutional framework ... In essence treaty federalism is a way of restoring the unique First Nations-Crown relations since earliest colonial times.<sup>7</sup>

The Royal Commission on Aboriginal Peoples put it simply: “Treaty federalism is an integral part of the Canadian constitution.”<sup>8</sup>

The constitutional status of treaties is obviously central here, but so too is the *federal* nature of the relationship. In Canada, as a manifestation of Indigenous peoples’ quest for self-determination, treaty federalism combines “identity politics and traditional territorial politics of federalism.”<sup>9</sup> As Richard Simeon and Katherine Swinton remind us, “federalism is at once a set of institutions – the division of public authority between two or more constitutionally defined orders of government – and a set of ideas which underpin such institutions. As an idea, federalism points us to such issues as shared and divided sovereignty, multiple loyalties and identities and governance through multi-level institutions.”<sup>10</sup> By positing a regime founded upon three distinct orders of government – federal, provincial/territorial, and Indigenous – treaty federalism is concerned with just such issues. As Henderson notes, in Canada “treaties created shared responsibilities rather than supreme powers.”<sup>11</sup>

The Canadian treaty federalism literature is almost exclusively framed in terms of developing Indigenous self-government as a means of restoring the spirit and intent of the “historic” treaties signed by First Nations and the British and Canadian authorities. Kiera Ladner, for example, writes of treaty federalism as “an Indigenous vision of the future,” arguing that the treaties “hold the solution for the problems that we face today in restructuring and decolonizing the Aboriginal/non-Aboriginal relationship.”<sup>12</sup> Thus treaty federalism is usually seen as operating through direct, government-to-government relationships. Yet it may also take the form of indirect relationships mediated by institutions such as the Northern claims boards. Like the historic treaties, comprehensive land claims are about establishing principles for land ownership and use and principles for political-governmental relations between Indigenous peoples

and the Canadian state. Both are inherently constitutional in nature. It follows that settled comprehensive land claims comprise a central element of treaty federalism.

The Indigenous understanding of treaty federalism, according to Thomas Huegelin, “emphasizes mutualist and holistic values, and it operates through a process of coordination and compromise on the basis of consensus. It is meant to be an open-ended, horizontal and renewable partnership aiming at the autonomy and reciprocity of all participants ... [It] establishes a common bond of mutual obligations as well as organized self-determination.”<sup>13</sup> Many of these phrases would fit comfortably in claims boards’ mission statements, though a key question is how well the on-the-ground reality matches the rhetoric.

Just as the limited Canadian literature on treaty federalism relates mainly to the historic treaties, so too it tends to be abstract and conceptual rather than concrete and empirical. Few treaty federalism scholars have attempted to set out in any detail how the overarching principles they outline might play out in practical issues of governance. In offering an on-the-ground account of Northern claims boards, this book thus represents a departure from conventional treaty federalism literature. The hope is not only that a treaty federalism perspective will strengthen the analysis of claims boards but also that the conclusions drawn about the boards will advance and refine treaty federalism as a tool for understanding Indigenous-state relations.

## Co-management

The term “co-management” came to prominence in the natural resource literature during the 1980s and 1990s. As leading co-management scholar Fikret Berkes writes:

There is no widely accepted definition of co-management. The term broadly refers to various levels of integration of local- and state-level management systems ... A more precise definition is probably inappropriate because there is a continuum of co-management arrangements from those that merely involve, for example, some local participation in government research being carried out, to those in which the community holds all the management power and responsibility.<sup>14</sup>

Co-management principles and processes could presumably be applied to a wide range of governmental activities, such as health and education, but the vast co-management literature is almost entirely concerned with natural

resources, typically common-pool resources in situations not characterized by regimes built on private property and individual rights.<sup>15</sup> Significantly, although co-management is not inherently about Indigenous peoples' involvement in natural resource policy making and implementation, a great deal of the literature, especially the Canadian literature, focuses on just that. As David Natcher and his colleagues observe, "co-management regimes are not only changing the way in which lands and resources are being managed, but are also restructuring indigenous-state relations more broadly."<sup>16</sup>

As summarized by Peter Usher, the contrast between the state wildlife management system and that of Northern Indigenous peoples is stark:

The state system rests on a common property concept in which the state assumes exclusive responsibility for managing a resource equally accessible to all citizens. The state manages for certain levels of abundance on a technical basis, and then allocates shares of this abundance to users on an economic and political basis. The system of knowledge is based on a scientific accumulation, organization, and interpretation of data, and management problems are resolved in a technical, historical framework. The system of management is bureaucratic, which is to say hierarchically organized and vertically compartmentalized. Managers become distinct from harvesters, authority becomes centralized and flows from the top down. The environment is reduced to conceptually discrete components which are managed separately. As these separate management units take on a life of their own, management objectives diverge and become focused on specialized objectives: maximizing fur production, trophy production or recreational expenditures. Not least, the management of fish and wildlife resources becomes separated from the management of the lands and waters that sustain them ...

The indigenous system rests on communal property arrangements, in which the local harvesting group is responsible for management by consensus. Management and harvesting are conceptually and practically inseparable. Knowledge comes from the experience of every aspect of harvesting itself – travelling, searching, hunting, skinning, butchering and eating. It is accumulated by every individual, and shared intimately and constantly within the household, the family, or whatever is the social unit of production. It is also shared and exchanged within the larger society, and handed down in the form of stories from one generation to the next. In sum, these observations, like those of the state system's, become coded and organized by a paradigm or a set of paradigms that provide a comprehensive interpretation of them. The

knowledge, so produced becomes the cultural heritage of these societies, just as what we call science is part of ours ... The indigenous system of management is a core feature of all Northern native cultures, and is therefore intimately linked with their values, ethics and cosmology, which are generally based on an integrated, non-compartmentalized view of the environment.<sup>17</sup>

Claudia Notzke rightly comments that “the two systems are based on and operate within two profoundly different social realities, the protagonists of which have held the other resource management systems in anything but high regard and commonly have failed to acknowledge the other as having any legitimacy.”<sup>18</sup> Little wonder then that Berkes and others see the central challenge in making co-management work as getting the adherents of the two systems to accept that the other’s perspectives and techniques can be merged into an effective system utilizing the best of both systems.

In contemplating how – or if – co-management can truly meld elements of the state and Indigenous wildlife management systems, it is well to recognize that, although elements of the Indigenous system persisted throughout the twentieth century, in most of Northern Canada the state system became overwhelmingly dominant. Accordingly, bringing the two together through co-management was not a process of blending two equally powerful systems but, rather, of replacing elements of the state system with significant aspects of the Indigenous system.

The co-management literature encompasses cases across North America and the globe, but, as Tracy Campbell, among others, has pointed out, co-management institutions created by the constitutionally protected comprehensive land claims agreements of the Canadian North are qualitatively more powerful and effective than others lacking such a foundation.<sup>19</sup> According to Natcher not only did the co-management provisions of the 1975 *James Bay and Northern Quebec Agreement (JBNQA)* depart significantly from established Canadian wildlife management regimes, as “the first viable alternative to state wildlife management in Canada,” the *JBNQA* “also represented a clear shift in state policy, as wildlife management moved from the biological to the political.”<sup>20</sup> Although the co-management regimes of the *JBNQA* and the 1984 *Inuvialuit Final Agreement (IFA)* in the Northwest Territories are often seen as lacking the clout for Indigenous people enshrined in subsequent land claims agreements, in 1989 Berkes commented: “the co-management provisions of these agreements are quite detailed, and provide for a level of user group participation in resource decision-making which is simply unparalleled in Canada and rarely achieved elsewhere.”<sup>21</sup>

The Northern claims-mandated co-management boards are located towards the power-sharing end of Berkes's continuum and are generally understood to entail joint exercise of decision-making authority between, on the one hand, government and, on the other hand, Indigenous people and their organizations. A few Northern claims boards are indeed true co-management bodies in terms of formal sharing of decision-making authority. Some boards established by the *IFA* have members appointed by government and by the Inuvialuit who are explicitly designated as "representatives" of their appointing bodies.<sup>22</sup> Significantly, however, although on paper the formal structure of these *IFA* boards, as well as the orientation of their members, differs fundamentally from those of the other claims boards in the North, the reality is that they operate much like the other boards and their members relate to one another in similar ways.<sup>23</sup>

For Lars Carlsson and Fikret Berkes, co-management is more than a formal power sharing arrangement: it is "an approach to governance."<sup>24</sup> In studying co-management regimes, they argue, "by over-emphasizing the formal aspect of such power sharing arrangement, one might run the risk of disregarding the functional side of co-management which should be understood as a continuous problem-solving process."<sup>25</sup> They suggest that co-management "should be understood as a process in which the parties and their relative influence, positions and activities are continuously adjusted."<sup>26</sup> While it is important to look beyond the formalities of the claims-mandated Northern co-management boards to their effectiveness as natural resource problem solvers, the legal and procedural frameworks within which they operate are centrally important to their activities. Moreover, as they evolve, as do all institutions, their scope for continuous adjustment is subject to clear limits.

It will not have escaped the reader's attention that, as exemplified in the authorities just cited, both conceptually and empirically the co-management literature relates almost entirely to renewable natural resources. What then of claims-mandated boards engaged in environmental regulation, primarily involving non-renewable natural resources? At first blush they would not appear to be constructed on or operating according to co-management principles, which are largely concerned with allocation of common pool resources. On closer inspection, however, environmental regulatory boards, such as the Nunavut Impact Review Board (NIRB) and the MVLWB, are deeply engaged in issues pitting certain uses of land – perhaps the ultimate common-pool resource – particularly non-renewable resource extraction, against other uses, such as traditional Indigenous hunting, trapping, and fishing activities. Moreover, as set out not only in the claims that brought them into being but

also in the self-image they have adopted, boards tasked with environmental regulation operate with an explicitly articulated co-management ethos.

Echoing observations of several people interviewed for this book, Natcher and his colleagues write that “co-management has more to do with managing human relationships than resources per se.” Accordingly, they suggest, the success of co-management regimes “depends on the participants’ abilities to engage rather than subvert differences in knowledge and cultural experiences.”<sup>27</sup>

It is worth keeping in mind that the term “co-management” can mean quite different things to different people. During a 2003 interview an official in the Department of Indian Affairs and Northern Development (DIAND) Whitehorse office commented: “co-management is a very sensitive word; the First Nations like to think that they’ve negotiated co-management but the government thinks in terms of ‘cooperative management’ which means that the government runs the show and the buck stops with the minister.”

Thierry Rodon’s 2003 book, *En partenariat avec l’État: Les expériences de cogestion des Autochtones du Canada*, is the only major comparative study of Indigenous peoples’ experiences with co-management in Canada. In it, he asks whether co-management is an instrument of control for integrating Indigenous peoples into the structure of the Canadian state or whether it is a way for them to regain mastery over their traditional lands and revive their power.<sup>28</sup> Rodon outlines four interpretive models (“scenarios”) for understanding Indigenous peoples and co-management.<sup>29</sup> First, co-optation (“confiscation du pouvoir” – taking power away): “the institutions of co-management allow the Canadian state to promote the integration of Indigenous peoples.”<sup>30</sup> “Participation of Indigenous peoples in resource management encourages them to accept scientific and administrative norms – in other words, the values and standards of the Canadian society.”<sup>31</sup>

A second model, transaction (“partage du pouvoir” – power sharing), sees co-management in terms of intercultural transactions between Indigenous peoples and the representatives of the Canadian state. In this way “the institutions of co-management could allow each group to contribute its own values and objectives.”<sup>32</sup> The third, “l’autonomisation” or empowerment (“reconquête du pouvoir” – reclaiming power), interprets co-management as “a way [Indigenous peoples] can take back control over their land, their resources, and ultimately their lives.”<sup>33</sup> According to the final model, “le malentendu” or misunderstanding (“lutte pour le pouvoir” – struggle for power), “the institutions of co-management only reproduce the lack of political understanding between governments and Indigenous groups.”<sup>34</sup> Though Rodon does not explicitly say so, it is clear both from their formulation and the way he uses them in his

analysis that these interpretive models may be analytically distinct but are not entirely mutually exclusive. Accordingly, in a given jurisdiction, the co-management regime, as indeed individual boards, may exhibit elements of more than one model.

Empirically, Rodon examines five cases of Indigenous co-management, all of which involve renewable resources, mostly management of fish and wildlife; one deals with timber management. These cases are the three fish and wildlife co-management boards created by the *Inuvialuit Final Agreement*; the Hunting, Fishing and Trapping Coordinating Committee established under the *JBNQA*; the Nunavut Wildlife Management Board; the Beverly and Qamanirjuaq Caribou Management Board; and the Wendapan Stewardship Authority in Northern Ontario. Only the first three are claims-mandated boards. A more extensive account of Rodon's findings must await the final chapter; suffice it to say at this point that, with respect to the three claims-based case studies, overall he primarily found integration and misunderstanding ("malentendu"), with limited intercultural transaction and very little empowerment.

On balance the Canadian literature presents a somewhat more positive assessment of claims-mandated co-management (see Chapter 9), but, as discussed in the concluding chapter, several anthropologists, deeply familiar with Northern Indigenous peoples and co-management processes, offer profoundly negative assessments of Northern co-management regimes. According to one, "it would be difficult to conceive a more insidious form of cultural assimilation than co-management as currently practiced in northern Canada."<sup>35</sup>

Doubtless some Northern Indigenous people would agree, but many experienced Indigenous leaders, who are certainly not naive about the difficulty of maintaining cultural identity in the face of state power, saw – and continue to see – substantial possibilities for co-management as realized through boards established under the comprehensive land claims. To cite one notable example, Chesley Andersen, former vice-president of the Inuit Tapirisat of Canada (now Inuit Tapiriit Kanatami), supported co-management as a way to "bring together the traditional Inuit system of [wildlife] knowledge and management with that of Canada's. We knew that we could manage our resources in our own tradition, but we also recognized that the government's management system has something to offer. Our definition of co-management is the blending of these two systems of management in such a way that the advantages of both are optimised and the domination of one on the other avoided."<sup>36</sup>

Two final points about co-management. First, as mentioned at the outset of the chapter, co-management is not self-government. Myriad variations of self-government exist, but all entail some measure of exclusion of non-Indigenous



people from governmental processes and/or from programs and services provided by government. Many Indigenous people would prefer that land and wildlife decisions be taken and policies set by self-governments rather than by co-management regimes, but for the most part co-management prevails. Second, this book is exclusively concerned with co-management through Northern land claims boards. Many other forms of Indigenous-state co-management regimes exist in the North and indeed elsewhere in Canada, including two of Rodon's cases. Some have proven highly successful; others less so. None, however, are considered in subsequent chapters; they deserve their own study.

## Unpacking the Central Question

The central question informing the analysis in this book can be succinctly stated: Do claims boards enable Indigenous peoples to exercise substantial influence over the land and wildlife policies so crucial to them? Northerners have not been reluctant to express their views. Members and staff of Northern claims boards regularly make conference presentations lauding the boards' success in bringing Indigenous influence to bear on important land and wildlife questions. At the same time harsh critics are not hard to find. Jim Bell, the long-time editor of *Nunatsiaq News* and one of the North's most astute and experienced political observers, offers a no-holds-barred assessment of the Nunavut claims boards:

[Inuit negotiators] pointed to the system of environmental management boards, and promised beneficiaries that these boards would give Inuit effective control of Nunavut's entire land base.

We now know that this promise was a lie. Thirteen years later, the highly-touted board system at the heart of that lie now smells like a whorehouse on a Sunday morning.

At best, it's a shared management system that allows Inuit, and the public, to be consulted on some issues. At the very worst, it's a system that surrenders effective control of the entire land base, for most environmental issues, to the federal government.<sup>37</sup>

Indigenous political scientist Hayden King, analyzing claims boards in the three territories from a theoretical perspective, concludes that "co-management regimes are one of the many facets of [Indigenous] disempowerment."<sup>38</sup>

Clearly, all views should be assessed with scepticism. The hardly surprising corollary is that answering the central question turns out to be a complex undertaking, involving several subsidiary questions. This complexity is reflected along several dimensions. In the first place, overall judgments must take into account considerable variation across claims boards. Their numbers are substantial, as is the range of their activities: some thirty exist in the territories, engaged in, among other things, wildlife management, land-use planning, and environmental regulation. As well, the socio-political contexts in which they operate vary a good deal across the three territories. So too, a temporal dimension comes into play: some boards have been up and running for two decades and more while others have barely begun their work. Over their histories several have experienced noteworthy changes in their performance, and not simply by virtue of gaining experience and developing expertise. Some have gone through conflict-ridden phases when they were clearly dysfunctional. Others, though not engulfed in conflict, nevertheless accomplished little for extended periods. Still others have been widely acknowledged as highly effective for long stretches of time.

Understanding, then, that assessing Indigenous political influence through claims boards necessarily involves generalizing across a substantial range of institutions and their experiences, what are the subthemes explored in subsequent chapters? The first is straightforward and easily addressed: Are Indigenous people appointed as board members in sufficient numbers to exert meaningful influence? The answer is unequivocal: invariably half or more – sometimes a good deal more – board members are Indigenous, and they are full and engaged participants in board work. Or perhaps one should say male Indigenous board members are full and engaged participants since, as detailed in Chapter 2, Indigenous women (as indeed non-Indigenous women) are seriously underrepresented on claims boards.

Indigenous people may be at the table with solid clout in board decision making, but do the boards themselves wield real power? The ability to influence meaningless decisions or readily ignored recommendations is worth little. In formal, legal terms, claims boards have limited capacity to render binding decisions and for the most part have advisory status only; the federal and territorial governments retain the final power. However, as is so often the case in more familiar realms of Canadian federalism, a substantial gap exists between legal technicalities and real-life governance so that claims boards can and indeed do exercise significant power and influence.

For Indigenous influence to be realized through claims boards it is necessary that they enjoy independence from the federal and territorial governments. Do

they? Three distinct components of the independence issue require attention. First, with governments in most instances holding the power to make board appointments, is independence compromised? Second, since claims boards are all but entirely dependent on government for their funding, does the “golden rule of politics” – “he who has the gold rules” – prevail? If, in other words, boards are financially beholden to government, how independent can they be? Third, beyond control over appointments and finances, can governments bring into play other processes that adversely affect board independence? Federal legislation to eliminate the regional land and water boards in the NWT, examined in Chapter 6, certainly suggests that this can occur. A full treatment of board independence also requires a look at the relationship of Indigenous governments to the members they have nominated. The crucial question of board independence is examined in Chapter 7.

Indigenous influence via claims boards entails not only decisions and policies premised on Indigenous interests and preferences but also board procedures and operations that reflect Indigenous approaches and modes of thought. Accordingly, the analysis must extend beyond the substance of decisions to the nature of board activities and decision making. Here the most central – and most problematic – question involves the extent to which boards have incorporated “traditional knowledge” into their operations. Chapter 8 looks in detail at this issue, with particular focus on two important boards.

The final question turns the others on their heads. Where the questions outlined above seek to determine whether claims boards have fulfilled the promise of enhancing Indigenous influence over land and wildlife policies, some observers ask whether the boards have not actually visited significant harm on Indigenous peoples. This line of thinking sees co-management as entailing the co-optation of Indigenous peoples into Euro-Canadian governance processes as antithetical to their cultures and ways of life to an extent far outweighing the limited influence they can wield via claims boards. From this perspective, it may be true that Indigenous peoples exercise influence through the boards, but it is not *Indigenous* influence – bringing Indigenous worldviews, culture, and processes to bear. The concluding chapter considers this critique.

Rodon sets out his co-optation/integration and autonomization/empowerment models of co-management, outlined above, as fundamentally antithetical. Indeed, the central issue his book addresses is whether co-management promotes the integration of Canadian Indigenous peoples into state structures or enhances their control over their traditional lands and resources. The central question animating *Indigenous Empowerment through Co-management* is whether Indigenous peoples in the territorial North are

able to exercise substantial influence over land and wildlife decisions and policies through claims-mandated co-management boards. It is not posed in either/or terms with respect to the extent of Indigenous integration into state structures and processes. Rather, the assumption is that the very essence of co-management is integration into governance institutions for the purpose of exerting influence. By definition, co-management is very different from self-government. Where the proper balance lies between integration and influence is, to be sure, a matter of vital import. However, it is a normative issue that Indigenous people, not social scientists, should decide.

© UBC Press 2020

All rights reserved. No part of this publication may be reproduced, stored in a retrieval system, or transmitted, in any form or by any means, without prior written permission of the publisher.

### **Library and Archives Canada Cataloguing in Publication**

Title: Indigenous empowerment through co-management: land claims boards, wildlife management, and environmental regulation / Graham White.

Names: White, Graham, 1948- author.

Description: Includes bibliographical references and index.

Identifiers: Canadiana (print) 20190223103 | Canadiana (ebook) 20190223197 |

ISBN 9780774863025 (hardcover) | ISBN 9780774863049 (PDF) |

ISBN 9780774863056 (EPUB) | ISBN 9780774863063 (Kindle)

Subjects: LCSH: Conservation of natural resources – Canada, Northern – Case studies. | LCSH: Community-based conservation – Canada, Northern – Case studies. | LCSH: Conservation leadership – Canada, Northern – Case studies. | LCSH: Advisory boards – Canada, Northern – Case studies. | CSH: Native peoples – Legal status, laws, etc. – Canada, Northern – Case studies. | CSH: Native peoples – Canada, Northern – Politics and government – Case studies. | LCGFT: Case studies.

Classification: LCC S934.C2 W45 2020 | DDC 333.720971–dc23

### **Canada**

UBC Press gratefully acknowledges the financial support for our publishing program of the Government of Canada (through the Canada Book Fund), the Canada Council for the Arts, and the British Columbia Arts Council.

This book has been published with the help of a grant from the Canadian Federation for the Humanities and Social Sciences, through the Awards to Scholarly Publications Program, using funds provided by the Social Sciences and Humanities Research Council of Canada.

UBC Press

The University of British Columbia

2029 West Mall

Vancouver, BC V6T 1Z2

[www.ubcpress.ca](http://www.ubcpress.ca)