IMPLEMENTING DELGAMUUK'W

Biography of Marty Weinstein
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Dr. Martin Weinstein is a natural resources scientist, trained as a biological oceanographer and an animal ecologist at McGill University. His research focuses on the socio-economic side of resource management, and the relationship of long-established communities to their environment and renewable resources. He has been involved in aboriginal land use mapping in Canada for the last 25 years. He is the research designer for 11 major aboriginal land use studies in northern Quebec, the Yukon, and BC, and has been an advisor on research methodology for a further three studies. These studies involved documenting the land use of over 30 aboriginal communities. He has also been the designer and primary researcher for 5 harvest studies. Marty's particular interests include traditional ecological knowledge, customary systems of resource tenures, community resource management and the resolution of conflicts between aboriginal land use and sea use and industrial-scale resource management. He operates a consulting practice from Comox, and is an Adjunct professor at the UBC Fisheries Centre.

This is kind of round two for me this morning, so I want to express my appreciation again, both for the U.B.C.I.C. for hosting this very important conference and to the Coast Salish peoples for welcoming us here.

I want to switch away from T.U.S. [Traditional Use Study] and go back to Delgamuuk'w again and talk about land use and occupancy, mapping broadly. And this is supposed to be a best practices talk, but I'll get to best practices. But I think it is important for everybody here in British Columbia doing mapping and providing information to have at least a basic understanding of the ancestors, the grandmothers and grandfathers, of the methodologies that everybody is working with within Canada. So a lot of the stuff that I am going to be talking about and the overheads I'm going to be showing are way back in the 1970s, because I think it is important for everybody to have a foundation in the kind of land use and occupancy techniques and methodologies that have developed in Canada. We have a very, very deep toolbox of methods for exactly these kinds of purposes that we are talking about here.

The Supreme Court's Delgamuuk'w decision left First Nations with a load of challenges. The scope of the decision and its implementation for significant change is simply enormous. However, getting to the implementation of the decision requires an ability to establish aboriginal title. That's the critical platform. If you can't establish aboriginal title then you may think that you have rights according to Delgamuuk'w, but they're what you think; they're not there for you in terms of the real world and in terms of your opportunities. So the court provided a variety of criteria, or tests, for aboriginal title and these provide general guidance to researchers, but there are many ambiguities that will undoubtedly require additional judicial decisions before the ground rules are clear to all parties. The court established that the party asserting aboriginal title would have to prove that the title was occupied prior to sovereignty. However, because of the difficulties in providing detailed proof of occupancy a hundred years or more ago, the court agreed that present occupancy can be relied on as a proof of pre-sovereignty occupation. But if the proof is going to be based on present occupancy, the group then must be able to establish that there has been continuity in occupancy between then -- which is pre-sovereignty, 1846 in British Columbia -- and now. The court also requires details about such factors as the group size, the group's manner of life, the group's material resources, the group's technological capabilities, and the character of the land. All of those are critical according to the Supreme Court's decision for considering whether occupation in order to "ground title" -- and that is their quote -- has been established by the claimant. In other words, is it simply rights that you've got to fish or hunt, or is it really title? Those are the basic ground rules. But there are enough questions and ambiguities to provide a lot of work for lawyers for many years. For example -- and I have a long list here, but I will throw them out anyway because I think they're really important questions -- is potential aboriginal title limited to land or does it include water bodies, does it include inter-tidal areas, does it include sea beds, does it include lake beds, does it include river bottoms? What does occupancy consist of? Is it limited to areas of physical use or does it also have implications for broader habitat lands required for the biological production of resources harvested at particular sites? Really, what is the difference between relying on proofs of pre-sovereignty occupation and present day occupancy if present day occupancy requires establishing continuity? What's the difference? How specific is the geographic limit to title? If you establish title under this platform, will you also have to establish that you have aboriginal title under you own seat? If you establish title to land, what is your legal relationship to the plants and animals that are traditionally harvested on the lands to which you have title? I am not throwing these questions out from frustration, rather I feel that they are important guidance to thinking about research direction. These are difficult questions. They are important questions that the court will have to struggle through.

Essentially in the Delgamuuk'w decision the court is struggling with ways to reconcile the aboriginal presence with non-native settlement. The reason that the decisions from Sparrow to Vander Peet to Delgamuuk'w and the other significant decisions have come down is because the court has started to hear about how aboriginal societies are organized. They're not

looking at maps, they're starting to hear really important things. However, many aboriginal people and social scientists still feel that they have an awfully long way to go. I think that this is the direction that is needed for the next generation of land use and occupancy research in British Columbia and in Canada. It is important that this research pay attention to Delgamuuk'w, to all of these ambiguities, and be focused on helping the courts understand the nature of aboriginal societies and their relationship to the traditional lands and to the resources on their traditional lands. The court needs better and more complete understanding of aboriginal land and resource use. Indeed, in asking for more details about the nature of aboriginal society and its manner of life -- and those are right there in the Delgamuuk'w decision -- they are asking about the full relationship with traditional lands and with the resources provided by those lands and waters. This means that the job of researchers is to tell the aboriginal land use and occupancy story more completely. Researchers need to make extensive use of the experience that we have gained through nearly three decades of aboriginal land use and occupancy mapping research in Canada. And the research needs to go further. In particular, it needs to tell the story of why particular First Nations needed the extent of lands that they occupied for long term sustainability. This is a critical point and it's not addressed in the Supreme Court, and I think everybody needs to keep this one in mind. When the James Bay Cree have a territorial limit, or the Inuit in the Northwest Territories have a territorial limit or, for that matter, aboriginal people in northeastern British Columbia or any of the other communities have a territorial limit, why do they need so much land? What's the point? The research that is needed has to focus on answering that story; it has to answer that question, it has to tell the story of why the full extent of the traditional territory was needed for long term sustainability of those communities. I think that's what the court is asking. In addition, it needs to tell the stories about the cultural rules that were devised for such things as access to land and resources, managing land and resources, maintaining exclusivity, honouring cultural traditions for sharing resources, and so on. So that's part of the story as well: how are the lands organized, what were the rules, who could go where, were there rules that provided sharing and exclusion of other groups? Those are critical parts of the story and those parts of the story are certainly needed by the court, but those parts of the story also are important aspects of the way that First Nations culturally learned to manage their lands and resources.

Part of the T.U.S. story is not simply putting lines or polygons on maps. The T.U.S. story is deeply entrenched in resource management. I think all the T.U.S. researchers need to keep that one in mind: that you're not just telling the story of occupancy on land, you're telling a very, very critical story -- and a story that's important for everybody to understand -- about how aboriginal communities manage their own resources and how they lost the rights or opportunities to manage their resources by the way that government activities usurped all of their structures and painted over the very detailed and complex picture of resource management that was developed historically by First Nations.

Many aboriginal groups around the world look to Canadian First Nations to learn about land use and occupancy. Most of the early mapping was done by northern First Nations. What might be thought of as the grandfather and grandmother of land use and occupancy was done by the Inuit Taparaset of Canada, the Inuit Brotherhood of Canada, in the mid-1970's. I think we can start with the first overhead. This an overhead that shows the Northwest Territories. So, the focus of the Inuit Tapirisat's research -- land use and occupancy research -- was to establish the extent of lands to which the Inuit could claim title. So, they started with a blank map. The land use part of the research focused on living memory. Living memory is the memory all of the Inuit who were living at that time. People were asked to attest to the lands that they have used during their lives. These so called "map biographies" -- we can put the next overhead on -- were used to establish the extent of the claim. Essentially this part of the research focused on land and resource use. This is a series of figures that show the basic methodology that they used. Basically they went around to each family, to the representatives of each family, and they said, "show us on these very large scale maps the areas that you have hunted, fished, trapped, picked, planted materials, etc.;" harvested basically -- used land, used resources -- during your lifetime. The first figure is a sample of a map biography from one hunter. What they did then was they aggregated the information for each community, and what you see in figure three is compiled information for one of the polygons, probably the hunting polygon. Then, subsequently, they shaded in areas for a specific information about different types of resource use and for a community they ended up with -- the next overhead. This is the Belcher Islands on the east coast of Hudson's Bay off the shore of Quebec, and this is the compilation of map biographies that was drawn up for different types of resources that were used during different time periods. So the methods that they used also relied on time periods. It asked people, if I remember correctly, about their hunting, fishing, and trapping during the period before the Hudson's Bay post was established on the Belcher Islands sometime in the mid-twentieth century, and then their usage subsequent. This is one community. And if we look at the next map the intention, again, of their land use and occupancy was to establish the extent of the claim that they could provide to the lands that Inuit that were living at the time had used during their lives. And when they compiled each community's outer boundary of usage, this is the map they came up with and this was the map that they then provided to the land claims office as being the extent of their negotiation. So they didn't sit down, as we have in British Columbia, with a bunch of Elders and councillors and kind of sketch things out. They really started first with research. So this is very powerful information. It's defensible in court, it used the best of the social scientists that worked with aboriginal people in Canada. Unfortunately, I wasn't

involved and I think Doug [Elias] equally wasn't involved, but they tapped some really good brains and they came up with this very interesting methodology that still has relevance. It's a very interesting methodology. In the early 1990s, the Great Whale River Cree asked me to come up and do some research for them in case they went to court to defend their rights against the Great Whale Hydro Electric project. We made use of the map biography method. We just changed the time period and the questions that we asked. Instead of... well, we asked people about the extent of their use during their entire lives -- because the issue was focused on their potential loss of harvesting areas into the future and that were currently used -- we asked people about their land use during five year periods of time, from the time that the James Bay Northern Quebec Agreement was signed to 1990 when the research was done.

This is a land use method, but many aspects of relations to land would be missed if the method were limited to map biographies, because knowledge is an important part of land use and knowledge is equally a critical part of a group's ability to occupy a territory and to be able to reside on the territory for generation after generation. Some of this knowledge deals with biology and ecology and how to manage resources, and some of it reconstructs the landscape according to social and cultural standards. Place names are a very good example of this. Place names are chosen to convey information about resources, about travel, about family history, about cultural history, about relations with other groups, and on and on and on, and all of this is mappable. Any information that has to do with place is potentially mappable. The job of researchers is to be selective, to choose the method that is relevant to the job at hand. The Inuit Tapirisat mapped a long time span of uses as living memory allowed. When the James Bay Cree were fighting the Le Grand Project in the early 1970s, they needed to establish the kind of impacts to the land use that would result from the flooding of the major river valleys. They were active -- and obviously everybody knows them as active hunters, fishers and trappers. The Crees chose a very limited time span. They chose to map where harvests were coming from at the time the research was being done, in the early 1970s -- current harvests. This is the community that was threatened by the Le Grand project, was Fort George at the mouth of the Le Grand River. This is a map that shows the distribution over one year of beaver that were harvested within the Fort George territory. So this kind of research is done species by species, but then it was converted into total animal weights to produce something that looks a bit more like a topographical chart. This is a map that shows the distribution of fish and wildlife food harvests per pound that came from ten square kilometer U.T.M. grids that you see on 1:250,000 square maps, and these are isoplets that show equal distribution. This shows during that one year period of time where one half of a million pounds of edible fish and wildlife were harvested by that community in the 1970s. If I went back to do that same mapping today -- now with the community, instead of being 1,500, is twice the size, 3,000 people -- the land is fully occupied. This is an historical vignette. We'd find a very, very changed distribution, but equally at least half a million, if not more, pounds of wild food still coming from the bush. But, underlying all of this harvesting is a system of management and access that the Crees developed according to their own cultural rules that was then encapsulated into the registered trap line system in Quebec. But these are the family trapping territories and there is specific rules -- these are registered as trap lines but they really are hunting territories -- there are specific rules for how people obtain access to those territories. So, the Crees are a northern hunting people but in a lot of ways they have a territorial management and access system that is very similar to the one that the Gitksan have, for example.

Once you have an understanding of this system, then a lot of the information that you collect starts to make sense. And what you can end up doing is you end up constructing time horizons from the use pre-occupancy, families that were using the land pre-occupancy to the present. This is a system that helps to understand what is going on in the land, when you start connecting all of these disparate bits and pieces with the cultural rules for resource management and organization, you've got something immensely powerful.

Finally, in terms of the toolkit, the work that was done by the Union of B.C. Indian Chiefs at the end of the 1970s in northeastern British Columbia put another dimension on land use and occupancy research. What this is, this is taken out the book *Map and Dreams*, which is a report of the Union of B.C. Indian Chief's research in northeastern British Columbia, and this is a compilation of the Doig reserve's map biography -- hunting lines, basically. The next overhead. The departure that developed out of the U.B.C.I.C. work is that -- this is a very complicated map and it is very difficult to understand: the gray areas are registered trap lines that belong to the five northeastern British Columbia bands, the outer heavy lines show the limit to map biography, outlines that we recorded, so that is the extent, but all the coloured information in the middle has to do with conflicting creation of tenure for farm land, for oil and gas development, for logging and so on -- this is the map of conflict, of conflicting use between aboriginal rights. It really speaks powerfully to the situation that this particular group of people found themselves in. But the reason I put this on is because this is another tool. It's a very important tool that is now amenable and available to people because of G.I.S. [Geographic Information System] technology. You can overlap all of this kind of information and then you can talk about why particular groups are where they are today, which is all part of the story.

The way that I read the Delgamuuk'w decision, the court is looking for the story of land use and occupancy of traditional territories around the mid-nineteenth century. Prior to Delgamuuk'w oral histories were not established as valid evidence, consequently many land use and occupancies studies relied exclusively on map biographies drawn from living memory. The change allows for the mapping of knowledge of traditions passed down from deceased family members and from other people long dead. So that's another dimension that can be added to the toolbox.

As a comment, I think it's very important for everybody to understand, that land use and occupancy studies are not land surveys. They should not be expected to have land survey accuracy. Indeed, the kind of accuracy that results from interviewing is highly variable, at best. In some cases it may be as accurate as G.P.S. [Global Positioning System], in other cases an Elder may describe travel to and within or the use of a valley, but he may not be able to map accurately enough to show his travel and his use of that particular area. So what do you do? To honour and to validate in such a situation, one study that I am involved with has begun to classify the level of accuracy -- and I saw that Don Bain's group in their T.U.S., in terms of the database that he showed, appears to be doing exactly the same kind of thing. The range that we are using extends from G.P.S. accuracy to gross estimates. This type of approach has important bearings on being able to map oral history. Obviously other than with specifically named sites and legal boundaries, locations of use within oral traditions are going to pose accuracy problems. The solution, I think, is to reconsider the kind of mapping that is being done in land use and occupancy and even in T.U.S. People who come out of a survey or G.I.S. context often forget that land use and occupancy -- and T.U.S. -- is really social sciences research. Accuracy is possible, but it's a mistake to eliminate a person's interview data because it cannot be mapped with G.P.S. accuracy. When you do this, you're really denying their testimony and their knowledge. You really need to find another way for incorporating their data. The method that we're using has to do with classifying the accuracy of information.

To return to the story, the continuity expected by the court between use prior to 1846 and the present obviously requires that a genealogical dimension be added to the mapping. That's something new. Groups need to show that the people using or occupying the land at present are related to the people who were using the land prior to the mid-nineteenth century. So genealogical studies are now part of the land use and occupancy, or T.U.S., tool box. They are the means to create links. I was very pleased to see the panel yesterday talking about genealogical studies, the use of genealogical information, and genealogical software. The final piece of the story -- and I think that it's the story that is important here -- and I think the most important is telling how the system of land use employed by cultural groups worked. How did all of the pieces fit together? What were the rules? Who had rights of use? How did they acquire them? What were their responsibilities to the land, to the animals, to people within the group and to other people, the outsiders or adjacent neighbors? What do the traditions say about the adequacy of the territory before the mortalities of the major epidemics of the nineteenth century? Were there periods of hardship or starvation due to inadequate resources periodically? What did people do when the resources failed? What kind of reciprocity existed between different groups? What kind of changes happened to land and resource use and occupancy between the mid-nineteenth century and the present? Why did all of these changes happen? To what extent were the changes due to conflicting land and resource use? These are big stories. The reason that they are big stories is that, essentially, they include everything: they include family and personal histories, they include histories of land, water, animal populations, territory, ecology, plant communities; it includes the stories of adaptation cultures; it includes the stories of the contact between civilizations, and on and on and on. All of these kinds of understandings are critical to avoid having to argue aboriginal title square foot by square foot. It is critically important to inform the people across the table, be they negotiators or judges, about how aboriginal cultures occupied and used the land, the waters, and their resources. Indeed, what is interesting to me in reading Delgamuuk'w, is that the court appears to be addressing exactly these needs in requiring data about aboriginal life, technology, and the ecology of the land in order for their legal evaluations of aboriginal title. Thank you.