

## The antithesis of restitution?

### A note on the dynamics of land negotiations in the Yukon, Canada

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#### Abstract

*Although the negotiation of aboriginal land claim agreements in northern Canada appears to have much in common with land restitution processes elsewhere in the world, these Canadian agreements are not in fact supposed to be about land restitution at all. Rather, they deal with the cession of land held under aboriginal title to the federal government. In this article, I focus on the negotiation of Kluane First Nation's (KFN's) land claim agreement in Canada's Yukon Territory. I examine talk that took place at the negotiating table and some of the legal and administrative mechanisms negotiators used to negotiate landownership. I show that political inequalities among the parties transformed what was in theory a process of land cession, in which KFN granted lands to the federal government, into one of restitution, in which the government gave lands to the First Nation. Reframing the process in this way gave the federal government a degree of control over the land claim process that was unjustified by the legal theory that gave rise to the negotiations in the first place.*

Most of the chapters in this book deal with the *restitution* of land, that is, the return of land – or payment of compensation in lieu of the land itself – to those who claim to be its rightful owners. On the face of it, the negotiation of aboriginal land claim agreements in northern Canada have much in common with processes of land restitution elsewhere in the world. Legally speaking, however, land claims agreements in the Canadian North are not about the restitution of land at all. In contrast to what took place in most of the rest of the continent, the history of native–white relations in the North is, for the most part, *not* one of wholesale dispossession. Because the Arctic and Subarctic are not suitable for agriculture, there was little demand for northern lands by encroaching Euro-American settlers. Although Euro-American newcomers did appropriate some land – especially in and around urban/industrial centres – northern native peoples have for the most part been able to retain access to and use of the lands on which they have hunted, fished, and trapped for generations. Because there was no great demand for land in the Arctic and Subarctic, neither

the US nor Canadian governments bothered to negotiate land cession treaties with northern aboriginal people.

Starting in the 1960s, however, new communication and transportation technologies made it possible for Euro-Americans to exploit some of the mineral and energy wealth that had been locked away in the North and largely inaccessible to southern markets. The last quarter of the twentieth century saw the development of numerous multi-billion dollar mega-projects across the North (pipelines, mines, hydroelectric projects). While these projects often caused an influx of large numbers of Euro-Canadians from the south, much of this immigration was temporary, lasting only so long as construction work remained. Most of those southerners who did remain tended to settle in the urban industrial centres. Indeed, the vast majority of non-aboriginal people living in the North today reside in urban centres like Anchorage, Whitehorse and Yellowknife and work either for government or industry. The oil fields and mines themselves – massive though some of them are – are local phenomena, industrial enclaves within a vast northern landscape, most of which remains free of agricultural or industrial development. Northern aboriginal people continue to hunt and fish on these lands; and indeed, most remain dependent to some degree on hunting and fishing for their subsistence (Nadasdy 2003; Receveur *et al.* 1998; Wenzel 1991).

While, generally speaking, industrial development in the North did not directly force aboriginal people from their lands, it did force both Canada and the US to deal with outstanding aboriginal claims to land. No corporation or consortium is going to invest the billions of dollars necessary to build a pipeline, mine, or hydroelectric project in the North if there is any uncertainty at all about who owns title to the land on which it builds. Without certainty of title, there is always the danger that a corporation might lose its investment as the result of a lawsuit brought against it by aboriginal people. The US Congress unilaterally created certainty when it passed the Alaska Native Claims Settlement Act in 1971. In Canada, however, the need for certainty led the federal government to begin negotiating modern land claim agreements across the Canadian North.<sup>1</sup>

In its 1973 decision in *Calder v Attorney General of British Columbia*,<sup>2</sup> the Canadian Supreme Court ruled that First Nation people in Canada retained their aboriginal title to land except where it had been *explicitly* extinguished by treaty (see Isaac 1995: 20–34). This had profound consequences in the North, where no treaties had ever been signed. It meant that in some sense First Nation people still ‘owned’ the land, and that therefore the federal government had an obligation to settle aboriginal land claims before development could proceed. Thus, in theory at least, land claim negotiations are the very antithesis of land restitution. Rather than returning land to its original owners, land claim agreements are supposed to create certainty of ownership, and they do this by explicitly extinguishing aboriginal rights and title to those lands *not* retained by First Nations under the agreements.<sup>3</sup> According to Canadian law, then,

aboriginal land claim negotiations are not about restoring land rights to First Nation people; rather they are about First Nations ceding land rights to the federal government. Thus, First Nation and government negotiators wrangle not over which lands the government will give (or give back) to First Nations, but over which lands First Nations will cede to the federal government and which they will retain.

That, at least, is the theory. In practice, however, negotiations do not resemble this theory very closely. There is a huge power disparity among the parties to these negotiations. Regardless of the opinions of the Supreme Court, the Canadian government has long had de facto control over the land, administering and managing it as a sovereign power. The Canadian government also has vastly greater resources (of time, money, and personnel) at its disposal than does any First Nation. First Nations are dependent upon the federal government to fund the basic costs of local governance, to provide and administer a whole array of programmes and services, and even to cover the costs of First Nation participation in the negotiation process. As I have noted elsewhere (Nadasdy 2003), the preponderance of state power enables the state to dictate the conceptual assumptions underlying the land claims process and the rules by which negotiations will proceed – even as state officials engage in the negotiations as supposedly equal players (see also Verdery 2003). As a result, First Nation people have been forced to speak the Euro-American language of property law, adopt Euro-Canadian-style political institutions and develop bureaucratic infrastructures that mirror those of the Canadian government – all as prerequisites for even sitting down at the negotiating table.

These unequal power relations do not change once the parties actually begin negotiating, so it should hardly be surprising that land claim negotiations have usually proceeded *as if* it were the federal government giving land to the First Nations, rather than the other way around. This is a difference that makes a difference. It has shaped the very process of negotiations as well as the resulting agreements. In the remainder of this chapter, I will focus on one particular set of land claim negotiations: those among the governments of Canada, the Yukon Territory, and the KFN, whose citizens are the aboriginal inhabitants of the south-west Yukon. I observed these negotiations for two and a half years, the last year of which I served as a negotiator on behalf of the First Nation. In addition, KFN tape-recorded eight years of negotiations, all of which have now been transcribed. Most of those who sat at KFN's negotiating table were well aware of the formal theory underlying land claims that I have just described: that it was the First Nation giving land to the government and not the other way around. As we shall see, however, the day-to-day process of negotiations over land was not consistent with this theory. Although some KFN negotiators at times actively sought to enforce the formal view of land claims, both in the way people talked at the table and in the formal procedures of the negotiations, they were ultimately unsuccessful. Although for the most part everyone at the table avoided overt talk about government 'giving' land to

KFN, such a dynamic remained implicit in the process by which land was negotiated.

### Giving land

Negotiations over land took place as follows. KFN had previously agreed to retain a certain 'quantum' of land (350 sq miles) within their Traditional Territory (approximately 15,000 sq miles).<sup>4</sup> In consultation with First Nation members, KFN's Lands Committee chose and mapped a series of 'land selections', the combined area of which equalled their total land quantum.<sup>5</sup> KFN negotiators then presented these land selections to the federal and territorial governments at the negotiating table. While government negotiators quickly agreed to some of these selections, others they rejected outright. Most of the selections, however, were accepted provisionally, subject to more or less intense negotiations over their precise boundaries.

The language of 'land selections' was neutral with regard to who owned the land; one could view it as a matter of KFN selecting the land it would retain (this was the official account of the process) or, alternatively, as the selection of lands they would receive from the government. Most of the time, government negotiators were careful to avoid any explicit statements to the effect that the federal government was 'giving' land to the First Nation. And on those rare occasions when one of them did, they stumbled over one another to correct the mistake, as in the following exchange from January 31, 1997:

- Yukon negotiator:* And I think that's why the agreement is as thick as it is – the UFA [Umbrella Final Agreement], because it doesn't just deal with . . . [inaudible] money. It's giving the First – well, I shouldn't say 'giving;' I mean – (('establishing'))
- Federal negotiator:* (('creating'))
- Yukon negotiator:* or 'creating' . . .
- Federal negotiator:* . . . possibilities for a First ((Nation and other))
- Yukon negotiator:* ((And sharing of)) of . . . of how we address the . . .<sup>6</sup>

Despite the lengths government negotiators went to avoid talking in terms of 'giving' land to KFN, it is clear that that at least some of them did see the land claim process in this way. This is evident in their frequent assertions throughout the negotiations that all land in the Yukon not held under fee simple title<sup>7</sup> was 'crown land', as in the following:

- Federal negotiator:* because gravel permits might, or gravel might, be a YTG [Yukon Territorial Government] interest, but it's a process like I've said. You know, *roads* might be a YTG interest, but they were *ours* until a few years ago, and the land is still primarily crown land, but it's gonna be devolved, so –<sup>8</sup>

Implicit in such statements is the assumption that the federal government *already* possessed underlying title to all land in the Yukon. If this had been unambiguously the case, however, there would have been no need for land claim negotiations at all. That such statements were not just occasional slips of the tongue is evident in the frequency with which government negotiators referred to unoccupied lands as 'crown land', despite the fact that KFN negotiators sometimes explicitly challenged them on their use of the term, as in the following discussion over the status of a gravel pit:

*Federal negotiator:* Yeah, it's a borrow pit for NPA [Northern Pipeline Act], and [name of Yukon negotiator] said it's a gravel pit for YTG [the Yukon Government].

*KFN negotiator:* And it's a land selection for KFN.

*Federal negotiator:* And it's federal crown land at the moment (laughs).

*KFN negotiator:* Oh no. [inaudible]. You have to keep in mind that this is *our* land. We were here before the federal government.

*Federal negotiator:* You're right.

*KFN negotiator:* We lived here anyways. I mean, for ever and ever.<sup>9</sup>

Significantly, however, it was several KFN negotiators – mostly elders – rather than government negotiators, who were most likely to speak in terms of the federal government 'giving' land to KFN:

*KFN negotiator (elder):* We are the smallest band in the Yukon, right?

We got gypped out of the money part. We got gypped out of the *land* part. What I wanna ask the government, are you guys willing to give us more than we got now [that is, increase KFN's land quantum]? Would you be willing to do that, to show your good grace, that you're negotiating in good faith with us? I mean, say, 'hey you guys; we know we gypped you' but give another hundred kilometers . . . more miles of land (inaudible) to have for my people? [If] it could be done, would you . . . will you consider it?<sup>10</sup>

Younger KFN negotiators, however, who were generally more familiar with the legal theories underlying land claim negotiations – and who were often openly hostile to any hint of paternalism – regularly reminded government negotiators that it was the First Nation and not Canada that owned the land. Even so, there were times when everyone at the table – First Nation and government negotiators alike – tacitly acknowledged the inequalities of power that confined such distinctions to the realm of theory. In a lighthearted exchange on 26 September 1997, for example, negotiators likened the federal government to Santa Claus and KFN to an expectant child on Christmas morning:

*KFN negotiator:* . . . And I don't think we are *far* apart on Schedule B

[Schedule B of chapter 10 in the agreement deals with the Kluane Game Sanctuary. This statement was tongue in cheek, because the parties in fact disagreed considerably on how to deal with the Sanctuary: KFN wanted it to become a First Nation Park, while the federal and territorial governments insisted that it become a territorial park]. It strikes me, what we tabled *I think* you probably could live with in the context of the territorial park concept, that's entrenched as part of our agreement (laughter). *I am* only dreaming now.

*Federal negotiator*: Make a wish.

*KFN negotiator*: OK? It's almost Christmas. (laughter) You know it's almost Christmas when the Sears wish book is out. So.

*Yukon negotiator*: Just remember Santa usually delivers *some* of the things you wanted. (much laughter)

*KFN negotiator*: He's a very selective Santa. OK, on *that note* . . . of the *stingy* Santa . . .<sup>11</sup>

This theme became a running joke for the rest of the day. Later, for instance, government negotiators invoked it again and in doing so successfully rebuffed a serious complaint from a KFN negotiator regarding the contentious issue of the inherent right to self-government:

*KFN negotiator A*: I think these inherent rights. . . . *Our* agreement could've been different because of those rights. Seeing that it's not on the table today, *our* agreement becomes weaker [inaudible] because of that. So why don't you give us the inherent right *today*, so we can beef up our *agreements*, and we'll have it [negotiations] wrapped up by Christmas . . .

*Federal negotiator*: It's on the list, right? (laughter)

*KFN negotiator A*: I'm asking yes or no.

*Yukon negotiator*: It's a little stocking stuffer. (laughter)

*KFN negotiator B*: Oh my gosh. Mom and Dad, look! I got the inherent right.

(overlapping talk and laughter)

*Federal negotiator*: My fear is that I remember one or two Christmases where *nothing* on my list arrived under the tree.

*KFN negotiator B*: So you know how that feels . . . (laughter)

*Federal negotiator*: . . . And I wouldn't wanna do it at this table.

*KFN negotiator A*: If you would give us that, just think how you'd be marked in the history books in a hundred years. You'd be greeted right across the country from coast to coast [by First Nation people and] [inaudible] given a lot of fish eggs and what else? Rabbit tails (much laughter).

Interestingly, during this interchange, the KFN negotiator initially refused to go along with the joke, insisting instead that the government negotiators answer

his question. It was not until a second KFN negotiator joined in the joking that the first gave up and joined in himself. Even, then, however, he refused to play along with the Christmas morning metaphor. Rather than acceding to the idealized one-way gift implied by the figure of Santa Claus, he invoked an image of true reciprocity: if the government negotiators would only recognize First Nation needs, he said, First Nations across the country would repay their generosity by honouring them with gifts of native food (though his reference to 'rabbit tails' was clearly a joke, fish eggs are an important food and marker of Indianness), thus drawing them into First Nation society.

In likening the federal government to Santa Claus and KFN to an expectant child on Christmas morning, the joke brought into sharp relief the power differential between the two. Legal theories about aboriginal title aside, it was the federal government – not KFN – that controlled the land. The federal Santa Claus might grant KFN land and other rights, but only if they were good. And, they should remember, no child ever gets everything they want for Christmas; rather, the choice of gifts is ultimately left up to the parents masquerading as a benevolent man in a red suit. Because it was 'only a joke', government and First Nation negotiators could give voice to their understanding of how things 'really' worked, despite the façade they normally had to maintain at the negotiation table.

In their study of joking among scientists, Mulkay and Gilbert (1982: 592)<sup>12</sup> note that humour arises from the incongruity that results from a juxtaposition of distinct interpretive frameworks 'which are both appropriate to a common range of topics but which are normally kept separate'. They describe a whole class of jokes told by scientists the humour of which derives from the 'gap between the formal literature and informal talk about science' (Mulkay and Gilbert 1982: 595). Analysis of this sort of humour, they argue, is important because it reveals the interpretive work people do in their efforts to create social meaning (Mulkay and Gilbert 1982: 606). I suggest that the Christmas morning joke was funny for many of the same reasons described by Mulkay and Gilbert; it played on the disconnect between the formal interpretive framework of land cession and everyone's informal understanding of how things 'really' worked.

How things really worked was also clearly evident in the structure of the land negotiation process. Once KFN negotiators had tabled their land selections, government negotiators compared those selections to government maps and consulted with officials from other departments within their respective governments. If they identified any existing government or third-party rights or interests to that land, they either returned the selection to KFN for modification or rejected it outright. Many years before, Yukon First Nations had agreed not to claim any land already held under fee simple title. Without such an *a priori* agreement, it is unlikely that negotiations could have proceeded. Yukon private property owners had initially feared that land claims would undermine their property rights. Without assurances to the contrary, sentiments against land claims among non-First Nation citizens in the territory would likely have been

overwhelming. KFN negotiators, however, were dismayed to find that it was not only fee simple title that trumped their claims (see Council for Yukon Indians 1993: section 9.4.0). Rather, government negotiators gave precedence to *any* pre-existing right or interest at all – regardless of how temporary or contingent it might be. Such rights included, for example (to name just a few), the right-of-way for a pipeline that might never be built, bureaucratic ‘notations’ identifying possible future use by government departments, and grazing leases.

In one particular example of this, government negotiators refused to allow KFN to include in one of their land selections land that the government had recently leased out to a third party for grazing horses.<sup>13</sup> This infuriated KFN negotiators who maintained that since the land was theirs, the government should never have leased it out in the first place. This particular grazing lease was especially contentious because the area in question, around the Little Arm of Kluane Lake, is extremely important to Kluane people. Not only do they hunt and fish there regularly, but the area figures prominently in the social and spiritual life of the village (for example, the popular song *Little Arm Tatay*, referring to narrows on the Little Arm of Kluane Lake, known and sung by Athapaskan people throughout the Yukon and interior Alaska, is owned by the Kluane people). What is more, KFN negotiators argued, the grazing lease had infringed on a KFN citizen’s prior legal rights and interests in the area. The KFN citizen in question had long had a cabin and trapping concession on the Little Arm, and the presence of horses in the area had made it impossible for her to set traps for wolves. Why, KFN negotiators asked, would the government grant third parties rights in land that infringed upon long-standing KFN interests like this, yet refuse to approve all KFN land selection that conflicted with any third party interest – even one as contingent and temporary as a grazing lease? KFN negotiators complained that when it came to negotiations over land, their interests were ‘at the bottom of the barrel’.<sup>14</sup> It was clear from the dynamics of this process that – despite the rhetoric – it was the federal government that was granting land rights to KFN and not the other way around. And, in the granting of those rights, the government accorded First Nation interests the *lowest* priority; the existence of *any* other interests whatsoever in a land selection was enough to prevent the government from approving it.

That in reality it was the federal government that was ‘giving’ land to KFN was also evident in the way land negotiations proceeded even in the absence of third-party interests. Government negotiators insisted that KFN provide them with an exhaustive and detailed description of all the interests they had in any particular land they selected. That is, they wanted to know all the ways KFN members had used that land or planned to use it in the future. Government negotiators used this information to evaluate the selection and prepare a response to it that was consistent with government policy. KFN negotiators objected to this process, because they felt that government negotiators were requiring them to justify their land selections. They repeatedly stated that since



KFN owned all the land, it was the federal and territorial negotiators, rather than KFN, who should be identifying their interests and justifying their choice of lands.

### Competing conceptions of 'balance' in land selection

Although government negotiators did reveal government and third party interests *after* KFN had tabled their land selections, they refused to do so beforehand. There were sound practical reasons for this; since KFN was retaining only about 2 per cent of their traditional territory, it made more sense to research the interests in KFN's selections than the other 98 per cent of the territory. Often enough, however, even when there were no specific government or third-party interests in KFN land selections, government negotiators objected to the selections (or parts thereof) on the grounds that they conflicted with some government policy. As a result, land negotiations frequently pitted specific KFN interests against government policy. Although government policy did not *always* prevail in such situations, it was only due to the assumption that the land *already belonged to the government* – and not the First Nation – that policy could play the key role it did in the negotiations. To see what I mean, consider the following example.

One important policy guiding government negotiations over land had to do with the notion of 'balance'. In laying out the guidelines for land selection, the Yukon Umbrella Final Agreement states that:

To establish a balanced allocation of land resource values, the land selected as Settlement Land shall be representative of the nature of the land, the geography and the resource potential within each Yukon First Nation's Traditional Territory, and the balance may vary among Yukon First Nations' selections in order to address their particular needs.

(Council for Yukon Indians 1993: section 9.5.1)

The federal and territorial approach to land negotiations was based on an interpretation of this clause as meaning that First Nations should not select an 'excessive' amount of high value lands, such as those with lake or highway frontage, and that they should instead select equal proportions of mountain top and muskeg. As a result, government officials scrutinized KFN's land selections along Kluane Lake and the Alaska highway particularly closely, and they regularly insisted that KFN needed to reconfigure those selections to make them 'shorter and deeper' (that is, to include less lake/highway frontage and more of the muskeg and mountains deeper in the bush). KFN negotiators, on the other hand, understood the concept of 'balance' somewhat differently. As one KFN negotiator put it: 'Yeah, I mean you gotta *understand*. We're giving up *everything* else, *everything* else. So when you're looking at our 350 square miles,

we're balancing this with *everything* else, which is a *huge* amount of land. So, I mean, that's the way I look at it. I mean, the balance is – the other way around'.<sup>15</sup>

KFN negotiators argued that the government negotiators' concept of balance was incorrect, because it was based on an assumption that KFN was *gaining* something as a result of land claims (and that therefore the land they gained had to be balanced). They argued that government negotiators were confusing figure and ground when they looked at maps of KFN's land selections: 'When we're looking at a lake package, we're looking at what we've had to leave out. I mean, in a sense we're gaining, but at the same time we're losing'.<sup>16</sup> If one kept in mind what was supposedly *really* going on, that is, that KFN was *giving up* the vast majority of land, then all that 'extra' land they were giving up had to be factored into any assessment of how balanced their selections were. As another KFN negotiator put it:

No, I just want to take a look on the map at what [name of different Kluane negotiator] is talking about, like the use down in here. There's lots of available land left over. This section here and all over, you know. There's all that other land left over, too, right? So, I mean, that's why we're having a hard time [accepting] your point that there's too much lake frontage. And then another thing too: for our whole traditional territory, the whole

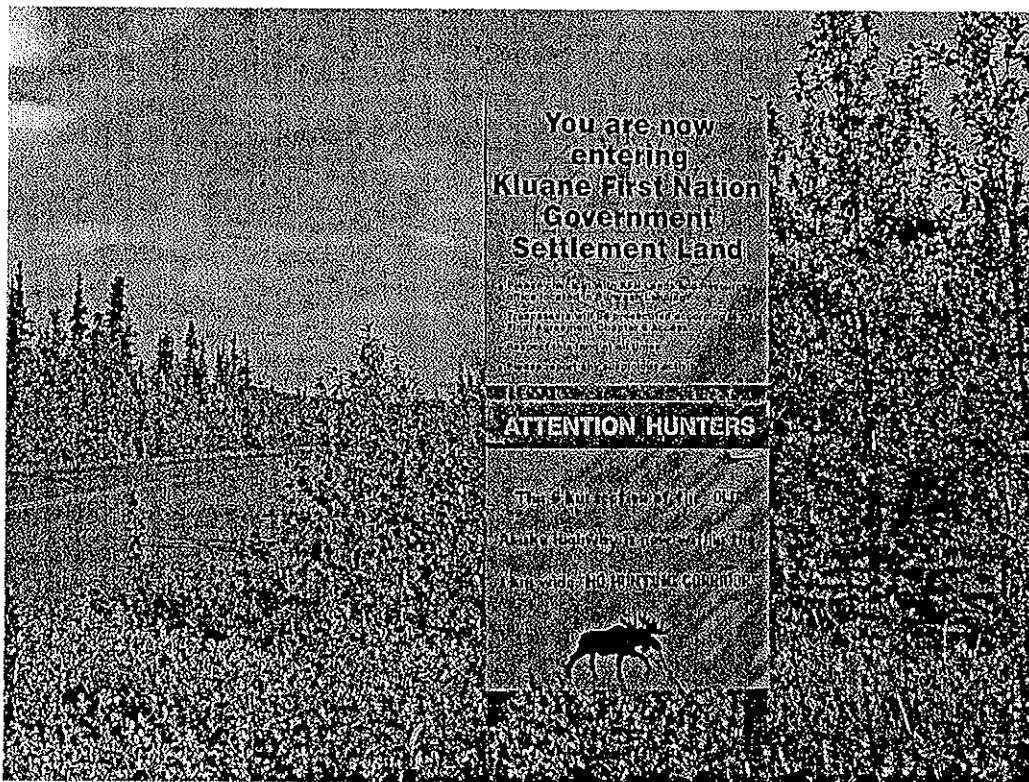


Figure 5.1 Retained KFN settlement land.

territory are like sacred *grounds* for our whole First Nation. *The whole thing* is very important to us . . .<sup>17</sup>

Despite repeated protests of this sort by KFN negotiators, however, the government negotiators prevailed, and KFN had to reconfigure their lakefront and highway selections to make them 'shorter and deeper'. Government negotiators prevailed by simply refusing to give in. In theory, KFN could have played the same waiting game, but practically speaking this was not an option. In addition to financial constraints that limited KFN's flexibility in this regard, there was the added pressure of possible land alienations. Because it was the federal government that really controlled the land (they could, after all, continue granting property rights to third parties, thus diminishing the lands KFN could potentially select<sup>18</sup>), KFN was under increasing pressure to conclude an agreement as soon as possible. Thus, political inequalities between KFN and government transformed what was in theory a process of land cession, in which KFN granted lands to the federal and territorial governments, into one of restitution, in which government gave lands to the First Nation. Reframing the process in this way gave the federal and territorial governments a degree of control over the land claim process that was unwarranted by the theory that gave rise to the negotiations in the first place.

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## Notes

- 1 On the issue of certainty, see Blackburn (2005) and Woolford (2005). Both of these scholars point out that while 'certainty' is what motivates federal and provincial/territorial governments to engage in land claim negotiations, First Nations' have other motivations.
- 2 [1973] SCR 313.
- 3 'Extinguishment' has been a sticking point in all modern Canadian land claim negotiations. Initially, Canada insisted on the total extinguishment of aboriginal rights and title, so that these under-defined terms would not undermine the certainty the agreements were meant to achieve. Yukon First Nation people, however, were understandably reluctant to sign away their as-yet-undefined rights. Eventually, Canada began to soften its position, enabling the parties in the Yukon to sign an agreement that does not entirely extinguish aboriginal title on those lands retained by a First Nation (see Council for Yukon Indians 1993: sections 2.5.0, 5.2.1, 5.2.2; McCormick 1997: 67–8). See Asch and Zlotkin (1997) and Blackburn (2005: 592–3) for discussions of the relationship between certainty and extinguishment.
- 4 Each First Nation's land quantum is laid out in the Yukon Umbrella Final Agreement (UFA), signed in 1993. This framework agreement was negotiated by the Council of Yukon Indians, which represented most First Nation people in the territory. The UFA was never ratified, because it is not an agreement in itself, but rather forms the framework for the negotiation of individual First Nation Final Agreements. The process of negotiating each First Nation's land quantum under the UFA was too long and complex to deal with adequately here, but it is worth noting that some First Nations were permitted to retain considerably more land than others.
- 5 In fact, KFN selected an area equal to 110 per cent of their total land quantum, and these lands were temporarily withdrawn from disposal by a federal Order-in-Council on 31 December 1993. The idea was that these lands were to be protected from development while the parties finalized KFN's land selections, at which time only 100 per cent of the land quantum would be permanently transferred to KFN. The interim protection order was revised and renewed on 5 December 1996 and again in 1999 and 2000.
- 6 31 January 1997. Yukon Archives accession number SR234–61B, transcript p 19. Copies of negotiation tapes and transcripts are all located in the Yukon Archives in Whitehorse, YT. Note on transcription: I use [square brackets] to indicate my own comments and ((double parentheses)) to indicate overlapping speech.
- 7 Fee simple is the legal term for private property in which the owner has the unqualified right to control, use, and transfer property at will (as opposed to fee tail, an archaic form of property in which inheritance was limited to some particular class of heirs, as in feudal estates). In the Yukon agreements, 'fee simple title' is used in contrast not only to other forms of Euro-American property rights, but also to 'aboriginal title', which, though not precisely defined, is viewed as a form of collective property right. On those lands retained by KFN under its agreement (where aboriginal title is not entirely extinguished), KFN is deemed to possess 'the rights, obligations and liabilities equivalent to fee simple' as well as the right to

govern on and manage those lands (Council for Yukon Indians 1993: section 5.4.1).

- 8 2 May 1997. Yukon Archives, SR234-69B, p 18.
- 9 24 March 1997. Yukon Archives SR234-64B, p 7.
- 10 1 May 1997. Yukon Archives SR234-68A, p 7.
- 11 26 September 1997. Yukon Archives SR234-26, p 2.
- 12 I thank Derick Fay for drawing my attention to this article.
- 13 31 January 1997. Yukon Archives SR 234-61B, pp 21-8.
- 14 Nadasdy negotiation fieldnotes 1997, p 141.
- 15 31 January 1997. Yukon Archives SR234-61B, p 19.
- 16 28 February 1997. Yukon Archives SR234-62A, p 16.
- 17 28 February 1997. Yukon Archives SR234-62A, p 16.
- 18 Although there was a general moratorium on the outright sale of 'crown land' in the Yukon pending the settlement of First Nation land claims, the federal government could and did continue to grant other forms of property rights in KFN's traditional territory, including, for example, grazing leases and mining claims. Even interim protected lands (see above n 5) could be adversely affected. According to the interim protection order, the federal government could extract gravel from lands under such protection. In 1996, the federal government authorized the extraction of gravel from what was then an interim protected land selection along Edith Creek for use in the reconstruction of a stretch of the Alaska Highway. KFN negotiators complained bitterly about this development. Federal negotiators responded that the new gravel pit did not affect their land selection; KFN was still free to select the land in question. KFN negotiators wondered aloud why anyone would want to select a big hole in the ground, and they redrew their land selections in the area. This event drove home to KFN citizens the fact that even interim protected lands would not be safe until after their agreement had been signed.