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BOOK REVIEW

Matsui, K. 2009. Native peoples and water rights: Irrigation, dams, and the law in western Canada. McGill-Queen's Native and Northern Series No. 55. McGill-Queen's University Press. ISBN 0773535217, 243 pages, CDN$30.

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Aboriginal and treaty rights require governments to provide Aboriginal people with a wide array of entitlements. Governments owe a number of positive obligations to Aboriginal people as a result of the fiduciary relationships that exist between these people and the Crown. It is also intuitively unfair to distribute certain entitlements only to those Aboriginal people sufficiently powerful or fortuitous to enjoy either the benefit of treaty protection or legislative goodwill. The Canadian state should be constitutionally obligated to undo the damage wrought by colonisation and to ameliorate Aboriginal socio-economic disadvantage. These arguments, proposed by Patrick Macklem (2002), both frame and challenge Kenichi Matsui's book, *Native Peoples and Water Rights: Irrigation, Dams, and the Law in Western Canada.*

Matsui provides a comprehensive analysis of the choices Canadian Native leaders' made in their determination to convince the federal government of their legitimate claims to land and water. The challenge of defining land and water claims is that they are peculiar to the meeting of two vastly different cultures. Consequently, there will always be a question about which culture is to provide the vantage point and which rights are to be defined. According to Matsui, First Nations adopted Western legal and political concepts as a tool to retain their self-governing rights. What Native leaders meant to claim by using these concepts was significantly different from what lawyers or politicians understood about Native rights. By focusing on competing perspectives and misunderstandings of Native rights, Matsui pushes forward a debate on the interconnected and entangled stories of water conflicts among Native peoples, settlers, federal and provincial officials. This story has been largely neglected (Macklem, 2002) but is necessary for reconciling aboriginal societies with Crown sovereignty.

By recognising that individual Native people had to choose whether to resist, or to take advantage of the increased power yielded by Indian Agents in late nineteenth and early twentieth centuries, Matsui deconstructs simplistic versions of history and expands upon concepts of Aboriginal cultural difference. In doing so, he persuasively argues that Native leaders pursued legal and political recognition of their 'rights' in order to induce the government to fulfil its fiduciary duty. First Nations sought the government's assistance to solve increasingly fractious water rights disputes and to affirm indigenous jurisdiction over natural resources. By focusing on the constraints placed on First Nations, Matsui persuasively argues that the elements of practice, custom or traditions integral to distinctive cultures of

Aboriginal nations were both contextual and negotiated. Matsui states that when struggles for Aboriginal land rights were intensifying in the early 1970s, legal experts and anthropologists failed to document how Native peoples valued water in cultural and spiritual terms, and claimed their water rights in a traditional manner. The failure to recognise the use and importance of water and land to Aborignal people, sadly, transcends most of our colonial history. Matsui argues that aboriginal peoples were historically dispossessed of their ancestral territories because governments and their agents failed to consider the significance of Aboriginal territorial interests. The disconnection between watersheds and water's life-giving qualities can be traced back to the early development of water rights doctrines, which in turn frames current problems with water-quality and -quantity allocations. In this sense, protection of Aboriginal interests should not proceed on the misguided assumption that the existing distribution of title to land and water is sufficient to fulfil social and constitutional requirements.

Institutionalised colonial practices sought to transform the indigenous environment into a European one by entering into a series of treaty negotiations with Native peoples on the Prairies, eventually leading to Treaties 1 through 8 (1871-1899). Since water was fundamental to mining, agricultural and industrial developments, the codification of land and water rights became an integral part of the colonial process. In an attempt to recognise the economic, political and social problems of securing water for the Native peoples, Matsui provides four case studies concerning the semiarid portions of British Columbia's interior and southern Alberta. His research helps reveal federal and provincial strategies to use irrigation and hydroelectric projects to assimilate Native peoples on reserves. Government officials did not satisfactorily reconcile Native and non-Native water uses and were often met with resistance from Native communities. In the process, Native peoples' entitlements to water became muddled. Matsui's historical account contextualises present-day realities. By and large, water and land disputes have not been resolved; they are intensifying as business, and 'public' interest in, and industrial demand for, limited water resources increase.

Matsui does not seek to offer a definitive account of Native water rights in the North American West. Instead, he encourages further exploration of the social history of Native water rights by emphasising the interdependency and cross-cultural interactions between Native and non-Native peoples in relation to land and water rights. Conflicts over First Nations right to land and water persist as a stumbling block for their social, political and economic development. In this sense, perhaps the state of Native water rights and the supervisory role of the courts need to be reconsidered. In Peter Hutchin's words, "[n]egotiations can be frustrating, ruinous, and seemingly unending road if the power and discretion of the crown are left unchecked" (Hutchins , 2010).

Jurisdictional disputes over water became one of the most contentious political and legal issues of the late 19th century. In chapter 3, Matsui argues that conflicting exercise of jurisdiction was most intense in British Columbia because both federal and provincial authorities had, and competed for, jurisdiction over water rights on Native reserves. While Native testimonies and petitions asserted inherent Aboriginal rights to water, the provincial and Dominion governments did not address this key issue; instead, they sought to determine how much water the Native people were entitled to claim based on 'reasonable use' and the Lockean premise of the yeoman ideal. To reveal the varied nature of water-rights conflicts, in chapter 4 Matsui focuses on these conflicts between settlers and the Secwepemc (Shuswap) people on Kamloops and the Neskonlith reserves in the southern interior of British Columbia. Prominent settlers cooperated with the Department of Indian Affairs (DIA) to fight off neighbouring settlers and to benefit from the relatively secure federally funded Native irrigation projects. Landowners fought against Native reclamation projects and, as a result, obtained monetary compensation from the federal government. Through this comparative approach, Matsui depicts the entangled stories and conflicting interests of Native peoples, settlers, and provincial and federal officials for water rights. Through these conflicts, a localised and heterogeneous culture of Native water rights developed.

Federal officials introduced irrigation farming as a means to discourage some traditional activities, such as the Sun Dance, and to transform the Siksika into yeoman farms. In chapter 5, Matsui focuses on

one of the earliest irrigation projects among Treaty 7 Natives on the Blackfoot reserve near Calgary. He refers to Sarah Carter's research on prairie reserve agriculture to argue that the Siksika (Blackfoot) people gradually accepted and began to incorporate irrigation works and agriculture into their economic lives before the treaty-making and reserve era. Matsui's research reveals that the Siksika people continued their traditional activities while practising agriculture. Matsui argues that no questions arose within the DIA regarding the Native water rights or the Stoney Nakoda people's entitlement to rental payments. In contrast to in British Columbia, Native rights to water power became de facto rights. The Stoney Nakoda leaders had also developed the skill to negotiate and incorporate statutes to their advantage.

Chapter 6 considers how the Stoney Nakoda, a Treaty 7 nation on Alberta's upper Bow river, had to cope with the industrial development and water demands from the Calgary area. As opposed to focusing on the negative impacts of dams on Native lands in western Canada, Matsui explores the extent to which Native leaders and policy makers considered Native water rights when negotiating an on-reserve hydroelectric project. First Nations in Alberta obtained a different bargaining position because hydroelectric projects were of significant socio-economic importance to policy makers and a major reason why Native communities received heavy compensation for their lands. Matsui's approach provides an important new understanding of the history of Native water rights, and political and economic development of early hydroelectric projects. Additionally, and in contrast to British Columbia, competition between provincial and Dominion governments were minimised because the Dominion governments only held title to Crown lands in the prairie regions until the 1930s.

For the Stoney Nakoda, water in the rivers and lakes circulated between the spiritual world, secular society and nature without a clear beginning or end. In his conclusion, Matsui recognises that the indigenous value system regarding land and water faced unprecedented challenges after British imperialists made contact with Native peoples. Matsui uses his case studies to reveal how traditional hunting, fishing and ceremonial activities evolved with government-promoted irrigation and farming practices. Matsui's analysis reveals Native leaders' determination to retain their self-governing rights. They adopted Western legal and political concepts as a tool to convince the federal government of their legitimate claims to land and water. But what the leaders meant to claim by using these concepts was significantly different from what lawyers and politicians understood about Native rights at the time.

Matsui, an assistant professor of Sustainable Environmental Studies at the Graduate School of Life and Environmental Sciences, University of Tsukuba, provides research that is fundamental to help clarify continuing controversies of Native water rights. By providing a historical analysis of First Nation's and the government's interactions, Matsui's work can contribute to resolving these continuing land and water disputes. The notion of reconciliation resonates in Canada's more recent aboriginal law. In *Haida*, the Court asserted that "this process of reconciliation flows from the Crown's duty of honourable dealing toward Aboriginal peoples, which arises in turn from the Crown's assertion of sovereignty over an Aboriginal people and *de facto* control of land and resources that were formerly in the control of that people".[1] Matsui's work can assist present-day reconciliation by expanding our understanding of the past. Matsui's research helps readers question whether the Crown fulfilled generalised fiduciary duties to strike a fair balance between interests associated with the public good and indigenous difference. Matsui's comprehensive, detailed and insightful book can help indigenous groups, policy makers, scholars and students better appreciate First Nation's history, and could inform legal and political developments. His work comes at a time when concerns over natural resources are intensifying, and the potential for conflict is increasing due to shrinking access to water.

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[1] *Haida Nation v. British Columbia (Minister of Forest),* [2004] 3 S.C.R. 511, [2004] S.C.C. 73 [*Haida*].

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