History of Perceptions of Jurisdiction Boundaries and the Tsilhqot’in Land Claim in Canada

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Introduction

- What can we learn from historical definitions of boundaries that can be applied in Aboriginal land claims in Canada?

- Need to determine the boundary between different Aboriginal groups and Aboriginal groups and the state in Canada. 370 million aboriginal people world wide.

- Rights spectrum to guide fieldwork
  - James Bay and Northern Quebec Agreement (James Bay)
  - Tsilhqot’in Nation v. British Columbia (Supreme Court of Canada)
Structure

- Frontiers
  - Eg: Mesopotamia
- Borders
  - line in the sand/map
  - subsequent, antecedent, and superimposed
- Land Relationships (Bohanan 1973)
  - “man-man” – interpersonal
  - “man-thing” – commodity
- Tsilhqot’in
  - title granted for the first time
  - defined rights beyond boundaries.
Frontiers

Traditional Frontier

Early Border

Mesopotamia 2500 BC

Types of Border: Subsequent

[Image of a map showing geographic features and cities such as Madrid, Barcelona, and Toulouse, with labels for Andorra, Spain, France, and other regions.]
Types of Border: Antecedent

Types of Border: Superimposed

Internal waters (12 nautical miles)

Contiguous zone (12 nautical miles)

Exclusive Economic Zone (200 nautical miles)

Continental Shelf (based on topography)

High seas

Category I lands
- Cree and Inuit total control

Category II lands
- shared management

Category III lands
- regional government control
- shared hunting and fishing rights

Chisasibi

Radisson

Framework of Different Rights Beyond Title

Spectrum of Rights based on UNCLOS & James Bay Agreement

- Consultation with accommodation
- Occupation
- Stewardship
- Traditional Use Area
- Aboriginal Title
- Consultation with consent
- Ecozone
- Regional Zone
- Consultation with notification
Conclusion

- Aboriginal Title cannot overlap – Crown’s view
- areas of diminished rights
  - can overlap with one another
  - can overlap with Title
    - sui generis servitude
QUESTIONS?
Sui Generis

- exception to the general class
- it is of its own kind
- example: a black sheep. It is a sheep so part of the general class, but is unique in that it is black.

http://uncvr.net/live-korea-im-conspicuous/one-black-sheep-herd-animals-hd-wallpaper-1875640/