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Damming Rainy Lake and the Ongoing Production of Hydrocolonialism in the US-Canada Boundary Waters

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ABSTRACT: Transboundary water governance between the United States and Canada – ahistorically described as cooperative and harmonious – has been instrumental to Settler colonialism and the dispossession of Indigenous peoples around the Great Lakes. At Rainy Lake, on the border between the American state of Minnesota and the Canadian province of Ontario, transboundary water governance supported a binational, Settler colonial joint venture through which European-descended Settlers established themselves in this area. It allowed for the construction of hydroelectric dams that enabled industrial development but also damaged ecosystems and species on which local Ojibwe and Métis communities depended, particularly the lake's wild rice (*Zizania palustris*) stands. We reconceptualise transboundary water governance in the region by expanding the framework of hydro-hegemony to include relations between Canada, the United States, and Indigenous Nations. By recognising Indigenous Nations and Settler colonial states as having equal status in political negotiations around the use of water, our analysis reveals negative hydro-hegemony between the United States and Canada on one side, and Indigenous Nations on the other. We advance hydrocolonialism as a framework for describing these relationships. Hydrocolonialism persists through the ongoing exclusion of Indigenous Nations from nation-to-nation diplomacy; this exclusion is particularly embedded in the functioning of the 1909 Boundary Waters Treaty and the International Joint Commission which it established.

KEYWORDS: Wild rice, Settler colonialism, hydro-hegemony, hydrocolonialism, Boundary Waters Treaty, International Joint Commission, hydroelectric dams, USA, Canada

INTRODUCTION

With water conflicts capturing headlines around the world, hydro-diplomacy between the US and Canada appears to be a bright light in an otherwise bleak landscape. Indeed, water governance across the US-Canada border has commonly been described as cooperative and harmonious (Norman et al., 2013; Clamen and Macfarlane, 2015; Wolf, 2001). While this is true for the two states,¹ from the perspective of the region's Indigenous peoples, the experience has been more troubled.

In this article, we show how transboundary water governance and the 1909 Boundary Waters Treaty (BWT) have been instrumental in the smooth operation of Settler colonialism and the dispossession of

¹ We distinguish between states and nations whereby the former are equivalent to countries and the latter are "political and cultural project[s], based on a sense of common heritage (Smith, 1986) and imagined community (Anderson, 1983)" (Walby, 2003: 531).

Indigenous peoples in Anishinaabewaki,² the traditional homeland of the Ojibwe that surrounds the Great Lakes. We are specifically studying the Rainy Lake (*Gojiji-zaaga'igan*) Basin on the border of Minnesota and Ontario. Water governance has been integral to a binational, Settler colonial joint venture through which European-descended Settlers established themselves in this area. The construction of hydroelectric dams in the early 20th century facilitated colonisation by enabling industrial development and damaging ecosystems and species on which the local Ojibwe and Métis communities depended, in particular the lake's stands of wild rice (*Zizania palustris*, or *Manoomin* in the Ojibwe language).

We build our argument on recent scholarship on transboundary water governance that understands international borders as processual and socially produced (Thomas, 2017a), and introduces actors beyond Westphalian states, such as Indigenous Nations. Such a reorientation unseats prevailing narratives that portray water governance in the US-Canada boundary waters in positive terms. Recognising that Indigenous Nations and Settler colonial states have equal status in political negotiations around the use of water, our analysis instead reveals negative hydro-hegemony between the United States and Canada on one side, and the Anishinaabe and Métis Nations on the other. We advance hydrocolonialism as a framework to describe these relationships.

Modern Settler states reproduce colonial relations in how they govern natural resources. Although Indigenous communities in North America are increasingly involved in co-managing shared resources – Rainy Lake is a case in point – central aspects of Settler colonial domination persist. We find the concept of hydrocolonialism helpful for understanding these processes and we develop the term to build on recent theorisation of the legal strategies of hegemony (Akhter, 2019). Our argument encourages policy changes to decolonise water governance around Rainy Lake and elsewhere along the US-Canada border.

This paper uses previous scholarship, historical documents, and interview transcripts as its main sources. It is informed by 18 months of fieldwork in Anishinaabewaki in which Johann Strube conducted interviews, informal conversations, and participant observation with members of Couchiching and Nigigoonsiminikaaning First Nations, with members of the International Rainy-Lake of the Woods Watershed Board (IRLWWB) of the International Joint Commission (IJC), and with other stakeholders.

We approach this research as two scholars who are committed to decolonisation but who also recognise our complicity in Settler colonialism. As a German national, Johann's ties to North America are tentative; however, as a White scholar at a US land-grant institution, he experiences the privileges of other White Settlers. Through personal connections, Johann became acquainted with brothers Behahmoytung and the late Giigwegiigaaboo, Muskrat Clan, two Elders and spiritual leaders from Nigigoonsiminikaaning First Nation at Rainy Lake. Over several months, Johann accompanied Behahmoytung as his helper-in-training, learning about the Anishinaabe worldview and spirituality while assisting with his ceremonial work. Facilitated through this relationship, Johann was invited to conduct research with Nigigoonsiminikaaning and Couchiching First Nations at Rainy Lake. In reflecting on hydrocolonial dynamics in Anishinaabewaki, Kimberley Thomas draws on her research on asymmetrical transboundary water governance in postcolonial South Asia, as well as on her previous experience working with Indigenous Elders in British Columbia and Hawaii to integrate traditional knowledge and local education. Although born in the US and implicated in the Settler colonial project, Kimberley's personal trajectory is complicated by the entwined legacies of French colonialism and American military imperialism in Southeast Asia and the subsequent Vietnamese diaspora.

We centre this paper on Settler practices of colonising. Although we recognise that this decision risks marginalising Indigenous perspectives on this issue (Snelgrove et al., 2014; de Leeuw and Hunt, 2018), as Settlers we hesitate to represent Indigenous people who speak for themselves. Instead, we problematise

² Depending on the context, Anishinaabewaki can refer to the territories of a larger group of Indigenous peoples that includes the Ojibwe, Odawa and Pottawatomi, or to the land of the Ojibwe specifically. In this paper, we refer to the latter; we suggest, however, that dynamics similar to those described in this paper may have played out in the extended Anishinaabewaki and indeed throughout 'Indian country' (a third meaning of Anishinaabewaki).

the water governance practices from which we benefit disproportionately and complement this perspective with interview excerpts from First Nation members.

The paper proceeds in seven parts. First, we review the theory of Settler colonialism as it relates to land and water in North America. Second, we integrate this theory with the literature on transboundary water governance. The third section introduces Anishinaabewaki and Rainy Lake as the setting of this study. In the fourth section, we trouble the popular reading of US-Canada transboundary water governance as a peaceful endeavour. In that section we show how, historically, the United States and Canada have cooperated in colonising the Boundary Waters at Rainy Lake and how they continue to dominate Indigenous Nations through water governance and hydro-engineering. Fifth, we comment on the International Joint Commission's recent efforts to decolonise water governance around Rainy Lake and suggest four issues that the IJC should address in order to advance decolonisation. Sixth, we argue that hydrocolonialism aptly describes the current configuration of water governance in these boundary waters. We close this article by summarising our findings and discussing their relevance for water governance practice and theory.

SETTLER COLONIAL TRANSFORMATIONS

Settler colonialism is a form of colonialism in which an exogenous community seeks to reproduce itself in an appropriated territory (Veracini, 2010); violence is required to displace the Indigenous inhabitants of that territory. North America is a prime example, where European-descended Settlers committed genocide against Indigenous peoples in their campaign to establish themselves in these foreign territories. They vandalised complex forms of Indigenous social organisation and established a colonial system in which Whites were imagined to be the masters of the land and over people of colour (Dunbar-Ortiz, 2014; Glenn, 2015). Many Indigenous peoples, however, have survived this onslaught. Indigenous Nations now find themselves in the difficult position of being subjected to colonial legal systems while simultaneously asserting their inherent sovereignty and traditional ways of life.

Settler colonialism involves the transformation of a territory into a landscape that provides Settlers with culturally appropriate livelihoods (Glenn, 2015). The ideological basis for this erasure was the early framing of North America as *terra nullius* – land that belongs to nobody – despite the presence of Indigenous peoples on the continent (Veracini, 2010; Dunbar-Ortiz, 2014). This ahistorical perspective has led Settlers to disregard Indigenous water governance arrangements and impose water laws that support colonisation (Hunt, 2014; Yazzie and Baldy, 2018; Curley, 2019a, 2019b; Daigle, 2018). Materially, Settlers have terraformed the landscape to serve their economic and cultural needs. They cut forests, ploughed land, and engineered rivers. This allowed them to recreate European lifestyles, but severely damaged the environmental relations on which Indigenous peoples depended (Whyte, 2015a).

Settler colonialism continues to be reproduced and contested in North America and elsewhere, prompting Wolfe (1999) to describe Settler colonialism as an ongoing structure.³ Recently, a number of water-related developments that predominantly benefit Settler society have threatened the ecological integrity of tribal lands (Hoover, 2017; Estes and Dhillon, 2019; LaDuke and Cowen, 2020). For instance, the generation of hydroelectricity disproportionately burdens, and often displaces, Indigenous communities in North America as well as globally (VanCleeef, 2016; Thompson, 2015; Waldram, 1993; Cooke et al., 2017; Loney, 1995; Martin and Hoffman, 2011). In Canada, new hydroelectric dams and diversions such as the Lake St. Martin Outlet Channels in Manitoba (Ballard and Thompson, 2013; Thompson, 2015), the Lower Churchill Project at Muskrat Falls in Labrador (Calder et al., 2016), and the

³ There is more nuance to the history of North American Settler colonialism than what is implied by the structural model of Settler colonial studies (Dunbar-Ortiz, 2014; Hixson, 2013). Indigenous Nations have at times colonised other Indigenous Nations and there have been instances where Settlers and Indigenous peoples lived together in cooperative, non-colonising ways. Writ large, however, it is accurate to describe Canada and the United States as Settler colonial states in which Settlers dominate Indigenous and other people of colour.

Site C Project at the Peace River in British Columbia (Bakker and Hendriks, 2019) displace Indigenous communities and flood their traditional hunting and trapping areas. Whyte (2015a) argues that developments on tribal lands, which expose Native American communities to environmental risks, continue historic Settler industrial campaigns. Indigenous Nations are also frequently dominated in the management of existing structures and the governance of traditional lands. They often find themselves in the awkward position of having to defend Indigenous sovereignty over natural resources within colonial law (Curley, 2019a; Simpson, 2014), a seemingly impossible proposition. Efforts of the state to integrate Indigenous communities into the co-management of natural resources has often led the latter to adopt administrative practices that displace the very Indigenous culture they were intended to protect (Nadasdy, 2003); Indigenous Nations, however, also find ways to bend colonial law to meet their objectives (Wilson, 2019; Clark and Joe-Strack, 2017). Our research adds to this literature by showing how hydroelectric dams and water governance reproduce Settler colonial social relations in the Rainy Lake watershed.

Three dominant approaches have been proposed as ways to oppose Settler colonialism: indigenisation, reconciliation, and decolonisation. Indigenisation in its most common configuration aims to mainstream Indigenous peoples into existing institutions and positions of power (Kuokkanen, 2011), but does little to confront the underlying structure of oppression (Gaudry and Lorens, 2018). Reconciliation, on the other hand, challenges Settlers to give up their privileges vis-à-vis Indigenous peoples and acknowledge past wrongdoing, but it does not question the former's claims to rightful residence on stolen land. Finally, decolonisation focuses on dismantling the institutions of colonial rule (Fanon, 1961; McFarlane and Schabus, 2017; Tuck and Yang, 2012). 'Incremental decolonisation' and 'strong decolonisation' distinguish between struggles that broadly work against colonial institutions and norms, and struggles for the rematriation of land (including the reclaiming of Indigenous culture, spirituality, ancestral resources, and knowledge). Survivance (Vizenor, 2000), collective continuance (Whyte, 2018), and resurgence (Elliott, 2018; Alfred, 2017; Coulthard, 2014) are other approaches that Indigenous thinkers have used to describe the advance of Indigenous self-determination.

DECOLONISING TRANSBOUNDARY WATER GOVERNANCE THEORY

Geographers have developed a rich theory of transboundary water governance to describe the power dynamics between co-riparians. This literature focuses on the international relations between nation states but fails to consider Indigenous Nations as sovereign nations. We review this theory and how it might be modified in order to analyse the governance of water that is shared between Settler states and Indigenous Nations.

International water law often perpetuates power imbalances between co-riparians (Lowi, 1993; Rieu-Clarke, 2010; Kistin-Keller, 2012; Zeitoun et al., 2010). Rather than unequivocally embodying cooperative water governance or resolving resource conflicts, legal instruments themselves may be used to exploit existing power asymmetries in order to gain control over transboundary water resources (Warner et al., 2013). We follow Zeitoun and Warner's (2006: 437) conceptualisation of a hegemon as a group "whose superior power position effectively discourages any violent resistance against the (hegemon's preferred) order". Explaining this dynamic as it applies to river basins, Lowi (1993) writes that hegemons only accept changes to this order if forced or if they themselves benefit. Regime building usually entails soft power whereby non-hegemonic states are brought into line using discursive power (persuasion, incentives, pressure) rather than physical force (Zeitoun et al., 2010; Warner et al., 2013; Zeitoun and Warner, 2006).

This notion of 'hydro-hegemony' reconceptualises international legal agreements not only as tools for resolving competing claims and demands for water, but also as one of several devices used by hegemons to control water resources (Turton, 1999; Rieu-Clarke, 2010; Kistin-Keller, 2012). The etymology of 'hegemon' as 'leader' suggests that hydro-hegemony can assume a positive, leadership form in which all riparians benefit, but its negative, dominative form is what is most commonly associated with hegemony

(Zeitoun and Warner, 2006; Warner et al., 2017). The concept also captures the mutually enhancing relationship between powerful states and the benefits that flow to them. Control over water enables hydro-hegemony, whereby "hegemony at the river basin level [is] achieved through water resource control strategies such as resource capture, integration and containment" (Zeitoun and Warner, 2006: 435). Conversely, hydro-hegemony enables control over water, whereby "power relations between riparians are the prime determinants of the degree of control over water resources that each riparian attains" (ibid: 436).

Hydro-hegemonic arrangements have been analysed in a number of postcolonial settings such as the Nile (Cascão, 2008), Tigris-Euphrates (Warner, 2010), and Amu Darya River Basins (Wegerich, 2008), but there has been a paucity of research on hydro-hegemony under contemporary colonialist regimes.⁴

We approach the intersection of hydro-hegemony and colonialism through the underutilised concept of hydrocolonialism.⁵ The general inattention to hydrocolonialism corresponds to the popular perception of colonialism as a past event, and the lack of definition offered by this literature indicates that the term is self-explanatory. While hydrocolonialism in fact has multiple registers (Bystrom and Hofmeyr, 2017), we define it as the seizure by a foreign entity of "waterscapes" (Karpouzoglou and Vij, 2017) that are inhabited, created, and governed by Indigenous peoples.

We investigate hydrocolonial relations in Anishinaabewaki in response to the "urgent need (...) to theorise and empirically substantiate the processes through which particular socio-hydrological configurations become produced that generate inequitable socio-hydrological conditions" (Swyngedouw, 2009: 57). Our analysis questions why Indigenous Nations have been included as signatories to land treaties but excluded from the equivalent legal instruments regarding water. Unsettling the assumption that the former is a 'domestic' issue and the latter an 'international' one challenges how hydropolitics in the Boundary Waters region have been interpreted to date; furthermore, much transboundary water governance research has been stimulated by overtly conflictive riparian relations. By extending recent work that reinterprets ostensibly successful treaties (Akhter, 2019; Thomas, 2017b), our analysis situates the BWT within broader debates about international water law and demonstrates the continued salience of the US-Canada borderlands as a rich site of theorisation on transboundary water governance.

ANISHINAABEWAKI AND THE RAINY LAKE WATERSHED

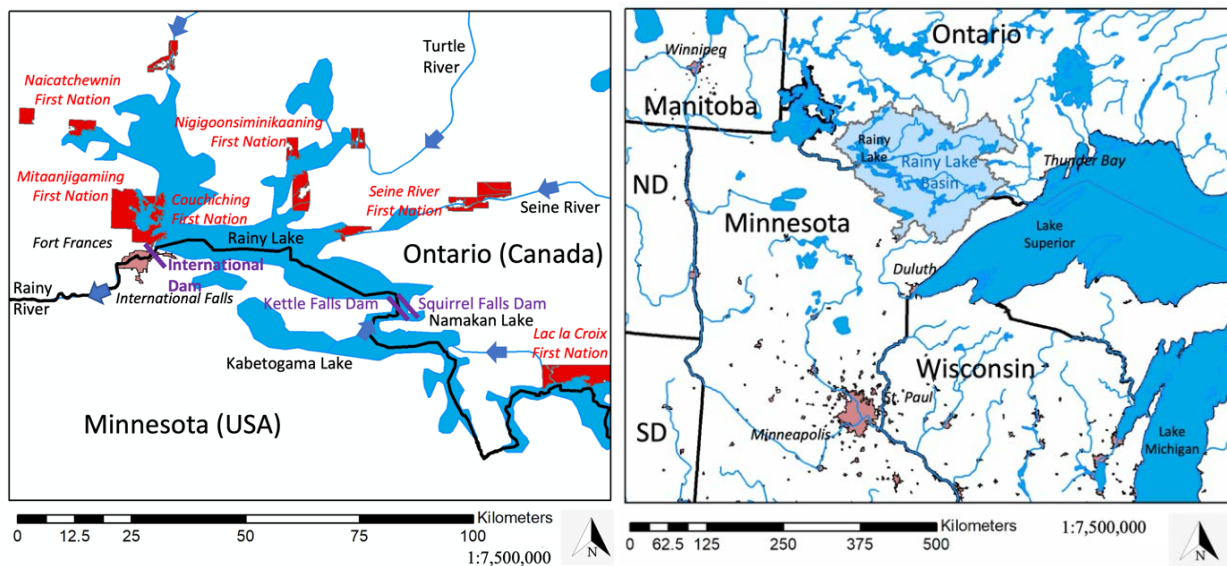
The setting for our research is Rainy Lake and its adjacent lands and waters (Figure 1). The 932 square kilometre (km²) lake is part of the patchwork of water bodies that covers the Canadian Shield between Lake Superior and the Hudson Bay, into which it drains. Before the railway, Rainy Lake was traversed by Indigenous peoples, fur traders, and Settlers who travelled between the Northeast and the Northwest of the North American continent.

Rainy Lake is fed from Namakan Lake to the south, with smaller inflows from the Seine and Turtle Rivers to the west and north; Rainy Lake drains into Rainy River, which flows west. Boreal forest and muskeg cover the thin soil that overlays the Precambrian rock surrounding the lake. Only the Rainy River Valley possesses a sizeable swath of arable land.

⁴ An important exception is the case of Israel in the Occupied Palestinian Territories (see, for example, Selby, 2013; Wessels, 2015; Al-Shalafeh et al., 2018).

⁵ The extent of such publications to date is represented by Libecap, 2007; Boelens et al., 2014, 2018; Szabó, 2015; Vidal Parra, 2019; Gagnon and Desbiens, 2018.

Figure 1. Left: map of Rainy Lake and adjacent communities; right: Rainy Lake Basin in the US-Canada Boundary Waters region.



Source: Cartography by authors; data sources: US Census Bureau, Statistics Canada, US Geological Survey.

Note: First Nations territories are depicted in red; blue arrows indicate direction of water flow.

This area is the traditional homeland of the Gojjiwininiwag, the Rainy Lake and River Bands of Saulteaux Ojibwe. Their subsistence was based on the lake's fish and wild rice, on game and berries, and later on the fur trade (Harmon, 1922; International Joint Commission, 1917). The area was one territory of one people sharing the same language and culture; this changed little when trading posts were established at the mouth of the Rainy River or when the 1783 Treaty of Paris established an international border across the lake.

The political geography changed in the mid-19th century, however, when Settlers moved to the Canadian Prairies and Northern Minnesota. In order to give Settlers access to this land and its resources, the United States and the Crown of Canada signed treaties with the Ojibwe in the area. As a result of these treaties, the northern bands of the Gojjiwininiwag became organised under Treaty 3 (signed in 1873) and the Canadian Indian Act. The southern bands signed treaties in 1854 and 1866 and were merged with the Bois Forte Band of Chippewa further south; they came to be governed under American Indian law.

The Ojibwe reserved usufructuary rights on their ceded lands but not on the other side of the border where they had not signed a treaty. As a result, the northern bands of the Gojjiwininiwag lost their right to hunt, gather, and fish in what is now the United States of America, while the southern bands lost these rights north of the border. The bands also lost much of their mobility as they were now mandated to live sedentarily on reservations. Settlers who entered the Rainy Valley in the late 19th century brought drastic changes; they cut much of the old-growth forest, ploughed the valley, and developed towns at the lake's outlet on either side of the border. Today, Fort Frances, Ontario and International Falls, Minnesota make up a regional centre with populations of 7739 and 6043, respectively (Statistics Canada, 2016; US Census Bureau, 2020). The formal economy is built on pulp and paper, a gold mine, social services, and tourism, but unemployment is high, particularly among First Nations. Couchiching, Naicatchewnin, Nigigoonsiminikaaning, Mitaanjigamiing, Seine River, and Rainy River First Nations are situated around the lake and river; the southern bands of the Gojjiwininiwag do not have a reservation near the lake.

THE MYTH ABOUT PEACE – US-CANADA TRANSBOUNDARY WATER GOVERNANCE

Settlement as a US-Canada joint venture

At the turn of the 20th century, the Rainy Lake district was lumber country. A small Canadian settlement had developed there in the late 19th century around a trading post of the Hudson's Bay Company. Farms on the northern side of Rainy River supported loggers who were attracted by the lucrative stands of pine and the lack of any effective enforcement of property rights in Minnesota (McQuarrie, 2003). Indigenous people crossed the border without interference, as did illegally logged timber (Nute, 1950; Drache, 1980). A short-lived gold rush on Rainy Lake at the end of the 19th century brought people and business to Fort Frances, but it had little permanent impact on the area's development (McQuarrie, 2003).

The early development north and south of the border was a transboundary effort, with American Settlers fully depending on Canadian infrastructure. Without the Dawson Trail (the first developed route that linked the Great Lakes with the Canadian Prairies without entering the United States), steamships from Rat Portage (now Kenora in Northwestern Ontario), and later the Canadian Northern Railway – all of which were Canadian enterprises – Settlers would not have been able to enter the area and lumber would have never made it to market. Development was slow, however, due to the lack of electricity and no direct transportation route to southern Minnesota.

Events accelerated when Edward Wellington Backus entered the scene. The American industrialist possessed what Fort Frances and International Falls needed in order to grow: unrestrained ambition, access to capital, and connections to government officials and legislators. The list of Backus' companies on both sides of the border is staggering; it includes a lumber mill in International Falls, pulp and paper plants both there and in Fort Frances, a gold mine operation, the first public bridge, a bank, the local telephone company, and a railroad that connected International Falls to the rest of the United States (Nute, 1950; Kuhlberg, 2005; Bertrand, 1997).

These investments required hydropower, which Backus proceeded to exploit. First, in 1905, he commissioned the International Dam on Rainy River at the lake's outlet; this was followed by dams at the lake's main inlets of Kettle and Squirrel Falls in 1910, and the Seine River in 1926 (Benidickson, 2019). Backus had invested approximately US\$10.5 million for development on both sides of Rainy River, employing about 4000 workers in his various operations (International Joint Commission, 1917). As a result of all this, Backus has been widely regarded as the main developer of the Rainy River Valley (Drache, 1980; Nute, 1950; Fort Frances Public Library, 1973; McQuarrie, 2003). Given his control of almost all hydroelectric facilities from Rainy Lake to the Winnipeg River, combined with his status as a Wall Street darling, no industrial development could take place in this watershed without his approval (Benidickson, 2019).

Just like the old timber industry, Backus' syndicate was a transboundary venture from the beginning. In the spirit of capitalism, he contended that business operations should go beyond international borders (McQuarrie, 2003); consequently, his mills drew lumber and water resources from across the border (McQuarrie, 2003; Kuhlberg, 2005). Backus lobbied for the support of both Canadian and American legislators (Bertrand, 1997; Benidickson, 2019; Searle, 1977) and invested US capital in companies in both countries in exchange for flooding rights on the Canadian side of Rainy Lake (Benidickson, 2019; McQuarrie, 2003). Although the Ontario Government and the town of Fort Frances had routinely suspected that Backus was only interested in extracting Canadian resources in order to develop International Falls, and even though they often frustrated his plans (Kuhlberg, 2005; McQuarrie, 2003), they depended on his ventures. Besides, many of his main competitors in Ontario, including Shevlin-Clarke, the International Paper Company and Kimberly-Clark, were also US-American ventures (Bertrand, 1997; Kuhlberg, 2005).

In addition to powering the pulp and paper industry that attracted new Settlers into the region, the dams also had implications for the Indigenous population. The most direct effect was the submerging of

land used by the Ojibwe. Already by 1916, a flood caused severe damage to some reserves, and Backus was eventually forced to pay compensation for the damages (Benidickson, 2019). Today, more than 100 years later, the First Nations and Canada are negotiating compensation for permanently lost reserve land. Ceded territory that is now under water is unlikely to be considered in any compensation claims, however, despite the dependence of First Nations on these lands for subsistence.

The dams have also destroyed most of the wild rice in the watershed. Besides fish, wild rice was the most important source of food for the Ojibwe and was central to their identity and social cohesion (Vennum, 1988; Jenks, 1901; International Joint Commission, 1917; Harmon, 1922). As recalled by Elder Willy Yerxa of Couchiching First Nation, "Before the dam was in, the rice fields were plentiful and they were all over. But then when they built the dam for the logging industry, then it became something else. The water level raised a lot in Rainy Lake, flooded a lot".

Reports that dams had a devastating impact on wild rice stands were prevalent when the dam was being built (Benidickson, 2019; Denis and White, 1911). Today only scant pockets of it remain and it is no longer the staple it once was. Scholars have attributed recent public health issues and social disintegration within Indigenous communities to the disappearance of traditional, communal food practices such as the traditional wild rice harvest camps (Kuhnlein and Receveur, 1996; Whyte, 2015b). Allan Yerxa of Couchiching First Nation describes the effects of the loss of wild rice on Ojibwe culture:

When you're talking about lost cultures, lost ceremonies, the high water has an indirect effect on the loss of those kinds of things. If the resource isn't there, then how can you practice them? (...). How can you respect and take part in this wild rice stuff in the fall if you don't really understand anything? I mean, that whole part of our culture is almost lost (...) because (the rice) is just not there.

Indirect implications for the Ojibwe are related to the increasing presence of Settlers, as our interlocutors reported. Hunting grounds were reduced in area and the habitats of big game were lost; bear meat disappeared as a viable food source because of the bears' exposure to domestic waste, and the emerging commercial and recreational fisheries increased the competition for fish.

Finally, the colonisation of the area has led to an increased enforcement of the border. Around the turn of the century, as more and more people settled on both sides of Rainy River, controlling this section of the US-Canada border became a pressing issue (Drache, 1980). This was particularly consequential for the Ojibwe who hunted and gathered on both sides of the border and who had relatives on both sides. One implication was that the Ojibwe's usufructuary rights only applied on the ceded territory that was in the country in which they were enrolled; even travelling across the border became difficult (Hele, 2008; Simpson, 2014). A further difficulty is that certain criminal convictions can preclude individuals from entering either country. Although this restriction applies to both Settlers and Indigenous people, it is especially hard for the latter; for Indigenous people, the Rainy River and Lake system has never been a border and they are also more likely to be convicted because of discriminatory policing (Perry, 2006) and sentencing practices (Alvarez and Bachman, 1996).

The changes that Backus brought were so consequential that Nute (1950) and many Indigenous residents in the area distinguish history around Rainy Lake as 'B.D.' (before the dam) and 'A.D.' (after the dam).

The flooding of Rainy Lake as a Settler industrial campaign

The flooding of Rainy Lake constitutes a transboundary, Settler industrial campaign. Whyte (2015a: 3) describes Settler industrial campaigns as "global waves of settlers, such as those forming the US or Canadian nations, who continue to deploy strategic (industrial) tools and weapons to establish permanent roots in Indigenous territories with the hopes of inscribing homelands for themselves in those territories". LaDuke and Cowen (2020) call tools that support a destructive Settler economy "Wiindigo infrastructure", named after the cannibalistic spirit of excess of Anishinaabe legend. On Rainy Lake, the

capitalist venture of E.W. Backus used hydro-engineering and clear-cutting to transform a vast watershed for the benefit of his industrial consortium. He created thousands of jobs in the area; these were jobs that conformed to the cultural expectations of US and Canadian Settlers, who then permanently moved into the Rainy River Valley. This occurred to the detriment of the Indigenous Ojibwe and Métis populations whose economy, culture, social cohesion and, ultimately, "collective capacity" (Whyte, 2015a) to assert their sovereignty was damaged by the dams.

Just as Backus' industries have been international, so too were the events that eventually brought them to an end: conservationist opposition and the Great Depression. Around the turn of the century, a group of citizens became alarmed by Backus' plans to develop hydropower along the entire boundary water system; they lobbied legislators and the IJC to pass strong conservation laws and policies to protect what they perceived as a pristine wilderness and prime recreational site. An early success in this respect was the establishment of Superior National Forest and Quetico Provincial Park in 1909, a vast transboundary conservation area which includes the popular Boundary Waters Canoe Area Wilderness (Searle, 1977; Benidickson, 2019; Paddock, 2001). Although the IJC never fully adopted the positions of the conservationists, the commission increasingly targeted recreational uses of the Boundary Waters as important management goals and thus limited industrial development.

The second event that toppled Backus' plans was the Great Depression. Demand for newsprint dropped and Backus' sales followed; his financiers no longer lent him capital and he was forced into receivership in 1931. Although the pulp and paper industry eventually recovered, the unrestrained optimism about industrial development was shaken (Kuhlberg, 2005; Benidickson, 2019).

The exclusion of Indigenous Nations from transboundary water governance

The smooth utilisation of hydropower requires a water governance regime that settles conflicts between differently interested parties. In the Boundary Waters, this was achieved by two means; first, the United States and Canada developed a progressive, binational water governance regime that harmonised the interests of the Canadian and US-American states, capitalists, conservationists, and Settlers; second, both countries excluded Indigenous Nations from this regime and ignored their interests when developing the watershed.

The relationship between Canada and the United States around shared waters has typically been described as cooperative (Norman et al., 2013). The diplomatic mechanisms developed between the two states, in particular the Boundary Waters Treaty of 1909 (BWT), have been effective in resolving the conflicts that did occur (Clamen, 2013; Fogarty et al., 2010; Hall, 2008; Knox, 2008; Wolf, 2001; Clamen and Macfarlane, 2015).

When E.W. Backus first applied to construct a dam across the Rainy River, there existed only a nominal institutional capacity for managing the watershed in the public's interest. No single entity was responsible for overseeing applications for hydraulic works in transboundary waters. Backus therefore submitted applications to both US and Canadian authorities separately; by 1906, both of these had been accepted (International Joint Commission, 1917).⁶ To maintain good relations with Canada, the US Senate made its consent conditional on approval by the Canadian authorities. That the first comprehensive, transboundary survey of the watershed was not conducted until eleven years later (International Joint Commission, 1917) suggests that the dam had been approved without much knowledge about its impacts.

While dam construction was underway, disputes elsewhere led the two federal governments to negotiate the BWT as a mechanism for resolving future conflicts. The BWT established the International Joint Commission (IJC), a binational, quasi-judicial body that would decide about developments in the transboundary waters (Hall and Starr, 2016; Clamen, 2013). The treaty was seen as progressive at the

⁶ Astonishingly, this was one year after construction of the dam had begun.

time because of its focus on consensus-based and science-based decision-making and public participation (Knox, 2008). It soon became a symbol for peaceful relations between Canada and the United States (Heasley and Macfarlane, 2016).

The BWT was signed in 1909, the same year the dam on Rainy River went into operation. The first issue that the IJC deliberated upon was Backus' application to build a second dam on Rainy Lake. This dam was planned to span the international border at Kettle Falls at the lake's inlet. The IJC decided that no further approval was necessary because both the United States and Canada had already accepted the project prior to the BWT, knowing that it would only be realised if approval from the other state was given (Benidickson, 2019; International Joint Commission, 1913). Implicitly, the IJC confirmed that both governments had agreed about this development before the BWT was signed and that construction could thus begin.

At least in its first decades, the IJC prioritized the exploitation of hydropower on Rainy Lake and elsewhere (Heasley and Macfarlane, 2016). In a series of reports, the IJC suggested that water storage on Rainy Lake could be increased and that more dams could be constructed upstream should a need for additional power arise (International Joint Commission, 1917; International Joint Commission, 1934).

Backus had planned additional dams upstream of Rainy Lake which the IJC considered in the 1930s. Due to financial difficulties, he could not finance these dams (in addition to the three dams on the Seine River that had been built in the 1920s) and the IJC, pressured by the conservationists, did not conclude that there was a need for additional hydropower that justified the use of public funds for co-financing this project. It was therefore financial reasons – rather than a profound change in policy – which ended the era of dam construction in the Boundary Waters.

The second means by which conflicts around the use of water on Rainy Lake were settled – in all senses of the word – was less cooperative. While Canada and the United States harmonised their interests, both governments excluded Indigenous Nations from watershed governance. We are not aware of evidence that any Indigenous Nation was consulted in earnest when the dam on Rainy River was proposed. The state of Minnesota, the province of Ontario, and the American and Canadian federal governments assumed full authority over the lake and its adjacent areas. This was the case despite the fact that some of the land belonged to First Nation reserves and the remainder was ceded territory in which the Ojibwe Nations reserved certain land use rights, including the right to co-manage water (Norman, 2014). Recent settlements of land claims in which the provincial government agreed to compensate Nigigoonsiminikaaning, Couchiching, and Seine River First Nations for their losses can be interpreted as an acknowledgement that flooding reserve land was in fact a violation of treaty rights. It is not just the transformation of land that is at stake; equally important are the affective connections to the landscape and its associated cultural heritage which are severed by flooding for hydroelectric generation. This fact prompted Gagnon and Desbiens (2018: 50) to describe reservoirs as "hydrocolonialism's most powerful tool of erasure".

That Canada and the US alone assumed sovereignty over the waters straddling their border became apparent when they signed the BWT without considering Indigenous Nations as signatories (Hand, 2016; Norman and Bakker, 2017). Despite the name of the treaty's main body, the International Joint Commission, the IJC is comprised of representatives of only two nations: Canada and the US. This is paradigmatic of the ambivalent relationship between the two Settler states and the Indigenous peoples in their territories. Formally, both the United States and Canada acknowledged the sovereignty of hundreds of Indigenous Nations by signing treaties with them (Wilkins and Lomowaima, 2001; Vicaire, 2013; Stark, 2013). This position has regularly been affirmed by the supreme courts of both countries, and the Canadian government has recently adopted the rhetoric of a 'nation-to-nation' relationship with First Nations; in practice, however, treaty rights and responsibilities have been routinely violated. In everyday political practice, Indigenous Nations have commonly been regarded as subordinated political bodies rather than as legally equal nations. In managing transboundary waters, Indigenous Nations must

appeal to the federal government with whom they have signed a treaty that then may or may not present their case to the IJC, rather than formally negotiating with both governments directly. The BWT's failure to include Indigenous Nations was in line with the doctrine of the time (Malanczuk, 1997: 19); as a result of this failure, while Indigenous Nations' treaties with Canada and the US, respectively, confirmed the nationhood of the former, the BWT, in practice, has disregarded this status.

The marginalisation of Indigenous communities at Rainy Lake was not limited to exclusion from the BWT and the IJC. In its first decades, the IJC was unconcerned about the needs of the Indigenous communities in the Rainy Lake area; for instance, the 1917 landmark *Final Report on the Lake of the Woods Reference* (International Joint Commission, 1917) did not once consider the impact of hydropower facilities on wild rice, even though it refers to the central importance of the plant to these communities. Interestingly, the report discusses wild rice harvesting in its section on agriculture but merely treats it as an historical practice, whereas farming is discussed both historically and with respect to the dams' impacts on existing farmland. Reports that the dams destroyed wild rice stands were ignored (Benidickson, 2019; Denis and White, 1911), while a subsequent investigation on Rainy Lake omits wild rice completely (International Joint Commission, 1934). Neither the 1917 nor the 1934 report discusses any other interests of the Indigenous communities, although they neatly explore the interests of Settlers and their industries. The latter report mentions that a Department of Indian Affairs representative noted at a hearing that First Nations would receive no benefits from additional hydro development and that their lands and forests may be damaged. The report did not further consider this information.

That the IJC saw itself as an organisation intended to serve Settlers, and not Indigenous peoples, becomes apparent in the way the history of the Rainy Lake region is portrayed. Both IJC reports begin their history sections with the explorations of Jacques de Noyon, the first White person to reach Rainy Lake. In subsequent descriptions of the fur trade, 'Indians' are mentioned as residents of the area who provided voyageurs and trading posts with sustenance; they are not referred to as peoples with their own histories. This historiography reflects the prevailing Settler narrative at the time, which conceptualised North America as an idle continent ready to be utilised by White Settlers (Veracini, 2010). It is not surprising that a report that privileges Settler interests and histories and disregards those of Indigenous communities does not consider how water may be managed to improve the livelihoods of the latter. The IJC's ability to discursively erase Indigenous peoples' presence and interests constitutes a form of soft power that legitimised the material destruction of Indigenous livelihoods through the construction of hydroelectric dams.

The Supreme Court of Canada was more affirmative of the rights of the Ojibwe communities. In 1924, it concluded that Backus' dams had caused severe damage to reserves during the 1916 flood and that the First Nations should be compensated. At the trial, it was revealed that the dam had raised the water levels much higher than had been expected by the Governments of Ontario and Canada when they approved the dam (Benidickson, 2019). That this did not stir concerns before the flood shows the paucity of public oversight over the management of water levels at that time.

In summary, in the early 20th century, Canada and the United States developed cooperative international relations around the management of their boundary waters which supported Settler interests in the Rainy Lake area, particularly the development of hydropower. At the same time as these cooperative relations between the two governments were being forged, the needs of Ojibwe communities were being ignored and their right to co-manage water in their traditional territories was being disregarded. Norman et al. (2013) note that this federal-to-federal model of water governance, with its focus on hydropower, was in line with the federal era of governance of the early 20th century. Although the Hoover Dam on the Colorado River (Griffith, 2017) and the Grand Coulee Dam on the Columbia River are more iconic examples of that era, they were preceded by smaller hydro projects that generally received the support of the Canadian and US federal governments. Next, we will see how these decisive moments in Settler colonial history reverberate through ongoing management practices that reproduce the uneven relationships that constitute Settler colonialism today.

Ongoing production of Settler colonialism through hydro-engineering

The built structure of the dams is a material manifestation of Settler colonialism as ongoing structure. A century old, the concrete walls continue to obstruct the flow of water through the watershed and alter the levels of Rainy Lake. While the town of Fort Frances, unlike the surrounding reserves, enjoys reduced utility rates because of the dam, wild rice is still largely absent from the lake; thus, every day that the dams hold back water, their outcomes for both Settler and Indigenous communities are reproduced. Hydro dams are misleading, as a flooded reservoir quickly becomes a natural lake in the perception of people who have never experienced it otherwise (Thomas, 2020); however, oral histories of the Ojibwe and the journals of French-Canadian voyageurs (e.g. Harmon, 1922) remind us that the dams are artificial and recent interventions.

Hydro dams are also adjustable technologies. They slow water flows and raise upstream levels, but sluice gates allow these parameters to be adjusted. Water levels follow precipitation and snowmelt in the watershed, but they also depend on the number of sluice gates opened or closed. The rate at which water levels rise or fall has ecological implications that are no less impactful than the levels themselves. With regard to wild rice, sudden changes during the submerged-germination and floating stages of the plant's development can terminate it (DeWolfe et al., 2017; Meeker and Harris, 2009). Consequently, the water release rates over the course of a year are critical determinants of the ecology of the lake and the communities that depend on it; this puts the dam operators and the regulatory bodies⁷ that define the release rates in a powerful position that deserves scrutiny.

Wild rice has largely disappeared from the lake since the dams were built. There have, however, been exceptional years during which the IJC accommodated requests to keep lake levels stable during a critical time of growth, thereby enabling moderate to plentiful harvests. Elder Willy Yerxa continues his account of rice on Rainy Lake:

[The dam] kind of wiped out the rice for a while, but then the rice comes back. (...). The rice keeps coming back year after year, but it's something that you really have to watch every year. But now that they pipe the water so much, it's wiping it out again big time.

If the IJC does not mandate management practices that allow sufficient wild rice harvesting, then they reproduce the violations of Indigenous sovereignty and treaty rights that were committed when the dam was first built.

DECOLONISING THE WATERSHED

Scholars have recognised the failure of the BWT to include Indigenous Nations and have criticised the IJC's disregard for Indigenous communities in past water management practices (Norman and Bakker, 2017; Hand, 2016). The IJC has responded to this concern and to a call for more public participation by establishing watershed boards with representatives from civil society, municipalities, and Indigenous Nations (Norman and Cohen, 2016; Norman, 2014; Clamen, 2013). The International Rainy-Lake of the Woods Watershed Board, founded in 2013, has gone further than any other board by explicitly reserving seats for tribal, First Nations, and Métis representatives, a move which has been praised as an unprecedented step towards decolonisation (Norman and Bakker, 2017; Benidickson, 2019). Today, representatives from all Indigenous peoples in the watershed serve on this board. In 2019, the IJC also appointed its first Indigenous commissioner, Henry Lickers (International Joint Commission, 2019b).

⁷ The dams at International Falls and Kettle Falls are operated by Boise Paper (a subsidiary of Packaging Corporation of America) and H2O Power, Backus' successors in title. They follow operational guidelines set by the Water Levels Committee of the International Rainy-Lake of the Woods Watershed Board of the IJC (Rainy Lake Convention, 1940; International Joint Commission, 2018; International Joint Commission, 2019a).

The IJC has also begun to acknowledge federal treaty responsibilities and the relationship between water levels and wild rice. In its most recent report on Lake of the Woods and Rainy Lake, for instance, the IJC describes treaties as agreements that define how Canada, the United States, and Indigenous Nations should co-manage their shared waters. The same report discusses the negative impact of water-level fluctuation on wild rice (International Joint Commission, 2012). The IJC has also recommended scientific studies on wild rice in the watershed (International Joint Commission, 2014), some of which have already been conducted (e.g. Dysievick et al., 2016).

While some Indigenous rice harvesters and representatives welcomed these changes as sincere efforts to improve relations with their Nations, many First Nation members still feel left out. Willy Yerxa of Couchiching First Nation recognises these efforts, but regards them as lip-service:

I've been to many places speaking to different water commissioners and water people and control things. (...) A lot of them invited me but nothing ever ... They just controlled it for their own use. (...). They put in their report "Well, we talked to a Native person. We talked to an Elder". Just to make it look good on paper.

Allan Yerxa, the Natural Resource Advisor of Couchiching First Nation, expresses his frustration:

I know damn well that they're not going to change anything. I would think about pulling out of the IJC. The communication is just non-existent right now. So, the only thing to do is just work within the existing structure, because they don't give a shit, and to just find a couple places where we can have the wild rice and then police it ourselves. That's the only thing we can do.

Although we are supportive of the recent steps taken by the IJC, they hardly advance decolonisation. There remain a number of colonial practices and arrangements within the IRLWWB and the IJC that discriminate against Indigenous communities. First, the setting in which the IRLWWB convenes follows Western conventions of governance. With few exceptions, it meets in video calls that are chaired by representatives of the Canadian Department of Environment and Climate Change and the U.S. Army Corps of Engineers. Unlike traditional Indigenous governance practices, ceremony is not usually a part of the board meetings. Nadasdy (2003) argues that when First Nations co-manage natural resources within institutions of the state, they often adopt ways of thinking that mirror those of the dominant state.

Second, the IJC has a legacy of privileging Western Scientific knowledge over Indigenous knowledge. Although it is appreciated that the IRLWWB has taken up the call to investigate the impacts of the dams on wild rice by commissioning scientific studies on the issue, many Ojibwe community members are frustrated that their knowledge has been ignored for decades. We maintain that effective decolonisation of water governance would entail the IJC mainstreaming Indigenous knowledge as a valid basis for its decision-making. Members of the IRLWWB shared that Indigenous knowledge is part of some projects funded by the IJC, but that it has yet to be integrated into the routine operations of the board and the commission. As long as Indigenous knowledge is merely added to a water governance regime that is led by Western governance principles, interests, and science, it is likely to fall short in delivering outcomes favourable to Indigenous Nations (von der Porten et al., 2016; Nadasdy, 2003). A first step in mainstreaming Indigenous knowledge could be the appointment to the IRLWWB of Elders who can ensure that traditional protocols are followed. Elder Nancy Jones from Nigigoonsiminikaaning describes why this is important:

They should have an Elder in there who has lived through this, someone that knows what's been going on. (...) [To conduct ceremony is] why you're going to need an Elder in there. That's why you need an Anishinaabe in there, because that's most important of these things, when you talk about the Creator's creation. We honour our creator when we use tobacco and food. See, when you ask for a meeting, when you come here, ask for a meeting, you need to bring a cloth item (...). And then the food, and then tobacco, and water. Those are the first time meeting. (...). And then the second time, all you're going to do is to bring your tobacco and food. That's your protocol right there, is your gift, because we all have a helper in us.

There's a, I think you guys [White people] call it an inner child that listens when we talk. And that's who you honour when you give the gift item. And then your inner child works, you and I work together.

Third, the IJC continues to order the dam to be operated for the "most advantageous use (...) for the combined purposes of navigation, sanitation, domestic water supply, power production, recreation, and other beneficial public purposes" (International Joint Commission, 2018). Failing to list the harvesting of wild rice and other specifically Indigenous interests indicates who constitutes the 'public' to whom the IJC is accountable. As long as wild rice is a subsidiary concern, the relationship between the different actors can hardly be considered equal; in fact, with respect to restorative justice, managing water levels to enable First Nations to exercise a self-determined economy that includes traditional subsistence practices would be an appropriate priority for the IJC. A reliable and sufficient rice harvest on Rainy Lake, then, becomes a material benchmark for the decolonisation of water governance in this transboundary watershed. In whatever way the IJC chooses to prioritise water uses on Rainy Lake, the basis of the decisions needs to be the nation-to-nation treaties between the Ojibwe Nations and the Canadian and US federal governments, which define how resources on ceded territory may be used and by whom.

Fourth, Canada and the United States need to invite Indigenous Nations to renegotiate and join the BWT (or a new diplomatic agreement) as sovereign signatories. It is inconsistent that the US and Canada share sovereignty with Indigenous Nations over ceded territory but exclude the latter from an agreement on water governance in the same territories. One can speculate how an inclusive, multinational Boundary Waters Treaty would look; it can be assumed, however, that Indigenous Nations would delegate commissioners to the IJC (or the body that might replace it) and would send board chairs with rights that are equal to those sent by the United States and Canada.

In conclusion, the IJC and the IRLWWB need to stop treating Indigenous Nations as stakeholders who are on a level equal with industry and civil society but subordinate to the Canadian and US nation states. Instead, they must start engaging with Indigenous peoples in a nation-to-nation relationship in which Canada, the United States and Indigenous Nations convene as equal treaty partners. One of the key recommendations of the Canadian Royal Commission on Aboriginal Peoples (1996a) was that the Government of Canada should treat First Nations as equals on the subject of self-governance. Many Indigenous peoples regard the treaties, despite their often coercive history, as agreements about how Settlers and Indigenous people can live together in peace (Epp, 2003; Dunbar-Ortiz, 2014; Craft, 2014a; Canadian Royal Commission on Aboriginal People, 1996b). Besides a recognition of each other's sovereign nationhood, the treaties also call for an ongoing commitment to mutual well-being and accountability. The treaties should therefore be the foundation of how water is managed between Indigenous Nations, Canada, and the United States.⁸

Over the past decades, new legal instruments have been implemented to give Indigenous Nations more authority over water within their territories; these include the Treatment as a State (TAS) regulations in the US *Clean Water Act* (Diver, 2018) or the Land Claim and Self-Government Agreements in Canada (Wilson, 2019). Although these frameworks provide opportunities to reassert Indigenous relations to water, they dismiss how water is connected across jurisdictions and base Indigenous-Settler relations in colonial law. Considering how Indigenous Nations may enter into international agreements on water provides an opportunity to apply the rich insights of transboundary water governance theory to Indigenous-Settler relations, which up to this point have been largely treated as domestic affairs.

To be sure, although a governance regime in which the United States, Canada, and Indigenous Nations share sovereignty over transboundary waters as equals would constitute a significant improvement over the present, it would merely constitute an incremental form of decolonisation. Coulthard (2014) condemns the recent recognition of Indigenous self-government rights by Canada as a shift towards

⁸ The Two Row Wampum Renewal Campaign, organised by the Onondaga Nation in 2013, provides one example of how treaty responsibilities may be renewed around the sharing of water (Hallenbeck, 2015).

liberal, neocolonial governmentality in which Indigenous Nations are integrated as oppressed subjects. Following Tuck and Yang's (2012) assertion that decolonisation is not a metaphor but a material rematriation of stolen land, any water governance framework that prioritises Settler futurity and sovereignty is incommensurable with a strong framework of decolonisation. Charlie Windego, an Elder from Nigigoonsiminikaaning First Nation describes this notion:

If it was up to us, there wouldn't be a dam. It would get back to its natural source, the way it was before they disrupted it with that dam. They don't realise, it has a big impact by setting up a dam. (...). Obviously, the White man figured out a way that "Hey, we'll use this water for hydro, to transport wood, all these other (...). But never mind about these Anishinaabe people that are paddling to their rice fields because those rice fields are going to soon disappear, in which they are disappearing". So, if it was up to us in the Anishinaabe world, we wouldn't have a dam. And we wouldn't give a damn about the White man.

From this perspective, Indigenous Nations must assert sovereignty over the waters in their territory and have the choice to invite Settlers to partake in relationships to water on their terms. In Treaty 3 territory, the traditional Anishinaabe resource law *Manito Aki Inakonigaawin* (The Great Earth Law) could form the foundation of a new, truly decolonised water governance regime in the area (Grand Council of Treaty Three, 2020; Craft, 2014b).

The inclusion of Indigenous representatives in the IJC and the IRLWWB does indeed mark a break in the troubled relationship between Settlers and Indigenous peoples and models inclusive indigenisation in transboundary water governance in North America (Gaudry and Lorenz, 2018). To this day, however, these changes do not challenge the underlying colonial relations that disenfranchise Indigenous communities and prevent them from asserting their traditional relationships with the natural environment in their ancestral territories.

HYDROCOLONIALISM IN THE BOUNDARY WATERS

Corresponding to prevailing perceptions of the BWT as an example of effective transboundary water management, a conventional application of the hydro-hegemony framework would identify a positive leadership configuration of hydro-hegemony between the United States and Canada. From this perspective, the political, economic, and military dominance of the United States did not lead to a situation of apparent conflict over water but rather to an agreement that was praised by both parties. Reading against the grain of the hydro-hegemony framework, however, reveals that its state-centrism occludes other actors with legitimate claims to water resources. The BWT assumes a very different status under this orientation, by which the denial of Indigenous lifeways around Rainy Lake amounts to negative, dominative hydro-hegemony by the US and Canada of Indigenous Nations.

The long-standing practice by Canada and the US of invisibilising Indigenous Nations asserts Settler dominance in the realm of transboundary resource governance. India, on the other side of the world, has been criticised for insisting on bilateral water treaties that allow it to maintain the upper hand in negotiations with its co-riparians (see Crow and Singh, 2000). The US and Canada have pulled the same manoeuvre vis-à-vis the Ojibwe and other Indigenous Nations; they have excluded Indigenous groups from the legal process and thus facilitated bilateral negotiations between themselves. The selective recognition of Indigenous sovereignty legitimises Settler claims to territory, while conversely validating the exclusion of Indigenous peoples from international legal procedures. Settlers' appropriation of water resources and their ongoing marginalisation of Indigenous Nations from transboundary governance of the Boundary Waters reflects the colonial origins of international water law (Anghie, 2007) and is aptly described as hydrocolonialism.

The notion of hydrocolonialism may extend recent scholarship on the legal strategies that state elites exercise in the pursuit of their objectives around water. Akhter (2019) observed that competing interpretations of the 1960 Indus Waters Treaty arose from India and Pakistan and employed different

logics; in seeking to mitigate its downstream vulnerability, Pakistan invoked "downstream territorialism", while India was operating under the geopolitical imperative to maximise economic development through "basin developmentalism" (ibid). The case of Anishinaabewaki and the US-Canada Boundary Waters reveals hydrocolonialism as a third geopolitical logic underpinning hydropolitical struggles.

Whereas Akhter (ibid) locates these strategies in the post-negotiation process of treaty interpretation, our case highlights hydrocolonialism all the way down, such that there is no aspect of transboundary governance at Rainy Lake that does not bear its mark. As noted, both the US and Canada entered into treaties with Indigenous Nations, but the latter were subsequently stripped of their sovereignty and omitted from further participation in interstate politics. As Anghie (2007: 55) explains, "once non-European states were excluded from the realm of sovereignty, they were precluded from making any sort of legal claim in the realm of international law". Whereas downstream territorialism and basin developmentalism are antagonistic geopolitical imperatives in South Asia, hydrocolonialism is unique in that it is effected by both signatories of the BWT together against the Ojibwe and Métis Nations. Our analysis thus extends the literature on transboundary water governance by demonstrating that hydro-hegemony is not merely a relation between states but is also a condition in which states dominate groups whose claims to sovereignty over water are not recognised.

In Settler states, hydrocolonialism is as central to colonisation as settling and state-making. In many areas of Canada and the US, hydropower projects were the industrial avant-garde of Settlers (Griffith, 2017; Desbiens, 2013; MacFarlane, 2016). This observation led MacFarlane and Kitay (2016) to describe Canada's state-making in the north as 'hydraulic imperialism'. Without appropriating Indigenous waterscapes as a source of livelihood, Settlers would have been unable to establish themselves as powers strong enough to dominate Indigenous peoples.

CONCLUSION

The literature on transboundary water governance has been disconnected from scholarship on Settler colonialism. Transboundary water governance research has overwhelmingly focused on interstate relations, to the exclusion of non-state sovereign entities such as Indigenous Nations. Focusing on the case of the Rainy Lake watershed in the Boundary Waters region of North America, we identify the denial of Indigenous communities as equal parties in transboundary water governance as the linchpin of ongoing Settler colonialism.

Water figured prominently in the foreign settlement of the territory known as Anishinaabewaki. In the early 20th century, the US and Canada welcomed privately financed hydropower dams to develop forestry-based industries, despite standing treaties with local Indigenous Nations and documented negative impacts of dams on their livelihood. Today, Settler colonialism is perpetuated in the form of the Ojibwe's limited influence within the International Joint Commission (IJC), which has coordinated regional water development since the 1909 Boundary Waters Treaty.

Although Indigenous representatives are now included in the IJC's local watershed board, this development does not go beyond what Gaudry and Lorenz (2018) define as inclusive indigenisation: a pathway to mainstreaming Indigenous perspectives within existing colonial institutions without challenging the underlying structures of oppression. Similarly, Coulthard (2014) characterizes the recognition of Indigenous rights claims within the legal framework of the Settler state as being neocolonial governmentality rather than an opportunity for decolonisation. Attention to hydrocolonialism challenges the dominant interpretations of the BWT and the IJC as examples of successful cooperation. Our work thus calls for a reconfiguration of the state-centric framework of hydro-hegemony to include Indigenous Nations. Acknowledging the US-Canada Settler colonial joint venture as a hydro-hegemon with respect to the Ojibwe and Métis Nations illuminates a path to re-establishing Indigenous sovereignty and recovering international law from its colonial origins. Expanding international water law to include Indigenous Nations at the bargaining table constitutes an incremental form of

decolonisation which is consistent with the "somewhat tragic reality that resistance must work, to some extent, within the parameters of what is being resisted" (Rajagopal, 2003: 10; see also Curley, 2019a). We maintain, therefore, that Indigenous self-representation is only a first step towards autonomy.

Water governance in the Rainy River Basin exemplifies the relationships between Canada, the United States, and Indigenous Nations across their shared waters. Historically, these Settler states, together, stripped Indigenous Nations of their right to manage water in their traditional territories, not only in the Boundary Waters of Minnesota and Ontario but across North America (Colombi, 2012; Daigle, 2018; Schneider, 2013; Norman, 2014). The BWT manifested Settler claims to exclusive jurisdiction over transboundary waters.

In recent decades, however, Indigenous Nations have become increasingly involved in the governing of transboundary waters in North America, for example in the watersheds of the Great Lakes, the Yukon, the Salish Sea, and the Columbia River (Norman, 2014). This moment provides an opportunity to reflect on the decolonising potential of these changes. So far, the implementation of these efforts does not suggest a serious move towards decolonisation. In the 2000s, for example, Tribes and First Nations around the Great Lakes unavailingly demanded equal participation in the negotiation of the Great Lakes Compact by the Canadian provinces and American states that border the Great Lakes. Although their stakes are now defined in the Compact and they have improved their influence on water management, their legal status as sovereigns is still not recognised on the international level (Hand, 2016). Similarly, in the renegotiation of the Columbia River Treaty, Indigenous Nations are now duly consulted according to principles set out by Canadian and US courts; they are not, however, considered to be potential signatories on the same level as the two Settler states (Baltutis and Moore, 2019). The case of the Rainy Lake watershed is particularly critical because the International Rainy-Lake of the Woods Watershed Board of the International Joint Commission has been praised as a model for mainstreaming Indigenous communities into the management of transboundary watersheds (Norman and Bakker, 2017). Here too, however, the increased participation has not yet led to a tangible recognition of Indigenous sovereignty and the rights that would flow from such a position, not to mention a recovery of the region's wild rice stands.

To be sure, the recent renegotiation of Indigenous-Settler relationships around transboundary water governance provides an opportunity to recognise Indigenous sovereignty over their traditional waterscapes. We hope that the experiences from Rainy Lake, and from the other cases referenced here, inform steps for a path towards decolonisation that deserves that name.

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