

INTERRUPTING MOVEMENT AND MOBILITY

An excerpt from Talk Treaty to Me

by CRYSTAL GAIL FRASER and
SARA KOMARNISKY

As part of
BORDERS HIDE THE HORIZON
A Yellowhead Red Paper

Yellowhead Institute

Chapter 8 from *Talk Treaty to Me: Understanding the Basics of Treaties and Land in Canada* by Crystal Gail Fraser and Sara Komarnisky ©2026. Published by HarperCollins Canada. All rights reserved.



The White Man put that [border] there, not us. I don't know why we have to put up with this bullshit.[1]

— AN ANONYMOUS KANIEN'KEHA:KA MAN SPEAKING TO ANOTHER ABOUT BORDER ISSUES

Before the creation of Canada, Indigenous Lands and territories extended across what are now provincial, territorial, and international borders.

Indigenous Peoples determined their own Land use patterns and movements and created boundaries with their neighbours through treaties and other agreements. There were relationships established across North America prior to colonization and extensive networks of trade and diplomacy. Many of these networks still exist. For instance, Dene from the Northwest Territories travel to and visit with Diné in the American Southwest. Prairie nations on both sides of the Canada-US border gather to engage in celebrations and ceremonies.

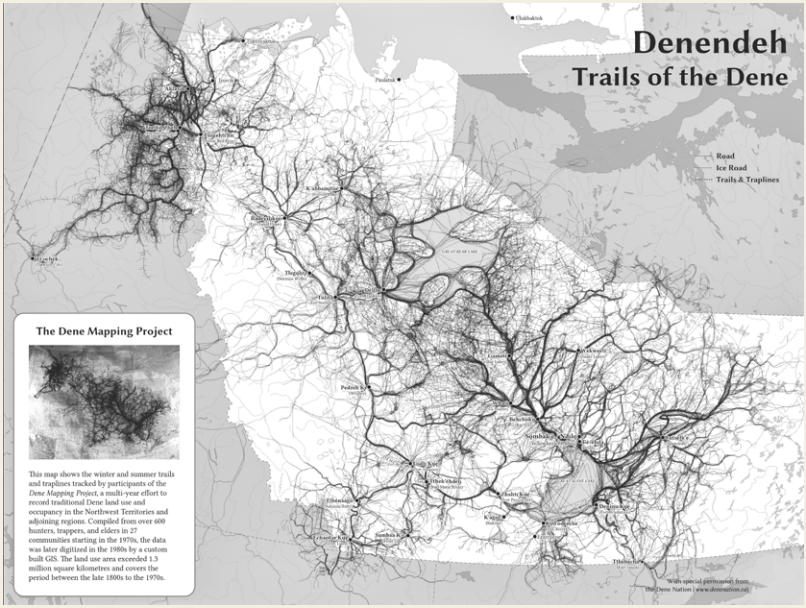
How Indigenous Peoples use Lands, travel to our destinations, interact with other people and animals, harvest our food and resources, gather with others, and think about the environment depends on how we understand our connections to those Lands. In Mohawk Interruptus: Political Life across the Borders of Settler States, Audra Simpson says that mobility can be a daily condition of life for Indigenous Peoples, and in particular she shows how the cross-border mobility of Kanien'keha:ka equates to their sovereignty. After all, Canada and the United States might have a firm border between their nations, but Kanien'keha:ka can live across it, seeking work as ironworkers on New York City skyscrapers, returning home to families and communities in Canada, and trading goods in local economies.

There are other examples of nations whose territories extend across an international border, such as Dinjii Zhuh and Inuvialuit, whose territories extend from Canada into the United States in Alaska. For example, Niitsitapi, Nêhiyawak, and Métis in the Prairies have territories that extend across the Canada-US border, and seven Indigenous Nations had their territories divided when the US-Mexico border was established: the Yaqui/Yoeme, O'odham, Cocopah/Cucapá, Kumeyaay/Kumiai, Pai, Apache, and Kickapoo/Kikapú.

In the Northwest Territories, the Dene Mapping Project interviewed harvesters and documented their trails, showing a landscape profoundly lived in and visited by many people. The Dene Mapping Project dates to the early 1970s, when Dene leaders directed the Dene Nation to carry out a traditional Land use and occupancy study to document the Dene interest in the Northwest Territories as well as to provide a Land use database to be used in Land claims negotiations and similar applications. Approximately 600 trappers recorded their Land uses, seasons and dates of use, species of animals, modes of transport, and other relevant details on 150 large composite maps. The database was computerized in the 1980s and is now being updated for community use. Dene travel their Lands, and the map below from the Dene Mapping Project shows how extensively they travel.

Over time, Canada has tried to control the mobility of Indigenous Peoples. Settlers did not understand Indigenous Peoples and their cultures well. As we have seen, there were many false assumptions, much misinformation, and great deception in treaty making. Newcomers also underestimated the importance of mobility to Indigenous Peoples. Repeatedly, promises were made that treaty signatories would not be restricted from their ways of life and would be able to hunt, fish, gather, engage in ceremony, visit, and freely move.

But overlooked in subsequent government policy was understanding of and respect for Indigenous Land use patterns, stewardship, and seasonal economies. The government of Canada took it upon itself to define Indigenous Lands as Indian Reserves, Land Claim Settlement Lands, and Indian Lands; create and maintain international, provincial, and territorial borders; and structure and control mobility. But aren't they all "Indian Lands"? How, then, did this come to be?



Winter and summer trails and traplines tracked by participants of the Dene Mapping Project. Courtesy of Dene Nation.

LANDS HELD IN RESERVE

"Reserves" are Lands literally reserved, or held "in reserve," for First Nations. The Lands are not owned by First Nations or their band councils, governments, or other organizations. Not all First Nations in Canada have reserves, and Métis and Inuit do not have reserves. Some reserves are in urban settings, but most are in rural areas. As of 2022, there were 3,414 reserves in Canada that involved over 600 First Nations.

There are no reserves in Nunavut and only a few in the Northwest Territories and Yukon. The 2016 Canadian census said that about 40 percent of Registered Indians (Indigenous Peoples that the federal government recognizes under the Indian Act) live on reserves. Communities located on reserves tend to be small; 70 percent of them have fewer than 500 residents. Reserves are different from "reservations," the term used in the United States. Overall, reserves are a tiny fraction of the Lands that Indigenous Peoples have inhabited or used since time immemorial.

Generally, Indian Agents and the federal government selected Lands for reserves. They are a direct product of colonization and the resettlement of peoples. Some reserves are very small and have been called "postage stamp" reserves. Some First Nations have more than one reserve, which can border each other, but they can also be located apart from each other.

In Indigenous Writes, Chelsea Vowel uses the example of the Alexis Nakota Sioux Nation in Alberta. It has four reserves, two of which are southeast of Hinton, one past Whitecourt (about 175 kilometres northwest of amiskwaciwâskahikan), and one on which most of the citizens of the nation live, at Lac Ste. Anne. Reserve Lands make up less than 1 percent of Canada.[2] Some reserves have also been drastically reduced in size over the years, such as that of the Enoch Cree Nation. Some reserves, though, can contain Lands that the First Nations traditionally used.

The concept of reserve Lands came from treaties in what became known as New France in the 1600s. During this time, Catholic missionaries thought that they would convert more Indigenous Peoples to Christianity if they lived on set parcels of Land. These missionaries then erroneously assumed that all other Lands belonged to them and sought legal title to those Lands. The concepts of Land ownership and title were not parts of Indigenous world views.

As we've seen, there were many early Land agreements that resulted in treaties, such as the Two Row Wampum Treaty in 1613. And then the Royal Proclamation of 1763 acknowledged that Indigenous Peoples had title to Lands and that the Crown was required to negotiate for them.

During this time, pockets of Land were sometimes set aside for Indigenous communities to use until the treaty was finalized. But the specifics of ownership of these pockets was murky, and to prevent squatters, speculators, and others from just taking the Lands the Crown gave itself title to them in order to "protect" them. The Constitution Act says that the Canadian government has power over "Indians, and lands reserved for Indians."[3] These laws were then incorporated into the Indian Act (1876) and enforced during the Numbered Treaties after Confederation.

Amid negotiations for the Numbered Treaties, some Indigenous communities suggested the locations of their future reserves, but Indian Agents had the power to reject their selections, or allot smaller parcels of Land, or assign to them Lands somewhere else. As we discussed in Chapter 4, there have been disputes over reserves, and as a result modern treaties have been negotiated and implemented to compensate for these grievances. The history of reserves in the Northwest Territories and Yukon is different, and we will not discuss it here.

Reserve lands never reflect the extent of traditional territories of First Nations and are very small in comparison. As well, First Nations did not always have a say in the process of assigning reserves. The creation of reserve Lands was meant, in part, to contain Indigenous Peoples. The pass system was then designed to control Indigenous Peoples leaving and returning to reserves.

CREATION OF THE PASS SYSTEM

The North-West Resistance in 1885 was a turning point in terms of how the mobility of Indigenous Peoples was controlled and limited by Indian Affairs and Canada. They viewed First Nations and Métis with suspicion and contempt and sought to control those whom they thought most threatening. Assistant Indian Affairs Commissioner Hayter Reed thought that the actions of Indigenous Peoples in the 1885 resistance had violated and even negated some of the Numbered Treaties. Interestingly, he did not make the same assessment of Canadian military forces, which had killed dozens of First Nations and Métis in the conflict.

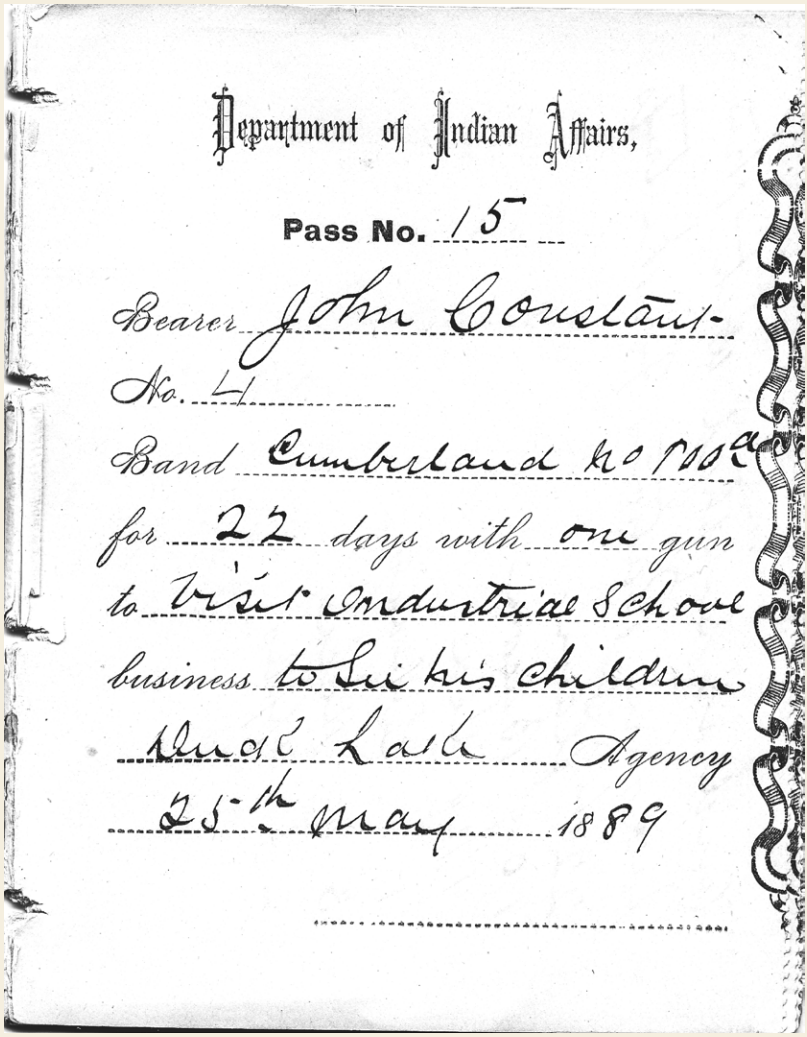
Government officials had pondered the idea of permits or passes during the early 1880s, but no system was implemented until after 1885. It was called the pass system and used mostly in the Prairies. Some people didn't agree with it. For instance, NWMP Commissioner A.G. Irvine thought that it restricted mobility too much and could be a treaty violation. Indeed, the Treaty 6 document says that First Nations had the "right to pursue their avocations of hunting and fishing throughout the tract surrendered."[4] Nonetheless, the pass system was enforced.

In May 1885, Major General Frederick Dobson Middleton wrote to Indian Commissioner Edgar Dewdney to ask that Indigenous Peoples be confined to their reserves so that they would not join the North-West Resistance. Dewdney did not have the authority to implement this restriction, but he issued a notice demanding that people ask permission before leaving the reserve or face arrest. Restricting mobility was not a concern for those Indigenous Peoples perceived as "loyal" by obeying Indian Agents; instead, they were allocated farming equipment and other "rewards."

After the conflict ended, Reed wrote a policy document titled "Memorandum on the Future Management of Indians" that led, in part, to the pass system. It obtained approval from Indian Affairs management and eventually Prime Minister John A. Macdonald, also the superintendent general of Indian Affairs. The pass system took effect in August 1885. Now First Nations had to ask Indian Agents for permission to leave and return to their reserves. Additionally, during this time, the number of Indian Affairs and police staff greatly increased. In Saskatchewan, for example,

the number of Indian Agencies increased fivefold, from two to ten. There were more agents of the state to control the movement of people and enforce the pass system.

It was not easy to obtain a pass. The person who sought a pass had to travel to the Indian Agent's home and, if the agent was not there, wait for his return. These sorts of delays could have far-reaching consequences, such as the spoiling of produce meant for the market and financial losses for Indigenous families. Families could not attend large gatherings such as Sundances, powwows, Potlatches, and other important ceremonies. The pass system also limited their ability to gather medicines, harvest seasonal items, check traplines, and hunt and fish. People had to ask permission to pick berries or cut wood if those resources were located off reserve. The pass system also restricted fur-trading activities and visiting extended family members who lived off reserve. It prevented parents from visiting their children at Indian residential schools or limited their visiting time. It also kept Indigenous and settler communities apart, which contributed to feelings of mistrust and dislike. It limited Indigenous Peoples' ability to gather in large numbers and organize. This restriction was important to Canada since it wanted to limit any threat to white settlements. Additionally, into the 1890s, non-Indigenous sportsmen—specifically the Calgary Gun and Rod Club—complained about Indigenous hunting and petitioned Indian Affairs to confine Indigenous hunters to their reserves. This petition was supported by signatures from the NWMP.



Department of Indian Affairs,

Pass No. 15

Bearer John Constant

No. 4

Band Cumberland No 1 Sask

for 22 days with one gun

to visit Industrial School

business to see his children

Duck Lake Agency

25th May 1889

A reserve pass. This travel permit was issued by the Duck Lake Agency in 1889 to John Constant, allowing him to visit his children at an industrial school. Provincial Archives of Saskatchewan, Records of Canada, Department of Indian and Northern Affairs, S-E19, File 35.a.

Indigenous Peoples did not always abide by the rules. Despite the consequences, they sometimes left and returned to their reserves without permission or passes. Those caught without a pass were arrested or taken back to their reserves. Alex Williams says in his 2015 documentary, The Pass System, that people thus caught could be jailed up to sixty days.[5] Indian Agents also withheld rations as punishment. But it was difficult for Indigenous Peoples to resist this system. Relations with Indian Agents and Indian Affairs more generally were not friendly. Indigenous Peoples were also not allowed to vote federally in Canada until 1960, so there was no likelihood of changing the system through colonial democratic structures.

Policing bodies continued to question the use of the pass system because it was never codified in Canadian law and therefore not enforceable under the law, but Indian Affairs continued to encourage its use. It also suggested that Indian Agents and the NWMP tell Indigenous Peoples that the pass system was part of the law when it was not. The system was in effect, though not evenly enforced, until the 1930s or 1940s. We still do not have a full understanding of the pass system, especially from Indigenous perspectives. There is evidence that the Canadian government recently attempted to hide the fact that it used the system—illegally—to control the mobility of Indigenous Peoples who lived on reserves. In his documentary, Williams focuses on the oral histories of this form of restriction and segregation.[6] Under the pass system, Williams said, reserves were "open air prisons."[7] The creation of reserves and the control of their borders were ways in which the mobility of Indigenous peoples was limited. They were encouraged to stay put. However, people sometimes were forced to move to attend a residential school far away from home, family, and community or to go to an Indian Hospital in the South, and occasionally whole communities were forced into new locations.

HIGH ARCTIC FORCED RELOCATIONS

> **We were actually on what we called "Prison Island."You were left to your resources, alone, and [no one] worried about running away because you're so far away.[8]**
>
> — LARRY AUDLALUK

Larry Audlaluk and his family were forcibly relocated from Inukjuak, Quebec, to Grise Fiord, Nunavut, in the 1950s when he was two years old. Those relocated suffered greatly and felt like virtual prisoners in the High Arctic, where they were sent to assert Canadian sovereignty. In Inukjuak, the people had the equipment that they needed, and there was plenty of game for food. As Samwillie Eliasialuk recollected, "we lived a secure life at that time, never having experienced hunger." But when they arrived at Grise Fiord, Anna Nungaq said, "there was absolutely nothing, no housing, no medical services. [T]hey just left us there and we saw the ship sailing away and we were just dumped in a place where there was absolutely nothing."[9]

Indeed, this is one of many examples where the state has worked to interrupt the Indigenous right to mobility. At home in Inukjuak, people would have traversed a familiar landscape to harvest, hunt, and visit. Forced relocation interrupted a way of life completely, with ruptures that continue to affect families and communities today.

Unfortunately, Audlaluk's experience is only one of many. There were no treaties or political agreements in place with Inuit when the Canadian government, RCMP, and HBC decided to forcibly move them away from their homelands despite the cost to Inuit life, culture, health, connection to the Land, and economy.

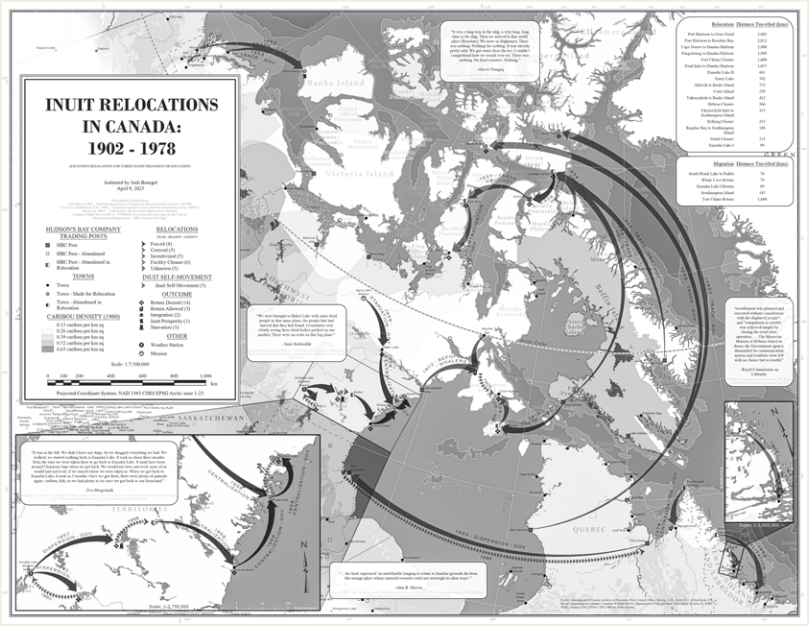
Between 1934 and 1947, Indian Affairs and the HBC thought it appropriate to team up to relocate Inuit living on Qikiqtaaluk (Baffin Island) to Devon Island. This is a revealing example of how, 100 years later, the government and HBC continued to work together in the pursuit of colonial goals. Since time immemorial, Inuit had lived comfortably on Qikiqtaaluk. Fifty-three people, as well as their sled dogs and possessions,

were relocated to Devon Island for a two- year period. Conditions there were harsh, and the outcome was not as the government and HBC had anticipated. All fifty-three Inuit elected to leave after two years. But they were not allowed to return home to Qikiqtaaluk. Instead, they were shipped to Arctic Bay, Fort Ross, and Taloyoak (then known as Spence Bay).

This happened against their will, and these families repeatedly asked to return home. This relocation displaced Inuit from their Lands, and it was a complete failure for the state and HBC, but it set the stage for future relocations. The state reframed these relocations as a need to "save" Inuit from the modern temptations of settler lifestyles and white corruption.

In 1949, the federal government "convinced" Inuit living near Ennadai Lake—without the use of a translator—to move more than 100 kilometres away, to Nueltin Lake. When they asked to leave Nueltin Lake and return home, they were then sent to Henik Lake, and then to Tavani, where several Inuit died. In 1953 and 1955, on behalf of the federal government, the RCMP moved just under 100 Inuit from Inukjuak, Nunavik, and Mittimatalik, Nunavut. Taken away from their traditional territories, these families were moved to High Arctic islands, some as far away as 2,000 kilometres, to the Far North. These islands were desolate, whereas the established communities that Inuit were forced to leave had modern services, were rich with wildlife, and had fertile opportunities for socio-economic growth.

As the federal government shuffled Inuit around the North, they eventually ended up in permanent settlements where white people had moved for work and financial gain. If forced relocations weren't bad enough, during this period the RCMP also killed tens of thousands of qimmitt (sled dogs) belonging to Inuit families. The RCMP claimed that qimmitt were destroyed because of public health and safety concerns, but the Qikiqtani Truth Commission (2007–10) uncovered more to the story. There were some ill qimmitt, and though Inuit wanted to care for them and knew that they'd survive they were targeted anyway. White settlers were afraid of qimmitt and requested that the RCMP kill them, so legal means were adopted to do so.



Inuit families were relocated vast distances away from their home communities and ancestral Lands, as this map shows. Map by Josh Bourget, available on the 2024 Esri Canada Map Calendar: https://map-calendar-esricanada.hub.arcgis.com/pages/jan-2024.

Inuit perceived the killing of qimmitt as intentional, and done in order to get their families to permanently move off their Lands and into modern communities. The absence of dogs changed Inuit relationships with the Land and reduced their abilities to harvest and gain good incomes for their families. Without qimmitt, Inuit thought that they were unable to engage in their traditional lifestyles.

Remember that, during this period, Inuit children were also removed from their families and sent to residential schools, and Inuit of all ages were sent to tuberculosis hospitals in southern Canada. All of these factors (and others) permanently changed the structure of Inuit families and how they connected to their Lands and cultures.

These relocations and dog killings were not done in the best interests of Inuit. The federal government and RCMP told Inuit that, if they "chose" to relocate, they'd prosper. During the 1930s, the government relocated some Inuit so that they could provide the HBC with furs. By the 1950s, the RCMP continued to promise better hunting grounds, but this promise was false and misleading. The relocations were supposed to contribute to the fur trade, but they also kept Inuit away from modern services. Thus, Inuit could live a more "traditional" lifestyle of gathering and hunting and thereby keep the state's financial obligations to them minimal or nonexistent. Newcomers did not respect Inuit or want their culture to persist, nor did they want the financial commitment to them.

These relocations were also about Canadian Arctic sovereignty. Canada feared that it would lose parts of the Arctic to another country. This fear was behind moving people onto Lands so that another country could not make an ownership claim. During the Second World War, the United States had a military presence in northern Canada and even helped to build critical transportation infrastructure. During the subsequent Cold War, Canada felt threatened not only by Russia but also by the United States, whose forces continued to be stationed in the Arctic and increased their military power. The Canadian government needed to populate the territory. Echoing the concerns with interpretation and translation of the Numbered Treaties, there are red flags about how the government communicated to Inuit and how they supposedly gave their consent.

As noted above, some information about relocations was given with no interpreter present. How would English- or French-speaking officials have communicated the details effectively into Inuktitut without an interpreter? The RCMP also told some Inuit that their family members

had already agreed to the relocations. Given the colonial power dynamics at the time, many Inuit thought that they had to agree to the relocations. They were also misled about being able to return home after two years. Relocated Inuit families were in completely new and different environments, and their knowledge of the Land, hunting patterns, and resources was not entirely relevant to the High Arctic. There were many different factors at play: reduced daylight hours during the winter; a longer and more pronounced winter climate; different animal migration patterns; reduced access to fish, shellfish, and edible vegetation; and limited fuel supplies to keep warm in the winter. Not only were their surroundings different, but also some families were strategically located so that they would not be able to access outside supplies. The government also imposed hunting restrictions that, if defied, could result in being fined or arrested. Even worse, some families were split up during relocations.

Many families requested to return to their homes and traditional territories, promised as an option after two years. Inuit were then told that they would have to finance the return themselves. To make matters worse, any money that Inuit trappers had earned for their furs was credited to the federal government's Eskimo Loan Fund, making the move unaffordable. Sadly, some were able to leave the High Arctic only through their institutionalization at an Indian Hospital in southern Canada for tuberculosis treatment.

Larry Audlaluk explains that this experience of being exiled to the High Arctic had a role in the creation of Nunavut. He notes that John Amagoalik, an Inuk known as the "Father of Nunavut," was a High Arctic exile, and that experience contributed to how he thought about the North and then later fought for the creation of Nunavut, the biggest Land claim agreement ever signed in Canada. In 1994, the Royal Commission on Aboriginal Peoples investigated the High Arctic relocations and wrote that Inuit families had no way to give free and informed consent to their relocations. Two years later the federal government established a Reconciliation Agreement with a $10 million trust fund for these relocated Inuit, but this fund diminished because of a collapse in the stock market, and payments stopped in 2009. So, through the creation of reserves and the implementation of the Pass System, Indigenous Peoples were forced to stay put. Yet, through forced relocations, Indigenous Peoples had to move. Either way, they didn't get to decide. Instead, the government decided for them.

INTERNATIONAL BORDERS

> **I have seen many written documents, and I have seen also my grandparents [had] a sort of written document at the time they crossed to Alaska, to Canada. At that time we didn't know where the border was, as a matter of fact.[10]**
>
> — PETER THRASHER, AKŁARVIK, BERGER INQUIRY COMMUNITY TESTIMONY, 1975

Herman Oyagak is Iñupiaq from Alaska, and Carol Oyagak (née Arey) is Inuvialuk from Akłarvik, Northwest Territories. They met at a drum dance festival in Alaska. In 2018, Herman travelled eighteen hours by snowmobile on traditional trails across the Canada-US border to join Carol in Akłarvik. In 2020, the RCMP arrested him in Aklarvik and transported him to SQQmbak'è; he was then released on bond but faced a deportation order from the Canadian Border Services Agency (CBSA). The order was deferred, but the CBSA could send him back to Alaska at any moment.

The onus was on Herman to prove his case to remain in Canada. His lawyer argued that Indigenous Peoples have a right to undertake traditional cultural practices, including hunting, fishing, participating in ceremonies and celebrations, and engaging in family relationships and marriages. Carol explained that "it's our right. We've always travelled back and forth between Alaska and Canada. And we're always going to continue doing it."[11]

The Oyagaks' experience demonstrates how cross-border restrictions complicate and negatively affect the lives of Indigenous Peoples. Before the creation of the Canada-US border and Land claim agreements in each country, the Oyagaks belonged to one nation: Inuit. For thousands of years, Inuit have travelled these Lands unimpeded, married each other, and harvested and hunted on them. They have made relationships with other Indigenous Peoples as well. International border restrictions prevent families, like the Oyagaks, from exercising their rights to mobility, intimate partnerships, and cultural activities and practices. Inuvialuit Regional Corporation Chair and CEO Duane Ningaqsiq Smith said that deportation is about Canada "blindly following process."[12]

How did this happen? Why wasn't Herman able to reside in Aklarvik and have the right to remain on Inuit Lands?

The creation of a border between the United States and British North America in 1783 was the result of the end of the American War of Independence and the Treaty of Paris. Not everything was resolved, though: the location of the border was still disputed, there were high duties and other restrictions, forts remained occupied in each other's territory, and there were disputes about enslaved people escaping to British territories after the American Revolution of 1776. There were concerns, too, about the vitality of the fur trade, and officials worried that a decline would affect Indigenous economies. Indeed, there was reason for concern: before the War of Independence, fur trade economies were flourishing, but their success was dependent on the mobility of Indigenous Peoples across their Lands. Drawing a firm border restricted that mobility.

This all led to the need for a new treaty. The Jay Treaty, or Jay's Treaty, of 1794 is also known as the Treaty of Amity, Commerce and Navigation between His Britannick Majesty; and the United States of America, by Their President, with the Advice and Consent of Their Senate. It is primarily a commercial agreement designed to solve the economic and mobility concerns that emerged with the new border.

The Jay Treaty had many terms, but here are the most important, for our purposes, taken from Article III:[13]

- "The Indians dwelling on either side of the said boundary line" shall be free to "pass and repass by land or inland navigation." This means that Indigenous Peoples were freely allowed to cross the border.
- "No duty of entry shall ever be levied by either party on peltries brought by land or inland navigation into the said territories respectively, nor shall the Indians passing or repassing with their own proper goods and effects of whatever nature, pay for the same any import or duty whatever." This means that Indigenous Peoples were excluded from paying duties on goods carried across the border.

Article XXVIII also states that "the first ten articles of this treaty shall be permanent," including Article III noted above. Yet Britain had to continually reassure the Anishinaabeg, Bodewéwadmik, Wendat, and Odawa that the international border would not affect their mobility. These reassurances were necessary, in part, because the United States attempted to regulate and restrict Indigenous traders.

Over the course of twenty years and two subsequent treaties, the right of Indigenous Peoples to pass freely over the border was expressed. Unfortunately, this right doesn't always hold up today.

For two reasons, Canada does not recognize the Jay Treaty in any form. First, Canada claims that the War of 1812 abrogated ("repealed" or "did away with") the Jay Treaty. Second, the Jay Treaty was never sanctioned by legislation (known as ratification) in Canada. So, from Canada's perspective, when entering Canada, anything to do with the Jay Treaty is irrelevant. The only people who have rights to enter and remain in Canada include Canadian citizens, permanent residents, and those registered as Indians under the Indian Act (i.e., they have status cards). The Canadian Immigration and Refugee Protection Act governs all noncitizens. In 2023, Minister of Immigration Marc Miller said that Canada has no intention of recognizing the Jay Treaty; instead, it is working to increase border movement and flexibility for Indigenous Peoples, an initiative apparently tied to Canada's implementation of the UNDRIP.

When entering the United States, some but not all Indigenous people can use the Jay Treaty to cross the border, legally live and work in the United States, and claim an exemption on duties. In practice, however, US immigration law narrowed the treaty promise: under Section 289 of the Immigration and Nationality Act, only those who can prove they have "at least 50 percent" Indigenous blood are recognized as having this right. As explained earlier, blood quantum is a system of classification used by colonial governments to restrict Indigenous sovereignty and rights or to eliminate or reduce the number of Indigenous people who might qualify for a certain program or agreement. Blood quantum has been harmful and is a part of colonialism. Measuring our ancestral and familial connections against settler-colonial regulations removes our ability to define our nations for ourselves.

Indigenous people who are Canadian citizens must meet US blood quantum requirements to access these benefits. This means that an Indigenous person who is also a Canadian must show documentation

from their band/government/ nation that they meet the 50 percent blood quantum requirement. The United States considers Inuit to be "Indians" if they meet the 50 percent mark, and Métis can benefit too if they satisfy the blood quantum requisite. Having a Canadian Indian Status card or a band membership card—even if it does state blood quantum—will not be sufficient to gain Jay Treaty benefits.

Also, American Indians born in Canada have the right to enter the United States if they show the proper blood quantum documentation from a "Canadian Indian Band" or a "US Indian Tribe" (according to the US Citizenship and Immigration Services webpage). Indigenous people who cannot prove that they meet the 50 percent blood quantum requirement cannot seek Jay Treaty benefits. The Jay Treaty is therefore a tool, if a limited one, to reinstate freedom of mobility among Indigenous Peoples.

There have been other instances when Indigenous Peoples on both sides of the Canada-US border have challenged border restrictions. In 1924, the United States passed its first Immigration Act, designed to limit immigration from Asia and Southern and Eastern Europe, but it also subjected Indigenous Peoples to the same laws as other non-US citizens. In 1925, the US Department of Immigration arrested Kanien'keha:ka ironworker Paul Diabo and his wife for entering the United States without passports. The couple requested an injunction based on the Jay Treaty but were deported to Canada anyway.

A year later Diabo returned to the United States to challenge his deportation. He was well supported by his ironworker colleagues and community since this international movement had implications for the livelihoods of Kanien'keha:ka families. At the same time, Indigenous Peoples in the United States were organizing, and the Six Nations Defense League emerged to fight on behalf of Indigenous Peoples for cross-border rights. The organization was later renamed the Indian Defense League of America.

In 1927, an American court decided that "international treaties recognized th[e] freedom of Indian people to cross the border between the United States and Canada and that there was nothing in American immigration laws to deny that freedom."[14] Diabo had been unlawfully charged and detained, but the government planned to appeal that decision. This became a discussion about the Jay Treaty and the Treaty of Ghent of 1814.

Ultimately, the court decided that the right to free crossing over the international border was not temporary, that this right had not been abrogated by the War of 1812, and that acts of Congress did not apply to Indigenous Peoples unless clearly stated because of their different legal status. Importantly, the ruling applied specifically to "American Indians born in Canada"—the legal category used in US immigration law—and not automatically to all Indigenous Peoples who cross the border. The case instilled political confidence in Kahnawake and encouraged activism on other issues, such as protesting conditions at Indian day schools and early conversations on the Kahnawake Longhouse movement and sovereignty more generally.

Akwesasne is a Kanien'keha:ka community located in both the United States and Canada, with the border dividing the community. There is a longstanding tension between the right of Kanien'keha:ka to cross the border unimpeded and be exempt from duties and the Canadian and American states enforcing border controls.

In 1956, a Kanien'keha:ka man named Louis Francis from Akwesasne purchased a household appliance on the US side of the Kahnawake reserve. Canadian customs charged Francis duty and tax, which he paid but not without protest. About ten years later, in 1968, leader Mike Mitchell—also from Akwesasne—was arrested when he failed to pay duty on household items that he brought into Canada. In February of the following year, protesters blocked the Seaway International Bridge, part of which was in Akwesasne Kanien'keha:ka territory, forcing Canada to recognize the right to duty-free passage for First Nations.

Twenty years later, in 1988, Mitchell again crossed into Canada from the United States and refused to pay duties on his purchased goods. He challenged the duties in court, and both the Federal Court, Trial Division, and the Federal Court of Appeal affirmed that his right to duty-free passage was protected. However, in 2001 the Supreme Court of Canada, in Mitchell v. MNR, overturned those lower-court rulings and held that crossing the border with goods duty-free is not an established Aboriginal right under Section 35 of the Constitution Act, 1982. This final ruling marked a reversal, since earlier courts had sided with Mitchell, but the Supreme Court's decision became binding precedent. It was Chrétien's Liberal government that appealed Mitchell's earlier court victories, leading to the 2001 Supreme Court decision against him.

Mique'l Dangeli of the Tsimshian First Nation in British Columbia was born just outside Canada, on the US Annette Islands Indian Reservation. In 2018, Dangeli sought registration under the Indian Act in Canada so that she could remain in British Columbia, but the approval hinged on obtaining nineteenth-century baptismal records of her great-great-great-grandmother. Dangeli says that "Canada dissects Indigenous territories in ways that sever the lifelines between First Nation families, communities, languages and ceremonies." Pointing to the fact that Canada doesn't acknowledge the Jay Treaty, she rightly asks "how is it possible that the US, with its extreme policies against immigration, honours the rights of Indigenous peoples regardless of citizenship and Canada does not?"[15]

There are many more examples of how the US-Canada border and the Jay Treaty have complicated and restricted the sovereignty and mobility of Indigenous Peoples in what is now known as Canada. Animals have also been affected by this border. One example is the Porcupine Caribou Herd in Yukon and Alaska, central to the members of the Gwich'in Nation. Indeed, Gwich'in territory and caribou territory overlap each other and cross multiple borders, requiring American-Canadian cooperation on conservation and mobility patterns. Inuit Tapiriit Kanatami President Natan Obed has also been calling on the Canadian government, including immigration ministers, to rectify border problems. Inuit Nunangat, for example, spans parts of Canada, Greenland, Russia, and the United States. In these regions, Inuit have shared families, hunting areas, and marine management strategies. Obed sees legal reform of the Canadian Immigration Act as "reconstituting our nation in the way that we have always lived in it."[16] For him, changes to Canada's border rules can result in greater Inuit sovereignty.



Kahentinetha Horn, a Kanien’keha:ka activist and model, delivers a message to Buckingham Palace in London in 1969, asserting the continued relevance of the 1794 Jay Treaty. The treaty affirms the right of Indigenous Peoples to cross the US-Canada border freely and in perpetuity. Photo courtesy of Paul Seesequasis.

EXERCISING THE RIGHT TO MOBILITY

> **Too often, our passports are denied by the very countries that took our land.[17]**
>
> — SID HILL

Indigenous Peoples have a right to mobility. In July 2022, Crystal decided to try crossing the US-Canada border (at the Coutts-Sweetgrass crossing) with her Jay Treaty rights to put them to the test. Information about how to cross the border using Jay Treaty rights was not easy to find. It often feels like the system is designed to withhold knowledge from Indigenous Peoples, and this was the case for exercising Jay Treaty rights under US law.

Crystal's conversation with the US border agent centred on two aspects: blood quantum and documentation. Recall that the United States requires 50 percent "Indian blood" and documentation as proof. First, a letter confirming ancestry and blood quantum cannot come from Indigenous Services Canada because, for the US government, registration under the Indian Act is not sufficient to prove your blood quantum. The letter needs to come from your band or Indigenous government or organization, be written on letterhead, and be signed by a representative.

The letter also needs to include the date of writing, name and date of birth of the traveller, enrolment or membership number related to your nation, Indian Status number, blood quantum in percentage, and detailed information about parents and grandparents (names, birth dates, nationalities, nation/band, Indian Status number, and blood quantum in percentage). It is smart to check with your band, government, or organization about these letters. Some might be quick to respond, but there are accounts of these letters taking more than two years. Bands also have different policies, and some might believe that it is inappropriate to write such a letter.

Second, Jay Treaty border crossing requires an original long-form birth certificate. It can be ordered through the provincial or territorial government of birth. The US border agent told Crystal that not all agents require the long-form birth certificate, but it's still smart to have one.

Letters provided by Indigenous bands, governments, and organizations are sometimes incomplete, so secondary documentation (the long-form birth certificate) is necessary. Third, you will need a valid Canadian passport or Indian Status card.

Even if all of your documents are in order, border entry under the Jay Treaty can be complicated depending on the agent and where you cross. There can be delays, verifications, and questions. Border crossings are not always safe because of ongoing stereotyping and racial coding. Indigenous travellers who enter the United States have also noted that, because of the Jay Treaty and the fact that they are perceived not as immigrants but as people with rights, their experiences have been more pleasant than those of their counterparts who enter Canada for a declared purpose.

To be clear, you are not entitled to dual Canadian-American citizenship under the Jay Treaty. You have the right to permanent residency in the United States. According to US Customs, the best option for Indigenous people who cross the border regularly under the Jay Treaty is to obtain a permanent resident card or a green card. How do you get one?

Lawyer Heather Fathali advises that you make an appointment with US Customs and Immigration so that you have dedicated time to discuss your application. According to her, all relevant documents will need to be presented, including a valid Indian Status card (obtained under the Indian Act), a valid Canadian passport, a letter detailing blood quantum in percentage, a long-form birth certificate, and two passport photos. Then you will fill out an I-485 form (used for green card applications). Then you will need another appointment (which might include travel to a major US city) to have digital fingerprints and photographs taken. If your application is approved, then your green card will be mailed to a US address. This process can be tricky, especially if you live in a remote region, such as the North, where you cannot easily travel for appointments or you do not have the financial means to engage in this process.

In 2016, the Standing Senate Committee on Aboriginal Peoples ordered the federal government to address Canada-US border crossing challenges faced by First Nations communities. Indigenous and Northern Affairs Canada appointed Fred Caron as the minister's special representative on First Nations border-crossing issues. Indigenous Peoples provided Caron with feedback on what can be changed and improved.

According to his report, First Nations consider border-crossing mobility issues a significant breach of their treaty rights.

Caron's report summarized a number of concerns:

- a lack of recognition of inherent rights;
- effects on familial and cultural connections, essential to cultural survival;
- current identity documents that do not take into account the desire of Indigenous Peoples to identify themselves as sovereign citizens of Indigenous Nations or as treaty peoples and the length of time that it takes to obtain official identity documents;
- the CBSA treatment of Indigenous people (inappropriate and/or disrespectful treatment, profiling, racism, improper handling of cultural items; and
- the imposition of duties on personal goods and items of historical trade inconsistent with inherent rights.



Haudenosaunee have long travelled throughout the world with their own passports, embracing the full rights extended by international law and diplomacy. Unfortunately, not all nationstates recognize their sovereignty or use of the Haudenosaunee passport. Photo courtesy of Susan Hill.

Solutions put forward in the report include the following:

- the ratification by Canada of the Jay Treaty;
- a legislative or other framework for the recognition of rights;
- a relaxation of Canadian restrictions on entry for Native Americans with criminal offences on their records;
- a review of import restrictions as they relate to traditional medicines;
- modification of the Canadian passport to allow for the identification of an Indigenous person;
- creation of secure identity cards issued by First Nations for travel at Land border crossings;
- improvement of service standards for issuing Status Indian cards;
- mandatory cultural awareness training for CBSA officers and increased hiring of First Nations people as CBSA officers;
- separate lanes for First Nations people at certain ports of entry;
- relaxation of import and export duty rules for goods; and
- the relocation of some ports of entry (e.g., Akwesasne and White River First Nation in Yukon).

Some have suggested that the best solution is to create a separate passport system and framework for Indigenous Peoples.

A passport is a travel document that verifies your identity and nationality. It reflects your membership in a particular nation. That Indigenous people are expected to get a Canadian passport can be viewed as another aspect of colonialism since some Indigenous people think of themselves not as Canadian but as citizens of their own nations. Nevertheless, nearly all Indigenous people have felt compelled to obtain

Canadian passports. But some nations have implemented their own passport systems for international travel. Anthropologist Audra Simpson notes that the creation of a separate passport system is just one example of an Indigenous Nation asserting its sovereignty and drawing from Indigenous governance structures.[18]

Haudenosaunee, for example, have made efforts going back more than a century to instill their own passport system. In 1920 and 1923, Haudenosaunee Hereditary Chief Deskaheh (also known as Levi General) travelled to Geneva to discuss sovereignty claims with the League of Nations and King George V, under a Haudenosaunee Confederacy–issued passport. The claims to sovereignty rested on Haudenosaunee interpretations of the Treaty of Canandaigua and the Jay Treaty. In Deskaheh's view, these treaties "recognized the collective sovereign status and territorial integrity of the Confederacy and affirmed peace and friendship between it and the United States."[19]

These passports have been used with varying degrees of success. In 1977, the Swiss government accepted Haudenosaunee passports for delegates attending a UN conference on Indigenous rights. In following years, other countries, such as Canada, the United Kingdom, and the United States, also accepted Haudenosaunee passports as official documents for the purpose of travel. In 2005, a delegation travelling on Haudenosaunee passports to Japan was able to enter the country without incident. In 2018, Israel also accepted Haudenosaunee passports but needed reassurances from Canada before doing so. Ireland also accepted them in 2022. In 2010, three Kanien'keha:ka of Kahnawake were travelling on Haudenosaunee passports, returning from Bolivia. They were delayed for seventeen days in El Salvador. Simpson discusses this delay in Mohawk Interruptus and notes that the travellers refused emergency travel documents from Canada (i.e., Canadian passports). Instead, they waited an additional ten days and were finally allowed to enter Canada with their Haudenosaunee Confederacy passports.[20]

In the same year, the Haudenosaunee National Lacrosse Team was denied entry into the United Kingdom because its government refused to recognize the Haudenosaunee passport. The team was supposed to compete in the World Lacrosse League Championship, a sport that the Haudenosaunee themselves had helped to invent a thousand years earlier. The national team did not compete in the United Kingdom that year

despite having used Haudenosaunee passports for travel to international competitions for three decades prior.

Some might argue that this refusal was the result of tightened international travel security after the terrorist attacks in 2001. But it could also be an example of how settler states and governments are less willing to understand and support Indigenous expressions of sovereignty in terms of mobility. But the fact that some countries have continued to accept Haudenosaunee passports since 2001 suggests otherwise, even though recognition remains inconsistent. They are sometimes called "fantasy passports," documents that look like passports but are only a souvenir or novelty. Labelling them as such is a tactic to undermine or belittle Indigenous sovereignty more generally but especially in relation to mobility. The problem, of course, with allowing (or tolerating) Indigenous Nations to create their own passport systems and use non-Canadian passports is this: the very act calls Canada's authority and sovereignty into question.

The passport issue will likely remain unresolved for some time. But having these conversations about Indigenous mobility, how it is regulated, and who decides who belongs where is a step in the right direction. Exercising these rights can have profound outcomes for how we practise our cultures and rebuild our nations. We can travel to harvest medicines, visit and reconnect with family members and Elders, engage in celebrations and ceremonies, and even live and work in another country. There can be many other benefits, such as being able to attend a university as a domestic student rather than an international one (saving loads of money on tuition) and purchasing less expensive items in the United States. It's important to note, though, that not all Indigenous Peoples are entitled to these rights.

The conversation also connects to global movements for the right to mobility. For example, the No One Is Illegal movement advocates for the rights of migrants globally. People should be able to stay, move, or return whether they are privileged or not. In many contexts, activists connect migrant rights and Indigenous rights in the sense that no one is illegal on stolen Lands; Indigenous Nations, not settler governments, have inherent authority over migration.

REFERENCES

1. Quoted in Audra Simpson, *Mohawk Interruptus: Political Life across the Borders of Settler States* (Duke University Press, 2014), 115.
2. Chelsea Vowel, *Indigenous Writes: A Guide to First Nations, Métis and Inuit Issues in Canada* (Highwater Press, 2016), 260–61.
3. Canada, *Constitution Act,* 1867 (UK), 30 & 31 Vict., c. 3, reprinted in *Revised Statutes of Canada* 1985, app. II, no. 5, s. 91(24).
4. Government of Canada, "Treaty Texts: Treaty No. 6" (Queen's Printer and Controller of Stationery, 1964).
5. Alex Williams, dir., *The Pass System* (V Tape, 2015).
6. Williams, *The Pass System*.
7. Quoted in Kerry Benjoe, "First Nation Reserves Prior to 1960s Were 'Open-Air Prisons,' Says Saskatoon Filmmaker behind *The Pass System,*" Regina Leader Post, November 26, 2015.
8. Quoted in Jane Sponagle, "We Called It 'Prison Island': Inuk Man Re- members Forced Relocation to Grise Fiord," *CBC News,* June 30, 2017.
9. Quoted in Royal Commission on Aboriginal Peoples, *The High Arctic Relocation: A Report on the 1953–55 Relocation* (Canada Communication Group Publishing, 1994), 25.
10. Peter Thrasher, testimony to the Mackenzie Valley Pipeline Inquiry, community hearing, Aklavik, N.W.T., April 2 1975, in *Mackenzie Pipeline Community Hearings* 1975–1976, vol. 1 (Allwest Reporting Ltd., 2003, electronic ed.), 12.
11. "Family in Aklavik, N.W.T., Hopeful after Minister Says Indigenous People Have Right to Move Freely: Federal Immigration Minister Said It Should Be Easier for Indigenous People to Cross International Bor- ders," CBC News.
12. Quoted in Emma Tranter, "'We're Going to Fight This': Deportation of Inupiaq Man Living in Canada Deferred," *The Canadian Press,* Decem- ber 10, 2021.
13. Great Britain and United States. *Treaty of Amity, Commerce, and Navigation* ("Jay Treaty"), signed November 19, 1794, art. III.
14. Gerald F. Reid, "Illegal Alien? The Immigration Case of Mohawk Iron- worker Paul K. Diabo," *Proceedings of the American Philosophical Society* 151, no. 1 (March 2007): 71.

15. Quoted in Amy Smart, "Indigenous Woman Fights to Stay in Canada, Says Traditional Tsimshian Territory Is BC," National Post, June 20, 2018.

16. Olivia Stefanovich, "Immigration Minister Says He Wants to Make It Easier for Indigenous People to Cross Borders," *CBC News*, September 29, 2023.

17. Sid Hill, "My Six Nation Haudenosaunee Passport Is Not a 'Fantasy Document,'" *The Guardian*, October 30, 2015.

18. Simpson, *Mohawk Interruptus*, 19.

19. Reid, "Illegal Alien?," 78.

20. Simpson, *Mohawk Interruptus*, 18.







Borders Hide the Horizon is an Indigenous internationalist study of imperialism, migration, and the horizon of possibility beyond the colonial border.

LEARN MORE

bhth.yellowheadinstitute.org