

Nation Building: Reclaiming Indigenous Laws and Increasing Foundational Capacity

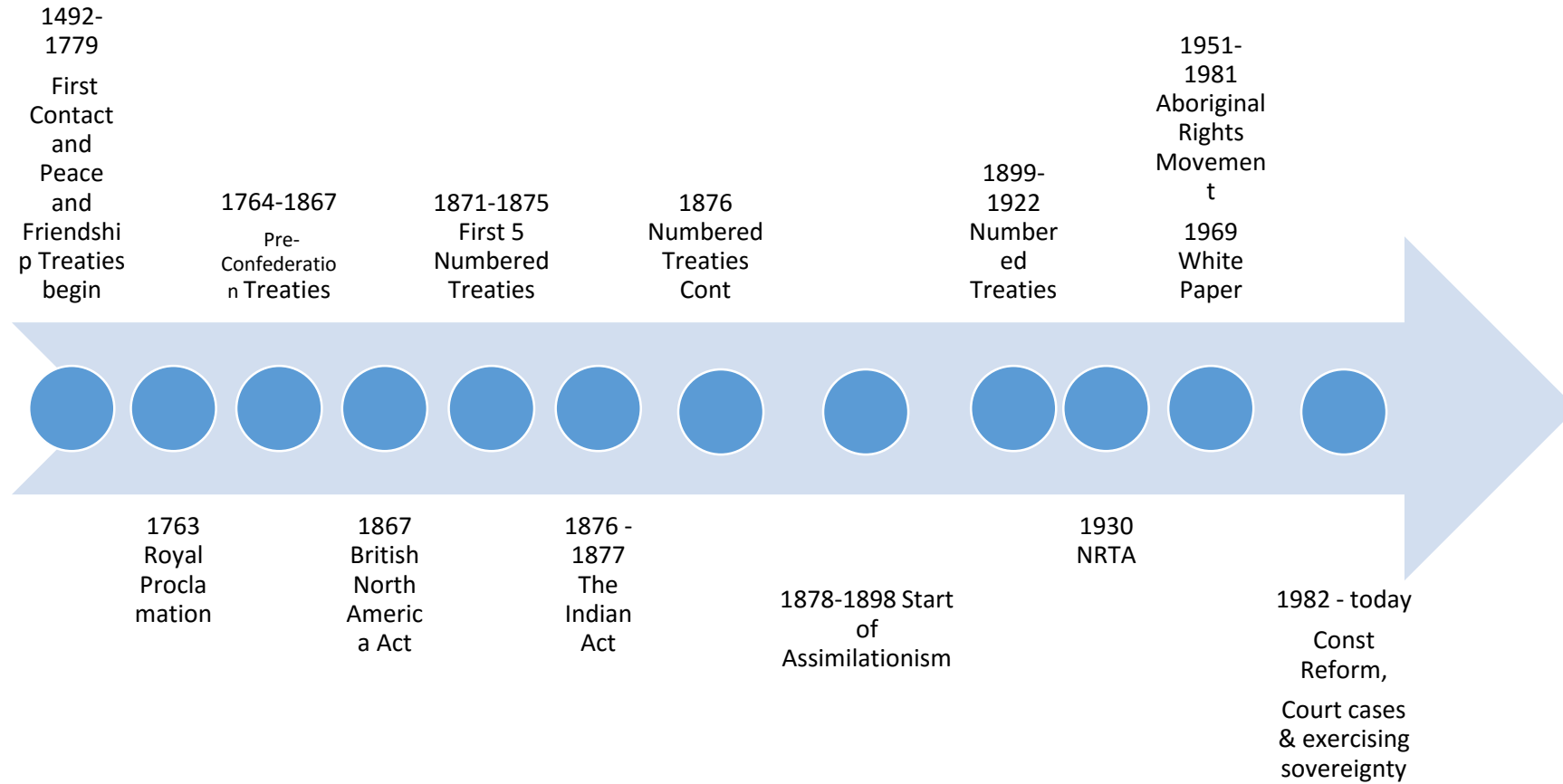
JSGS Public Lecture

October 23, 2017

Materials from HPAIED, NNI, Manley Begay Jr.

Status		
International Sovereigns	Military Alliances, land grabs, conflict inter & intra	Treaties The Royal Proclamation Treaty of Niagara
Domestic Sovereigns	Reservations	Marshall Trilogy
“Indian civilizing”	Banning cultural practices Residential Schools	Indian Act Indian Reorganization Act (IRA)
Termination Era	60s scoop Pass System	Dawes Act White Paper
“Self-determination recognition”		Court Cases Indian Act Amendments
Self-governance/self-government	Modern-Day Treaties Land Claims & Agreements	First Nations Land Management Act Nations Oil and Gas Money Management Act First Nations Commercial and Industrial Development Act

Brief Timeline



What Makes Nations Strong?

- Federal grants?
- A great location?
- Education?
- Huge influx of capital?
- Picking the right leaders?
- Community support?
- Luck?

What Makes Nations Strong?

Governance on your own terms, for your own needs, in your own way.

Nation Building: Five Principles

- Cultural Match
- Leadership
- Institutional Capacity
 - Effective Institutions of Self-Governance
- Practical Sovereignty
 - Jurisdiction (Practical Self-Rule)
- Strategic Orientation/Decision-Making

Nation (re)Building/(re)Strengthening

The enhanced capacity of Indigenous nations to realize their own cultural, educational, economic, environmental, and political objectives through foundational actions of their own design and initiation.

-Harvard Project on American Indian Economic Development (HPAIED)

Governing Tools

- Financial Resources and Financial Management
 - First Nations government's capacity to manage its financial resources productively and with integrity
 - Self-determination depends in part upon Native nations having financial resources that are under their own control
 - Native nations escape dependence on other governments for support, they become free to do things in their own ways and for their own purposes.
- Intergovernmental Relations
 - Municipal, rural, provincial, federal, international, and other First Nations
 - Industry and other external partners

Governing Tools

- Economy
 - First Nation Owned Enterprises, entrepreneurs, joint ventures, traditional pursuits
 - appropriate boundary between business and politics
- Human capital
 - people with the skills, knowledge, and commitment needed for nation building and governance
- Capable Tribal Administration
 - administration implements its decisions promptly and effectively, provides efficient management of programs and services, and gets things done.

Governance Strengthening: Governing Tools

- Citizen engagement
 - a community that is educated about and engaged with its own government
- **Legal Foundations**
 - constitutions
 - separation of powers
 - written and/or unwritten
 - clear distinction between the roles of your executive, legislative, judicial, administration
 - legal infrastructure and regulatory environment

Indigenous Stories, Traditions, Teachings: recordings and/or mapping

- Blackfoot Digital Library

<https://www.blackfootdigitallibrary.com/>

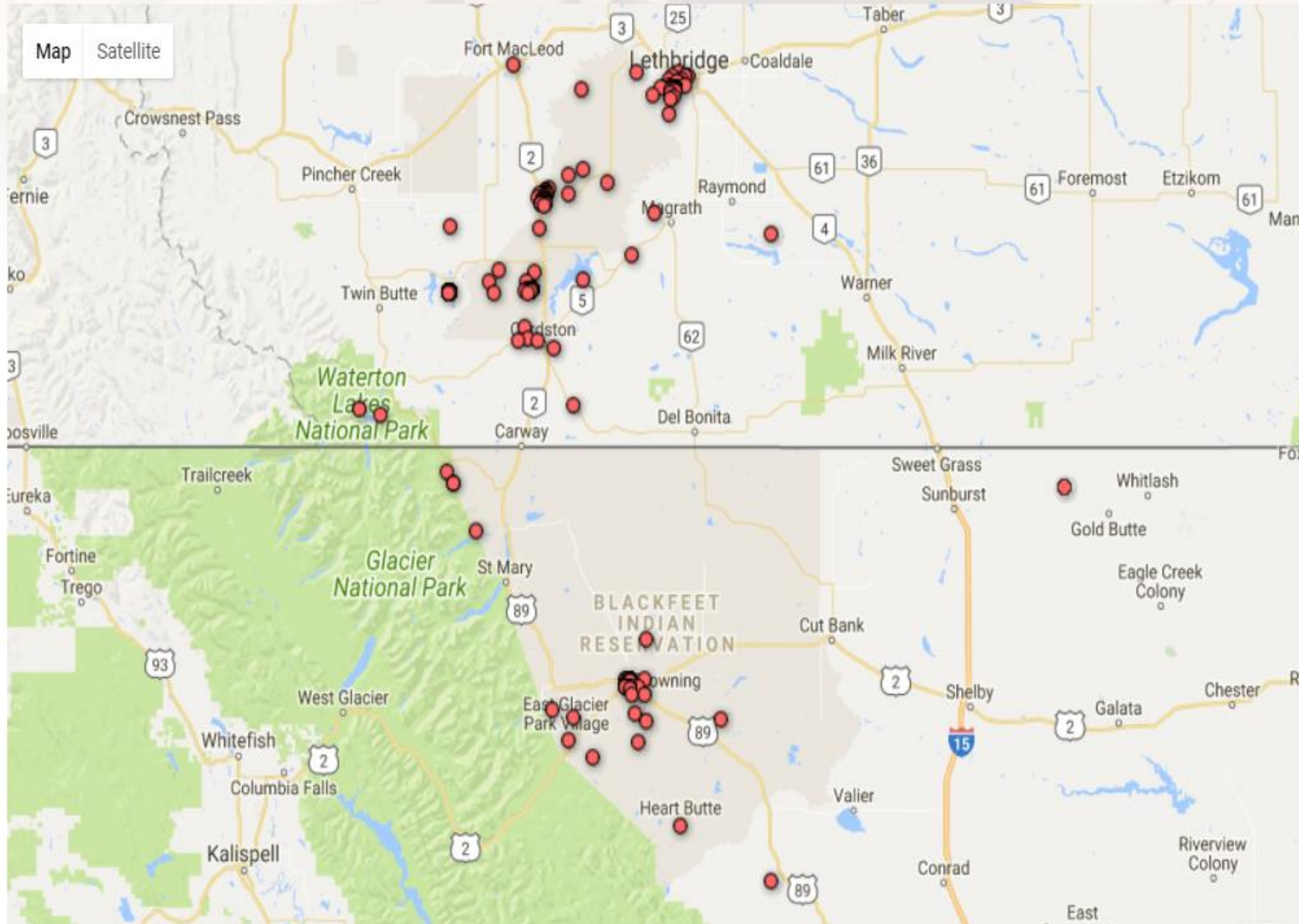
- Haulapai Cultural Atlas

- Gwich'in Social and Cultural Institute – mapping:

<http://atlas.gwichin.ca/index.html>

- Ngurrara – Australian National Native Land Title Tribunal
- Maya Atlas, Belize
- Miskitu, Northeastern Nicaragua

Explore





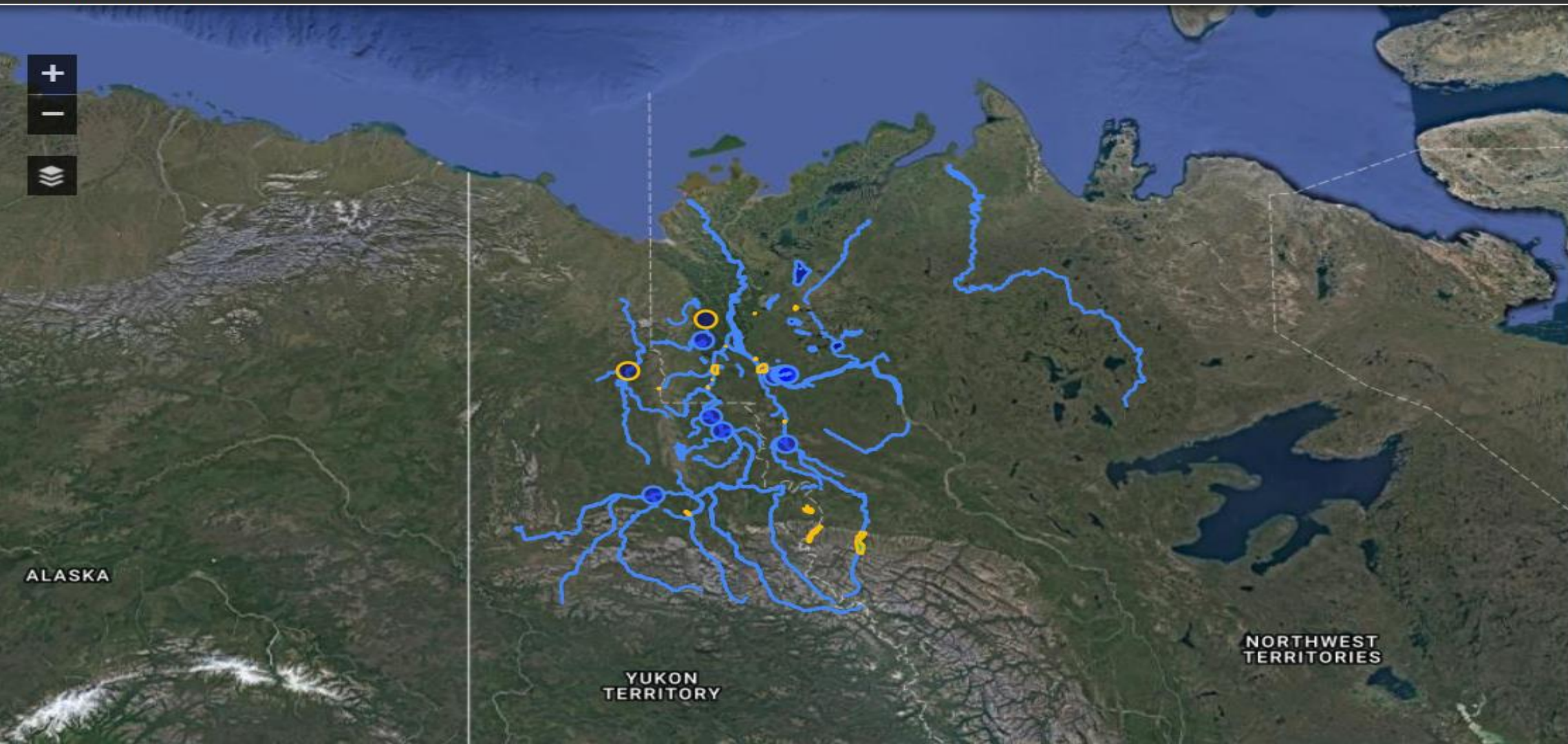
Gwich'in Place Names Atlas

PDF Maps

About

Credits

Gwich'in Place Names Atlas



ALASKA

YUKON
TERRITORY

NORTHWEST
TERRITORIES

Examples of Indigenization of Law

- Indigenous Law Research Unit (ILRU), University of Victoria
- RELAW project of West Coast Environmental Law
- Centre for Maori and Indigenous Governance

Indigenous Law Research Unit

“We believe Indigenous laws need to be taken seriously as laws. We partner with and support work by Indigenous peoples and communities to ascertain and articulate their own legal principles and processes, in order to effectively respond to today’s complex challenges.”

RELAW project, West Coast Environmental Law

- Revitalizing Indigenous Law for Land, Air and Water (RELAW)
- Use of storytelling to preserve culture and history, identity
- Knowledge holders share – creation, land stewardship, traditional ways of life – break down principles and using them in the creation and application of Canadian law
- “...laws can be used to benefit our community—to give credence to the use of our sacred beliefs in administering community programming, business, and interaction with the world around us.”

Western Legal System

- Common law – precedent and case law
- Statutory law – written laws
- FN Law is recognized within it

Storytelling & Traditions

- Used for generations
- Vital tool for transmission
- Can lose meaning when translated

To constitute a tradition, a past belief or practice must be transmitted by some individuals, in one time and place, and received by others. Without transmission and reception, a tradition dies. Its transmitted quality means that a tradition is not a static thing in time, but rather something that necessarily changes as the particular individuals who receive the tradition, interpret it, integrate it into their own experiences, and make it their own. As it is interpreted, tradition necessarily changes; in fact, tradition is altered by the very fact of trying to understand it. – K.T. Bartlett, 1995

Verbal Law Library

- Recordings of stories, teachings and traditions
- Headnotes
- Index
- Interpretation Act – Indigenous language was paramount when conflict arises
- Allowance of precedent and conflicting or inconsistency

Methodology: ILRU

1. Specific Research Questions
2. Case Analysis
3. Creating a Framework – primer, synthesis, and legal theory
4. Implementation, Application and Critical Evaluation

Methodology: ILRU

1. Specific Research Questions

- Critical evaluation – application, specific, scope, complexity
- Not just collection of stories, philosophies

2. Case Analysis

- Case name, issue, facts, decision/rationale, reasons/ratio/holding, bracket

Methodology: ILRU

3. Creating a Framework – primer, synthesis, and legal theory

4. Implementation, Application and Critical Evaluation

Risks & Challenges

- Use of Western system further legitimizes, endorse over Indigenous
- Lack of citizen and knowledge/language keeper engagement
- Lack of language, knowledge
- Fear of sharing, cultural misappropriation, misuse
- Inadequate storage, methodology
- Fear of crystalizing
- Lack of resources – human, lands, knowledge, finances

Benefits

- Preservation, revitalization of culture, language, and identity
- Accessibility and use – by First Nations
- Credibility and elevates stories and oral traditions to legal systems – values, dispute/conflict resolution, protections, pedagogy, court cases/evidence
- Growth, increase sharing and inform external laws and policies

Questions

Contact Info:

Dr. Jaime Lavallee – Jaime.Lavallee@FHQTC.com