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Kenichi Matsui, Native Peoples and Water Rights: Irrigation, Dams, and the Law in Western Canada

Kenichi Matsui, *Native Peoples and Water Rights: Irrigation, Dams, and the Law in Western Canada*, McGill-Queen's University Press, Montreal, Canada (2009); 243 pp; \$95.00; ISBN 978-0773535213; hardcover.

Native Peoples and Water Rights: Irrigation, Dams, and the Law in Western Canada examines the historical movements and events that gave rise to Native water rights in Canada. Specifically, Kenichi Matsui examines the interactions between Canada's provincial and federal governments and its First Nations from the 1870s to the 1930s. In seven chapters Matsui examines the practical implications of a Lockean approach to colonialism and how it gave rise to water conflicts, irrigation regimes, and rights to waterpower in British Columbia and Alberta. Matsui's hope is that his historical perspective will shed light on "the current enigma about Native water rights questions in western Canada."

Chapter One provides the theoretical backdrop that colored British expansion into western Canada and concludes with a convenient, chapter-by-chapter summary of the rest of the book. The book opens with an extended quote of Edward Bulwar Lytton, Britain's colonial secretary from 1858-59. Matsui extracts from Lytton the ideological aims of British colonialism: "[Not] to fight against men, but to conquer nature; not to besiege cities, but to create them; not to overthrow kingdoms, but to assist in establishing new communities." Such a vision did not rely on the area's traditional fur trade and gold mining; rather it would be built by yeomen on family farms. The yeoman ideal harkened back to the colonial theories of John Locke and Thomas Jefferson to which Matsui refers throughout the book. This Lockean approach to colonialism, however, assumes that the land is both suitable and available for farming. Matsui's main critique of Lytton's position is that the British based their vision on the assumption that the area was a "no man's land" recently opened for civilization. In fact, one of Matsui's goals with this study is to emphasize the intertwined relations between Natives and non-Natives, and he asserts that the dynamic nature of those relations gave rise to the highly localized nature of Native water rights issues.

Chapter Two further explores the connection between the yeoman ideal of Locke and Jefferson and western Canada's colonial culture. Here, Matsui presents the three component parts that gave rise to what he refers to as "a Water Rights Culture." First, he stresses the utilitarian view Locke placed on land and property rights. Specifically, Locke believed that one establishes one's property rights by investing labor into the beneficial use of land. In the arid west, this same idea extended from land to water rights. This 'labor theory of property' justified the Lockean sentiment that Native lands were *tabulae rasae*, or blank spaces, because landowners had not yet properly utilized them. Second, Matsui highlights the American and Canadian legal and political processes that put this theory into colonial practice. One

common feature was a system of federal land grants to non-Native settlers in exchange for improvement of the land. Because the land granted by the government was often arid, the establishment of a system of family farms gradually led to widespread introduction of irrigation programs. Finally, Matsui explores the creation of the notion of Native water rights with a discussion of the *Winters* doctrine. In 1908, the Supreme Court of the United States decided *Winters v. United States* which addressed the applicability of the prior appropriation regime to Native Americans in Montana. The court held that prior appropriation did not apply to Native water rights because when the federal government reserved land for Native use, they also meant to reserve water as well. Matsui argues that this decision was a product of the movement in North America that sought to “transform the Natives into yeoman farmers” so they could be integrated into and advance in non-Native society. This movement had traction at the federal level in Canada, but it was at odds with provincial ideas.

Chapter Three discusses the battle for administrative control of water on Native reserves between federal and provincial governments in Canada using British Columbia as an example. Matsui calls this dispute for jurisdictional control one of the most significant events in the development of Native water rights in Canada. Matsui looks to the history of British Columbia’s water rights legislation and argues that it laid the foundation for the province’s assertion of authority against the Dominion government. Matsui examines the Gold Fields Act (1859), the Land Act (1875), the Water Privileges Act (1892), and the Water Clauses Consolidation Act (1897) and argues that all four provincial laws were an effort by the province to consolidate the administration of power over all land and water resources in the province. Even after such legislation gave rise to litigation between the province and the Dominion – with the Dominion government prevailing – British Columbia passed the Water Act in 1914 to outline the process for obtaining a water license. The Dominion, for its part, attempted to assert its exclusive jurisdiction over Native lands and water as established in the British North America Act of 1867. Matsui argues that the Dominion attempted to stress this power until 1921 when a dispute resulted in the Indian Water Claims Act of 1921. This act effectively gave the province power over Native water rights. Matsui closes this chapter by reminding the reader that in all these debates, both governments assumed that the water was theirs to distribute based upon Lockean ideals and the Western notion of priority-based rights. He concluded by stating that “[t]his systematic marginalization of Native voices has bedeviled the Aboriginal rights struggle in British Columbia to the present day.”

Chapter Four analyzes the water conflict that arose between settlers and the Secwepemc people in the southern interior of British Columbia. Here, Matsui’s goal is to “show the complexities of Native-newcomer relations surrounding water rights disputes.” His analysis begins with a discussion showing how the Secwepemc adapted to form a new farm-based society in the early “postcontact era.” Their farming

was greatly hindered, though, when much of their water reserves were distributed to incoming settlers by the federal and provincial governments. Matsui outlines one specific struggle for the waters of Paul Creek near Kamloops as it played out between the Western Canadian Ranching Company and the Kamloops Indians (a division of the Secwepemc). This battle eventually went to an administrative appeal in which the court decided in favor of the Secwepemc people. That decision was reversed, though, by the British Columbia Court of Appeal that made null the Dominion's attempt to give the Kamloops a priority right that preceded the one held by the ranch company. Matsui summarizes this case study by characterizing it as a complex episode with various parties and competing agendas that created a "localized and heterogeneous culture of Native water rights."

Chapter Five discusses irrigation projects on native lands and examines the Siksika people living on the Blackfoot reserve near Calgary. Matsui examines two case studies to exemplify the Native people's forced shift from a buffalo-hunting economy to an agricultural one. Matsui argues that the government thrust this new way of life upon them in an effort to make them civilized land owners. Integral to this process was the implementation of large-scale irrigation methods used to farm the semi-arid land. The first case study offered by Matsui is a project undertaken by the Calgary Irrigation Company. That company sought to build an irrigation system through the Sarcee reserve for which they had to compensate the Tsuu T'ina people. Historians have not accurately documented whether the Tsuu T'ina ever did fully consent, but the company's efforts soon fell into disrepair and they filed for bankruptcy, defaulting on their promises to the Native people. The next case study examines an irrigation project undertaken on the Blackfoot reserve. When the Native people living there began construction of their own irrigation system, the federal government sought to aid them with technical oversight. Government officials were frustrated, though, by the Siksika's insistence on attending the traditional Sun Dance during two crucial farming months in the summer. Despite many officials insisting that the ceremony would detract from their farming success, the Blackfoot ditch was one of the most effective irrigation systems introduced to the area. However, the region's federally sponsored irrigation projects eventually ended in the early 20th century at the hands of harsh natural conditions and flooding. Later, after the Siksika made a few profitable land sales, their agricultural economy blossomed without governmental aid, and by 1921 they were competitive with many non-Native farms in the area. Matsui concludes by arguing that the government could have best aided the Native people with consistent programs and actions.

Chapter Six examines the construction of hydroelectric dams with the goal of gaining insight to the socio-economic impact on neighboring Native communities. Matsui begins the chapter with an examination of the nature of hydroelectric development in North America. He explains that hydroelectric generation gained popularity from 1859 to 1903 with the invention of the turbine. The idea had

significant traction in the area surrounding Calgary in that city's struggle to become an economic hub. Matsui offers three examples of early developments on the Bow River downstream of Calgary: (1) the Horseshoe Dam; (2) the Kananaskis Dam; and (3) the Ghost Dam. All three affected the Stoney Native reserve, and each project offered its own distinctive negotiating challenges for the Stoney Nakoda people living there. The 1907 negotiation concerning Horseshoe Falls set an important precedent when the Stoney Nakoda "surrendered" portions of the reserve to the federal government. This effectively established that they had proprietary rights to begin with and allowed them to incorporate the idea of forcing the government to make annual rental payments for waterpower. In 1913, the Stoney Nakoda surrendered what they referred to, significantly, as their "riparian rights" to water and waterpower with respect to Kananaskis Falls. By the 1928 negotiations concerning the Ghost Dam, it was an accepted principle that the Native peoples owned rights in the water for which the government must compensate when they surrendered those rights.

Chapter Seven gives a concise summary of the substantive material and provides a succinct context to the case studies of the previous chapters. It is a useful review because the concepts that Matsui addresses are alternately technical and theoretical. This final chapter does well to connect those concepts.

Native Peoples and Water Rights offers a theoretical approach to the historical developments that gave rise to modern day Native water rights in Canada. Matsui writes in two tones; one is a scholarly discussion of colonial approaches and the other is a pointed recitation of case studies. Though limited in its usefulness to the modern day practitioner, it will prove a valuable and insightful read for those interested in Canadian development of Native water rights.

Robert Westfall

M. Ramon Llamas et al. eds., *Water Ethics: Marcelino Botín Water*

Forum 2007, Taylor and Francis Group, London, (2009); 368 pp.;

\$149.95; ISBN 978-0415473033; hardcover.

Water Ethics: Marcelino Botín Water Forum 2007 is a compilation of nineteen papers presented and discussed at the Third Marcelino Botín Foundation Water Workshop held in Santander, Spain, in June 2007. The workshop brought together experts from various cultural, geographic, and religious backgrounds to inspire open and diverse dialogue on the role of ethical considerations in water development and management. The papers cover a wide-variety of topics and are divided into eight sections: (1) Cultural Traditional Approaches on Water Ethics; (2) Ethical Aspects of New Water Management; (3) Water as a Human Right and as an Economic Resource; (4) Water and Poverty; (5) Ethical Aspects of Groundwater Use; (6) Ethics of Water Ownership and Management; (7) Corruption, Transparency, and Participation in the Water Sector; and (8) Ethical Aspects of