

# Politicizing the Soil: A Study on Indigenous Land Rights, Activism and Art in Canada

Debkanya Banerjee

Department of Comparative Literature Jadavpur University Kolkata, India.

Email: debkanya3@gmail.com

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## Abstract

This paper attempts to analyse the nature of Indigenous land rights in Canada and how they survived and changed after the British Crown acquired sovereignty over the land. Though this analysis is historical it shall remain incomplete without understanding its present state and the role of the United Nations in safeguarding the rights of the Aboriginal people. This paper will elaborate on the concept of reconciliation and its various forms. The second section of this paper will thoroughly explore the incidents of the Oka Crisis. I will bring to the forefront the background information that led to the crisis, how it affected the Indigenous people and the role of contemporary media in framing the events. Lee Maracle's novel *Bobbi Lee: Indian Rebel* and Beth Cuthand's poem *Post-Oka Kinda Woman* will show how the Oka Crisis reassesses the conventional role of women in any kind of activism. The third section of this paper will emphasize films and visual arts that were inspired by the events at Oka. A comparative study of Alanis Obomsawin's film *Kanehsatake:270 Years of Resistance*, Tracey Deer's film *BEANS*, and Thomas Deer's illustrations shall foreground the relevance of the Oka Crisis today and why it should be considered a landmark political issue in the history of Indigenous land rights movement in Canada. The paper will conclude by engaging in a discussion on the current socio-political relationship of the Indigenous people with the Canadian Government and identify the loopholes in the current governmental reconciliatory approach.

**Keywords:**Films, illustrations, Indigenous Activism, Land rights, Oka Crisis, Reconciliation

## 1. Literature Review

Indigenous Land Rights are collective rights of the Indigenous communities living in Canada for generations and have enjoyed this right over land before the European contacts. Since each First Nation community has its laws regarding land it is difficult to give a homogenous unified definition to this. Yet, there are a few common characteristics like rights to celebrate religious rituals related to the land, rights to self-determination and the right to manage and distribute natural resources according to the need.

Borrows (2005) in his seminal work *Resurgence and Reconciliation: Indigenous-Settler Relations and Earth Teachings* stated that the reconciliatory relationship between the Crown and the Indigenous people is based on the collective reconciliation with earth. Borrows further this argument by focusing on the idea of surrender which is found in the written language of the treaties, is absent in the Indigenous knowledge system, which, along with Indigenous languages and economies are rooted in traditional lands. Treaties do not extinguish the idea that we will always draw our life from the sun, waters, and plants that shine, flow, and grow in our traditional territories.

Alfred (2005) elaborated on this discussion about land pedagogy on reconciliation. For him, reconciliation is a method of restructuring the Canadian political landscape and this requires a drastic power shift over land and economic resources. Control of these must be placed into the hands of Indigenous nations as the only means to reconcile past colonial injustices and prevent future injustice. For meaningful reconciliation to happen Indigenous people must re-connect with the terrain, geography and vegetation of the land to understand the value of ancestral teachings.

The United Nations Declaration on the Rights of Indigenous Peoples (henceforth UNDRIP) is an international instrument adopted by the United Nations on 13th September 2007 that affirms (according to Article 43) the rights that constitute the basic standards for the survival, dignity and well-being of the indigenous people of the world. The UNDRIP secures and safeguards collective as well as individual rights of the Indigenous people. The Declaration is the product of almost twenty-five years of deliberation by U.N. member states and Indigenous groups. First of UNDRIP's forty-six articles declare that Indigenous people have the right to the full enjoyment, as a collective or as individuals, of all human rights and fundamental freedoms as recognized in the Charter of the United Nations, the Universal Declaration of Human Rights and international human rights law. The Declaration goes on to guarantee the rights of Indigenous people to enjoy and practice their cultures and customs, their religions, and their languages, and to develop and strengthen their economies and their social and political institutions. Indigenous people have the right to be free from discrimination, and the right to a nationality (Hanson, 2010). Articles three, four, five and 26 are extremely important where UNDRIP recognizes the Indigenous peoples' right to freely determine their political status and freely pursue their socio-economic-cultural development. It also affirms Indigenous peoples' right to autonomy or self-government in matters relating to their internal and local affairs and strengthens their distinct political, legal, economic, social and cultural institutions. Finally, Article 26 accentuates that Indigenous people have

the right to the lands, territories and resources they have traditionally owned, occupied or otherwise used or acquired, and it directs the states to give legal recognition to these territories. The Declaration does not override the rights of Indigenous people contained in their treaties and agreements with individual states, and it commands these states to observe and enforce the agreements (Hanson, 2010).

But four countries voted against it. These countries were Canada, the USA, New Zealand and Australia. For nearly a decade, Canada abjured to endorse UNDRIP. This UN declaration was finally adopted by the Trudeau government in 2016 but still, it remained controversial in Canada. The main reason for anxiousness is a clause that states free, prior and informed consent of Indigenous communities (United Nations, 2008) in matters that impact them. While the debates continued, British Columbia was the first province to make it a law. The legislation had set a framework to align provincial laws with the standards of the UN declaration. The Centre for International Governance Innovation (CIGI) and the Wiyasiwewin Mikiwahp Native Law Centre of the University of Saskatchewan College of Law released a book titled *UNDRIP Implementation: Braiding International, Domestic and Indigenous Laws: Special Report* that focused on how the three laws mentioned above could have supported the full implementation of UNDRIP in Canada. This video (Centre for Governance and Innovation, 2018) shows us how the relationship between the Indigenous people and the Canadian government has altered since the first contract. This would also accentuate how the effort to bring harmony to the various strands of law amid reconciliation would come with both risk and opportunity.

## 2. Reconciliation

Reconciliation has emerged as an essential concept to ensure harmonious relationships and settle past and ongoing conflicts between Indigenous and non-Indigenous people. In Canada, recurrent tensions have been observed between different approaches to reconciliation and even the rejection of the possibility of reconciliation by Indigenous communities. An important starting point for understanding different conceptions of reconciliation is the acknowledgement of divergent understandings of the nature of the conflict between Indigenous and non-Indigenous people. A narrower concept of reconciliation is often based on the assumption that the conflict giving rise to the harm is over that the people are in a post-conflict situation and that reconciliation requires an apology for previous wrongdoings, acceptance of the apology, forgiveness, and adequate compensation.

Another conception attached to the ideas of reconciliation is that the Indigenous people are still being harmed by the policies, laws and practices of governments, controlled by non-Indigenous Canadians. John Borrows in *Crown and Aboriginal Occupations of Land: A History and Comparison* highlighted the centrality of land disputes. He interpreted that the main cause of conflict is the non-Indigenous occupations and blockades that hindered the Indigenous communities from accessing their land. Indigenous knowledge of the land focuses on community rituals and human well-being. But the British Crown viewed Indigenous lands as acquired into the systems of British common law through colonial settlement. Thus, indigenous legal traditions were completely ignored and forceful displacement continued.

Ash, Borrows, and Tully (2018) in *Resurgence and Reconciliation: Indigenous-Settler Relations and Earth Teachings* have argued for a form of reconciliation that would remould the Indigenous-Canadian relationship. They proposed to reject the language of reconciliation that perpetuate discriminatory relationships and encourages inappropriate ways of dispossession, domination and exploration. Instead, they argued for transformative practices that would repair this unjust relationship.

Bear (2022) in *Traditional Knowledge and Humanities: A Perspective by a Blackfoot* has stated that reconciliation is of two types, correcting past mistakes and preventing future exploitations. According to him, positive steps have been taken by the Canadian judiciary. The acceptance of Indigenous traditional knowledge is growing in the Canadian intellectual community through a recent reference by the Supreme Court. For example, the value of Indigenous knowledge as a means of evidence in Indigenous rights cases was first affirmed in the *R. v. Van der Peet (1996)* ruling that Indigenous knowledge could not be undervalued to Western standards of knowledge and evidence. This was further confirmed in *R. V. Marshall (1999)* and *R. v. Bernard (2005)*.

### 3. The Oka Crisis (1990)

Though Bear puts forth multiple theories about the positive sides of reconciliation but the incidents that took place at Oka in 1990 profoundly changed the perception of Indigenous-government relations in Canada. The prolonged confrontation at Oka, Quebec, proved fatal, suggesting that Indigenous communities were volatile powder kegs that could erupt into open violence. The Mohawks had long claimed the title over the Pines, but they failed to secure a favourable resolution through the official land claims process during the 1970s and 1980s which made the situation worst. When the members of the local Euro-Canadian community decided to build a private golf course on the disputed land, the Mohawks erected barricades to obstruct the development. The dispute accelerated into an eleven weeks stalemate between the Mohawk warriors (militants from the Kanesatake reserve) and the Quebec provincial police and armed forces. Mohawks from Kahnawake and Akwesasne reserves also joined the protest. On 11th July 1990, Sûreté du Québec (SQ) attacked using tear gas and grenades which finally resulted in the death of SQ Corporal Marcel Lemay (Lackenbauer, 2008).



Figure 1. Mohawk warrior staring down a Canadian soldier during the Oka Crisis. Quebec, Flickr (Adopted from Injuneering, n.d.)

The conflict escalated as Indigenous supporters across the country joined the Mohawk warriors. Mohawks of the Kahnawake reserve barricaded the Mercier Bridge and were successful in cutting off access between Montreal Island and the southern suburbs of Montreal. The SQ not only had to tackle this crisis but also faced the anger of the civilians who blamed them for this blockade. The demand of the Mohawk warriors expanded to eventually include full sovereignty. By 29 August, negotiations had put an end to the blockade of the Mercier Bridge, however, the Mohawk resistance continued. The resistance came to halt when twenty-eight warriors, six children accompanied by sixteen women suddenly left the centre, leaving the army command in complete shock. To settle the matter, the federal government decided to purchase the Pines to hinder further developments on the matter. Legally the matter was reconciled but Indigenous communities lost hope and faith in the government.

#### 4. The Role of Media

Indigenous-studies scholar Julia Metraux in *How the Media Framed the Oka Crisis and Terrorism?* discussed how media shaped the incidents at Oka. Both the Canadian media and government at that time portrayed the Kanien'kehaka as terrorists. Due to the temporal coincidence of Desert Storm in the Middle East and the standoff with Canadian forces, settler leaders such as the Québécois separatist Jacques Parizeau were able to transpose the scene of purported Iraqi lawlessness onto the scene of Kanien'kehaka protest. By highlighting the rhetoric of antiterrorism in mass media journalists fed into stereotypes of Indigenous people as dangerous and thereby ignored the cause of the activists (Metraux, 2021).

Though the golf course expansion project was cancelled by the government the land was not returned to the Mohawks. In the 2000s, developer Grégoire Gollin acquired the land and started building houses in the disputed area without Mohawk's consent. Facing continued resistance from many community members Gollin announced that he was willing to give sixty hectares to the federal government as compensation. Though this action would prevent future development of the disputed area still the Mohawks could not reclaim their land back.

#### 5. Literary Works on the Oka Crisis

Maracle's (1950) (Sto:lo) book *Bobbi Lee: Indian Rebel* opens with the short essay titled 'Oka Peace Camp- September 9, 1990,' where she brings out her disgust and anger against this inhuman incident. In relation to this incident, Maracle wrote,

The land is scarred with extraction in the interest of corporate imperialism. The language is battered: battered in the interest of sanctioning the scarring of the land in the interest of profit. Stripmining, uranium production, gas and oil extraction, mega hydroprojects, clearcutting, overfishing, chemical disfiguring of the soil, and tampering with foodstuffs are all carried out in the interest of profit. (p.7)

An important aspect that has come to the forefront in the book is that the white-skinned people of Canada have often associated the Indigenous people with crimes, habits of drug addiction and dropping out of school but these have happened to them because of the prolonged exploitation, torture and marginalisation they have been facing since ages. It can

be said that this book is not only about the life story of a single Indigenous woman but also about that turbulent time and the harsh realities which shaped the lives of many others like Lee (2005).

Peaceful struggle is all about expending great, strenuous effort to live free from strife, free from war, and free from conditions which annoy the mind. It annoys our minds to imagine golfers trampling on the grave of Mohawk grandmothers. It annoys our minds to think, to feel, that we are less than sovereign people in our homelands. And it annoys a good many Canadian now too. (p.8)

Cuthand's (2013) (member of the Little Pine First Nation in Saskatchewan) *Post-Oka Kinda Woman* is an important poem to understand the situation after the Oka Crisis. The incidents at Oka not only boosted confidence in Indigenous men but also taught women to fight for their rights. The most important section of the poem is, 'You wanna discuss Land Claims?' where Beth indirectly challenged the government that it would not be easy henceforth to fool the Indigenous people. They are ready to fight and protest rather than suffer from a bad settlement.

The Oka Crisis played a significant role in the establishment of the Royal Commission on Aboriginal People in 1991. This in turn contributed to new agreements between governments and Indigenous peoples, including the Paix des Braves (Peace of the Braves) between the Grand Council of the Crees and the Quebec government. Despite several positive steps, Canada still has not seen meaningful reconciliation. The Royal Commission on Aboriginal People 1991 and the Truth and Reconciliation Commission of Canada 2015 have acknowledged the colonial harms done and have discussed the need to return Indigenous lands along with proper recognition of Indigenous sovereignty but it must be kept in mind that reconciliation can be useful to the Indigenous people only when it is seen beyond the scope of the colonial harms of the past. Reconciliation needs to be seen as a collective initiative to reconnect with the earth.

Gilio-Whitaker (2019) argued that Indigenous people are different from settler societies by their unbroken connection to ancestral homelands. Their cultures and identities are linked to their original places in ways that define them, they are reflected in language, place names, and origin stories. From an Indigenous worldview, there is no separation between people and land, between people and other life forms, or between people and their ancient ancestors whose bones are infused in the land they inhabit and whose spirits permeate the place. While the land is understood from a western socio-economic and colonial standpoint as a form of ownership, Indigenous peoples' relationship to the land is understood in a much different manner (p.27). Therefore, it can be said that until and unless the government of Canada realises their mistake and change its perspectives Indigenous people are far off from getting justice in matters of land claims.

## 6. Films and Illustrations

Cunneen(2017) in *Visual Power and Sovereignty: Indigenous Art and Colonialism* have discussed the cultural turn in criminology over the last decade which has led to a greater focus on issues of representation. It can be said that this criminal tendency is distinctly administrative in nature. This administrative turn in criminology has had a significantly negative impact on the Indigenous people of Canada. The concerns of Indigenous artists challenge the positivist framework of administrative criminology, particularly through their exploration of counter-Indigenous sovereignty. The potential of Indigenous art as an assertion of Indigenous visual sovereignty needs to be contextualized by an understanding of Indigenous knowledge, ontologies and epistemologies, and how we might contrast this with the underpinning knowledge assumptions of administrative and authoritarian criminologies. Indigenous cultures utilise rich and complex oral and artistic traditions as an essential part of the communicative process. Invalidating Indigenous knowledge is an attempt to disconnect Indigenous people from their traditional teachings, spirituality and land. Despite several attempts by the administration, visual artists and filmmakers of the Indigenous communities still uphold their uniqueness in several spheres of artistic creation. Indigenous filmmakers like Alanis Obomsawin and Tracey Deer have been successful in portraying the reality of the Oka Crisis through their award-winning movies.

Documentary as a genre turned out to become a privileged vehicle for competing programs of re-education. A renowned centre for documentary production, the National Film Board of Canada (henceforth NFB) has historically constituted a unique laboratory for such state-sponsored experiments in public education. As a recognized medium for large-scale education, the documentary film became popular amongst activists and social reformers, especially for Native militancy that gained strength and momentum in Canada in the late 1960s. In a settler-colonial society in which state sovereignty rests on marginalising the indigeneity, bringing their voice to the forefront would never be an easy task. But when the state willing 'gives the voice back to the marginalised there also remains a hidden motive of getting something in return. The state would want to educate the public on Indigeneity accentuating the benevolent role they played, thus attempting to erase or alter the history of The Indigenous struggle against settler-colonial society. Therefore, it can be said that Indigenous filmmakers have a huge burden of properly educating the public through their documentaries highlighting stories of exploitation, loss and struggle.

Obomsawin's film *Kanehsatake: 270 Years of Resistance* (1993) shows how modern Indigenous filmmakers use and bend colonial symbols and technologies to visually assert their stand against the settler state. As such the film clarifies the reason why the incidents at Oka could never be forgiven or forgotten. The documentary trailer begins with a picture of a placard 'Mohawk Territory: No Trespassing' that constantly ignored the presence of the colonial self and attempted to draw indelible barricades to lock the settler out. The documentary skillfully handled the incident of barricading, thus portraying the land as un-Canadian and yet Indian. These scenes emphasize the binary opposition that is constitutive of settler colonialism and yet needs to remain invisible, that binary between Natives and Canada

as a mutual absence of each other. As a result, Obomsawin's efforts to juxtapose and contrast visually the different boundaries erected and violated by the SQ, the Canadian Army and the Mohawks reveal that these barricades constituted more than the simple material setting for verbal and physical confrontations. These makeshift frontiers became the main stage in the scenography of a political crisis at which the exclusive powers and privileges to draw divisions and boundaries were at stake. More specifically the dispute over the barricade constituted a potent reminder that in the settler colony, real political power primarily lies in the hands of those with the authority to set up the boundaries delimiting who and what qualifies as 'it'(Cornellier, 2022). Hence by barricading themselves the Mohawks attempted to drive Canadianness out of their Indigenous self-rendering both visible as opponents or adversaries. And it is precisely that racial and political divide at the core of Obomsawin's film, that the NFB's official literature and the cultural press attempted to suppress to erase the sense of belonging that the Mohawks still have over that land.

The film *BEANS* is inspired by Tracey Deer's coming-of-age journey. As a twelve-year-old living through the Oka Crisis had a profound impact on her understanding of herself and her identity as an Indigenous woman. She learnt about the importance of standing up for what you believe in and saw the incredible resiliency of her people. She also realised that the world was a dangerous place for indigenous women with a difference. All of her work to date has centred on the goal of bridge building by fostering greater awareness, compassion and solidarity towards Indigenous people so that the world does not have to be such a hostile place for her people, or anyone vilified as 'other' by the ruling majority. With *BEANS* she wanted the audience to experience the complex reality of being an Indigenous person through the heartbreaking and disturbing experiences of racism, hate and exclusion and the toll it can take. The best way to accomplish this was through an innocent child's point-of-view, during the highly disturbed summer of the Oka Crisis (Deer, 2022).

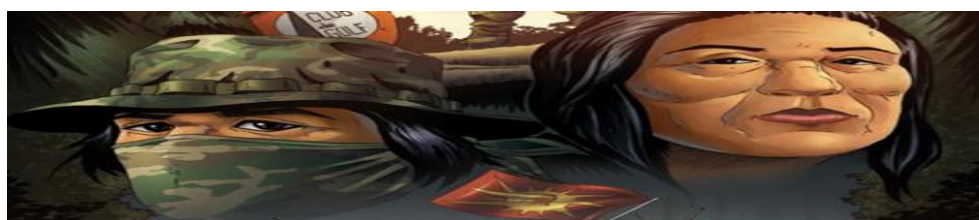
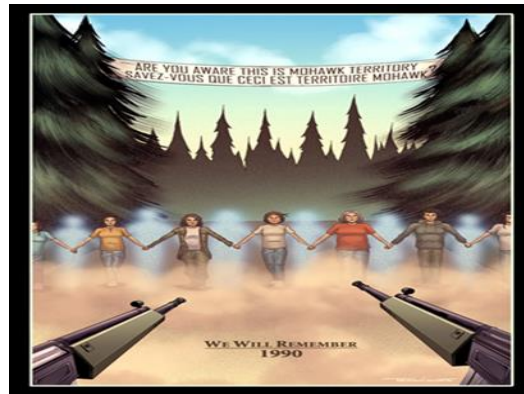


Figure 2. Teiowí:sonte Thomas Deer, Untitled, Kanien'kehá:ka artist marks Oka Crisis anniversary with thought-provoking illustrations (Adopted from CBC News,2020)

Teiowí:sonte Thomas Deer is a comic book artist and illustrator who had decided to commemorate the 30th anniversary of the Oka Crisis. He created a series of illustrations to pay homage to brave fighters and activists of his community. When most non-Indigenous artists in Canada are experimenting with form, borrowing impressionist or realist elements or relying on extravagant installations, Thomas Deer's illustrations emphasize his deep sense of history, love for the land and sense of duty for his community.





*Figure 3.* Teiowí:sonte Thomas Deer, Untitled. Kanien'kehá:ka artist marks Oka Crisis anniversary with thought-provoking illustrations (Adopted from CBC News, 2020)

The detailing in both Figures two and three can disorient the viewers and raise questions about whether these illustrations speak of the past or does it remind Canada that injustice shall not be tolerated henceforth? There is a purposeful opacity with illusions of depth, mass, and a disturbing application of light and darkness. They seem to speak to the grand points of history, wars, and displacements and these echo familiar themes and moods of history painting. But these stories are always complicated by meticulous brush strokes of the pines in the background and are said to represent hidden, half-remembered but no less consequential, micro-histories that are often forgotten by the mainstream.

## 7. Conclusion

Does a question persist whether the Canadian government is at all interested in solving the land disputes with the Indigenous people? Despite struggling for so many years, the disputed land at Oka has still not been returned. Wet'suwet'en protests in early 2020 against the pipeline project in northern British Columbia emphasize the issue of colonial band government interests conflicting with those of the traditional Indigenous hereditary governments, which fought over the issue of land and development in the Wet'suwet'en case.

With the signing of historical treaties, the Indian Act of 1876 implemented band councils with elected chiefs and councils to act as the pseudo governments for Indigenous nations, replacing Indigenous hereditary forms of traditional governments. These band councils of the colonial period are often the representatives of Indigenous communities and are placed in a position to settle land claim disputes with the Canadian government while having to balance the interests of their nations within the limited resources the government provides them. Resource development can provide Indigenous communities with many economic benefits and these may need to be taken into account by band councils despite the impacts resource development has on traditional lands. This often, as was the main issue in Wet'suwet'en, conflicts with the wishes of hereditary land protectors (Baker, 2020). Yet, it should also be kept in mind that all Indigenous communities do not suffer from an equal amount of economic or material scarcity. Thus, the benefits of signing land claim agreements may vary to different extents regarding individual nations' needs or desires. Examining the

impacts of colonial band councils in the land claims settlement process and the inclusion of hereditary governments as well as Indigenous communities in the land claims procedure is a vital question that demands attention.

Another crucial concept that needs to get attention is the formation of an international tribunal that would tackle the legal issues on land claims and disputes with the Canadian government and would function in the spirit of nation-to-nation agreements which in a way would acknowledge Indigenous sovereignty. Perhaps, it can be said that a need had aroused to arrange for a new way of settling land disputes which would include an international legal framework. This would surpass the This would the idea of a Royal Proclamation of Reconciliation as recommended by the Canadian Truth and Reconciliation Commission.

Therefore, it can be said that reconciliation can be justified and beneficial when the Indigenous legal system is included within the Canadian legal framework. Along with legal measures, proper resource development and distribution are required keeping in mind the economic needs of the Indigenous communities. Only then can this be considered as another crucial step towards peaceful coexistence.

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