

## Review Essay

Cavell, Janice. *Documents on Canadian External Relations: The Arctic, 1874-1949*. Ottawa: Global Affairs Canada, <https://networks.h-net.org/node/3449/discussions/157415/announcement-documents-canadian-external-relations-arctic-1874>, 2016. 917 pp., bibliography, archival sources, photographs, illustrations, maps, indices.

Kikkert, Peter and P. Whitney Lackenbauer, eds. *Legal Appraisals of Canada's Arctic Sovereignty: Key Documents, 1905-56*. <http://cmss.ucalgary.ca/research/arctic-document-series>, vol.2. 2014.

As Stéphane Dion, Minister of Foreign Affairs, noted in the preface of Cavell's book under review here, Canada's interest in the Arctic is both historical and contemporary, and its importance for Canada is "ever-growing" as "Canadians face new challenges in their North." Canada has the world's longest coastline, 75% of which is along the Arctic Ocean, and a front seat to the effects of climate change on the Arctic. As the Arctic continues to melt, as the five Arctic coastal states map their continental shelf beyond the 200 EEZ (all but the USA having submitted those claims to the UN's Commission on the Limits of the Continental Shelf [CLCS]), and as an increasing number of non-Arctic states express interest in the Far North, individual state's national interests are increasingly intersecting with circumpolar and transpolar issues that include national and circumpolar indigenous rights, migrations issues (human and animal), weather and the impact of climate change on transportation, communication, resource exploration, and extraction. As nations pursue unilateral national resource development and infrastructure efforts, including military installations, collaborative efforts like search and rescue and scientific cooperation continue.

The issues of today cannot be understood without a clear understanding of the past. Today's focus is largely issues related to the water—resource exploration, extraction, continental shelf delineation, shipping, and the relationship (sometimes tense, other times collaborative) between commercial interests and stewardship concerns, between access and legal classifications of water routes, and between indigenous rights and national claims. While the books under review reflect the assertion of sovereignty over the land in the Canadian Arctic in the century prior to large Arctic climate change, what they expose is instructive in terms of both continuity and change. By studying the way the Canadians identified priorities,

*The Northern Mariner/Le marin du nord*, XXVII, No. 2 (Apr. 2017), 175-184.

evaluated threats - both real and perceived - and took steps to secure the North, one comes away with a better appreciation of the stakes, the assets, and the liabilities for securing the North, and the lens by which to appreciate Canadian energies and expertise in these decades and to more fully assess the issues of today.

Documents do not speak for themselves, thus, the invaluable role of the historian is to give them voice. And while historians are not without their differences in interpretation, the bedrock of the profession is the primary sources. Of course, part of the historian's craft is to investigate the primary documents, ask new questions of old documents, bring new sources to light, read the experts in the field, and investigate the historiography. What is particularly exciting in the digital age is the proliferation of resources readily available without always visiting the archives. And yet, with this deluge, in print or online, comes a problem of information overload. Collections in the hands of experts, who make sense of the sources and analyze key documents, advance understanding of the past and confirm its importance to both the present and the future.

The two books under review, published within two years of each other, are invaluable on many levels to understanding Canada in the Arctic. Janice Cavell's book compiles over 500 documents related to the Arctic for the years 1874-1949, while Peter Kikkert and P. Whitney Lackenbauer's book is more narrowly focused on a legal analysis of Canada's sovereignty concerns, plans, and claims in the years 1905-1956. While many of the same documents appear in both books, each has sources that the other does not, and together they provide a comprehensive picture and broad context to the era and the issues faced by Canada. Significantly, these monographs present students and researchers of the Canadian Arctic with extensive and incisive introductory essays that complement the original documents which the researchers can then evaluate for themselves.

While focused on the primary sources, the authors are absolutely correct to insist that the documents need to be reviewed in the context of their time, even as they find new ways to evaluate them. The Arctic is clearly a geographic place with diffuse political and emotional attachments, but no clear delineation of its geographic borders, much less its political and emotional associations, exists. There is no standard definition of the Arctic—even different Canadian government agencies and departments delineate it differently. This lack of a clear definition is especially evident in the broad geographic focus of Cavell's special *Documents on Canadian External Relations* Arctic volume and the legal focus of Kikkert and Lackenbauer's study. The documents reveal the way various individuals, committees, and departments approached the question of sovereignty in the Canadian Far North, and sometimes their mere approach to framing an issue predisposed its answer and their response.

The foundation of any study of Canadian External Affairs is, of course, the Canadian government's own *Documents on Canadian External Relations (DCER)*, a series first begun in 1967 and comprising documents that date back to 1909. What

makes Janice Cavell's latest contribution so important is its targeted focus on the Arctic from 1874-1949, expanding upon the traditional *DCER* practice of publishing only official documents (not internal government documents) and adding documents on the Arctic from many other sources. She has created a comprehensive volume on Canadian Arctic sovereignty, selecting sources regardless of department or even country, that provides a "more accurate context for, and suggest[s] different interpretations of, documents that have long been known to researchers." (Cavell, xi) The importance of this context is reflected in her decision to present the documents in chronological order "because it highlights the interplay that often existed between various northern sovereignty issues." (x)

This special edition's starting point is "from the earliest tentative beginnings of the Canadian government's engagement with the Far North [and ends with] the brink of major new geopolitical developments." by the end of which "there could be no doubt that Canada's [terrestrial] northern sovereignty was securely established." (x) Establishment of claims began with the basic question that Canadians officials had to ask themselves: what in the Far North is Canadian? In these decades, the Canadian government's sovereignty focus was land, not water, thus this volume's documents reflect that focus. What land was there? Did islands count as "Canadian"? Similarly, Cavell had to ask herself which documents to include in this volume. She noted the fluidity of the use of the term Arctic and Far North and convincingly chose as her definition, "the perception on the part of officials at the time that an issue was an Arctic issue." (xi-xii)

Cavell, a Carleton University Adjunct Research Professor of History and a *DCER* editor in the Historical Section of Global Affairs Canada, is the author of numerous articles on the Canadian Arctic, from foreign relations and sovereignty claims to cultural history and women's participation in Arctic exploration. Her book, *Acts of Occupation: Canada and Arctic Sovereignty, 1918-25*, co-authored with Jeff Noakes, was shortlisted for the Canadian Historical Association's Political History Book Prize in 2012.

For scholars used to standard *DCER* volumes, Cavell's "Note on Editorial Principles" is especially helpful. (xxxvi-xl) She also clearly explained why the Arctic is largely absent from pre-1949 *DCER* editions and established why this volume is important for both the past record and future scholarship. (x-xiii)

Canada's pre-Second World War Arctic claims are not in earlier *DCER* volumes because when the series began in 1909, it printed only Canadian documents. Even then, it published only official correspondence and documents, not "internal government discussions" or many private papers. Finally, many classified documents relating to Arctic have only recently been declassified. After 1939, the *DCER* series included more on Arctic matters, and for those documents Cavell has created a helpful appendix for researchers to consult. In her Arctic volume, "Previously printed documents that are essential to understanding an issue have been reprinted in [the 1878-1939 sections of this volume], while some others

are referenced in the footnotes.” (xi) And since present *DCER* volumes of the years 1939-49 include much more on the Arctic, only new documents are published in this volume. In Cavell’s expert hands, the Arctic volume also fills the void in *DCER* volumes by departing from standard *DCER* files to include files from other government agencies and departments, “memos to Council,” relevant correspondence between interested parties and departments, and other entities and individuals concerned with sovereignty issues. Careful sleuthing both in Canada and abroad has yielded “useful documents ... found in unexpected places” such as, “correspondence between the CO [Colonial Office] and the Foreign Office shed a great deal of new light on Arctic matters” (x-xi). Relevant United States documents are noted in the footnotes.

Ultimately, Cavell’s collection includes the sovereignty efforts of over 20 Canadian government office, departments, and agencies, the personal papers of more than 30 individuals (in Canada and abroad – including explorers and scientists), records from the Colonial Office and the Dominions Office, the British National Archives, London, the National Archives of the US, College Park, and the Royal Geographical Society Archives, London. Furthermore, her footnotes are invaluable for explaining and clarifying documents, sources of other relevant Canadian records (ex: *Senate Debates*, earlier *DCER* volumes, manuscript collections), and references to international agencies like the Permanent Court of International Justice, as well as decisions, like the 1931 Eastern Greenland decision, that relate to Canadian Arctic territorial sovereignty concerns. Finally, Cavell also cites important Arctic secondary sources. Superb supplemental material includes maps, photos, indices and appendices that cross-reference extant *DCER* volumes related to the documents in this Arctic volume. “Unfortunately, there are still a few significant gaps in the record .... Many important documents and files have simply disappeared.” (xii) The 1916 fire that destroyed the Centre Block of the Parliament Buildings, for instance, contributed to the gaps. But despite the losses, Cavell has discovered, compiled, and contextualized sources critical to the period.

The very fact that Cavell’s volume on the Arctic includes documents from various government agencies reflects the complexity of the sovereignty issues. If government departments had differences, which they did, then looking at their positions can only produce a volume that reflects the context of the time—political, diplomatic, legal, and cultural. Cavell’s comprehensive approach convincingly shows that, “even the errors into which Canadian politicians and civil servants sometimes fell are an important part of the historical record, and the cumulative effect of many smaller government initiatives in and regulations about the Far North should not be underestimated.” (xii) When her discoveries yield evidence to re-evaluate past scholarship and assumption, one realizes her impressive contribution. One example that highlights the case for updated interpretation is Cavell’s new material on Britain’s 1880 transfer to Canada of Rupert’s Land and the North-Western Territory. While noting the thorough work of historian Gordon Smith on

this topic, she uncovered even more documents on the issue, giving her a nuanced “interpretation [that] differs in some respects” from “the standard scholarly source” of the transfer. (xiii, note 3.)

Janice Cavell’s 75 years and 570 documents focused on the Arctic writ large is wider in scope than Peter Kikkert and P. Whitney Lackenbauer’s legal focus. *Legal Appraisals of Canada’s Arctic Sovereignty: Key Documents, 1905-56* specifically presents and analyzes 37 important documents related to Canada’s terrestrial sovereignty claims in the Arctic Archipelago. They open with 1904 and “the first legal appraisal ever produced on Canada’s Arctic sovereignty.” (Kikkert & Lackenbauer, vi) Using largely, but not exclusively, Canadian documents, the authors focus on “the legal history of Canada’s Arctic sovereignty” and rightly insist that the “analysis must respect the state of international law at the time when decision-makers weighed options and chose their approach rather than simply assessing their behavior in light of current legal desires, assumptions, and criteria.” (x)

A brief note about the two authors of this important volume. P. Whitney Lackenbauer is a prodigious author on many aspects of Canadian Arctic history, from works on Canadian Arctic policy to Canada-U.S. Arctic relations to the uniquely Canadian Rangers. He is also regularly consulted on current Arctic issues and government policies. A dedicated teacher, mentor, and scholar, Lackenbauer is determined to place key primary documents at the disposal of students and researchers alike. His Documents on Canadian Arctic Sovereignty and Security (DCASS) series, of which *Legal Appraisals* is a volume, are topical in nature and available as e-books. As noted on the DCASS website, “the editors of each volume include only what they consider to be the most relevant items.” Thus, of course, it is incumbent on any Arctic scholar to seek broader exploration of relevant documents in departments and archives beyond these excellent works, but no study can afford to ignore either these primary documents or the authors’ extensive and incisive essays that introduce and contextualize the documents.

Peter Kikkert, like Lackenbauer, is a scholar on issues surrounding Canadian Arctic sovereignty, security, and stewardship whose expertise is similarly grounded in not only the archives, but also in his extensive personal experience in the Arctic. His contribution with Lackenbauer to *International Law and Politics of the Arctic Ocean: Essays in Honor of Donat Pharand* (2015), “The Dog in the Manger – and Letting Sleeping Dogs Lie: The United States, Canada, and the Sector Principle, 1924-55” and their article, “Setting an Arctic Course: Task Force 80 and Canadian Control in the Arctic, 1948” (2011), reflect their position that Canada’s approach to Arctic sovereignty was historically both realistic and pragmatic. By avoiding confrontation with the United States over legal classifications and declarations of sovereignty, and instead focusing on a successful functional approach, Canada was able to build its case for asserting sovereignty in 1985 when it instituted straight baselines around the Arctic Archipelago. Other collaborations with Lackenbauer include two valuable books of primary documents presented with extensive and

insightful introductions: *The Canadian Forces and Arctic Sovereignty: Debating Roles, Interests and Requirements, 1968-1974* (2010), and, subsequent to the volume under review, the DCASS volume *Lessons in Arctic Operations: The Canadian Army Experience, 1945-1956* (2016).

Kikkert and Lackenbauer's *Legal Appraisals* captures the political and legal uniqueness of Arctic sovereignty issues and arguably lays the groundwork for future studies that will necessarily include the legal dimensions connected to cultural concerns and the circumpolar scope. Since politicians, government officials, and legal experts of these years had to navigate unknown legal territory, clearly historians have to acknowledge that reality. Cavell, Kikkert, and Lackenbauer make clear that one cannot evaluate a position or policy if alternatives did not exist or if knowledge of all the facts were not known at the time. Scholars must accept the challenges of the time under study before assessing the results and need to avoid applying hindsight. While criticism may certainly be warranted, presentism is a pitfall to be avoided. For example, in the eyes of the Canadian government, the indigenous people of the North were not considered as a foundation for sovereignty claims in the period under study. Since effective occupation undergirded sovereignty claims, and the presence of indigenous people was ignored, "both British and Canadian officials agreed that there was no need for [administration] until white settlement reached the archipelago." (Cavell, xv) Instead, administration of whites living there, and protection against incursions and various violations of Canadian law by Americans were the catalyst in first years of the twentieth century. (Cavell, ix)

The specific documents chosen by Kikkert and Lackenbauer reflect issues regarding sovereignty claims, national interest, and political realities in their historical context. They are careful (and wise) to explain that "the 'contextual turn' in legal history ... treats legal ideas and concepts as products of their time, of historic systems of thought, and of social and political contexts." (K&L, x) Kikkert and Lackenbauer show the pragmatic approach to the issues of sovereignty that confronted the Canadian government and provide the reader with the lens through which to both read the documents and to understand why these documents were chosen. Further, they correctly note that "Historical analysis must respect the state of international law at the time when decision-makers weighed options and chose their approach, rather than simply assessing their behavior in light of current legal desires, assumptions, and criteria." (x) Part of contextualizing the documents is contextualizing sovereignty as well. While sovereignty in general is not easily defined, "Polar sovereignty has never been a static concept, but is an ever-evolving legal, political and intellectual construct that must be reviewed in its historical context". (x) This assertion of context's relevance and fluidity is important because fixed meanings (from definitions of sovereignty to delineations of the Arctic) hinder historical analysis of the decision-makers' world which was fluid due to domestic and international factors that they had to consider. Certainly, Canada has one static

limitation: its geographic size and its location in relation to the USA. But both countries needed to consider context, and Kikkert and Lackenbauer convincingly challenge the view that in this era, America's legal position was consistent while Canada's was not: "this assumption downplays the uncertainty evident in American officials' appraisals and the selective manner in which they asserted their perceived legal rights." (viii)

The context that Kikkert and Lackenbauer present is not only on the micro level (Canadian Arctic sovereignty) but on the macro level as well. The introduction's overview, aptly subtitled "A Complicated History," makes clear that the lack of settled law made confusion over Arctic claims understandable. The introduction sets the international context of legal definitions of early-twentieth-century sovereignty by reaching back to fifteenth-century papal bulls on territorial claims, the role of discovery, and later the concept of effective occupation in retaining the legal rights. But as the authors note, at the beginning of the twentieth century, "the legal discourse on territorial acquisition and the establishment of state sovereignty remained unsatisfactory and confused." (xxi) The documents reproduced in the book take the reader through the legal issues, political considerations (both domestic and foreign), and environmental obstacles faced by Canadians in their efforts to assert Arctic sovereignty claims from 1905 to the early Cold War (mid-1950s). Excellent footnotes guide scholars to a wide range of primary and secondary sources on Canadian Arctic sovereignty issues, historical and legal approaches, Canadian governmental policy, and relevant cases and opinions in international law.

The "first legal appraisal ever produced on Canada's Arctic sovereignty," in 1904 by Dr. William Frederick King (Canada's chief astronomer), was at a time when "little legal precedent and few guidelines [existed] for how a state could establish sovereignty over uninhabited or sparsely populated areas like the Arctic islands .... [and thus] called for adaptations to the law." (vii) The challenge for Canadians in this period of legal ambiguity was the Arctic's uniqueness over which the state sought to establish sovereignty but whose distinctive qualities made rules for non-polar regions unrealistic if not completely inapplicable. (vii) For example, the American Hughes Doctrine, "the most conservative approach to the acquisition of polar sovereignty of any country with interests in the Arctic or Antarctic" (xxxii) and its emphasis on settlements and resource development resulted in an inflexible American position regarding any nation's claims to the Arctic region despite its uniquely harsh conditions. And, as previously noted, recognition of indigenous settlement and use of the region's resources were not valued in terms of sovereignty claims at this time. As the latter part of the twentieth century demonstrated, recognition of indigenous rights and their use of the Arctic changed the legal approach and political position both in Canada and internationally, thus radically altering the context by which sovereignty claims are evaluated today.

Both books under review note the tension and interplay of the three primary state actors in this era, Canada, the UK and the US, while their respective legal opinions regarding claims in the Arctic reflect the importance of context. For example, regarding the sector principle, Cavell reviewed the Dominion Office records and reprinted the “Memorandum from Comptroller [Frederick White], Northwest Mounted Police, to President of Privy Council” on 2 January 1904 and the “Memorandum by Governor General” on 9 January 1904. Kikkert and Lackenbauer contributed the “Memorandum, W.F. King, Chief Astronomer, to Honorable Clifford Sifton, Minister of the Interior, Report on the Title of Canada to the Islands North of the Mainland of Canada,” 23 January 1904, and further noted the internal British tensions over interpretations of the sector principle – specifically between the Admiralty and the Foreign and Dominions Offices. The former was staunchly against the principle while the Dominions Office strongly favoured it and the Foreign Office leaned toward the Dominions Office’s position. Arguably, the most important outcome from the publication of all these documents and their focus is Cavell’s conclusion that the maps made for the King Report by James White, Canada’s geographer from the Department of Interior, and his “advocacy of a claim extending to the [North] Pole” made clear that the idea of the Sector Theory predates the standard narrative that Senator Poirier introduced the theory in Parliament in 1907, and concludes that “the common belief among historians that Poirier was the originator of the sector theory must be rejected.” (xx)

Part of the reason why history is not static and declassification/access is so invaluable, is made clear by both books. Obviously, there is some overlap of topics and documents, though not necessarily from the same archive. For example, as the Canadians avoided reliance on the Sector Principle they stressed the importance of an active presence in the region to counter any questions surrounding the British 1880 transfer to Canada. These collections publish the memorandum from “H.R. Holmden to A.G. Doughty regarding Arctic Islands in 1921,” but Cavell’s copy came from the Department of External Affairs while Kikkert and Lackenbauer’s came from the Library and Archives Canada’s J.D. Craig Papers. As Cavell points out in her introduction, different versions of the same memo or report can include notations by the sender or receiver that give context and meaning that were not present in other copies or even known in the past. In works like these under review, which convincingly argue for the documents to be set in the context of their time, this continual search for new documents, and even versions of old documents, is clear.

Similarly, in terms of the same topic under review, the juxtaposition of different documents enhances the context. Continuing with the 1920s discussion of activities in the Arctic and securing recognition of Canadian sovereignty, Governor General Lord Byng and the British Chargé d’Affaires in the U.S. exchanged telegrams on 12 June 1925 concerning the proposed U.S. MacMillan Expedition. Cavell provided one telegram and Kikkert and Lackenbauer another, and as discussions continued



for the next seven days with multiple players, including other Canadian departments and the Americans, the two collections' different, yet complementary, documents provide a fuller understanding of the dynamics, issues, and concerns of the moment. Certainly, any study of Canadian Arctic claims, foreign policy, and continental defense needs to address America's Arctic focus—its legal position, its forays into the Far North, and its requests of Canada. The Second World War and the early post-war years opened a new era with the United States as their mutual enemy, the Axis Powers and later the Soviet Union, meant that continental security necessitated cooperation and collaboration. Canadians had the real estate while Americans possessed greater economic resources. Much has been written about the synergy of these two asymmetrical partners, neither of which could secure the continent without the other, but as both collections show, and Cavell, Kikkert, and Lackenbauer assert, the USA did not seek to challenge or undermine Canadian sovereignty claims. Cavell has supplied new documents written by and between Canadians and Americans which support the 1943 claims by Hugh Keenleyside, Canada's Assistant Under-Secretary of State for External Affairs, that British High Commissioner Malcolm MacDonald's alarmist assessment of the Americans in the Canadian North during the war was exaggerated. This helps support both book's argument that American actions were not the result of subversive challenges to Canadian claims.

Regarding Canada's position on sovereignty at the end of the 1940s, the "Report for the Department of External Affairs by Dean of Law, Dalhousie University" was key and appears in both collections. For Cavell, it is the final document, from which she asserts that "the purpose of the 1925 sovereignty claim had been achieved." (xxxv) For Kikkert and Lackenbauer, sovereignty is not without at least theoretical challenges, especially by the Americans. On the one hand, while the United States did not acknowledge all Canadian sovereignty claims at this time, it also did not use the Hughes Doctrine to publicly and categorically deny them. In the early 1950s, documents show that Canada acknowledged a potential US challenge would be consistent with its adherence to the Hughes Doctrine, but at the same time, the Americans noted Canada's efforts in this inhospitable region. (K&L, xli) Thus, Kikkert and Lackenbauer convincingly show that the postwar defense agreements "implicitly acknowledged Canada's sovereignty over all the islands of the Arctic Archipelago." (xliv)

Cavell and Kikkert and Lackenbauer acknowledge the pragmatic and generally smooth US-Canada cooperation in the Arctic to this point. Despite Canadian concerns over a lack of official recognition of all of Canada's Arctic claims, it was evident that, overall, the Americans saw more to gain than lose by following Canadian laws and by signing agreements and treaties that implicitly recognized Canadian sovereignty claims to the area. Clearly, this continued during the Second World War and the Cold War, as Americans recognized that continental sovereignty

against an adversary was more important than challenging sovereignty claims by a historical and reliable ally.

Kikkert and Lackenbauer's last document is dated August 1956, the same year that the first Law of the Sea Convention convened and the next phase of Arctic sovereignty considerations moved from the land to the Arctic waters. Not only has the legal context changed with the latest Law of the Sea Convention, but the climate itself is arguably changing faster than any diplomatic resolution to the legal issues. Scholars and policy makers can only hope that the promise of future DCASS volumes pertaining to the Arctic will include a volume entitled *Legal Appraisals of Canada's Arctic Waters Sovereignty: Key Documents*, as it will undoubtedly be an important addition to Arctic sovereignty debates.

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