

REVIEW

Aboriginal Resource Use in Canada: Historical and Legal Aspects

Kerry Abel and Jean Friesen, eds.
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SOME OF THE MOST significant shifts in judicial opinion on Aboriginal rights in Canada in recent years have originated in competing interests over access to and use of wildlife and other natural resources. Should Canadian Indian, Métis and Inuit people be restricted in their access to such resources in the same ways as other Canadians? Or does the distinctive position of these people in the Canadian confederation override other regulatory powers of Ottawa or the provinces?

The conflict is not recent. This book is an invaluable aid to an understanding of the issues. Bringing together a range of disciplinary and professional contributions, it makes available papers on the subject first presented at a conference at the University of Manitoba in 1988. In the introduction Kerry Abel outlines the context of the concerns of that conference and reviews its significance in the light of some of the important Supreme Court of Canada rulings since then (especially *Québec (A.G.) v. Sioui*¹ and *R. v. Sparrow*²).

Perhaps the most emblematic essay of the book is the last. In a sharply argued paper, Barry Barton explores the history in recent decades of the anti-trapping movement, its influence in international trade law, and the impact it has had on access to subsistence and trade resources of Canadian native peoples. The story is a valuable antidote to dewy-eyed environmentalism. In the generation of a radical environmentalist sympathy in Western political cultures, we have a new variant on the sorry history of an unself-conscious European

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¹ [1990] 1 S.C.R. 1025.

² [1990] 1 S.C.R. 1075, 30 D.L.R. (4th) 385.

cultural imperialism in contact with indigenous peoples. In this history, the culture and practices of the latter appear forever doomed to be backward. In early contact history their shortcomings were their failure to cultivate and harvest intensively enough the lands on which they lived. In the late twentieth century their sin is that they harvest those things which Western sensibilities now deem inviolate. Barton's essay gives us the elements of the emergence of this recent turn, tracing not only the political and international treaty history, but assessing its background in the varied environmentalist philosophies which have made trapping a target for elimination.

There is no doubt the sympathies of the other contributors to the book, though few are as engaged polemically as Barton's paper. Rather the main task is the careful historical documentation of Indian, Métis and Inuit resource use or else of the legal status of such use. Those seeking general perspectives will find them admirably represented in the papers of Irene Spry and Jean Friesen, providing overviews respectively of resource use on the Great Plains and of the context of treaty-making and the subsequent attack on treaty rights leading to legal subjugation of the Indians in the 1880s.

Other contributors explore the varied historical evidence of the use of buffalo, fish, and plant use and cultivation, as both subsistence and trading commodities. In an essay of great historical sensitivity, John Milloy explores most systematically a theme underlying many of these pieces: the relation between such resource use and the cultural identity and disposition of Aboriginal peoples. Hence Milloy explores the identity of the Plains Cree in the course of the nineteenth century changes which saw first an abundance then a rapid depletion of the buffalo. The Cree's use of this resource was both historically recent, but no less culturally significant for all that. From the Cree perspective, argues Milloy, the treaty negotiations had many dimensions, some of which were commercial, others sacred: but "[i]n Cree minds, the circle connecting the people, the land and the Creator had not been broken."³ Historical research of this kind must call into question any attempt (as, for example, in some Australian land rights legislation) to distinguish a "traditional" from a "historical" relation of Aboriginal peoples to the land.

The interactions of Aboriginals, including Métis, and the changing modes of European economic activity and governmental policy loom large in the bulk of essays. In contrast to those papers which

³ K. Abel & J. Friesen, eds., *Aboriginal Resource Use in Canada: Historical and Legal Aspects* (Winnipeg: University of Manitoba Press, 1991) at 68.

document Indian perspectives and behaviours, a number explore some of the historical conditions underlying Canadian jurisprudence and administration of resource use, especially in post-treaty areas. Indian voices are predictably absent from some of these considerations, a point which is turned to political account in Anthony J. Hall's timely review of the federal-provincial dimensions of the *St. Catherine's Milling*⁴ case: "the representatives of distinct Aboriginal societies must be afforded their rightful place beside federal officials whose constitutional responsibility is as vindicators of Aboriginal rights."⁵

It is almost *de rigueur* to review a collection of essays with an introductory or concluding comment that there is too little holding the book together. That is not a judgment which can apply here. While the papers vary in pitch and density, their common purpose in taking both law and history seriously provides an essential resource in addressing some very current questions in the political and juridical determination of the future status of Aboriginal peoples in Canada.

⁴ *St. Catherine's Milling and Lumber Co. v. R.* (1887), 13 S.C.R. 577, *aff'd* (1888), 14 App. Cas. 46.

⁵ *Supra* note 3 at 282.

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