

Aboriginal Harvesting Rights and White Resistance

Bonita Lawrence

Witnessing the spectacle of angry whites attempting to intimidate Native people at Burnt Church, New Brunswick, from exercising their legal rights to fish, many anti-racist activists may have made connections between this incident and other instances of repression of Native people, such as at Ipperwash, Ontario. And yet, for Native people across Canada, the issue of harvesting has far greater resonance than that. Across the country, a great number of Native communities are engaged in harvesting struggles. Indeed, Aboriginal harvesting - hunting, fishing, and gathering wild foods - currently represents the core of cultural regeneration for many First Nations. In this respect, it is perhaps not surprising that Aboriginal harvesting is also the central focus not only of white racist assaults, but provincial attacks on Native autonomy.

Burnt Church is a clear example. On September 17, 1999, the Supreme Court of Canada acquitted Donald Marshall Jr. of the charge of violating the *Fisheries Act*, by upholding centuries-old treaties between the Mi'kmaq nation and the British Crown.¹ Native people covered under the treaty therefore have the rights to hunt and fish all year round, as the treaty specified. Shortly after the ruling, white fishermen responded by attacking Native fishermen.² The RCMP did not intervene. When Native people refused to back down, the provincial government imposed a thirty day moratorium against fishing until "the conflict" subsided (a decision which restricted only the Native fishermen, since the commercial fishery does not run in October) (APTN, October 1999). Both provincial and federal government agencies thus tacitly supported white mob violence. Since then, a number of white groups across New Brunswick have been petitioning for the Supreme

Court to reverse its ruling (APTN, October, 1999).

This has not been the first time the white community has attacked Native fishermen at Burnt Church. Two years ago, in response to Native fishing policies developed since the *Sparrow* decision,³ white fishermen destroyed 580 traps - representing the entire set of traps owned by the Burnt Church community at that time. The Department of Fisheries and Oceans simply paid for the traps lost by Native fishermen (APTN, October 1999). No whites were punished at that time.

The Native fishery at Burnt Church, which represents less than two percent of the entire fishery yield, has a negligible effect on the white-dominated commercial fishery. Why then does the presence of Native people exercising treaty rights to fish represent such a threat to white fishermen in New Brunswick? The primary reason is that whites are used to the presence of impoverished Native people, who will work for them and accept virtually any conditions. The presence of self-sufficient, economically secure Native communities threatens the social dominance that white people in the Maritimes have been able to exercise over Mi'kmaq people for centuries (APTN, October 1999).

It would be a mistake, however, to look at Burnt Church solely as an example of local racism against Native people. On a national scale, struggles like that of Burnt Church are being replicated across the country, and represent, in the highest sense, struggles over sovereignty. Native people may currently own less than one percent of their former land mass⁴, but they are struggling for their rights to exercise the hunting and fishing rights over the rest of the land which were guaranteed with most of the treaties signed by the

British or Canadian governments. It is the sovereignty aspect of these struggles, as well as the fact that they enable Native people to become self-sufficient, which challenges the two central concepts which have shaped Canadian society since its inception -that white people are to have sole and unrestricted access to the land, and that Native people will forever be destitute and powerless.

White assaults on Native harvesting rights are often based on the notion that Native people violate conservation efforts when they oppose provincial law.⁵ And yet, across Canada, Native people are attempting to protect the resources that white governments have allowed to be used so badly.⁶ Provincial resource ministries, in particular, promote this notion that Native communities flout their laws because of greed, rather than acknowledging that Aboriginal people have their own resource conservation traditions, and have conserved the land well for thousands of years. Indeed, these provincial bodies are frequently a locus of resistance to Aboriginal harvesting rights - sometimes in devious and illegal ways. One example of this is "Operation Rainbow," where the Ontario Ministry of Natural Resources spent approximately one million dollars in nine years of undercover work seeking to entrap individuals from Manitoulin Island reserve communities on charges of violating various hunting and fishing regulations. The operation involved over three hundred charges being laid against thirty-five defendants, and cost the individuals collectively over \$500,000 in defence fees. After years of court proceedings, the judge handed down suspended sentences to all the defendants (Billoki 1997, 19). This operation, the largest undercover fish and wildlife sting ever launched in Ontario, has been the spearhead of a provincial assault on Aboriginal rights to harvest that has only escalated in recent years.

It is precisely because of the tacit support which government bodies lend to local white protestors, that white resistance to the process is such a major factor in struggles over harvesting rights. This resistance often comes both from organized commercial interests⁷ and from white community opposition, and in a number of places has succeeded in defeating Aboriginal harvesting

efforts. For example, the Chippewas of Nawash, after a concerted court struggle, were recognized in 1992 as having a historic right to fish in their traditional waters. This decision led to three years of racist assaults by local whites and organized commercial fishing interests, including the sinking of Native fishing boats, the destruction of thousands of dollars of nets and other equipment, assaults on local Native people selling fish, and the stabbing of two Native men in Owen Sound as well as the beating of two others (*Anishinabek News* 1995, 1). No charges were laid by the Owen Sound Police or by the Ontario Provincial Police, until the band called for a federal inquiry into the attacks. In 1996, despite considerable opposition, the band took over the fishery, using an *Indian Act* regulation that severed their community from the jurisdiction of the provincial government. The provincial government refused to recognize their claim, and continuously obstructed it.

By 1997, the band, facing not only local racist assaults but continuous pressure from government bodies, was racked with discord. Finally, Chief Richard Kahgee, whose administration had orchestrated much of the sovereignty struggle for the community, resigned because of in-fighting on council. He was succeeded by Lester Anaquot, who, as his first act in power, withdrew the sovereignty declaration (*First Perspective* 1997, 1) in order that the community might have some peace.

Returning to harvesting allows communities to re-embrace their traditional ways of living and recreate the social institutions that these ways of living fostered. It is usually accompanied by a resurgence of cultural awareness and pride. It also provides ways of escaping the poverty that most Native communities face after years of landlessness and resource theft. In this respect, harvesting is crucial to the survival and re-empowerment of First Nations.

At the same time, every Native community that re-engages with harvesting rebuilds their link with the pre-colonial past which the Canadian settler state wants permanently broken. It is this reason, and not fears of economic competition, which drives the obsession on the part of many

non-Native groups to stop Native harvesting of resources.

Anti-racist activists seldom hear of these struggles around harvesting, and what they signify, for a very good reason - these struggles, like most forms of Native resistance, take place outside of the large cities which are usually the focal point for anti-racist struggle. Furthermore, what happens to Native people is seldom reported in the media. But the massive movement to claim sovereignty through exercising Aboriginal rights, which is flourishing in communities across Canada, currently represents a significant challenge to the colonial settler state. For this reason, it is important for those engaged in anti-racist resistance to support the harvesting struggles of First Nations.

ENDNOTES

1. Marshall, who was found guilty in 1996 of fishing for eels without a licence during a closed season, appealed his case to the Supreme Court, asserting that his right to fish was guaranteed by the Peace Treaties of 1760-61 and 1751, between the Mi'kmaq Nation and the British Crown. The Supreme Court acquitted Marshall and upheld the treaty rights (*Micmac Maliseet Nations News*, 1996, 1).
2. A mob of white fishermen entered the community of Burnt Church and cut all of the lobster traps owned by Native fishermen. Shortly afterwards, two Native men in a pickup truck were rammed repeatedly by a truck driven by white men. When the Native men got out, whites attacked them with baseball bats. One man managed to get back into the truck; however, the other barely survived the beating. Native people fought back, and in response seventeen whites and six Native people were arrested (APTN, October 1999).
3. In 1984, Ronald Sparrow, of the Musqueam Nation was charged under the *Fisheries Act* for fishing salmon in the Fraser River with a drift net longer than allowed under the band's food fishing license. The episode became a test case for the nature of the Aboriginal right to fish as defined by the *Constitution Act* of 1982. In 1990, the Supreme Court of Canada ruled that Aboriginal fishing for food, social and ceremonial purposes is a constitutional right, which takes precedence over the needs of other users, and are second only to conservation needs for the resource (which must be undertaken in conjunction with Native people). Importantly, *Sparrow* allowed for modern exercise of traditional practices. As a result of *Sparrow*, an Aboriginal Fisheries Strategy was developed by First Nations and the federal government. *Sparrow*, however, did not address the rights of Aboriginal people to sell fish, nor did it include inland waters (*Micmac Maliseet Nations News*, 1994, 14).
4. Near the start of the 1990s, Aboriginal people held 6.4 million acres, representing 0.3 percent of the total land area (Dickason 1992, 325).
5. For example, Native people have been blamed for the killing of wolves in the Northwest Territories, what biologists and government resource people, in a painful and frankly hypocritical turn of phrase, are calling "local genocide" practiced by Native people (*First Perspective* 1998b, 5). And in 1994 and 1995, Native poaching, rather than commercial over-fishing, was continuously used as the excuse for the precipitous decline in the salmon fishery. Native fishermen constantly pointed not only to commercial overfishing, but to the high water temperatures as killing numbers of fish. In 1995, government research confirmed that unusually warm water as a result of increasing temperatures had killed many of the fish. This, and an overdependence of the British Columbian economy on fishing, represents an ongoing threat to the fishery (Lazaruk 1995, 3). However, Native people still find themselves the target not only of white fishermen but of anti-Native rights groups such as the BC Fisheries Survival Coalition.
6. The Haida nation has been concerned for years about the high commercial fishing quotas allowed by the government, including over 100,000 tonnes of herring per single season in some areas throughout the 1950s and 1960s, which have resulted in severe herring

collapses in the past decade. After months of fruitless talks, in 1998 members of the Haida nation took to their boats to physically stop the commercial fishery, calling for a Standing Committee on Fisheries to investigate these problems (*First Perspective* 1998a, 15). Meanwhile, in Ontario, the United Chiefs and Councils of Manitoulin have demanded that the Ministry of Natural Resources immediately bans the hunting of bears in its traditional territories. Almost 10,000 bears are killed, primarily by American sports hunters, in northern Ontario annually (*Anishinabek News* 1998, 3).

7. In the face of a powerful commercial fishery, and white citizens groups opposed to Aboriginal rights, the Supreme Court, in cases involving British Columbia Native fishermen, ruled against having Aboriginal rights include a commercial fishery (Williams 1996, 1). Elsewhere in BC, in 1995 the Upper Nicola Indian band had to blockade a highway at Douglas Lake to have their traditional rights to the inland fishery protected from the interests of white ranchers (Russo 1995, 1).

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