

Wage Labour, Aboriginal Rights and the Cree of the Churchill River Basin, Saskatchewan

Peter Douglas Elias

Introduction

In recent years, Canadian courts have dealt with cases in which there have been disputes as to whether or not certain forms of behaviour are expressions of Aboriginal traditions. If a form of behaviour is found to be traditional, it may be deserving of respect as an exercise of Aboriginal right. If not, it may be illegal behaviour. In some cases, courts have decided the question by looking at the extent to which cultural elements characteristic of non-Aboriginal culture have pervaded Aboriginal culture. Wage labour has been just such an element used in the past to distinguish aboriginality from non-aboriginality. Courts see the extent to which an individual or group engages in wage labour as an indication of the extent to which Aboriginal traditions have been abandoned.

This paper examines the assumption that wage employment is alien to Aboriginal culture. It also examines whether involvement in wage labour distinguishes the history of a people who have abandoned their Aboriginal traditions. In particular, it will examine the history of wage labour in the culture of the Cree of the Churchill River basin of central Saskatchewan. It will be shown that wage labour among these Cree predates any diminution of their Aboriginal rights through treaty or express legislation. It will be argued that selling labour for wages cannot serve as a legal test of persistence or abandonment of traditional ways unless an extreme and essentially incorrect concept of tradition is used as the base for the test.

Since 1973, the legal concept of Aboriginal rights, until that time a nebulous idea at best, has acquired some of the character of a definition. In 1973, the decision in *Calder et al. v. Attorney General of British Columbia*, delivered by the Supreme Court of Canada, stated that the source of Aboriginal rights was the common law, rather than in any particular act of the Crown or its legislatures (*Calder* 1973). The 1984 decision in *Guerin v. The Crown* determined that, in some circumstances at least, the Crown has a responsibility to protect Aboriginal interests in land (*Guerin* 1984). Finally, while the *Constitution Act, 1982* recognizes and protects Aboriginal interests, it was found in *Simon v. The Queen* that,

when the terms of a treaty conflict with federal legislation, the latter prevails (*Simon* 1986). This has been confirmed most recently in *Horseman v. R.* (1990), where it was decided that the *Alberta Natural Resources Transfer Agreement* limited Aboriginal rights.

The most profound judicial statements on Aboriginal rights, however, are primarily statements of principle, and not very precise ones at that. The courts are only now interpreting basic principles in the light of particular peoples' situations. A well-known example of this has to do with establishing the legal horizon between history and prehistory.

It is now generally accepted as a principle that Aboriginal interests in land are derived from a people's occupation of a territory since times immemorial. The variable in this principle concerns where in the past the dividing line between times immemorial and times memorial occurs. A corollary principle holds that for a local practice or situation to be a manifestation of an Aboriginal right, that practice or situation needs to have been in existence since before the assertion of English sovereignty over the locality. A variety of dates have been used for this purpose, ranging from that of the Royal Proclamation of 1763 to the signing of treaties more than a hundred years later. These somewhat arbitrary dates serve as tests to distinguish whether or not a claimant group has a valid Aboriginal interest in land or an Aboriginal right to certain practices. The claimants and their ancestors must have occupied the lands or engaged in a certain activity in their vicinity since before whatever date applies, and if they cannot show this line of historic occupation or practice, their claim may be in jeopardy.

Continuous physical occupation of lands is not the only such test. *Baker Lake (Hamlet) et al. v. Minister of Indian Affairs and Northern Development*, determined by the federal court in 1980, was the first case in which these tests were set out in a systematic way. The presiding judge, Mr. Justice Mahoney, said that "The elements which the plaintiffs must prove to establish an aboriginal title cognizable at common law" are:

1. That [the claimants] and their ancestors were members of an organized society.
2. That the organized society occupied the specific territory over which they assert the aboriginal title.
3. That the occupation was to the exclusion of other organized societies.
4. That the occupation was an established fact at the time sovereignty was asserted by England. [*Baker Lake* 1980, p. 542]

Since 1980, these tests have been restated and amplified to meet the

particulars of later cases. Mr. Justice Steele, for example, who heard *The Attorney General for the Province of Ontario v. The Bear Island Foundation et al.* in the Ontario High Court of Justice, said that "the onus is on the [Indian claimants] to adduce evidence to prove on a balance of probabilities":

1. the nature of aboriginal rights enjoyed at the relevant dates (1763 or at the coming of settlements);
2. the existence of an organized society or social organization and the fact that it exercised exclusive occupation of the Land Claim Area. Included would be proof that there was an organized system of land holding and a system of social rules and customs distinct to the band;
3. the continuity of the exclusive occupation to the date of the commencement of the action. [*Bear Island Foundation* 1984, p. 24]

Most social scientists would agree that proving any of these points so as to meet the tests they imply would be a daunting task, likely to produce a considerable bulk of raw data and interpretation. In the course of a trial, much of this bulk is tendered as evidence, and it is then the task of the judge to determine what the evidence indicates and how to weigh it in making a decision. It is at this point, when confronted by volumes of information, that the courts construct tests by which they distinguish whether or not the information tendered is consistent with the basic principles characterizing Aboriginal rights.

Tests change and, as evidence becomes more complex, tests become more numerous and more rigorous. This becomes apparent when the two decisions cited above are compared. Mr. Justice Steele's formulation of the tests is much more demanding than Mr. Justice Mahoney's, even though the former says in his decision that he attributes his tests to the precedent established by the latter. In the past, there have been other tests that are now abandoned as inappropriate. One such test would have had claimants of Aboriginal rights show that they were as civilized as Europeans, and therefore as capable of having rights as any Englishman. The *Calder* decision of 1973 disposed of that test. Mr. Justice Hall of the Supreme Court of Canada said:

The assessment and interpretation of the historical documents and enactments tendered in evidence must be approached in the light of present-day research and knowledge disregarding ancient concepts formulated when our understanding of the customs and cultures of our original people was rudimentary and incomplete

and when they were thought to be wholly without cohesion, laws or culture, in effect a subhuman species. [Calder 1973, pp. 25-26]

Mr. Justice Hall provided another example of wrong thinking. He referred to the United States Supreme Court's 1823 decision in *Johnson and Graham's Lessee v. M'Intosh*, where Chief Justice John Marshall said that the tribes occupying America "were fierce savages, whose occupation was war" (*M'Intosh* 1823, p. 590). Mr. Justice Hall rejected this assessment of Indian culture as inappropriate for the early 1970s. He did point out, however, that Chief Justice Davey of the British Columbia Court of Appeal employed just such an assessment in his decision of *Calder* following its appeal from trial before the British Columbia Supreme Court. Chief Justice Davey had said of the Indians that "they were undoubtedly at the time of settlement a very primitive people with few of the institutions of civilized society, and none at all of our notions of private property" (*Calder* 1970, p. 66). Mr. Justice Hall concluded that "In so saying this in 1970, [Chief Justice Davey] was assessing the Indian culture of 1858 by the same standards that the European applied to the Indians of North America two or more centuries before" (*Calder* 1973, p. 26).

While it is encouraging to see the courts criticize decisions based on faulty historical and cultural information, such errors persist, and new errors are generated when past ones are finally corrected. One such new error may be identified in current thought on Aboriginal rights and title: that is, an error based on the perceived role of wage labour in Aboriginal culture.

Briefly, this error assumes that wage labour has nothing to do with Aboriginal culture; the extent to which a population of Aboriginal people relies on wage labour is taken to be an indication of the extent to which that Aboriginal population has abandoned its Indigenous culture. Perhaps the most comprehensive expression of this assumption is to be found in the decision of Mr. Justice Sissons of the federal court, who in 1961 heard the case of *Re: Noah Estate*. Noah, an Inuk of the Central Arctic, had died intestate. A significant part of his estate was in the form of cash earned while he was an employee at a Distant Early Warning Line station. The question was how to dispose of Noah's estate—to his bilateral kin as prescribed by Inuit custom, or only to his wife and issues, as prescribed in the appropriate Territorial ordinance. Sissons decided that Noah's hunting gear, tools and weapons would be distributed as prescribed by custom. Wage money was distributed according to the ordinance. Sissons explicitly distinguished tools and weapons as being attributes of Inuit life, and wages

as being foreign to that life (*Noah* 1961). Is this view of Aboriginal life appropriate?

Wage Labour and the Cree

There have been fur-trade posts in the region of the Churchill and Reindeer Rivers since free-traders built Fort la Traite at Frog Portage in 1774. Over the following two decades, the Hudson's Bay Company established nine posts in the vicinity, and the North West Company three (Harris 1987, plate 62; Voorhis 1932). For these early years, almost nothing of the historic record exists today; but for the decades from 1860 until 1890, the Hudson's Bay Company records are fairly complete. The focus here will be on these later years that predate Confederation (1967), the transfer of Rupertsland from the Hudson's Bay Company to Canada (1870), the *British North America Act* (1870), the signing of Treaty 6 (1876), the adhesion of the regional Cree to that treaty (1889 and 1890), the incorporation of the territory as part of the province of Saskatchewan (1905) and the *Saskatchewan Natural Resources Transfer Agreement* (1930).

The records of interest are the Hudson's Bay Company's daily journals and accounting books from the trading post at Rapid River, today known as Stanley Mission. The daily journals contain notes describing activities and events around the post, including the activities of post employees. The accounting books record business conducted at the post, including compensation for employees' labour. By comparing both sets of documents and the names they contain, it is possible to describe the number of employees engaged from time to time at the post, the number of days of work done by each employee, the sort of work they did, how employees were compensated for their labour and how employees disposed of their income.

Ray and Freeman said such records "provide empirical data ... which is remarkably accurate and complete" (Ray and Freeman 1978, p. 81). The data, however, rarely reveal themselves in forms that are immediately suitable for analysis. In this instance, the daily journals usually describe employees' activities in terms of days of work or partial days of work; for example, it may be recorded that a man was sent to net fish in the morning and to saw lumber in the afternoon, while another man spent the day repairing a York boat. Work time was rarely measured with more precision than that. For the purposes of this paper, the data have been compiled as person-days of work; that is, the number of days of labour expended on each identifiable task.

The 1865/66 fiscal year is the earliest year for which fairly complete data are available from the records at Rapid River post (HBCA

B.174/a/3). It should be pointed out, though, that social patterns described in those records were well-established much earlier than 1865. By that year, employment of Aboriginal labourers was a routine practice at Rapid River post and elsewhere. Records dating to 1797/98 from the Company post at Lac La Ronge, a few kilometres south of Rapid River, mention hiring labourers as an ordinary way of getting things done (HBCA B.106/a/1). In general, almost all work performed by Indian employees at the Rapid River post fell into four broad categories: food production, fuel production, transportation services and fabrication.

In 1865, the Rapid River post was manned by a single European and two Indians who were permanent employees of the post living close by with their families. Other Indians were engaged from time to time, as required, during periods of intense work. In all, these men did 439 days of work over the fiscal year 1865/66. Their most regular tasks involved keeping the post contingent fed, absorbing 160 days of labour, or about 37 percent of the total person-days of work done by them. Fishing and gardening were the most important tasks involved in food production. Semi-permanent fisheries had been established earlier in the century, about a half-day's travel above and below the post. Just before freeze-up, an employee's family would move to one of the fishing sites and attempt to net enough fish to last the post over the winter. When the river ice was solid, the frozen fish were hauled to the post with dogs and sled or horses and stoneboat. If the early expedition was not wholly successful, another turn at the fisheries was arranged for later in the winter, as was the case in 1866. In all, 87 person-days of work was spent at fishing.

Gardening accounted for 53 person-days of work. The garden was adjacent to the post, and fenced with rails to keep roaming livestock and wild animals out. A variety of vegetables were planted and stored in a root house for the winter. Barley was grown for the horses and, as well, for human consumption. While hunting was not extensive, amounting to only 17 person-days of work in the year, it was intensive, concentrating on rabbits in the late autumn and ducks in the spring.

Getting a winter's fuel supply was critically important to all posts in the north-west. Most wood was cut in the late winter and early spring, just before and just after spring thaw. In all, 33 days of labour went into wood cutting, with two men felling up to eight cords a day. Wood was usually left to lay where it was cut until needed, then drawn to the post at Rapid River by horse, sawn into stove-lengths by two men using a whipsaw, and finally split with axes and stacked.

In 1865/66, Rapid River post was a central point for trade along the Churchill River. Goods were first freighted to Rapid River from Cumberland House to the east, and then redistributed to Reindeer Lake,

Montreal Lake, Lac La Ronge, Egg Lake and Ile a la Crosse, mainly by York boat. Most freighting took place in the autumn, when goods were taken to the surrounding posts, and in the spring, when furs were collected for shipment east. As well, in most months trippers were sent to the outlying trappers' camps to take in goods and carry away furs. There was little trapping in the summer months when fur production was negligible. In all, 108 days were spent transporting goods and furs. As well, 58 days were spent hauling the catch from the fisheries and fuel from the wood lots, for a total of 166 days spent in transportation services.

Indian labour was used for the preparation of building and crafting materials and the manufacture of finished products. Carpentry, stonemasonry, joinery, shipbuilding, sawyering and lumber production, along with the making of specialized products, such as coffins, snowshoes, oars, canoes, nets, fence rails, pack thongs, toboggans and sleds, required 46 days of labour spread over all but the summer months. All involved skilled hand labour.

Gaps in the written documents make it difficult to determine the significance of wage labour in the local economy of 1865/66. The account book for 1864 (HBCA B.174/d/1), however, shows casual labourers were paid 12 Made Beaver (MB) per month, while full-time Indian employees were paid 15 MB per month. Fishers were paid 12 MB each month. All received provisions while on the job and had access to Company merchandise at reduced prices. In November of 1865, five men were working for the Rapid River post, the maximum number that year. Nine different men worked at the post at one time or another, putting in a total of about 18.3 person-months of labour over the year (based on six work-days in a week and twenty-four work-days in a month). If the wage rates of 1864 applied in 1865/66, and there is no evidence to the contrary, then it is expected that the total income earned through the sale of labour was in the range of 220 MB to 250 MB. The accounting book for 1865 (HBCA B.174/d/2) shows thirty-eight trappers with accounts at the Rapid River post and a total trade of 1175 MB. If this volume of trade is representative of the fiscal year 1865/66, then the value of wages was the equivalent of 19 to 21 percent of the value of income from trade.

At Rapid River in the 19th century, labour was a commodity with a set market value. Once terms of employment had been agreed upon, the purchaser of labour specified the task to be done and the means by which it would be done. The labourer retained no residual interest in the product of labour. In other words, by 1865, and probably much earlier, the essential features of wage labour were in place and functioning at Rapid River. From that date onward, change involved not so much innovative social relations of production (those innovations had occurred

much earlier) as empirical changes in the exact role of wage labour in a more complex economic configuration involving market production and domestic production as well as the sale of labour.

By 1870/71 (HBCA B.174/a/4; B.174/d/5), one or two of the small outposts served from Rapid River had closed and the post at Lac La Ronge was reduced in size. Several trappers at these posts moved their accounts to the Rapid River books, which increased that post's listing of thirty-eight trappers to fifty-nine. There were two European men at the post, at least one of whom was accompanied by his family. Four Indian employees, men with their families, were permanently attached to the post, including a full-time carpenter, two fishers and an interpreter. The amount of work at the post increased dramatically from a total of 439 person-days in 1864/65 to 1,101 person-days in 1870/71. While most of the work still fell into the four categories described above, there were some important changes in the nature of the tasks.

The larger compliment at the post required increased supplies of food. In 1865/66, the post received country foodstuffs valued at 68 MB, or about 6 percent of trade, which totalled about 1,175 MB in value. In 1870/71, the value of foodstuffs taken in trade was 600 MB, or about 14 percent of the total trade value of 4,299 MB. Prices paid for meat were free on board at the trapper's camp, and considerable use was made of labour to carry the meat from the camps to the post. Cartage took 50 days of labour, while in 1865/66 no labour had been expended on this kind of transport.

Fishing increased slightly in importance to feed the men, their families and the great numbers of dogs that were required to keep up with increased local transportation demands. There were now four permanent fisheries at much greater distances from the post, and the two full-time fishers rotated between them as stocks were exhausted. In all, fishing took only 96 days, but hauling the fish to the post took 170 days of work. The winter of 1870/71 was a very poor hunting season, and the post journal records that some trappers were starving (HBCA B.174/d/4). This may explain why fishing was so important that year.

Gardening was still important, and livestock at the post included bulls and cows as well as horses. Ox meat was a part of the diet. Husbandry occupied 96 days of work, including the time to make brewing malt for birch and barley beer.

Increased demands for food, dog feed, hay and fuel, as well as a larger area served by the post, resulted in expanded transport facilities at Rapid River. A full-time dogkeeper, with a permanent dog yard and kennel, was needed during the winter. The post regularly acquired dogs from Cree trappers, paying up to 20 MB for a trained animal. Hay production

increased, which involved scything grass along sloughs and in natural meadows, and transporting it to the post in a rick or wagon. Moving the hay from cutting sites to the post was done as supplies were needed. Of the 487 days of work involved in transportation, 401 days were needed to transport fish, wood and hay, while only 86 days were spent tripping to the surrounding camps; since trappers were expected to bring their furs to the post themselves.

The houses, barns, latrines, storage sheds, kennels, outbuildings and other structures demanded more labour for original construction and subsequent maintenance. The full-time Cree carpenter supervised a pitsaw and planing jig. Collars, harness, traces, sleds, wheeled wagons, boats, canoes and skiffs (used mostly to transport fish) were fabricated by local workers, who also managed a pine-tar cooker, charcoal clamps and a forge.

By 1870/71, the sale of labour had become quite important to the Cree around Rapid River. Of the fifty-nine men on the post's accounts book, eleven had received an average of 17 MB income in return for casual labour. Thirteen crewed the York boats during that year, for an average income of 18 MB each, and twenty-seven sold provisions and finished or semi-finished goods, for an average income of 32 MB from these sources. In the same period, fifty-two trappers brought in 3,010 MB in furs, averaging 58 MB each. The average income from all sources for those listed in the accounts book was 74 MB.

Relatively few employees had incomes from only one source. Of the fifty-nine persons named in the accounts, only eighteen derived an income solely from the sale of furs, and they averaged an income of 57 MB. Another thirty-seven derived an income from both trapping (averaging 68 MB from this source) and sale of produce (averaging 17 MB), with a total average income of 85 MB. These persons had the highest average incomes of all those listed in the accounts. The success of this combination—trapping and sale of products—might be attributed to the compatibility of activities that demanded a presence on the land, either to take fur or to harvest meat, bark, fish, ducks or other resources.

High incomes were also possible for those who sold their labour: three persons averaged an income of 90 MB, of which 49 MB came from tripping, 20 MB from the sale of fur, 15 MB from the sale of produce and 6 MB from temporary labour. In general, however, as wage labour became a part of an economic strategy, the sale of commodities declined in importance. Labour was usually provided at the post; thus, the opportunity to exploit land resources was much reduced during the terms of employment. Most of those who did combine tripping with trapping or the sale of produce had relatively low incomes: eight such men averaged

10 MB from tripping, 24 MB from the sale of fur and 9 MB from the sale of produce, for an average income of 43 MB. Six men who combined the sale of casual labour with the sale of fur or produce did somewhat better, averaging 66 MB in total income (44 MB from fur, 11 MB from sale of labour and 11 MB from sale of produce). This average is only slightly higher than that achieved solely from the sale of fur.

In 1870, Rapid River boasted an inventory of almost two hundred different items on its shelves, which can be divided into three general categories: clothing materials, tools and non-subsistence goods. As might be expected, persons with high incomes spent more than persons with low incomes. Those with high incomes earned most of that income from the land and made the largest expenditures on tools and other subsistence goods. Those who sold labour for much of their income spent less on tools and more on clothing and non-subsistence goods.

For a decade from the late 1870s until the late 1880s, hunting was very poor in the Churchill River region. Both fur and meat animals were scarce (HBCA B.174/d/13). By 1888/89, though, the next year for which adequate data are available (HBCA B.174/d/28; B.174/d/29; B.174/d/30; B.174/d/31), further changes had occurred at Rapid River. A new barn was added. The same compliment of European and Indian personnel were employed. The post's hinterland had expanded considerably, since it was the terminus of a new freighting route that led into the region from the south rather than the east through Cumberland House. The recently completed railroad far to the south connected with wagon and cart trails leading to a Company depot at Prince Albert. Cree and Dakota freighters then carried goods north through Montreal Lake and the Montreal River and over the height of land into the Churchill River system (Elias 1988). In the same year, the outpost at Southend-Reindeer was reopened and administered from Rapid River.

Important changes were taking place outside the Company-dominated system. The Cree living in the Rapid River region adhered to Treaty 6 on 10 February 1889. The treaty was, of course, vitally important in many aspects of Indian life, but for the purposes of this paper it need only be mentioned that the treaty annuity payments introduced cash into the regional economy and marked the beginning of a government-funded support system for aged or incapacitated people. By 1888, the Anglican church at Rapid River, the landmark Stanley Mission, was well-established, and clergy often hired the Cree to do many of the tasks they had been doing for the Company. All of these transactions are recorded in the Hudson's Bay Company post journals.

Provisioning at the post had reverted to an earlier pattern. Meat was no longer purchased at the camps; indeed, meat was almost a luxury,

limited to rare pieces or whole carcasses brought in to the post for trade or taken during an equally rare hunting expedition mounted by post personnel. Fishing was the primary food-getting activity and fish the staple of the diet. Fishers were paid 25 MB a month to work the four fishing stations. For the first time, there is a record of the European Company men working the fishery themselves, and over the winter season they put in twenty-seven days at the work. As well, fish were taken in trade from the Indians, who were paid five cents for each large whitefish they brought in to the post. (At that time, one Made Beaver was the equivalent of seventy-five cents (HBCA B.174/d/30)). Reliance on fish and a decline in the regional availability of game is reflected in the volume of trade in country provisions. In 1865/66, produce accounted for 11 percent of the total value of items traded at the post; by 1870/71, this had increased slightly to 14 percent of the trade; by 1888/89, the trade in produce had declined to 1.4 percent of all trade.

Fish and meat pemmican were taken in trade, with the latter valued at thirteen cents per pound. Fresh meat was either consumed immediately in the summer or pounded into pemmican for winter use. Ducks were shot in the spring and fall, or taken in trade at 1 MB for four ducks. Beef was more commonly eaten by the post personnel. Gardening was declining but remained important. Only twenty-seven days of work were put into gardening.

For a few years before 1888, the post manager had attempted to "winterproof" the post's dwellings. The record does not say how this was accomplished, but the amount of time spent producing firewood declined to 114 days of labour, compared to 181 days in 1870/71. On the other hand, the winterproofing itself took 50 days to complete. Seven men worked at woodcutting, earning in all 233 MB, or about 175 dollars.

By 1888, Rapid River had again become a central point for smaller posts located down the Churchill River and connecting waterways. Ten York boats were commanded from Rapid River. A boat required eight to ten oarsmen and cost 130 MB for labour and 45 MB in supplies for a trip to Cumberland House. The short trip to Frog Portage cost 75 MB for labour and 17 MB in supplies (HBCA B.174/d/30). Roads had been cut to the fisheries and woodlots, greatly reducing the need for labour to operate the skiffs, stoneboats and dog teams. On the other hand, an independent trader had set up opposite the Hudson's Bay Company's post at Rapid River. To meet this competition, the post was again operating a tripping service to the camps year-round. A total of 753 days of labour was spent travelling to the trappers' camps, compared to 86 days in 1870/71.

Specialty goods were now relatively easy to obtain from the large

Company depot at Prince Albert, which was supplied by rail from the south and by steamboats on the North Saskatchewan River. The demand for skilled labour declined. Men were still making sleds, snowshoes, canoes and building materials both for sale and as employees of the Company, but there is no further mention of a kiln, tar still, malting and beer-making facility, or forge. However, the increased demand for fish was matched by a demand for fish nets, which were purchased from the Cree for 20 MB.

The importance of labour in the local economy had undergone a major change since the 1860s. In the summer of 1866, the Company journal for Rapid River records that "boats left after much trouble in getting a sufficient number [of oarsmen] for tripping" (HBCA B.174/a/2). In February 1871, the post manager wrote that men for cutting wood "are not to be had for love or money" (HBCA B.174/a/4). In 1890, however, the journal recorded that Indians were coming from as far as Lac La Ronge looking for work (HBCA B.174/a/8). In 1870/71, twenty-two men of sixty-two listed in the accounts book were reported to have worked for the post in exchange for wages. In 1890 this proportion had risen to fifty out of sixty-six men named in the list. In the earlier years, the men who had the highest incomes were those who exploited country resources exclusively, without selling their labour. Since 1871, this group had dwindled from nineteen of sixty-two men listed, to only five of sixty-six listed, and these five were amongst those with the lowest incomes. Those with the highest incomes were men who sold their labour.

This vignette of history in the Churchill River basin of Saskatchewan provides examples of most of the factors that have been influential in shaping the role of wage labour in the local economy of the Cree. Wage labour was only one component in a dynamic and complex regional economy that also included a market component and a domestic production component. Domestic production provided virtually all of the things necessary for subsistence: food, heat, shelter, transportation and clothing. Foodstuffs were available at the post, but the accounts books make it clear that the Cree purchased very little of this stock. In 1888/89, for example, foodstuffs made up only 5.4 percent of the value of all purchases at Rapid River. Heat and fuel supplies made up 1.8 percent; clothing (primarily unfinished yard goods, needles, thread, buttons and so on) 53.3 percent; tools 15.2 percent; and non-subsistence goods 23.5 percent (Ballantyne 1976, pp. 34-35).

By the last decade of the 19th century, virtually all cash came in the form of treaty annuities. Credit, which was always more substantial than treaty payments, came from the sale of fur, the sale of products, and the sale of labour. The Cree economy was based on strategies that balanced

production in each of these components, and this balance was to a considerable extent determined by influences external to the Cree community. Thus, opportunities to sell labour were influenced by national political decisions, such as the decision to build the railway, which reduced the need for labour associated with long-distance river freighting, as well as such local influences as fluctuations of fish stocks, which resulted in an increased demand for labour to haul fish from more distant fisheries.

For the Cree, a decline in fur prices, resulting in lower trapping incomes, promoted the sale of labour. An increased number of permanent employees at the post encouraged the sale of meat, finished leather and other local products. Decisions made in England to reorganize the northern fur trade resulted in the closing of outposts and a decline in the need for trippers. Competition from independent traders increased the demand for trippers and supplies necessary to feed them. The establishment of a church increased opportunities for selling labour. Finally, southern technological innovation made the local manufacture of many essential items obsolete, and the demand for skilled labour declined.

These changes are continuous throughout the history of the region, from the early 1860s until recent times. From 1900 to 1940, Cree involvement in wage labour declined rapidly. In 1900, Cree labourers did 703 days of work at posts in the Churchill River district. By 1910, this had dropped to 553 days of work and from there went to about 425 days in 1920, to 388 days in 1930 and 100 days in 1940. By the end of the 1970s, opportunities to sell labour had all but disappeared. In more recent years, these opportunities have increased. Initiatives taken by the Lac La Ronge Band, changing government policy and favourable court decisions have resulted in increasing responsibilities for the band and more band members are now employed to carry them out. The band has encouraged private enterprise and today there is a labour market more-or-less internal to the Cree community. Other Cree are employed by local and provincial governments, enterprises, and so on (HBCA B.174/a/8; HBCA B.106/a/3; HBCA B.106/a/4; HBCA B.106/a/5; HBCA B.106/a/6; PAC RG10, vol. 6914; HBCA B.158/a/11; HBCA B.106/a/9; B.106/a/10; B.106/a/11).

Discussion

Wage labour is not the only social indicator gaining status as a test of continuing aboriginality. In her introduction to the Gitksan and Wet'suwet'en Address that opened *Uukw et al. v. The Queen in the Right of British Columbia and the Attorney General of Canada*, then being heard by the Supreme Court of British Columbia, Louise Mandell identified several such indicators.

The last line of defence apparently being advanced through the governments' cross examination of witnesses is assimilation. The Crown attempts to show that the Gitksan and Wet'suwet'en people no longer have a distinct way of life on their land. That it has been replaced by Indian reserves, the wage economy, cars, Christianity, public education and provincial jurisdiction over hunting and trapping, etc. The province of British Columbia and the federal government deny the aboriginal title claimed by the Gitksan and Wet'suwet'en. [Mandell 1988, p. 14]

To be regarded as persisting elements of an Aboriginal right, contemporary practices must be consistent with past practices. This notion is taking shape under the rubric of "tradition." The keyword "tradition" is invoked by both Indians and whites in all forums where Indian matters are discussed: political, legal and administrative. For example, in the introduction to the government of Canada's policy statement on land claims, *In All Fairness*, comprehensive land claims are described as relating to "traditional use and occupancy and the special relationships that Native people have had with the land since time immemorial" (Canada 1981, p. 7).

The concept of tradition has, as well, become central in the adjudication of matters of Aboriginal rights (*Baker Lake* 1980, p. 523; *Taylor and Williams* 1981, p. 367; *Dick* 1985, p. 33; *The Queen v. Wilson* 1987, p. 168). Legislation invokes tradition, as in *Northwest Territories Fisheries Regulations*, section 22 of which allows an Aboriginal person to "fish without a licence by his traditional methods for food for himself, his family or his dogs." Policy makers and courts seem to assume that legal continuity from "times immemorial" to the present is materialized if current practices are consistent with past practices.

In their address, the Gitksan and Wet'suwet'en correctly identified the root of this approach. They characterize the current concept of tradition as "mistaken and stereotypic" (Mandell 1988, p. 49). The problem is that the prevailing legal concept of tradition, at least insofar as it applies to matters of Aboriginal right, freezes the rights of a group of claimants. The time of freezing is in the claimant group's considerable past, usually at the point where times immemorial are legally separated from times memorial. This forces attention solely on what appear to be polar contradictions in the history of a culture: handcrafts are traditional, but high technology is not; hunting is traditional, but jobs are not; collective interest is traditional, but individual interest is not; and so on. This approach ignores the intervening decades and even centuries of history, which are more appropriately revealed as movement on a continuum.

This focus on the either/or face of a situation is derived from a particular, and, I believe, erroneous idea of what constitutes "tradition."

In keeping with the legal practice of respecting the ordinary meaning of words, the *Oxford English Dictionary* may be consulted. The dictionary gives almost two full pages of definition and annotation for words containing the root "tradition." "Tradition" itself has fourteen separate meanings, but of these several are liturgical in nature, referring to writings in the Torah, Koran, and Bible. Secular definitions include:

Tradition

- 3a. Delivery, esp. oral delivery, of information or instruction.
- 3b. An ordinance or institution orally delivered.
- 4a. The action of transmitting or "handing down," or fact of being handed down, from one to another, or from generation to generation; transmission of statements, beliefs, rules, customs, or the like, esp. by word of mouth or by practice without writing.
- 5a. That which is thus handed down; a statement, belief, or practice transmitted (esp. orally) from generation to generation.

What all these definitions suggest is for current behaviour to be traditional, it need only be continuous with the past; there is no implication that traditional behaviour must be identical to behaviour in the past. Jon Elster, in writing about matters having nothing whatever to do with Aboriginal rights, has described tradition as having "a short and inaccurate memory: it involves doing *approximately* what your parents did, not *exactly* what people in your society have been doing from time immemorial. Traditional behaviour, therefore, is often in a state of incessant if imperceptible change" (Elster 1983, p. 63; emphasis added).

The courts insist that change is equated with extinguishment of Aboriginal rights. This is more in keeping with the idea of "traditionalism," rather than tradition. According to the *Oxford English Dictionary*, "traditionalism" has a single, secular definition:

Traditionalism

Adherence to traditional doctrine or theory; maintenance of, or submission to, the authority of tradition; excessive reverence of tradition.

The word "excessive" amplifies the definition of "traditionalism" and according to the dictionary, has the following meaning:

Excessive

1. Transgressing the bounds of law, decency, or morality; outrageous, lawless, wrongful.
- 2a. Exceeding what is usual; "surpassing"; exceedingly great.
- 2b. Exceeding what is right, proportionate, or desirable; immoderate, inordinate, extravagant.

Traditionalism is a belief or persuasion, much like a religious article of faith, rather than a useful depiction of real-world processes. Elster suggests that for tradition to be unchanging, one of three conditions must be met: either the environment in which behaviour takes place is in ecological balance and absolutely unchanging, therefore requiring no compensatory change in behaviour, or there is intentional imitation of a constant model of behaviour, or the exact replication of past behaviour is superior in practice to all nearby alternatives (Elster 1983, pp. 63, 243).

Roy Ellen, in his discussion of static equilibrium, makes it clear that the first condition has never existed in natural history beyond the very short term. In his view:

As a description of empirical phenomena, the concept of ecological balance is at best highly relative and at worst misleading. The notion of a perfectly balanced ecosystem is incompatible with the empirical evidence. ...

Even in relatively closed, small-scale populations there is evidence that this balance is frequently upset through innovations, migration, conflict and resource depletion. The more complex ecosystems become the less equilibrium assumptions hold true. [Ellen 1981, p.187]

As for the second condition—intentional imitation of a constant model—only a single instance comes to mind. In the 19th century, a utopian community of farmers and silverworkers was established in New England. Their practices included interdicts on sexual intercourse and admission of new members by recruitment. In a short while, the only thing remaining of these devoted people was their name stamped on the back of table cutlery—Oneida.

Finally, it may well be that, in given circumstances, a continuation of past behaviour is superior to whatever alternatives there might be. This is determined on the basis of ongoing comparison of alternatives, which may and probably will eventually result in change.

Traditionalism implies functional autonomy, behavioural and environmental stasis, situational irrelevance, and absence of historical

conditioning. A more sophisticated measure of tradition might be based on the concept of resilience (Holling 1973, p. 17). Resilience determines the persistence of relationships within an ecological system that includes a population of humans. A system is said to be resilient if it is capable of absorbing change and still persist as a system. The question becomes one of determining if and when a given social system was overwhelmed by change.

To return to the example of wage labour in the Churchill River region of Saskatchewan, the extent and importance of wage labour has reversed several times in past decades. There are strong suggestions that the sale of labour by the Cree peaked prior to the turn of this century, and then declined steadily until very recent years. In 1975, the Peter Ballantyne and Lac La Ronge Bands completed a large-scale program of research to determine the economic characteristics of their people. It was found that 13 percent of all incomes were derived from the sale of labour, 14 percent from the sale of fur and handcrafts, 14 percent from transfer payments and about 59 percent from domestic production of food, shelter, clothing, heat, etc. Of all available cash, 60 percent was spent on food, 11 percent on shelter, 9 percent on clothing and 15 percent on subsistence tools (Ballantyne, et al. 1976, p. 318). This latter-day economic pattern bore more resemblance to patterns of a century earlier than it did to mainstream Canada of the day.

The concept of tradition has been invoked in a variety of legal cases. Proof of traditional practice may be demanded in almost any matter implicating Aboriginal rights. The onus will be on Aboriginal people, as has been said about section 22 of the *Northwest Territories Fisheries Regulations*:

While the term "traditional means" is not defined in the Regulations, it must have some meaning and the onus would surely be on a defendant claiming the exemption to satisfy the Court before which he appeared that the means used to fish came within the meaning of the term. [Rocher 1982, p. 128]

There are several aspects of Aboriginal life where sound historic arguments could be made linking current and ancient practices—trade, justice, self-government and so on. *Horseman v. The Queen*, decided by the Supreme Court of Canada in May 1990, clearly indicates the court's view of these arguments.

The Supreme Court of Canada has recently handed down two decisions: one supporting the conclusion that courts embrace traditionalism rather than tradition and one that seems to contradict this

conclusion. The first, *Horseman v. R.*, was decided on 3 May 1990. In this matter, Bert Horseman, a Treaty 8 Indian in Alberta, had shot a grizzly bear in self-defence and subsequently sold the animal's hide. He was charged with unlawfully trafficking in wildlife contrary to the *Wildlife Act*. Horseman argued that rights secured under Treaty 8 entitled him to carry on his "usual vocations of hunting, trapping and fishing." Horseman showed that his people had been engaged in hunting for many generations and that, since well before the signing of treaty, they had been selling products of the hunt. He argued that at the time Treaty 8 was signed, the "usual vocation" of his people included the taking and selling of meat, hides and other wildlife products, and that this vocation had been specifically protected by the treaty.

The trial judge agreed with Horseman and acquitted him. The Court of Queen's Bench reversed that decision. The reversal was upheld by the Court of Appeal. The Supreme Court was asked whether the *Wildlife Act* applied to Treaty 8 Indians, and whether the *Alberta Natural Resources Transfer Agreement* affected rights secured under treaty. The Crown had asserted that section 12 of the agreement had limited hunting rights to hunting for food only; if Indians had earlier hunted for barter or sale, that practice was now subject to provincial regulation. The court was split.

Madame Justice Wilson wrote the dissenting view, a view that embraced the concept of tradition rather than traditionalism. In her opinion, Horseman had the right not only to shoot the bear, but also to sell its hide. She argued that Treaty 8 was a solemn agreement into which the Indians entered only when they were assured that any laws the Crown might make would be constructed so as to protect the Indians' way of life. The *Alberta Natural Resources Transfer Agreement* stipulates that Indians may hunt "for food." Madame Justice Wilson urged that this phrase be interpreted to mean hunting for "support and subsistence." Horseman had sold the bear hide in order to purchase food for himself and his family and, according to Madame Justice Wilson, this would be entirely consistent with pre-treaty practice.

The whole emphasis of Treaty 8 was on the preservation of the Indian's traditional way of life. But surely this did not mean that the Indians were to be forever consigned to a diet of meat and fish and were to have no opportunity to share in the advances of modern civilization over the next one hundred years. Of course, the Indians' hunting and fishing rights were to be preserved and protected; the Indians could not have survived otherwise. But this cannot mean that in 1990 they are to be precluded from selling their meat and fish to buy other items necessary for their

sustenance and the sustenance of their children. Provided the purpose of their hunting is either to consume the meat or to exchange or sell it in order to support themselves and their families, I fail to see why this is precluded by any common sense interpretation of the words "for food."

This interpretation agrees with social scientists' understanding of human history and change. Traditions are not static and unyielding; traditions accommodate change by maintaining consistency with past practices. It would also have been consistent with the legal dictum that treaties with Indians should be given a large and liberal interpretation.

The majority of the court dismissed Horseman's appeal. The court adopted the narrowest possible interpretation of the words "for food," and strictly limited hunting rights to the right of putting meat on the hunter's table. The court agreed that Indians had long been engaged in commercial hunting before Treaty 8 was signed, and that Treaty 8 protected commercial hunting. However, the majority of the court concluded that the Crown had the lawful capacity to abridge rights secured under Treaty 8, and that the *Alberta Natural Resources Transfer Agreement* had done so. This is a traditionalist's decision, one that reduces lawful activities to their most elemental and primitive form without leaving any opportunity for ancient behaviour to adapt to change.

Sparrow v. R., decided 31 May 1990, seems to contradict the conservative decision in *Horseman*. Ronald Sparrow had been convicted in British Columbia's Provincial Court of fishing with a net longer than allowed by the *Fisheries Act*. Sparrow argued that he was exercising an existing Aboriginal right to fish and that net restrictions were inconsistent with section 35(1) of the *Constitution Act, 1982*. The British Columbia Court of Appeal rejected the conviction on the grounds that the lower court had not properly considered whether Sparrow was exercising an Aboriginal right. In considering the nature of an Aboriginal right to fish, the Court of Appeal invoked the principle of giving liberal interpretation in favour of the Indians. The court said it was a right to fish for food and related traditional activities: " 'food purposes' should not be confined to subsistence" (*Sparrow* 1986, p. 331). In the Supreme Court, the Crown argued that Court of Appeal had erred in giving such a broad interpretation of the right's contents, if such a right existed.

A unanimous court found that existing Aboriginal rights, as phrased in section 35(1) of the *Constitution Act, 1982*, "must be interpreted flexibly so as to permit their evolution over time." The court also said that rights "may be exercised in a contemporary manner" (*Sparrow* 1990). Sparrow argued that his Aboriginal right to fish extended to fishing for any

purpose, including commercial fishing. He said that the ancient practice of bartering with fish may be revived as a modern right to take fish for commercial purposes. The court did not decide this question, saying that the issue was beyond the scope of the present case. It is not possible to put words in the mouth of the court, but had the court applied the conclusions cited above, it may well have decided that commercial fishing is a contemporary exercise of an existing Aboriginal right that has evolved over time. This would certainly have been an appropriate view of tradition.

Conclusion

Clearly, it is an error to view wage labour, so firmly associated with industrial society, as alien to Indian culture. The exchange of labour for compensation has been a crucial component of local Cree economies since well before the beginning of the "modern" era in western Canadian history, and certainly before the legal horizon separating time immemorial from time memorial. As in many other matters, it will not do to arbitrarily assume that this or that form of behaviour is disqualified as the exercise of traditional Aboriginal rights. They must be placed in a proper historic context. A new view of Aboriginal history may help to clarify the legal status of tradition.

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