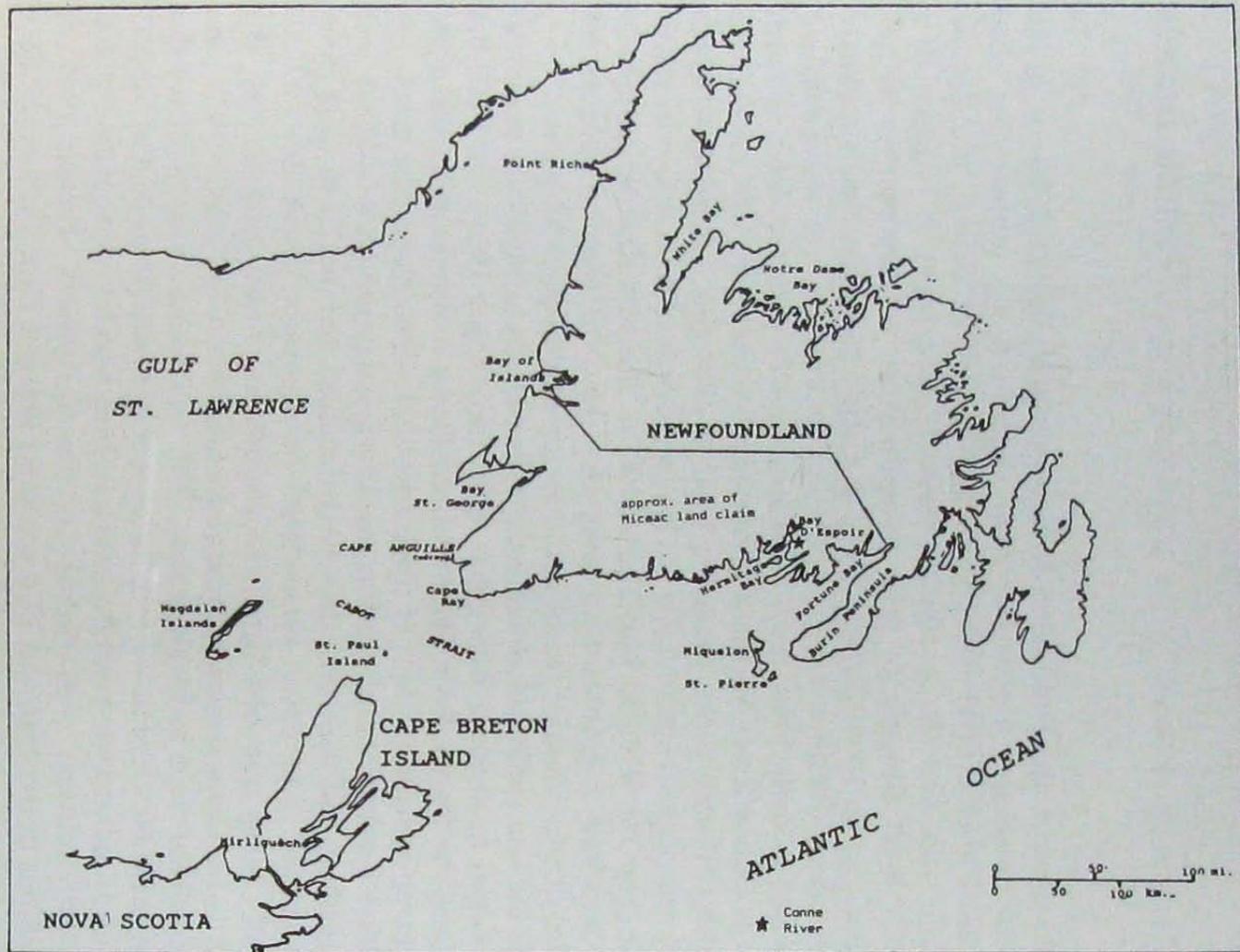


Newfoundland Micmac Claims to Land and "Status"

Dennis Bartels

At present, the Federation of Newfoundland Indians (FNI, or, in the Micmac language, *ktaqamkuk Ilnui Saqimawoutie*), representing 1000 Micmacs from central Newfoundland, the Bay of Islands, the Bay St. George area and the northern Peninsula (see map), is engaged in a political-legal struggle to gain recognition of its members as "status" Indians. Some 1800 Micmacs living in Conne River, on Newfoundland's south coast, obtained such recognition in 1986-87. In a legal action launched in early 1989, the FNI asserts that its members have as much right as Conne River Micmacs to Aboriginal status. The legal justification for the FNI case is the Canadian Charter of Rights, according to which every individual is equal under the law, regardless of race, colour or ethnic origin (see *The Western Star*, 25 Jan. 1989). The historical background of this case, and its relation to a comprehensive land claim by Micmacs for a third of the island of Newfoundland, are explored in this paper.

In the late 1960s, Newfoundland Micmacs became politically organized and began to demand Aboriginal rights (see Anger 1981). In 1981, the FNI and the Conne River Band Council filed a comprehensive land claim for the southwestern third of the island of Newfoundland (see map). To establish a comprehensive claim, an Aboriginal group must establish that its members and their ancestors have occupied and used land from "time immemorial," and never surrendered or otherwise ceded this land to others. Many non-Aboriginal Newfoundlanders and, most notably, the Progressive Conservative provincial government of 1981, did not take the Micmac land claim seriously at first. This was because it contradicted the widely held Newfoundland folk belief that the only Aboriginal occupants of Newfoundland were the Beothuck Indians who had disappeared by the mid-19th century. According to this folk-belief, French colonial authorities in the 16th and 17th centuries brought Cape Breton Micmacs to Newfoundland and paid a bounty for every Beothuck that the Micmacs killed. Some of these Micmacs stayed in Newfoundland and were the ancestors of the contemporary Micmac population. Thus, the former Progressive Conservative Premier of Newfoundland-Labrador, Brian Peckford, referred to Newfoundland Micmacs as one of several immigrant



Map: Micmac Land Claim in Newfoundland

groups, like the Irish or English, who were not Aboriginal. While Peckford did not publicly state that the Micmacs killed the Beothucks, this claim was, until recently, included in most school textbooks on Newfoundland history. Micmacs are still excluded from most maps that purport to show the traditional lands of Canadian Indians (for example, see Driver 1969, map 40).

Thus, the Micmac land claim could be rejected by non-Aboriginal Newfoundlanders and the Newfoundland government on the grounds that (a) the Micmacs were not indigenous, and (b) the ancestors of contemporary Newfoundland Micmacs were historically tainted with the murder of the Beothucks.

However, when historians began to examine the latter claim closely, they found no evidence to support it. Although there may have been traditional hostility between Micmacs and Beothucks (see Marshall 1988), no eyewitness account of a Micmac killing a Beothuck or collecting a bounty has been found. Also, no French documents have been found that indicate bounties for killing Beothucks were paid. Canadian historian Leslie Upton argues that what is now sometimes called the "Micmac Mercenary Myth" (Bartels 1979) was introduced, without supporting evidence, by the Newfoundland explorer-businessman, William Epps Cormack, in his inaugural address to the Beothuck Institution in St. John's, NF, in 1827. Upton concludes that the "myth" was "a very comforting explanation, as it relegated the English to a minor role in finishing off what others [i.e., the Micmacs and French] had begun" (1977, p. 147).

It seems likely that a few English fishermen and settlers, and not Micmacs, killed a significant proportion of the estimated 1000 Beothucks (Marshall 1981) in the late-18th and early-19th centuries (Upton 1977). It has also been suggested that a major factor in the demise of the Beothucks was tuberculosis (Marshall 1981).

It is perhaps significant that the most recent "official refutation" of the Micmac land claim by the Newfoundland-Labrador government (1982) does not contain the Micmac Mercenary Myth.

The Micmac Mercenary Myth is, however, still uncritically accepted by many non-Aboriginal Newfoundlanders and others. It is repeated in the latest edition of the *Encyclopedia of Native American Tribes* (Waldman 1988, p. 30). Thus, the Micmac Mercenary Myth remains a potent political weapon against the Micmac land claim.

Micmac folklore provides a different account of the end of the Beothucks. When their numbers decreased in the 19th century, the remaining Beothucks married into other groups, such as the Innu of Labrador, Cape Breton Micmacs or Newfoundland Micmacs. Several

Micmacs in Newfoundland and Cape Breton claim partial Beothuck descent. While many non-Aboriginals *would not* demand documentary evidence to support the Micmac Mercenary Myth, they *would* demand documentary evidence to support the Micmac account of the end of the Beothucks. To the best of my knowledge, no such evidence has been found. When one considers, however, that the Strait of Belle Isle, separating Newfoundland from Labrador, is only eleven miles wide at some points, and that it is covered with thick ice in the winter, it seems strange that beleaguered Beothucks did not escape across it, or that they were as isolated as most ethnographic and popular accounts would have it.

Even if the Micmacs were not paid to kill the Beothucks, the question of how long Micmacs have been living in Newfoundland remains. Newfoundland Micmacs base their comprehensive land claim on the premise that Newfoundland has been part of Micmac hunting and fishing territory since "time immemorial," presumably because Cape Breton Micmacs regularly travelled to Newfoundland to hunt and fish during pre-contact times. In the early 1920s, anthropologist Frank Speck claimed that Micmacs paddled and sailed in large canoes from Cape Breton to St. Paul Island, waited until the sea was calm, and then went on to Newfoundland at night, guided by beacon fires lit by advance parties (1922). This claim has been disputed by Ralph Pastore, an ethnohistorian at Memorial University of Newfoundland, who argued that Micmacs in pre-contact times had no good reason to go to Newfoundland, and could not have made the voyage from Cape Breton to Newfoundland without small European sailing vessels called shallops (1978). These arguments can be criticized in several ways. What counts as a "good reason" for making an arduous, perhaps dangerous, sea voyage? In the case of European explorers, commercial or economic motives are often cited (e.g., a shorter route to the Indies, gold from the Seven Cities of Cibola, etc.). It is similarly possible that Micmacs had economic motives for going to Newfoundland. The possibility that a decline in fish and game populations in Cape Breton might have led Cape Breton Micmacs to voyage to Newfoundland in pre-contact times has been discussed by Martijn (1986; 1988) and Miller (1982, p. 111). Pastore also discusses the possibility that depletion of game populations in Cape Breton led Micmacs to voyage to Newfoundland, but apparently does not believe that they could have undertaken such voyages without European-style vessels (1978, p. 20).

As for the possibility of pre-contact canoe voyages across the Cabot Strait, from Cape Breton to Newfoundland, according to reports from 17th- and 18th-century French missionaries, Micmacs "do not hesitate to paddle their bark canoes thirty or forty miles by sea" (Charlevoix, vol. 1,

1902, p. 264; also, see Martijn 1986 and Whitehead 1986).

Even if Micmacs, after extensive contact with Europeans, came to Newfoundland in shallops, this does not necessarily invalidate the Micmac land claim. All parties with an interest in the claim argue that establishment of the claim requires demonstration of Micmac use of Newfoundland prior to a particular date. (Since this date is subject to wide and seemingly arbitrary interpretation, it has been referred to elsewhere as "magic"; see Bartels 1987, p. 33.) For the provincial government and other opponents of the claim, this date seems to vary between the date of "assertion of English sovereignty" over Newfoundland, and the date of initial European contact during the 1500s or earlier (see Newfoundland and Labrador 1982, pp. 115, 93). However, both of these dates, as well as the definition of "sovereignty," are extremely controversial.

There are many factors that may be relevant to the determination of the "magic date," but only one will be mentioned here. If "assertion of English sovereignty" is interpreted to mean nothing more than French cession of Newfoundland to the British Crown according to the terms of the Treaty of Utrecht in 1713, then it is clear from 17th- and 18th-century French documents that Micmacs used Newfoundland long before that, probably because of the excellent quality of Newfoundland beaver pelts for the fur trade (see Commodore Grayson, Royal Navy, to the Lords of Trade and Plantations, 1701, C.O. 194/2, p. 180).

The "magic date," however, may be determined in the course of political and legal battles where historical and ethnographic evidence is of secondary importance. For example, it seems that the provincial government's initial opposition to the Micmac claim was economically motivated. Premier Peckford expressed his concerns about the possible effects on provincial government and corporate resource policy of recognizing Micmac Aboriginal rights and of negotiating the Micmac land claim. This was explicit in his remarks to the Newfoundland-Labrador House of Assembly on 23 November 1981, during a debate on the inclusion of an "Aboriginal Rights Clause" in the Canadian Constitution:

... for example, at [the] Bay d'Espoir [hydroelectric project, built during the 1950s]. There could be financial compensation that we will have to pay to the Micmac people for the disturbance caused in what has been their traditional land for hunting and fishing.

... Where in the Baker Lake case you had the mining companies having to bring back their planes, bring back their men and damage to them or the expense to them probably resulted in thousands of dollars, maybe tens of thousands of dollars, if, Mr.

Speaker, there is a delay in the commencement of a project such as the Lower Churchill [hydroelectric] project [in Labrador], you are talking then about possible expense or additional costs of tens or even hundreds of millions of dollars. . . .

There are other projects on the Islands, Mr. Speaker, that could be affected by the question of what rights, if any, can be claimed by the Micmac people.

The real question is whether the rights go further in terms of entitlement to royalties from minerals, to entitlement to a claim for royalties from petroleum or natural gas that might be found and so forth, to entitlement to royalties from the use of water power. These are difficult issues that have to be cleared up, Mr. Speaker.

After Premier Peckford made these remarks, a gold mining operation was developed in southwestern Newfoundland, well within the area claimed by the Micmacs. This operation was closed in 1991, but the Micmacs have received no compensation for damage to their traditional lands, nor royalties on profits from this mine.

In 1983, the Micmac struggle for traditional lands took an unexpected turn when a provincial government archivist found records of the negotiations between the government of Newfoundland and the Canadian government that led to the incorporation of Newfoundland-Labrador into Canada in 1949 (before that time, Newfoundland had been a self-governing British colony.) These records referred unequivocally to a Micmac Indian reservation at Conne River, Newfoundland. It was thus clear that the Newfoundland and Canadian governments had recognized the Aboriginal status of Conne River Micmacs prior to the incorporation of Newfoundland into Canada. With this evidence, the Conne River Micmacs pressed home their claim to Aboriginal status, and in late June 1984, the federal cabinet agreed to register Conne River Micmacs as status or "treaty" Indians. In 1986-87, a 2.6-square-kilometre reserve at Conne River was created. None of this involved settlement or recognition of the Micmac comprehensive claim, but it *did* mean that Conne River Micmacs could avail themselves of federal government funding programs for treaty Indians. The material benefits of these programs, in terms of housing, schools and other facilities, were quite apparent when my wife and I visited Conne River in the spring of 1987.

Newfoundland Micmacs living outside Conne River were not included in the Conne River registration, even though in many cases they claimed the same ancestors as Conne River Micmacs. This is the basis of their legal battle for recognition as status Indians, which was begun in 1989.

In this connection, there is a possibility that the Aboriginal status and

political sovereignty of Micmacs living on Newfoundland's west coast at Bay St. George were, in fact, recognized by the British Crown when Newfoundland was a British colony. In the early 19th century, Lieutenant Edward Chappell of the Royal Navy wrote the following after visiting the West Coast of Newfoundland in HMS *Rosamond*:

During our war with *America*, between the years 1775 and 1782, the *Micmac Indians*, inhabiting the island of *Cape Breton* and the parts adjacent, were amongst the number of our most inveterate enemies: but at length one of our military commanders having concluded an amicable treaty with them, he selected one of the most sagacious of their *Chiefs* to negotiate a peace with a neighbouring tribe, who were also hostile to the *English* cause. The old *Indian* ambassador succeeded in the object of his mission; and received, as his reward, the grant of a sterile tract of land in *St. George's Bay, Newfoundland* together with permission to transport as many of his countrymen thither as might be willing to accompany him in the expedition. Accordingly the old *Sachem* left his native land, accompanied by a strong party of *Indian* followers; and boldly launching out to sea in their own crazy shallops or canoes, they eventually reached *St. George's Bay* in safety. [1818, pp. 76-77; emphasis in original]

In light of Chappell's remarks, it should be noted that, while the land around Bay St. George may be unsuitable for agriculture, the bay is still used for lobster fishing. There are good fishing streams near the Micmac settlements and moose are often close by. Eels used to be plentiful and it seems likely that the area may have been part of a caribou migration route.

Several scholars have searched at the Public Record Office at Kew, the British Library, the National Maritime Museum at Greenwich and the Admiralty Hydrographic Archives at Taunton, England, for a copy of the treaty referred to be Chappell. So far, this research has not yielded a copy of the treaty, nor any clues as to its whereabouts. But,

Given the degree of anxiety in Nova Scotia by 1778, that a French attack on the province was imminent and that such an attack might trigger an Indian uprising, it is very plausible that Francklin, the Lieutenant Governor of Nova Scotia and Superintendent of Indians or some other member of the British civil or military establishment in Nova Scotia would have ignored the jurisdictional question and promised land around Bay St. George to those

Micmac who had originally lived in Cape Breton Island but of whom substantial numbers had by then begun to live permanently in Newfoundland in exchange for their assistance in the British war effort. [Bartels and Janzen 1990, p. 85]

If the treaty referred to by Chappell were to be found, this might strengthen the claim of FNI members to Aboriginal status. In any case, the federal government is apparently treating this claim seriously. In 1990, the federal government agreed to negotiate the FNI case out of court and the FNI suspended legal proceedings. In late 1991, the FNI revived legal proceedings in light of what they saw as unwarranted delays in the federal government's negotiation of their claim to Aboriginal status. The outcome of this political-legal struggle may well determine whether *all* Newfoundland Micmacs will gain Aboriginal status under Canadian law. It may also determine the future of the Newfoundland Micmac land claim. If all Newfoundland Micmacs gain Aboriginal status, they may decide to press jointly their comprehensive land claim. If, on the other hand, Micmacs outside Conne River are classified as non-status Indians, while Conne River Micmacs are classified as status Indians, this may impede united action in pressing the Micmac land claim. Such an outcome would highlight the effectiveness of federal government "divide-and-rule" policies in countering Aboriginal land claims.

Note

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