

Culture



Fay G. COHEN, *Treaties on Trial: The Continuing Controversy over Northwest Indian Fishing Rights*, Seattle: University of Washington Press, 1986. 229 pages, U.S. \$10.95 (paper), \$20.00 (cloth)

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Fay G. COHEN, *Treaties on Trial: The Continuing Controversy over Northwest Indian Fishing Rights*, Seattle: University of Washington Press, 1986. 229 pages, U.S. \$10.95 (paper), \$20.00 (cloth).

By Bruce G. Miller
University of British Columbia

Treaties on Trial is an account of the wrenching struggle over control of the fisheries of the State of Washington, and secondarily in Oregon along the Columbia River, leading up to and following the landmark "Boldt Decision" of 1974. More formally known as *US v. Washington*, the Boldt decision interpreted the treaties of 1854 and 1855 as reserving half the salmon catch for the Indians and occurred in two phases. The first phase determined that Indians did indeed have the right under the treaties to fish in usual and accustomed locations off reservation; the second provided that the Indian portion of the catch would include hatchery-bred and artificially propagated fish, and that treaties provided guarantees for the protection of the salmon habitat.

As the introduction by former Upper Skagit Chairman Andy Fernando indicates, this struggle has been of great importance to Indian people who have persisted in their efforts to ensure their fishing rights as guaranteed by treaty. Fernando notes the symbolic and economic importance of fish to the tribes of Washington and suggests that the Boldt decision has been a catalyst for change in Indian communities by providing new economic opportunities, thereby drawing talented people back to the reservations. This is a very significant aspect of the post-Boldt decision era, and a topic Cohen might have pursued in more detail.

Cohen's thesis is that "Judge Boldt's determination was so much the culmination of a process. The process had evolved logically from culture, from history, and from biology. It had also evolved from law" (p.16). In eleven chapters Cohen attempts to show this evolution, and argues that this decision has preserved the sanctity of US treaties, the fish, the traditional connection of Indian to fish, and finally, the national honor and peaceful coexistence between Indians and non-Indians. Cohen suggests that other resources, such as water, will also be the foci of major battles, and that cooperation, rather than confronta-

tion between State, Federal and Tribal governments will ease the way.

Treaties on Trial was prepared as a report for the American Friends Service Committee (AFSC), an arm of the Religious Society of Friends, and reflects a concern for peace and social justice. Cohen hoped that a careful documentation of the evolutionary process leading up to the Boldt decision would contribute to peaceful relations between those sharing the fisheries resource. While the book may not succeed in this, it is nevertheless a very valuable guide to the complex legal issues surrounding the effort of the State of Washington to regulate and restrict Indian fisheries prior to, and even after, 1974. Perhaps the greatest strength is the breadth of sources used by Cohen, including accounts of tribal leaders, state and federal officials, biologists, anthropologists, attorneys, fishery commissions, rank-and-file tribal members, and newspaper accounts. These sources are listed under chapter notes.

Treaties on Trial usefully examines the serious conflicts of interest within agencies of the federal government and the subsequent inability of the government to consistently uphold their trust responsibility to Indians. Further, the work shows how shifts in federal policy produced changes in the regulation of Indian fisheries in Washington. This is a good case study and *Treaties on Trial* could be properly included in courses on Indian-White relations, US federal policy, Indian law, peace studies, or applied anthropology. The work should interest specialists in these areas as well as undergraduates.

My criticisms of this book are minor and reflect the fact that Cohen has attempted a great deal in only 188 pages of text. In addition to describing the long legal history of this issue, she has also provided descriptions of the problems in implementing the rulings, the environmental threats to the salmon, the implications of the ruling for the tribes involved, and the significance of the controversy for society.

I will focus on Chapter 10, "Western Washington Tribes and the Salmon Today." Cohen gives only brief mention to one of the most significant problems emerging from the Boldt decision, which is the system of fish allocations between tribes. While she writes that "the many tribes may be 'catching up' at different rates (p.163)" and that the gains in tribal fishing have not been equally distributed, she does not make clear the seriousness of this issue. Although Boldt reserved

half the salmon catch for Indians, he did not conclusively determine where members of the separate tribes may fish under their treaty right nor the division of the fish run allotted to treaty fishers. In 1990 this issue is still not resolved, and the resultant competition, known as the "Fish Wars," has unintentionally driven a wedge between tribes.

In addition, the process leading up to Boldt's decision had the effect of disenfranchising Indian fishers who are members of tribes that are not recognized by the federal government. Prior to 1974 these people fished under agreement with other tribes, an arrangement which has ceased. Furthermore, the issues surrounding the Boldt decision inspired the federal government to officially revoke its government-to-government relationship with several tribes with whom it had dealt since the time of the treaties (these tribes include the Snohomish, Samish, and Steilacoom). Finally, because rights to fish in given locales are invested in tribes and not in families or individuals, competition over resources has encouraged recognized tribes to actively intervene against the non-recognized tribes engaged in the difficult process of obtaining recognition. This is another source of antagonism between Indians of western Washington, such antagonism have been heightened by Boldt's ruling.

Cohen does not adequately distinguish between tribes in assessing the effects of the Boldt decision. Some tribes (the Sauk-Suiattle, Upper Skagit, and Stillaguamish) may fish only up-river, and are thereby seriously limited in the sort of fisheries members can conduct and in the income obtainable. These people are limited to gill-netting and set-nets. Other tribes (including Swinomish, Tulalip, and Lummi) have small purse-seine fleets, allowing some tribal members to earn large incomes. Such differences in technology and fisheries income have important implications for the post-1974 social organization of western Washington tribes, and some evidence shows that new differences in income resulting from post-Boldt fisheries have created serious divisions within some tribes and facilitated the domination of tribal councils by wealthy families.

Although *Treaties on Trial* is not especially successful in describing the circumstances in the 1980s for those Indian fishers affected by the Boldt decision, Cohen's work is a very valuable contribution.

GISDAY WA and DELGAM UUKW, *The Spirit In The Land: The opening statement of the Gitksan and Wet'suwet'en Hereditary Chiefs in the Supreme Court of British Columbia, May 11, 1987*, Gabriola: Reflections, 90 pages, Canada, \$13.95 (paper).

By Michael Kew
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This statement is a powerful and clear message to Canadians about a First Nation's identity. Incidentally, it also contains a lesson that should find wide use in anthropology courses: assumptions about the world may simply blind us to the world.

Most Canadians will hold fast to an outdated evolutionist view that other societies from the third or fourth world are simple and undeveloped. Anthropology has had more than a little to do with popularizing this view, intentionally or not, and it still has a good deal to do with purveying, supporting, and tolerating simplistic applications of models of social evolution. Anthropological evidence was cited by both sides in the Gitksan-Wet'suwet'en case, known as Delgam Uukw vs. the Queen, although no anthropologist testified for the Crown.

The case began in Smithers, B.C., with the opening remarks by the plaintiffs which are reproduced in this publication. There are brief statements given by the two leading chiefs of the Gitksan-Wet'suwet'en tribal council, followed by their lawyers' outline of the case. Now, three years later in Spring of 1990, the evidence has been given, and summary arguments will be completed through the summer. A number of Gitksan and Wet'suwet'en chiefs and elders who gave evidence have passed on during the lengthy period of preparation and ensuing trial. Two holders of the name Delgam Uukw have died during the process: Albert Tait early in the case and Kenneth Muldoe, on April 8, 1990. It is a strength of the Gitksan-Wet'suwet'en system of succession that Delgam Uukw and all the other house leaders live on while individual persons come and go. Three years is a long span for a Canadian court case, but a mere moment in the long history of these people.

Although this is another in a continuing series of Native land claims cases occasioned mainly by the British Columbia government's peculiar ostrich-like view of aboriginal rights, it is much broader. As Delgam Uukw put it:

"We are not interested in asserting aboriginal rights — we are here to discuss territory and