

CAUGHT IN THE CROSS-HAIRS LIBERALIZING TRADE (POST-M.A.I.) AND PRIVATIZING THE RIGHT TO FISH: IMPLICATIONS FOR CANADA'S NATIVE FISHERIES

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Introduction

In 1983, Franz von Benda-Beckmann suggested that socio-legal research needed to keep its agenda focused on empirical studies of law at work in social life - to be aware of and to study how law both enables actors to take certain actions, and constrains others. This positivist empirical approach is largely endorsed by those of us interested in 'legal pluralism' (Griffiths 1986). In this paper, however, I will not talk about the ways conflicting sets of laws have been used by specific individuals in opportunistic ways. Instead, I am going to ask some questions about the *possibilities* encapsulated in a proposed rule-based international agreement, particularly when taken together with regulations already enacted in many state jurisdictions.

It matters very little to this particular exercise that any one international agreement may never come into force, because already such agreements are having an impact on the way that governments, corporations and individuals conceptualize and act on their options. To illustrate this impact, I will discuss an agreement known as the Multilateral Agreement on Investment (MAI), which until October 1998, was under negotiation among the 29 member countries of the Organisation for Economic Cooperation and Development (OECD). This proposed agreement was but one example of a wider international agenda of 'liberalising' trade and investment. While the withdrawal of the French government from the negotiations ended the OECD initiative, subsequent attempts at similar agreements are still in

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the works among the members of the OECD, the World Trade Organisation (WTO), and smaller blocks of regional cooperating nation states.¹

In this paper I explore how such agreements are revamping access globally to important natural resources. I use the changing landscape of fishing rights (particularly aboriginal fishing rights in Canada) as one example of this process. My primary concern is to explore how these expanding levels of law are having a negative effect on specific, local property rights in productive resources.²

Background

What are the main features of the global trade and investment liberalization drive? Since the MAI was in many ways an investor's 'wish list' it could be useful as a map of global liberalization objectives. But getting a good understanding of the MAI as it was unfolding between 1995 and 1998 proved difficult; one was forced to go the internet and to the many web pages set up by various interest groups around the world. Commentators made much of the fact that both the media, and the elected representatives of the democratic nations involved were largely uninformed on the MAI, it being rather difficult to obtain a full copy of the suggested text of the agreement (Chomsky 1998 on the U.S.; Clarke and Barlow 1997 on Canada; Mercredi 1998 on Canadian First Nations).³ The broad outlines, however, were summarized by the OECD in a number of its online publications, usually in the following terms:

¹ There is conflicting information on whether or not the OECD or the WTO continues to pursue the MAI and whether under that name or another. See for example, the Council of Canadians webpage on the post-MAI environment at <http://www.canadians.org/tradepositionpaper.htm>, and Sol Picciotto's essay at <http://elj.warwick.ac.uk/global!issue/1999-1/lessonsmai/index.html>.

² In this paper I use the broad definition of property rights which Harm (1988: 7) calls "the distribution of social entitlements".

³ In June 1998, the OECD web page had links to the full MAI text and exhaustive commentary: <http://www.oecd.org/daf/cmismai/malindex.htm>. By July 1999, addressing this site took the inquirer instead to <http://www.oecd.org/daf/cmismis/fdi/index.htm>, where the MAI terminology was replaced with plans for "a rule-based system for managing globalization" to be pursued by CIME or the Committee on International Investment and Multilateral Enterprises.

The Multilateral Agreement on Investment (MAI) will establish a broad multilateral framework for international investment with high standards for the liberalisation of investment regimes and investment protection, with effective dispute-settlement procedures. It will be a free-standing international treaty open to all OECD member countries and the European Communities, and to accession by non-member countries. The MAI will provide a 'level playing field' for international investors, with uniform rules on both market access and legal security. The rules will be legally enforceable, allowing recourse to international arbitration to settle disputes.... [The MAI] covers all economic activity, including all manufacturing and natural resources as well as services (Ley 1996: 28).

This sounded rather innocuous but the complete text of the agreement set off alarm bells for many.

The agreement had a twelve part structure, with the most important contents found in parts three, four and five. Section three dealt with the main principles of the treatment which foreign investors and investments "should" receive from their host countries, including their freedom from any discrimination in favor of national enterprises, prohibition of performance requirements, freedom of movement across national boundaries, and full participation in the host country's privatization programs. Section Four protected these principles through a series of foreign investor's "rights", including effective compensation for differential treatment or expropriation, and the right to transfer people and funds into and out of the host country. Section Five dealt with a proposed dispute resolution system, and enacted an international forum to ensure effective "enforcement". The remaining sections addressed issues such as general and temporary exceptions to the rules and provisions for parties to draw up "reservations" for sectors or activities where it was difficult to apply the provisions in the near future. There were also provisions for what was called "rollback" or the reversal of state laws which went against the principles of the MAI and for the "standstill" of any new legislation which might interfere with the MAI principles.

Once the specifics of this agreement began to be better known, they drew fire from a collection of public watchdog groups. Pro-democracy groups were concerned that the entire process of negotiating and attempting to ratify the MAI occurred without public knowledge or effective representation by those groups

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most affected.⁴ Since an earlier version of the MAI (hosted by the WTO) was abandoned under significant protest from India and Malaysia, development agencies and advocates also voiced concern. If the OECD could bring this agreement about among the richer nations, poorer nations would be forced to sign on to remain competitive. Once they became signatories, however, hard-won, post-colonial national and local control over resources would be eroded (Martin Khor 1997). In Canada and Australia, concern centred around the effects such investor rights might have on long-established public social programs, such as education and health care, which together represent multi-billion dollar private sector investments in countries such as the United States (Clarke and Barlow 1997: 110). Lawyers in the field of international law expressed the opinion that, unlike previous agreements such as the General Agreement on Tariffs and Trade (GATT) and the North American Free Trade Agreement (NAFTA), the MAT was drafted in legal language which made national exceptions and reservations extremely difficult to enforce (Appleton and Associates 1997). Concerns were also voiced about a government's ability to protect the environment, aboriginal rights and sustainable resource exploitation as a signatory to the MAI (Clarke and Barlow 1997). Women's groups protested that trade liberalisation was damaging women's access to productive resources in many developing countries (Williams 1997). And human rights activists were concerned that no effective trade sanctions could ever be brought to bear on states which practised human rights violations (Chomsky 1998: 24). In response, trade ministers in Canada, the United States and Australia would only say that they could be trusted not to negotiate anything that would harm the economic prospects of their country, which hardly allayed concerns.

For many, the single most disturbing clause in the agreement was that which created the "level playing field" mentioned in the OECD summary quoted above. It specified that any investor from any country, with capital from any source, could enter any country that was a signatory to the MAI, and make any investment they wished without different standards being applied to them. If different rules were applied to national versus foreign investors, the international investors could

⁴ Although the MAI was under negotiation from May 1995 until late 1998, Noam Chomsky (1998: 20) reports that 25 members of the U.S. House of Representatives were forced in November of 1997 to write President Clinton asking him to answer three basic questions about the MAT, so little information about the agreement was available to them. Ovide Mercredi (1998), former National Chief of the Assembly of First Nations in Canada, recently announced that the Federal Government was negotiating this agreement without informing First Nations, much less consulting with them.

claim damages from the government, even if they had not yet spent a penny of investment capital in the country. The MAI also provided investors with more protection than nation states. For example, under the transparency clause of the MAI, nations were obligated to provide information on demand to potential investors, while investors themselves could use confidentiality laws to protect themselves from nation states seeking information about them (Khor 1997). And finally, the MAI required that signatories agree to a 20 year binding clause, so that even if a country later left the MAI group, investments within that country remained protected for a protracted period.

Meanwhile, supporters of an international 'Charter of Investors' Rights' argued that the reservation option could allow nation states to protect any special interests in public services, health care, environmental law and regional development. Reservations are unilateral limitations placed on an international agreement by a government that refuses to be bound to a particular obligation. Reservations can only be made in the manner specified under the terms of the concerned agreement, however, and a public watchdog group in Canada asked an international law firm to prepare an opinion regarding the protections offered under the reservations that Canada had demanded. Their opinion was that these reservations were entirely inadequate to protect areas of public concern. Furthermore, the reservations were written in such a way that only the federal government was exempt, leaving other levels of government (provinces, municipalities, territories, band councils of First Nations) without any protection (Appleton and Associates 1997: 8). These are the very levels of government, however, most responsible for Canada's social programs.

The fact that the MAI agreement was never ratified might have comforted some detractors, but the international drive to create something like the MAI is not so easily dismissed. In a lecture given on the campus of the University of New Brunswick, Ambassador Weeks, a member of the Canadian negotiating team at the World Trade Organisation, advanced the WTO guideline that all trade negotiation and liberalisation that has or that will take place, happens at the expense of national sovereignty. This did not trouble Ambassador Weeks because he was confident that ultimately the rewards for countries such as Canada would be enormous (public lecture, March 13, 1998). And in fact, most of the bilateral trade agreements reached over the past decade have operated to effect many of the changes the MAI was trying to solidify.⁵ It is even more disturbing that internal,

⁵ By June 1998, Canada had already entered into liberalisation agreements with 21 countries and was negotiating with over 20 more as well as being signatory to NAFTA ([http : //www . reform. ca/mai/index.html](http://www.reform.ca/mai/index.html)).

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state-driven regulatory changes have been moving in concert with this global liberalisation direction. A case in point is Canada's recent fisheries policy.

Privatizing Fishing Rights

In fish resource management today the main problems are well known: overfishing, stock depletion or destruction, rapid capitalization, public agency withdrawal under debt reduction, international disputes over management and access, coastal community economic and political decimation, and concerns about the ecological health of the world's oceans. In response, one policy approach has received widespread support, 'privatized fishing rights', a solution emerging from economics-and-property theory (Barzel 1989; Demsetz 1967; Furubotn and Pejovich 1973; Libecap 1989a, 1989b; Pejovich 1972, 1990; Posner 1977). Canada has increasingly privatized fishing rights, primarily through Individual Transferable Quotas (ITQs), which give their holders the right to land a specified volume of fish over a specified period of time.⁶ This volume is based on an assured share of the Total Allowable Catch (TAC) for any particular fish stock in any one year. Distribution methods for such quotas vary; like various policy instruments before them, such as licences or catch histories, ITQ can either be issued to existing fishermen free of charge on the basis of some measurement of past fishing effort, or they can be auctioned by the government to the highest bidders. In either case, they quickly acquire a high market value since administration must allow for some level of transferability, which means they are soon bought and sold, either as property on the open market or under contract law. One of the concerns with fishing quotas is that where they have been introduced, concentration of ownership has rapidly followed.⁷

⁶ In addition, Bill C-62 was introduced in the Canadian House of Commons in 1996. It included provisions for the specification of private rights in fish under Section 17, which gave the government singular control over the granting of Fisheries Management Agreements or contract-based rights in fish, and the power to define what sorts of individuals or enterprises would be entitled to participate in such agreements. Although this bill was interrupted by the termination of the sitting of Parliament, many expect to see it reintroduced since the government has since sponsored a Panel on Partnering to investigate partner options for these agreements.

⁷ Copes (1995: 12-13) reviews a number of New Zealand and Icelandic examples (the longest standing ITQ systems) and says that, among other problems, quotas are rapidly being accumulated into the hands of the largest operators - for

Nevertheless, supporters for private rights in fish are pervasive and persuasive. The loudest and most influential proponents have been resource economists, who, it must be admitted, are not in complete unanimity on this issue (compare for example, Grafton 1996a and 1997). Since the principle 'user pays' seems to be easier to implement in situations of secure economic benefit and private rights, public administrators often view privatization as the first step to cutting administrative costs in relation to a number of activities including: the operation of public wharfs, ecological analysis, enforcement, the maintenance of coast guards, and other costly management requirements such as the research needed accurately to set annual Total Allowable Catch levels (Grafton 1992, 1995, 1996b; Grafton, Squires and Kirkley 1995; Scott 1989b: 64; for a contrary view see Copes 1986). The costly multiple and complex regulatory environments can be replaced with simpler property law remedies. Some ecologists have argued that lodging responsibility for stock declines, and securing damages from those who harm the aquatic environment would also be more successful in a situation where secure rights were lodged with private 'enterprises' (for example, see Brubaker 1996). In some fisheries, individual or enterprise quotas have been well received, both by individual fishermen and by the processing sector. The general consensus, then, has been that many and varied benefits will flow from the enhancement of private rights in fish stocks (Scott 1986, 1989a, 1989b, 1993, 1996; Squires and Kirkley 1996; Crowley 1996; Jones and Walker 1997).

The rights of 'collectives' in fish stocks (whether provinces, or communities with special fishing histories such as Newfoundland outports, or First Nation communities), on the other hand, are always ignored in the privatization model. This oversight is not accidental; the many benefits that are thought to flow from the simple mechanism of secure rights in fish are based in turn on the property qualities of exclusivity, transferability, divisibility and duration which give the *individual* property holder the ability to achieve maximum utility and efficiency of resource use. Resources that are held as divisible rights which in themselves are tradable, allow for reallocation to highest value users (i.e. the most efficient maximisers gather up all resource rights). This solves both the problem of inefficient operators (whose rights will be 'bought out' by those better able to afford the price) and that of insecure supply (since fishermen with private rights of long duration can better manage harvest patterns and will not flood the market).

example, the top ten quota owners in the New Zealand case increased their percentage of holdings from 57 to 80 percent during the first two years of the quota system. Copes sees this as an undesirable trend (see also Copes 1996a, 1996b), but for many of his fellow economists this is assumed to be the most efficient, and thus the most desirable outcome.

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Finally, and possibly most importantly, the messy political environment of entitlements can be avoided and all distributional questions can be solved by market forces as soon as the private right to fish becomes commoditized.

Thus the economic view of private property hinges on absolute dominion and is also consistent with a larger world view which encompasses the notion that a fully-informed and maximising homo economicus will always act rationally with respect to his/her property, and must be free of restraints in order to do so. Tied to these pragmatic considerations of the role of property in economic theory, are some well-entrenched perceptions of the role of property in sustaining individuals within society, making them productive members of the wider collective and even assuring their independence of thought and action so that they may play the role of citizen in the modern democracy.⁸ The implication is, of course, that those individuals protected from this crucible of democratic individualism, are so protected because they somehow failed to make the grade in modern society.⁹ While this 'survival of the fittest' mentality can be criticized on many levels, a number of dissenting voices have focused on the way that theorists in the economics-and-property school play up the problems with non-private forms of property, while downplaying the real experiences and problems in private property systems (see Berkes 1989; Bromley 1992; Gordon 1996; McCay and Acheson 1987; Ostrom 1990). Modern day property systems are not bastions of absolute dominion, and very few resource systems could be easily turned into straightforward private property.

At the concrete level, for example, such property as already exists in the fisheries is rarely held solely by an individual; constitutionally protected shares of fish stocks for Native peoples (see McNeil 1998; Meyers 1999), contractual arrangements in fishing boats, gear, licenses and ITQs (see Wiber and Kearney 1996, 1997), and the recent development of 'management boards' have spread the 'rights' in these resources among many stakeholders. Furthermore, contracting parties are rarely equal in economic weight or political clout, and often are linked through other multidimensional relationships such as kinship, community ties and debt. Legal battles over these rights have already emerged. There have been battles over boat ownership, license control, and quota shares. And even without such multiple contracting agents and their potential for conflict, rights in fish could

⁸ See Ziff's 1993 discussion of the usual defences offered for private property among mainstream legal theorists.

⁹ See F. von Benda-Beckmann 1997 for a discussion of the political process of typifying human individuals and collectivities for purposes of assigning statuses which grant or withhold access to resources

not be granted as a form of absolute dominion, since nation states cannot grant to their citizens what they do not have themselves.

An examination of bilateral and multilateral fishing agreements between Canada and other nations, and of the limitations placed on sovereignty under the Exclusive Economic Zones agreement, shows that it would be misleading in the extreme to tell domestic fishermen that they will have secure dominion, limited or otherwise. Exclusive Economic Zones (EEZs) allow coastal states to acquire exclusive rights over the natural marine resources in adjacent seas up to a 200 mile limit. These rights were created under the 1982 Law of the Sea Convention. In an important sense the demand for individual property rights in marine resources is a logical extension of rights-based demands by nations. However, in both cases the abstract notion of absolute dominion is untenable. In reality, national rights in the EEZs are neither exclusive nor extensive (Tsamenyi and Blay 1989). Nations have an obligation to permit other nation states to fish in their zone if, for example, the owner state cannot or does not capture the 'maximum sustainable yield' from fish stocks within the zone. Furthermore, the owner state is not free to set sustainable yield levels unilaterally, but must submit its decisions to 'objective scientific evidence' (Tsamenyi and Blay 1989: 43-44), which is of course always disputable. The solution for many coastal states has been to sign away fishing rights to other nations under contract, in order to acquire hard currency and short term financial gain, and in order to avoid costly international litigation. The parallel with fishers living in marginalized coastal communities is obvious.

More importantly, where international corporate interests exist to buy up these property rights, it is questionable whether the 'custodial care' expected of private property owners will materialise. It is more likely that the present generation of corporate owners will defer the high costs of sustainable management until the next generation. In addition, politicians will be under much more pressure to continue to allow fishing despite stock emergencies if they are confronting multinational fishing enterprises with private rights in fish and deep pockets to finance harassment suits. The benefits of privatization in the fishing industry are questionable enough; when it is combined with global trade and investment liberalisation regulations, the impact will be all the more dangerous.

An interesting question to ask then, is just how the behaviour of major players in the fisheries sector could be changed by the combination of privatization regimes at home and global trade and investment liberalisation. It is not difficult to predict some of the consequences of these two policy drives in combination. In Canada the right to fish has historically been a public right subject to certain legislative limitations to protect fish stocks, aboriginal rights and regional development. As

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rights become a private, marketable resource, there will be less impediment to capital investment from any source buying up privatized rights to Canadian fish, irrespective of the national public policy concerns mentioned above which would be seen as, or could be represented as, differential treatment.¹⁰ Agreements such as the MAI would enable investors to ignore public policy concerns, and even more importantly, would enable governments to 'wash their hands' of the resulting consequences since any restrictive legislation would only result in law suits claiming multi-million dollar 'damages'. Meanwhile, local users of resources would be 'constrained' from using democratic representation to affect the course of events. In sum, individual fishermen would have very few options available to them: to lose access completely; to break the 'law' and 'steal' fish from private owners; or to become paid employees of multinational fishing fleets. Even (or especially) fishermen with special status, such as those aboriginals with treaty rights entrenched in the constitution, would not be protected. And in terms of Canadian internal politics, coastal provinces like British Columbia or Newfoundland, which have traditionally resisted federal control over resources so important to their economies, would have little say in the regulation of fish extraction or the marine environment. If trade and investment liberalization was taken to its logical extreme, multinational corporate investors would have a special status entrenched in international law with a special forum in place to resist the demands of national sovereignty and public policy.

First, what is the implication of these developments for Canadian natives, and second, what is the evidence that foreign investors will not 'play fair' with Canada's public policy concerns, including the need for special status for First Nations' peoples?

¹⁰ The question of differential treatment will obviously be a troubling one for governments hoping to appear consistent in their dealings with all investors. At the same time that the Canadian federal government was involved in negotiating the MAI, using the argument that foreign investors needed security and stability if they were going to be attracted to Canada, it soundly rejected Bill C-302. This private member's bill, submitted to Parliament by a member of the opposition party, proposed to entrench fishermen's rights to participate in the management of the fisheries, and giving them the right to sue the government if the rules of access were unilaterally altered. This would promote a similar stability for the Canadian industry as that proposed for multinational investors under the MAI. Given the DFO's role in creating ITQ fisheries, it is ironic that the Fisheries Minister David Anderson rejected Bill C-302, partly on the grounds that "Canada does not have a tradition of private property in the fisheries" (*Daily Gleaner* 1997, June 5: A5)

First Nation Concerns

Four issues in particular concern First Nation leaders in Canada with respect to MAI-style agreements. First, they constitute a threat to self government in the sense that First Nation governments will have limits placed on their ability to manage the resources under their jurisdiction and to ensure that their own people are the prime beneficiaries (Mercredi 1998: 5; also Clarke and Barlow 1997: 158-60). Second, the MAI negotiations have been one more example of the federal government failing to meet their constitutional obligation to consult with First Nations about matters that ultimately impinge on Treaty or Aboriginal rights (Mercredi 1998: 5). Third, Canadian representatives to the OECD did not build in adequate 'reservations' to protect the special status of First Nation peoples under the draft MAI (Mercredi 1998: 6). And finally, in future self- government or land claims negotiations with First Nations communities in Canada, the federal and provincial governments could be limited by agreements such as the MAI; they would be unable to grant rights to natives that they were unwilling or unable to give to foreign investors. The likelihood that such foreign investors could sue in an international tribunal for damages sustained as a result of such 'special status' agreements with Canadian First Nations would constitute a serious barrier for the Canadian government and Canadian taxpayers (Mercredi 1998: 7).

A concrete example can be provided with reference to fishing rights. Currently the issue of rights to Northwest Coast salmon stocks is a source of considerable tension between the federal governments of Canada and the United States. It is also a source of conflict between the province of British Columbia and the Canadian federal government, as well as between the province of British Columbia and the state of Alaska. In the current heated negotiations that share of the Total Allowable Catch which Canada has retained includes a portion which has historically been set aside for the community use of First Nations of the Canadian Northwest Coast.¹¹ Although the non-native fishing community has often resented this native collective right in fish, it has largely accepted such an allocation in the form of individual native fishing licences. In the past, cases such as *British Columbia Packers Ltd v Sparrow* (1988) have shown how easy it is for relatively poor native fishermen to alienate these inalienable rights via civil contract to non-native corporations. Although native fishing licences were specifically designed to be non-transferrable, and although the fish were set aside for the benefit of the

¹¹ See K. von Benda-Beckmann 1997 for a discussion of the ways in which native access to natural resources has become subject to international human rights debates about collective rights versus rights based in sustainable stewardship.

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entire native community, these civil contracts have been upheld in the Canadian court system and thus the circumvention of collective rights in the fisheries has been accomplished.¹² If in the future the access of native people to fish is protected by the granting of individual quota holdings for native people, it will be very easy for these holders of quota to alienate their rights to international fishing enterprises. The rights of all Canadian fishermen will become more vulnerable, but those of First Nation fishermen will be the most vulnerable of all.

Constraining and Enabling Behaviour: The Case of *Ethyl v Canada*

The OECD now confronts the problem that the MAI rule-based system for managing globalization created legally binding rights for investors, but failed to create legally binding responsibilities upon them. While the MAI preamble stated that the signatories expected investors to act in a responsible way when it came to the environment and to labour practices, these provisions were entirely voluntary (Clarke and Barlow 1997: 168), and furthermore, placed no constraints on investors to act in the public interest in other areas such as regional disparity, special ethnic rights or in the interest of community survival. In view of corporate behavior under already existing international agreements, detractors made this lack of responsibility a rallying cry. Those who opposed the MAI noted from the outset that it was misguided to base the agreement on the 'takings rule' of U.S. property rights law, which requires that corporations be compensated for any form of expropriation by governments (expropriation being very broadly defined). Many argued that it would have been preferable for such international agreements to be based on the UN Charter of Economic Rights and Duties of States which is based on the assumption that states have the right to regulate trade and investment in order to protect the public at large, usually through 'performance requirements' (Clarke and Barlow 1997: 173). Such performance requirements were made illegal under the draft MAI, which meant that governments could not require investment in their country to support development or national goals, such as technology upgrading, stimulating local businesses, earning or saving foreign exchange to protect the balance of payments, or generating local employment (Khor 1997). Furthermore, the 'takings rule' has already emerged as a contentious problem in existing multilateral agreements such as NAFTA.

One example is the \$350 million dollar damages suit brought by Ethyl Corporation of the United States against the Government of Canada under a special section of

¹² For a wider discussion of the problems with Canadian fishing licencing and quota systems see Wiber and Kearney 1996

the NAFTA agreement which allows corporations to take action directly against governments on investment claims.¹³ This case involved Canadian environmental legislation which banned the import and transport of the gasoline additive MMT which is considered to be a dangerous neurotoxin (Clarke and Barlow 1997: 42, 90-91). Ethyl argued that this ban harmed their commercial interests not only in Canada, but, through the adverse publicity, internationally as well. Since this law suit would not have been decided on the basis of the scientific evidence of the harmful effects on humans of breathing or ingesting manganese, but rather on the strict terms of the NAFTA agreement which forbids such interference with commercial interests, it was likely that Canada would lose the case and the government opted to pay an out-of-court settlement (funded by the Canadian taxpayers). Other already existing bilateral or multilateral liberalisation agreements go much further than NAFTA in entrenching the rights of corporations to take nations to court, and many fear the 'chill effect' that the threat of compensation claims will have on national public policy (Clarke and Barlow 1997). Corporations have used this 'chill effect' in several other cases in Canada to deter legislation that might have harmed their interests, including Ontario's plans for public automobile insurance, the federal government's cigarette packaging legislation, and the plan to reverse privatization of a major international airport in Ontario (Clarke and Barlow 1997: 42). Taken together, these cases do not suggest that the international business community will put public concerns ahead of earning revenues from their investment dollars.

Conclusions

Global trade liberalisation strategies, taken together with national and international policy directions towards privatization, are producing a significant revision of patterns of access to and control over natural resources. The effects are to be seen not only on natural resources such as forest stands (as in the Canadian 'Crown Lands'), fish stocks (whether marine or freshwater), agricultural land or water, and other non-renewable resources, but extend to encompass social services, public health and education. Drafting public policy will become a much more

¹³ Formerly, if a corporation had a dispute with the laws or regulations of a host country, it had to work through its own government for redress. Under NAFTA's Chapter 11 investor-state provisions, corporations are allowed to sue any government directly. The MAI would have entrenched this right globally and over a wider set of potential issues, in effect, giving corporations 'nation status' (Clarke and Barlow 197: 40; Appleton and Associates 1997)

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difficult exercise. Even more important, from the anthropological point of view, is the fact that these trends will present new difficulties for those local polities which are working to entrench or to protect local access to resources, whether based on First Nation status or local economic survival. An important focus in future legal pluralism research, then, must be the development of methods and theoretical tools to examine the interaction between expanding international legislation and national and local sovereignty. One of the difficulties in such research is the excessive bureaucratization of the agencies involved, including the WTO, the OECD, and the World Bank, and the consequential difficulty of getting access to and evaluating information about their policies and practises (Caufield 1996; Kapteyn 1996). This is, of course, no less true of the multinational corporations who are also major actors. But if this research remains focused on the potential for significant new legal strategizing as interest groups position themselves and make choices, and on the ways in which specific agents may be constrained or enabled under the new rules of the game, as well as on the local and global environmental, economic and social consequences, I believe it can make significant contributions to both applied and theoretical legal studies.

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