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Preface

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Preface

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AFTER THE COLLAPSE:
Being a collection of studies on
the experience of the "collapse" of
Atlantic Canada's fishery in the
years 1994 and 1995 and the
phenomenon of change¹

*"When man interferes with the Tao
the sky becomes filthy,
the earth becomes depleted,
the equilibrium crumbles,
creatures become extinct."*²

As guest editors we are privileged to have the opportunity to create this special edition of the Dalhousie Law Journal. It is special for a number of reasons. First, the contributions reflect a specific decision on our part to explore the nature and meaning of events being experienced in Atlantic Canada's fishery from a variety of perspectives, of which law, traditionally privileged in law journals for its explanation of events, is perhaps the least important.³ Secondly the authors, many of whom are people who

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1. Defined as "Phenomenon (as perceived by the consciousness) is a self-sufficient thing or event that is a law unto itself": J. Graham, *System and Dialectics of Art*, (Baltimore: John Hopkins Press, 1971 (reprinted). The copy on file with M. McConnell is an earlier edition published by Delphic Studios, NYC, #986) at p. 22.

2. Lao-tzu, *Tao Te Ching*, S. Mitchell, ed., (New York: Harper & Row, 1989) at 39. The gender specific terminology in this translation is retained for a variety of reasons although the editor Stephen Mitchell notes that gender is not specific in the language of origin and that in this edition he or she is used alternatively throughout.

3. This approach draws upon the ideas involved in causation analysis. It has been of interest to us to see that yet another event of myth creating proportion in Nova Scotia, the Westray Mine collapse, has been the subject of comment specifically focusing on the role of attribution of cause. The author of that comment suggests that "Causation analysis is densely political . . .": see E. Tucker, "The Westray Mine Disaster and its Aftermath" (1995) 10 Can. J. of L. and Society 91.

would not ordinarily write for legal publications, were given express carte blanche to contribute “think pieces” on the phenomenon of the “collapse”—including whether the events experienced in the fishery are a collapse or a change or perhaps even a revolution⁴. Underlying this is an awareness, as signified by the title of this collection, of the place of the writer and the active formulation of ideas about current experience. More importantly, there is an assumption that the experiences of the Atlantic Canadian fishery are not without meaning for other places and times.⁵ They are extremely significant harbingers of what was faced in many other areas in relation to the environment. As is often the case, those close to the margin, whether it be geographic, economic or political,⁶ can provide lessons about the dangers of a situation and also inspiration, through the ability of the human spirit to survive, to those who still have the luxury of choice.

The decision to open up the journal in this way constitutes something of a risky experiment for an established academic journal which, in common with most other journals of this type, is committed to notions of disciplinary expertise and the formality of academia. We must thank our colleague Faye Woodman, Editor in Chief, for allowing us latitude in our decisions as to what would be the most interesting and useful way to contribute to understanding and thinking about these events. We have been rewarded through the papers given to us by the people who took us up on the invitation to contribute to this edition. We also thank several others who were interested and responded positively but due to various unexpected events in their lives, found themselves ultimately unable to participate. The papers in this edition of the Dalhousie Law Journal

4. Alternatively, we could adopt the recent comments of President Clinton of the United States describing the collapse of the Russian politico-economic system as a “revolution of democracy”: Speech to students at Moscow University, May 1995, broadcast worldwide on CNN. We could understand the events as nature’s revolution against regulation and an industrial model of human relations to the environment.

5. It is tragic, even as this edition is going to press, that a similar problem is now occurring on the West Coast of Canada in relation to the chinook and coho salmon. On the West Coast the parties are somewhat different, (e.g. Canada and Alaska), and the relative situational positions somewhat different, (e.g. Alaska is the first point of harvest and has a long established fishery), but the rhetoric and points of disagreement are dishearteningly familiar as there are debates over scientific predictions as to the state of the fishery and how best to preserve it. The resulting closure of a fishery this year in B.C. in August 1995 speaks for itself. See for example: “Alaska firm on salmon quotas”, *The Globe and Mail* (28 July 1995) A5; M. Cernetig, “Scaling back to save salmon”, *The Globe and Mail* (8 July 1995) A1; R. Howard, “Ottawa, B.C. Turn focus in fish dispute back to Alaska” *The Globe and Mail* (28 July 1995) A5; R. Howard, “West Coast sockeye fishery shut down”, *The Globe and Mail* (11 August 1995) A1.

6. The politics of location and its relationship to social transformation are explored in another context by bell hooks in her essay “Choosing the margin as a space of radical openness” in *Yearning: race, gender and cultural politics*. (Toronto: Between the Lines, 1990) at 145.

provide a rich array of reflections on, opinions about and analyses of, the events which caused the changes in the fishery, its impacts or consequences, and the lessons that can be learned for the future.

As teachers in a number of areas of international environmental law, including comparative fisheries, ecofeminism and change management, we believe that probably one of the most dominant features of Atlantic Canada's fishery collapse, is the extent to which it has captured the imagination, aspirations and fears of the nation.⁷ It is in a sense a "model phenomenon" providing fodder for complex analyses based on class, economy, ecology, feminism, scientific knowledge, constitutional and international law and diplomacy, as well as post modern critique. To a large extent, irrespective of the critique involved, the events are perhaps fundamentally evidence of entropy. That is, despite all human attempts to regulate, evaluate, manage and control fish and human behaviour through laws and institutions, the complexity of the situation emerges triumphant and tragic. It is telling that contributors such as Douglas Johnston, a long time commentator and observer of international law and relations, find themselves, after classifying and analyzing the range of players and issues involved, concluding with little optimism that the best one can hope for in the future is to exert some influence over events.

A third aspect of this special edition is that the events discussed changed and are changing daily in the national and international social consciousness. At the time we started preparing this edition, the predominant image was that of crumbling institutions, the end of an era and of a way of life—in short, the devastation and termination of a fundamental social system in Canada. Since that time the event has become a focal point for Canadian nationalism (or in the view of some, jingoism)⁸ and identity. Canadian military actions enforcing sovereignty and a non-exclusive non-ownership oriented claim to control the behaviour of nationals from countries other than Canada fishing in waters outside Canada's territorial zones has resulted in epithets ranging from "pirate"

7. The range of commentary has gone far beyond academic analysis with art and theatrical performances dealing with the impact of the fishery collapse and with causation. There have been performances (for example at the Halifax People Summit (P7) June 1995 and the Atlantic Earth Festival (Halifax, August, 1995)) by collectives such as the Fishnet People's Players and a "A Bunch of Crackies" which present satires pointing to government refusal to acknowledge the accuracy of the fishers knowledge that the fish were going away and also about the financial interventions which are seen as displacing people or providing them with training for jobs that do not exist. In addition recent gallery shows reflect the interest in fisheries e.g. Metal Arts Guild Show, AGNS, July 1995. See also C. P., "Poetry book captures passion about the sea", *The Globe and Mail*, (18 August 1995) A11.

8. J. Cummins, MP Delta, BC, Letter to the Editor, *Financial Post*, (25 March 1995) 20.

to “saint” being ascribed to the Federal Minister for Fisheries (now Oceans).⁹ Eminent Canadian academic, legal, and political commentators have differed in opinion as to whether Canadian actions to “protect” the global common property are illegal or progressive. The fishery collapse and crisis has been described as Canada’s version of “a Gulf War”¹⁰ with Canada pointing to overfishing by foreign nationals outside Canada’s territorial zone as illegal and endangering Canada’s livelihood. The terms “sustainability” and “common heritage” are key words in the debate. The result for many Canadians is a curious melange of moral indignation and self-criticism regarding Canadian responsibility for the demise of the once great fishing industry. However, as suggested by one contributor, sociologist David Matthews, the entire debate is itself premised on a misconception. He points out that the concept of common property, which has become the central legal and political metaphor for the debate and most activity is mistaken. The problem is not one of common property but of a fugitive resource. The notion of “straddling stock” is deconstructed by Matthews to show that stocks became “straddling” once the 200 nautical mile exclusive fisheries zone was claimed in 1977. Until then, the same fish were clearly of one state or belonging to no state. In effect, Canadian actions reflect an attempt by hunters of the fugitive resource to control the behaviour of other hunters. The metaphors used to explain the events are the focus of his interest as he describes a shift from a society of hunters to a society of harvesters.

Other contributors such as John Leefe, M.L.A., former Minister of both Fisheries and Environment in Nova Scotia, explore domestic political reasons for the failure, such as the constitutional division of powers in these issues and the centralization of concerns and information. The federal bureaucracy’s loss of touch with local culture and experiential knowledge is also critically examined in the context of Newfoundland’s experience by Jean Jacques Maguire, Barbara Neis and Peter Sinclair who propose an interdisciplinary eco-management strategy for managing the industry rather than the fish. The failure of managers, including scientists, to appreciate the effect of a quota system on a resource with natural cycles that lacks predictability and certainty, and their failure to

9. See full-page article and cartoon entitled: “St. Brian Among the Turbot”, *Globe and Mail*, (18 March 1995) D1.

10. Former Ambassador Allan Gotlieb was noted in the *Financial Post* as being “publically silent on the seizure of the Spanish fishing vessel Estai until now.” The *Post* quotes Gotlieb as stating that: “he admires patriotism not nationalism, which he finds Canada’s high seas action to be.” “This”, he says, with a touch of mocking irony, “is our Gulf War.” *Financial Post*, *Listening Post*, (18 March 1995) 7.

recognize and identify these cycles of shortage and abundance, are discussed by Peter Underwood, now Deputy Minister of Fisheries in Nova Scotia. The effect of the changes in the fishing industry on women and the role of fishing in family lives and structures is examined in an empirical study by anthropologist Marian Binkley. Two other contributors, working in the regulation of the industry, Leslie Burke and Leo Brander deliver a strong indictment of the economic regulation of fishery by analogy to the collapse of the Russian economy. They describe the “cod curtain” on the Atlantic, a curtain comprised of artificially maintained employment and a subsidized industry (the seasonal UIC fishery or social fishery). Once the curtain is lifted the false economy is exposed and what remains is a tragedy—the tragedy of a large unemployable class of former fishers and young people who stayed to live and work in an industry that never was viable on that scale and who are now ill-equipped to deal with the changes. Sociologists Richard Apostle and Knut Mikalsen examine differences in matters such as class and other structures of participation in decisions, and look for lessons using comparative analyses of the crises in the fisheries in Northern Norway and Atlantic Canada. They too point to the problem of over capitalization, a false economy and doubt that the system in Atlantic Canada will be able to alter significantly: The vested economic, scientific and other interests seem overwhelming and entrenched.

Historian Graham Taylor provides an important historical and comparative overview in which he points out that we have experienced species disappearing before and identifies four common factors. Perhaps not without optimism, he draws an analogy to the “dust bowl” experience of farmers in the Prairies. The failure to learn much from these lessons is striking, although the fact that there is again an agricultural identity, albeit operating on a different model for production, is a note of some encouragement. Clearly, however, he suggests that the fishing industry will not be the same and perhaps the species will not return.

Douglas Johnston seeks to provide a schematic analysis of the various interdisciplinary perspective “mind sets” and levels of interaction and actors. He identifies adverse effect(s) of the failure on seven levels of society, six levels of significance, and five “faiths”, and despite analyzing the issues in a clinical way—ranging from individual to international—his temper is one of pessimism.

The collapse is a chameleon event, and reducible in various ways to a legal, social, cultural and economic problem. Is it a passing problem or the way of the future? Will anything new emerge? Despite the impulse to embrace the fisherfolks’ common knowledge as discussed and the need

to incorporate the role of aboriginal communal practices¹¹ outlined by Bruce Wildsmith, it still appears that the immovable forces identified in bureaucracies and political and economic constituencies, leave little room for optimism. As noted in Matthews' paper, once a metaphor has gone, a world has ended. There is no possibility of a return to what was, and, as suggested by Johnston, at best we can perhaps hope to have some influence over the future. The fish are perhaps a metaphor for the failure and collapse of a system based on faith in regulation, law and science and which failed to consider the likelihood of unpredictability of life forces and their refusal to be reduced to the mathematical precision of an industry. The fishery crisis haunts lawyers as it is evidence of the abysmal failure of law to deal with world problems at all levels. Will the future be much different? Will aquaculture arrive?¹² The underlying problems highlighted by the contributors to this edition, that is, the fact that the fishery is perceived to be an "industry", does not appear to have changed or be likely to change.¹³ As noted by Apostle and Mikalsen the capital investments are still there. Is this collapse likely to generate a fundamental social shift?

The current focus on foreign overfishing as "the cause" of the problems reflects an all too human inclination to seek and fasten hopefully upon a single, external factor as the problem.¹⁴ In effect, the idea that emerges is not that of a society which understands that wild fish fishing cannot be an industry, unless there is wholesale move to aquaculture. That it is a hunter's way of life, wherein the catch is not imagined to be controlled by the hunter, but rather is a less predictable event. There is instead a desire to simply "fix the problem and return to business" as it was. That is, to stop the overfishing, to get better enforcement and profit. The language of international debate and the agendas being pursued regarding ways to effect change simply do not recognize the fact that a much larger change is required. There must be a change in mandate, a change which emphasizes sustainability and caution, a change in fishing methods and gear, and a change in social attitudes and social programmes

11. There have also been a number of confrontations between aboriginal communities and regulators in Atlantic Canada. See R. Jones, "N.S. Micmacs tired of DFO Lip Service" *The [Halifax] Chronicle Herald* (28 July 1995).

12. See various attempts to do so such as "CLFI Industry; The Aquaculture team for Tomorrow" and "The Seaweed Industry—when, why, and how?" in *Corporate Executive News Atlantic* (April/May 1995) 14; I. Bailey, "Almighty Cod to make Comeback at Newfoundland Fish Farm" *The [Halifax] Chronicle Herald* (23 July 1995) B.4

13. S. Proctor, "Barkhouse says N.S. Fishery Thriving" *The [Halifax] Chronicle Herald* (29 July 1995) A12.

14. K. Cox, "Overfishing Declines Under Watchful Eyes" *The Globe and Mail* (29 July 1995) A.3.

designed to sustain the unsustainable. The current moratoriums will have a short lived impact if the same ideology and practices are perpetuated. As suggested by contributor Anthony Charles, a frequent advisor to governments around the world on fishery policy, the current moratoriums will have no or only a short term effect if the ideology, practices and, more significantly, the existing attitudes prevail. He explores various responses, beliefs and explanations for the failure ranging from “blaming the ocean” to “we have all sinned” and argues for a shift in the evidentiary burden (to one of precaution) in decision making. All contributors to this special edition seem to conclude in various ways that local economic pressures, human difficulty in accepting changes, and the resistance of generations of people who have ascribed to the industrial model and are now displaced, will render us unable to confront the implications of this change. If that is true we will instead see more and more cycles of the same problem with shorter spans between—until there are truly no more fish and there are no more industrial workers in the industry that never should have been. Much of the capital that has been invested in freezer trawlers, quota management and fish detection must be considered lost. If the fishing industry is to play a role in the world economy, then less reliance on the hunt for wild stocks and more on the growing of fish for harvest, or aquaculture, is required.¹⁵ Changes to increased enforcement and regulation such as those being considered currently in the U.N. are only one small part of the solution and will in and of themselves provide only short term high cost solutions.¹⁶ Larger social changes are called for to create any security for this resource in the future.

15. It is encouraging to note that the federal government and Nova Scotia have just signed an MOU under the Canada-Nova Scotia General Fisheries Agreement. The MOU deals with the development and management of coastal aquaculture. Statistics indicate that in 1993 aquaculture accounted for above 17% of the total landed catch of the Canada fisheries sector: “Canada/Nova Scotia sign commercial aquaculture MOU”, *Nova Scotia Business Journal* (August 1995) A3.

16. It should be noted that the costs of reparation to fisheries for the failure of the industry are already well beyond original estimates: see, E. Greenspon, “TAGS facing radical surgery” *The Globe and Mail*, (11 August 1995) A1.

