Hunting and fishing rights history essay

For native peoples around the world, hunting and fishing remain important economic, cultural, social and spiritual activities. Hunting and fishing are a part of native people’s subsistence economies or as supplement to farming and modern forms of food procurement. Fish and wildlife are an important food and nutritional resource for native families and communities. Fish and wildlife are harvested by native people and sold in the market place, providing native families with an important source of cash and income. Commercial harvesting and trading of fish and wildlife have long been a part of native economies. Hunting and fishing are also important cultural, symbolic and spiritual practices. Hunting and fishing are part of native peoples’ identities and cultural traditions. These activities reinforce community belonging and solidarity. Native hunting and fishing practices and technologies are not static and unchanging. Native peoples have adopted and adapted new technologies into their cultural practice in order to enhance their ability to harvest fish and wildlife more efficiently. Native peoples retain and exercise hunting and fishing rights on reserves and outside their communities in their traditional territories. Native hunting and fishing rights, while vital to many native communities, remain under challenge by non-Native governments and grassroots anti-Native rights organizations.

Colonialism, settlement, treaties and reserved rights

As native peoples around the world came into contact with European based settler societies and colonialism over the last five-hundred years, they faced significant challenges to their ability to access traditional hunting and fishing territories and maintain hunting and fishing based economies and cultures.

With colonization, native people were displaced and denied access to fish and wildlife as non-Native settlements expanded and economic development (farming, mining, forestry, etc.) modified, replaced and degraded natural habitats for fish and wildlife. Native uses of natural resource and the environment were viewed, in comparison to European uses of nature, as improper and wasteful. Native lands and natural resources, it was argued, could be better used for farming, mining, forestry or other forms of “ civilized” and “ modern” development. Native hunting and fishing cultures were also viewed as primitive by European settlers. To become civilized and assimilated meant Native peoples would must give up hunting and fishing and adopt agriculture and industrial arts.

In regions colonized by the British colonized (North America and New Zealand), for example, treaties were the legal instrument which provided for the orderly, legal colonization and occupation of native lands. Treaty negotiations resulted in the sale or cession of native lands to the British Crown and American governments. In many cases, native peoples retained a small portion of their homelands as reserves or reservations. It was assumed that they would have a right to hunt and fish on these reserves. Native peoples also reserved rights to hunt and fish on the unoccupied or unsettled areas of these ceded lands and waters. Native leaders assumed the lands and its resources would be shared and that hunting and fishing could continue as long as it did not interfere with non-Native settlement. For example, in treaties negotiated between the U. S. government and various Indian tribes in the Pacific Northwest between 1854 and 1856, the following clause retaining or reserving fishing rights is found:

“ The rights of taking fish, at all usual and accustomed grounds and stations, is further secured to said Indians in common with all citizens of the Territory…together with the privilege of hunting, gathering roots and berries, and pasturing their horses on open and unclaimed lands.”

Such treaty reserved hunting and fishing rights are legally defined and distinguished from customary native hunting and fishing rights. Customary rights to hunt and fish are based on custom, historical traditions and native occupation of the land. Customary rights have not been afforded the same legal recognition or protection as hunting and fishing rights that were reserved by a treaty or similar legal agreement. Treaty reserved hunting and fishing rights are not grants of rights to native peoples. Rather, they are rights to hunt and fish that were retained or reserved by native peoples when lands and other political rights were ceded or given away. Native negotiators viewed such rights as essential to the future economic and cultural well-being of their peoples. For non-natives, however, such treaty-based hunting and fishing rights were viewed as temporary. Settlement, development and assimilation would make hunting and fishing rights unnecessary and unneeded.

By the late nineteenth century, non-native commercialization of fisheries, state conservation laws, development of nature-based tourism, and the creation of national parks limited the ability of native people to exercise their treaty hunting and fishing rights. Hunting and fishing treaty rights were ignored as government fishing and hunting regulations were applied to native people, requiring the purchase of licenses and permits, restricting native access to traditional harvesting territories, limiting harvest seasons

and the amount of harvest, and defining appropriate harvesting methods. Commercial fishers, sport hunters and sport fisherman all sought to monopolize fish and wildlife resources and government regulations served their interests. National parks, such as Glacier National Park, were carved out of native harvesting territories. Park managers sought to provide tourists with a wilderness experience and required natural landscapes that exhibited no human use or habitation. Native occupation and hunting and fishing were prohibited in parks even when such rights were reserved in a treaty. As the idea of national parks and protected areas spread to Asia and Africa, it has impacted native hunting and fishing rights around the world.

Indigenous resistance and legal activism: reclaiming and exercising hunting and fishing rights

Native hunting and fishing based economies and cultures persisted in spite of efforts to assimilate native people, government conservation regulations, competition from commercial fishers and other efforts to eliminate native hunting and fishing rights. Native peoples consistently claimed they had never relinquished such rights and they continued to exercise them despite arrests, fines and confiscation of their hunting and fishing equipment. During the second half of the twentieth century, native peoples in North American and New Zealand would use a combination of political activism, protest and legal claims to achieve legal recognition of their treaty reserved hunting and fishing rights. In the United States, Indian tribes in the Pacific Northwest and the western Great Lakes would win federal court cases recognizing the continuing existence of their rights to hunt and fish on ceded lands and waters outside their reservations. The courts examined evidence of native

understandings of the treaties and the history of settlement to find, in many cases, that native hunting and fishing rights had never extinguished by treaty or other government regulations. Defined as use or usufructuary rights, native hunting and fishing treaty rights were not restricted to lands owned or occupied by native peoples. The rights could be could be exercised on public lands and waters and native hunters and fishers could use both traditional and modern harvesting technologies. The courts found that the rights entitled the tribes to a modest living and in many cases at least 50% of the harvest of fish or wild animals. The harvest could be used for subsistence or commercial sale. The courts have ruled that if tribes created their own rules and regulations then state government regulations would not apply to native hunters and fishers. Thus, in the Pacific Northwest, Indian tribes formed an intertribal conservation organization, the Columbia River Inter-Tribal Fish Commission, to regulate their commercial harvest of salmon and represent tribes in the management, protection and restoration of the Columbia River fisheries. The Ojibwe tribes of Wisconsin established the Great Lakes Indian Fish and Wildlife Commission to regulate their off-reservation hunting and fishing rights in northern Wisconsin. The Ojibwe harvest a wide variety of fish and animal species using a combination of traditional and modern practices and technologies. Most of the harvest is used by families as a supplement to foods bought in conventional markets. Since 1989, the Ojibwe have annually spear-fished an average of 26, 247 walleye from inland lakes in northern Wisconsin. Some members of the Ojibwe, living along the shores of Lake Superior, fish commercially for Whitefish and Lake Trout. The Ojibwe also hunt white tailed deer, black bear, furbearers, wildfowl and other wildlife species. For example, in 2009, the

Ojibwe killed 1, 650 white-tailed deer and thirty nine black bear in the ceded territories.

Similar hunting and fishing rights court cases may be found in Canada. For example, in 1999, the Supreme Court of Canada ruled, in what is known as the Marshall Decision, that the Mi'kmaq and Maliseet communities of New Brunswick retained a treaty right to hunt and fish to earn a moderate livelihood and were thus entitled to participate in the region's lucrative commercial lobster and snow crab fisheries free from most state regulations.

In New Zealand, the native Maori claimed that they had never relinquished their subsistence or commercial fishing rights when they signed the Treaty of Waitangi in 1840. This treaty provided the British Crown with sovereignty over what is now New Zealand. The Maori successfully argued their commercial fishing rights claim before the Treaty of Waitangi Tribunal; the Tribunal was created in 1975 to review Maori claims. As a result of the Tribunal's findings in favor of the Maori, the government and Maori negotiated out-of-court settlement of the Maori commercial fishing rights claims. The 1992 Treaty of Waitangi Fisheries Settlement resulted in the government purchase of a 50% share of Sea Lord Products, New Zealand's largest fishing company on behalf of the Maori. As a result of the Sea Lord deal, the Maori now hold 27% of the New Zealand off-shore fishing quota. The Treaty of Waitangi Fisheries Commission was created and provides the Maori with greater input into how the fisheries are managed. The Maori who signed the deal agreed to give up all future commercial fishing rights claims.

Backlash: opposition to native hunting and fishing rights

One response to the court rulings and native exercise of hunting and fishing rights has been the rise of local and national groups opposed to such rights and to native political and cultural autonomy. Groups such as All Citizens Equal, Interstate, Steelhead and Salmon Protection Action in Washington Now, Protect Americans Rights and Resources, Equal Rights for Everyone, the Interstate Congress for Equal Rights and Responsibilities and others formed in Washington State, Wisconsin, Montana, Michigan, and Ontario. In Wisconsin, Protect Americans Rights and Responsibilities organized mass demonstrations and protests during the Ojibwe exercise of their fishing rights during the 1980s. All of these groups claimed that native treaty hunting and fishing rights were special rights granted to native peoples solely because of their race. They sought to reframe and re-cast the issue as one of un-equal individual rights instead of as one of rights reserved by native people in exchange for their cession of much of their homelands. Today, while local anti-native rights groups still exist, they no longer organize mass rallies and demonstrations. In the United States, the Citizens Equal Rights Alliance remains active at the national scale and lobbies state and federal officials to abrogate or legislatively eliminate hunting and fishing rights.

Steven E. Silvern