

## **Outline #15**

### **Native Americans Since the Wounded Knee Occupation: Renaissance or Neo-Termination?**

**I. Overview.** What is the best characterization of Native American history since the Wounded Knee Occupation of 1973? Some observers see a “Native American Renaissance” in which tribes and their members have successfully sought to reaffirm their cultural distinctiveness, improve their economies, and assert rights based on treaties and tribal sovereignty. Others emphasize the rise of “Neo-Termination” sentiment that has sought to restrict or reverse these recent gains by restricting tribal autonomy and placing Indian nations under state jurisdiction. The following lesson examines two recent developments and whether they reflect a renaissance or neo-termination interpretation of recent Indian history.

#### **II. Treaty Rights – Hunting and Fishing**

A. Overview. Several treaties and agreements between the United States and tribes stated that Indian tribal members had the right to hunt and/or fish off-reservation. State governments have sought to restrict such rights by enforcing state fishing laws and regulations against Native American fishers. Native and non-native critics of state actions counter that Native fishing rights guaranteed by federal treaties are not subject to state jurisdiction. Native Americans long resisted such efforts to restrict their rights. In the past, Indian often fished in secret, risking arrest. By the 1960s, 1970s, and 1980s, however, American Indian activists in the Northwest and Midwest more overtly challenged the states by engaging in civil rights-style protests that involved deliberately and openly fishing in violation of state laws and filing lawsuits against several states. These protests sometimes provoked violent responses by non-Indian vigilantes and law enforcement agents, which generated public sympathy for the Native Americans. By and large, judges ruled in favor of the Indians, finding that states lacked the authority to interfere with treaty-protected hunting and fishing rights.

B. Examples of fishing rights activism and court rulings upholding treaty rights in the Northwest:

1. Fish-Ins. In the 1960s and 1970s, Native American activists in the Pacific Northwest protested against efforts by the State of Washington to regulate off-reservation Indian fishing despite the fact that the Stevens Treaties of the 1850s guaranteed off-reservation fishing rights. Local Native nations and members of the National Indian Youth Council (NIYC) staged a series of Fish Ins, in which Indians openly fished in defiance of the State of Washington. The protests continued for years, even in the face of arrest and violence by state officials. The protests were modeled on the Sit-In protests of the Civil Rights Movement.

a. Boldt Decision / U.S. v. Washington. The tribes involved in the Fish-Ins took Washington State to federal court and won a major victory in *U.S. v. Washington* (1974). In the case, Judge George Boldt upheld the treaty-protected fishing rights of the tribes and declared the tribes were entitled to 50% of all the fish taken in a given year (the "Boldt Decision"). The ruling was affirmed by the Supreme Court in 1979.

2. Rapid River / "Second Nez Perce War." In 1980, the state of Idaho banned harvesting at the Rapid River salmon fishery because of low numbers of salmon. The Nez Percés objected, arguing that the closure violated the Treaties of 1855 and 1863. A group of Nez Percés openly fished on Rapid River in defiance of the state order. Non-Indian vigilantes threatened and harassed the fishers, and scores (including a seven-year old boy) were arrested by Idaho law enforcement agents. Judge George Reinhardt, in 1982, ruled that the Nez Percés had the right to take fish from Rapid River because of their treaties with the United States and that the state of Idaho had to consult with the tribe on managing the fishery.

C. Resistance to Native American Fishing Rights. As noted above, Indian fishing rights faced opposition not just from state governments but also from individual non-Indians and private groups that opposed what they saw as "special rights" for Indians.

*Lighting the 7<sup>th</sup> Fire*, a documentary film, examines the conflict over the exercise of treaty fishing rights by Chippewa Indians in Wisconsin. The events in the film reflect (1) the broader efforts by many American Indian nations to reassert their political rights and revitalize their tribal cultures in the late 20<sup>th</sup> and early 21<sup>st</sup> centuries, and (2) the larger backlash among some in the United States against treaty rights and related expressions of tribal sovereignty and cultural distinctiveness.

1. The Chippewa people are classified as Algonquian speakers and are also known as Ojibwe and Anishinaabe. They have six reservations in Wisconsin: Lac Courte Oreilles, Lac du Flambeau, Red Cliff Band, Red River Band, St. Croix, and Sokaogon.

2. Two things to be aware of and prepared for: (1) The film contains some disturbing language and images; (2) The film does have a point of view.

3. Key Terms

a. Chippewa / Ojibwe / Anishinaabe Indians

b. Treaties of 1837 and 1842 promised off-reservation fishing rights

c. *Lac Courte Oreilles Band of Lake Superior Chippewa Indians v. Voigt* (1983)

d. Backlash against Native fishing rights

- Harassment and violent protests by Non-Indians

- Racism

d. Fish population down mainly from of pollution and non-Indians

#### 4. Questions

- What is the 7<sup>th</sup> Fire? What are the other six fires? What is the connection between the 7<sup>th</sup> Fire and Chippewa fishing/fishing rights?
- Why do you think the Chippewa fishing rights issue has been so controversial?
- Some critics have characterized the Chippewas' fishing rights as "special rights" of recent invention by courts. What is the basis for such as characterization? How have the Chippewas responded to the argument that they have "special rights"?
- The film cites evidence that Native fishing is not responsibly for the decline in fish population. Why have at least some non-Indians blamed Native Americans for the decline?

### III. Gaming – “New Buffalo” or “Forced Federalism”?

- A. Earliest Indian Commercial Gaming Tribes: Seminoles of Florida, 1979
- B. Most Profitable: Mashantucket Pequot's Foxwoods Resort Casino (Conn.), 1992
  - 1. 6200 slot machines
  - 2. Estimated pre-2008 annual profits of \$1 billion
  - 3. Casino revenues used for:
    - a. Purchase of lost land
    - b. Scholarship program
    - c. Tribal museum and powwow
    - d. Tribal police and court system
- C. Selected Details
  - 1. Indian gaming \$28 billion annually by 2008 (\$25.1 billion in 2006)
  - 2. About 239 Indian tribes out of 564 had some kind of gaming enterprise
  - 3. Some Issues:
    - a. Much of Indian gaming revenues go to outside management companies
    - b. Gaming revenues not evenly distributed (some tribes make a lot of money, others do not)
- D. Indian Gaming Regulatory Act (IGRA), 1988
  - 1. Does requirement for tribal-state compacts erode tribal sovereignty?