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HUNTING TRADITION: Treaties, Law, and Subsistence Killing

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Abstract

This paper explores "subsistence traditions" that entail killing nonhuman animals among "indigenous" peoples in North America. In light of historic "tradition," contemporary practice, and the treaties through which these privileges are guaranteed, I challenge the appropriateness of laws permitting the continuance of "subsistence" practices.

I begin with a brief overview of the spiritual ethics behind "subsistence traditions," then offer a concrete example from Washington State, including treaties, legal issues, and court rulings. I next elucidate the meaning of "tradition," and compare contemporary lifestyles and practices with traditional ways. Finally, I consider whether or not current hunting, fishing, gathering, and trapping ought to be protected under the canopy of "traditional" activities.

Introduction

Terms: Early immigrants, animals

Peoples already living in the Americas were mistakenly referred to as "Indians" by European settlers. Since that time a series of other names have been applied: American Indian, Amerindians, First Nations, Native Americans, and Early immigrants. It is currently popular to refer to these various peoples as "native," but they are no more "native" than they are "Indian."

"Native" suggests that these peoples were originally from American. But studies indicate that human beings migrated to the Americas from Asia into what is now Alaska, then spread south and east across the continent (Matthews 21). Some groups of early immigrants settled in their accustomed territories comparatively recently: the Navajo migrated to the Southwest just before the first Europeans arrived, somewhere between 1200 and 1400 ACE (Brown 1991: 19). [1] The term "native" is also pregnant with implications (especially with regard to land use); it suggests that these people hold some special title to the land because they have always been here. But they are also immigrants, and have long battled for land among themselves.

Because the term "native" is a misnomer, and because it is laden with controversial implications of ownership, I choose to use the term "early immigrants," or "early immigrants in North America," abbreviated as EINA. Similarly, I use the term "anymal" to refer to all animals excluding *Homo sapiens*. Because people are mammals, it is incorrect to use the term "animal" as if it referred only to *other* species, excluding human beings. In philosophy, as in many fields, it is important to be as precise as possible with language. For this reason, I use the term "anymal" to refer to *any* animal (*anymal*) that is not *Homo sapiens*.

Shared Wildlife Ethic

Though the many distinct groups of people who lived in North America prior to European invasion used a variety of hunting methods in search of a plethora of wildlife across varied landscapes, early immigrants in

North America shared a core wildlife ethic (Schmidt 44-48). Though all points of this ethic may not have been true for all EINA, most of them will be true for the vast majority of early immigrants. For the purposes of this paper, I present eight important elements of this ancient ethic:

Correct behavior was "modeled on ancestral examples..." (Schmidt 102). Behaviors reached back across the centuries, patterned after what had come before.

"Religion" was indistinct from daily life. Spirituality was "a way of experiencing life;" every act had religious significance (Schmidt 46, 45).

There was no "division between subject and object, between landscape and people" (Kwiatkowska 1997: 276). Human communities were viewed as just one aspect of an ongoing sacred life that encompassed the entire cosmos; people maintained a "mystical identification with... the animals and plants that sustained their lives" (Schmidt 76). Both a social and spiritual relationship existed between people and wildlife (Gill 1983: 121). Anymals contained this spiritual power, and were thought to possess "consciousness, will, and other capacities... superior to those of humans" (Harrod 1987: 159). Anymals were seen as "equal to, if not more powerful than" human beings, not just physically, but spiritually (Preece 166). Early immigrants understood anymals as "guides and teachers," as powerful sacred beings who could communicate with people (Brown 1991: 124, 119).

Anymals, plants, and the natural world were "endowed with spirits and with spiritually based power" (R. Nelson, Make 228). All of nature was filled with a mysterious yet real power, and was potentially dangerous (Eredoes xi). Lack of respect for anymals was likely to result in starvation because anymals were in control of their own destiny, and might leave the area if people failed to treat them with respect. (Feinup-Riordan 544). Consequently, people were dependent on harmonious relations with anymals; and they associated with these powerful personalities *as spiritual powers* (VanStone 65). For historic EINA, "Nature is not governed by God, nature *is* God" (R. Nelson, "Passage").

Wildlife was kin (McLuhan 1971: 56, 99); other living creatures were referred to as siblings and grandparents, and they were viewed as part of the same great family to which human beings belonged (Matthews 39). An "unbroken chain" connected all living beings (Schmidt 186).

Wildlife was critical to subsistence. Though all beings were believed to live "together as relatives," people hunted, fished, gathered, and

snared wild animals—it was the only way they could survive (Schmidt 46). As might be expected, their mythologies reveal a constant tension “between the necessity to eat and the killing of animals, which [were] believed to possess consciousness, will, and soul” (Harrod 63, 159). Origin myths often describe a time when people did not eat anymals, and explained how this unsavory practice began (Harrod 38-65).

The conflict caused by eating kin was resolved through a spiritual relationship—a relationship guided by religious beliefs and ritual acts. Therefore hunting and fishing were as important spiritually as nutritionally (Brown 73, 111, 120): “the food that gave them life was regarded as sacred,” and “what was eaten and how it was acquired took on an importance that transcended survival” (Schmidt 45-46). Killing wildlife was a sacred responsibility, and hunters felt obligated to uphold “a code of moral and social etiquette” that encompasses all creatures (R. Nelson, Make 228). Many indigenous peoples lived in fear of the powers of nature, in fear of reprisal, should they somehow offend those they depended on for sustenance. Anymals were viewed as powerful enough to decide whether or not to allow a hunter to eat. Anymals were thought to appreciate the needs of others, and respond accordingly, even permitting their own death (Feit 421).

Hunting, fishing, gathering, and trapping were viewed as spiritual acts permitted only with the consent of those killed (Brown 1991: 51). Hunting success or failure were controlled by anymals. People could influence the willingness of anymals to die for hunters through rituals, taboos, and by maintaining and displaying a humble and appreciative attitude (Schmidt 74). “The hunter reveres the animal, and asks it to make a gift of itself so that humans can eat; animals comply and give themselves” to the worthy hunter (Preece 166). Wildlife could only be killed by the deserving with the permission of those killed (Preece 165).

The wildlife ethic of early immigrants, and the rituals and taboos surrounding that ethic such as fasting, prayer, and avoiding taboos, reflects an understanding of spiritual responsibility connected with the ominous task of killing kin. Behaving respectfully toward wildlife was thought *critical* to survival. Hunting, fishing, gathering, and trapping were

necessary, but they were restricted and controlled by a spiritually based ethic that forbid gratuitous killing. The spiritual power of wildlife, combined with the physical dependence of human beings, colored the human-wildlife relationship. If people suffered food shortages they were not apt to say, "I cannot kill deer anymore," but rather, "Deer don't want to die for me" (Heizer 1980:211).

Law And Tradition

Law

Hunting, fishing, gathering, and trapping have been secured for some early immigrant communities through legal interpretations and court rulings with regard to treaties. When they agreed to settle on reservations, some EINA groups obtained certain promises in exchange, such as the right to health care, education, protection, and permission to maintain certain important subsistence practice (Honor). Naturally, they sought to secure the continuance of practices essential to survival.

Across the United States there have been a host of legal cases, focusing on the wording and intent of the many treaties signed between the U. S. government and early immigrant communities. Litigation has attempted to outline exactly what these historic documents grant. In order to better understand these treaties, and court rulings recently passed, it is instructive to investigate details more carefully. Toward this end, I turn to specific cases in Washington State.

Based on a few key phrases in historic treaties, Washington courts have handed down a handful of divisive rulings. For instance, court proceedings established that Washington's early immigrants are legally guaranteed 50% of harvestable fish for commercial sale, plus any fish caught on their own reservation lands, as well as off-reservation fish for "subsistence and ceremonial purposes" (Madson 7). [ii] This grants early immigrant communities greater than 50% of the total fish harvest. Similarly, they are legally entitled to 50% of all harvestable wild shellfish on Western Washington beaches (Northwest, "Shellfish"). EINA, who constitute only 1% of the population in Washington State, are now legally entitled to 50% of the fish and shellfish from Washington waters and tidelands. Furthermore, Washington's early immigrants are legally entitled

to take shellfish from privately owned tidal lands because their ancestors gathered shellfish on these same lands (Northwest, "Shellfish"). It is understandable why such rulings have created anger in the larger community; there is yet more.

The U. S. Supreme Court also ruled that methods used by early immigrants could not be qualified by any state (Madson 6). For example, certain types of nets have been prohibited, "in order to conserve the fish," yet these restrictions do not apply to EINA, unless such practices endanger "resources" (Madson 7).

With regard to hunting, early immigrants are not restricted by state laws controlling seasonal hunts, or by killing-limits for a given hunt or season. Additionally, EINA are permitted to hunt on federal lands such as National Forests (Northwest, "Hunting"). It is not surprising that early immigrants killed well over 8% of deer and elk hunted in Washington State in 1997—over 400 elk and more than 28,000 deer (Northwest, "Hunting"). They were permitted to kill this many animals despite the fact that they comprise only 1% of the population. Had they killed 1%, they would have taken 3, 500 deer.

One group of early immigrants in Washington State, the Makah, recently petitioned for the right to engage in a form of killing that has been outlawed not just in North America, but increasingly around the globe: whaling. The Makah willingly abandoned whaling almost a century ago, when other flesh-markets were more lucrative (Marr 25-33). Though gray whales are still protected, the U.S. government granted the Makah the right to whale. A whale was soon dispatched in Washington waters, with modern technologies and without any evidence of traditional respect for nature (see below). In the U.S. it has been illegal to harass or harm gray whales for a quarter of a century. For those who are not Makah, whales remain protected, and it is illegal even to approach a whale within a certain parameter.

Interpreting Treaties

Each of these controversial Washington State rulings stemmed from the legal interpretation of fourteen treaties signed in the mid-nineteenth century. Many decisions revolved around a few passages. Article III from

the "Treaty of Medicine Creek," and Article IV from the "Treaty of Neah Bay," signed with nine Puget Sound groups and several Makah communities respectively, offer a sampling of such critical selections:

The right 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, and of erecting temporary houses for the purpose of curing, together with the privilege of hunting, gathering roots and berries, and pasturing their horses on open and unclaimed lands. (United, "Medicine")

The right of taking fish and of whaling or sealing at usual and accustomed grounds and stations is further secured to said Indians in common with all citizens of the United States, and of erecting temporary houses for the purpose of curing, together with the privilege of hunting and gathering roots and berries on open and unclaimed lands. (United, "Neah")

Contemporary court officials struggled to interpret these passages as signatory members would have understood their meaning (United 356). "Accustomed" and "usual" were interpreted in the standard dictionary manner: customary, familiar, frequent, habituated; "common" was interpreted as "for the use of all," and "belonging equally to more than one individual" (United 356).

Those interpreting the treaties applied the phrase "usual and accustomed" to include the "historical region" where a particular group of early immigrants had hunted, fished, gathered, or trapped (Northwest, "Shellfish"). They determined that this holds true "even if those locations were off the reservation" (Madson 4). This phrase was also determined to grant "usual and accustomed" methods, and the state or nation was forbidden from legally qualifying or challenging methods used. Any qualifications can only be applied off the reservation, and only with regard to the "manner of fishing, and the size of the take and commercial fishing" when such regulations are necessary for conservation (Madson 6). As a consequence, nets forbidden to other citizens because of the damage such nets do to the ecosystem are permissible for EINA.

From the phrase "in common with" courts ruled that early immigrants ought to be granted a "fair share" of the harvest. Later, "fair share" was clearly delineated as 50% of harvestable fish and shellfish (Madson 7).

Courts ruled that the "open and unclaimed lands" clause entitled early immigrants to practice subsistence on state lands. Consequently, EINA were permitted to hunt on federal lands such as National Forests (Northwest, "Hunting").

Court rulings in the past twenty-five years, based on interpretations of these historic treaties with regard to hunting, fishing, gathering, and trapping rights, have become increasingly controversial as natural "resources" dwindle and swarming North Americans compete for a piece of a sadly diminished pie.

"Tradition"

The above clauses, Article III from the "Treaty of Medicine Creek" and Article IV from the "Treaty of Neah Bay," reveal how important historic treaties have been in establishing the legal particulars of hunting, fishing, gathering, and trapping among early immigrants in the contemporary United States. What these passages cannot reveal is exactly what EINA *intended* these treaties to secure.

When these treaties were signed, what did early immigrants understand as "hunting," or "gathering," "taking fish and of whaling," or "usual and accustomed"? Treaties granted a continuance of traditions that were deemed essential to the survival and identity of the group, and promised certain privileges (such as education, medical care, and cash) in exchange for land (Honor). Such treaties were intended to peacefully free land in Washington Territory for private ownership for incoming settlers (United 355). But how are they to be interpreted one hundred and fifty years later? Because "perceived intent of the parties" was central to legal interpretations of historic treaties (Madson 4), we need to know precisely what traditions these groups intend to secure when they signed these particular treaties. We also need to compare original intent with modern-day practices and mindsets.

With regard to legal rulings and the interpretation of these treaties, much rests on the definition of "tradition." "Tradition" is derived from the Latin *traditio*, the act of "handing something over to another, or of delivering up a possession" (Galef 1996: 91). A traditional act or idea is a "long

established or inherited way of thinking or acting" (Webster's 1996).
Two aspects of "tradition" emerge:

a *continuing* pattern of activities

specific *methods* employed for these activities, *including* attitudes or ways of thinking.

In common usage, as well as in scholarly works, "tradition" generally refers to *methods* that have been *continuously* maintained across generations.

Yet traditions can and do change. "Changes in traditions are incessant" (Shils 285). Traditions constantly merge with new streams of thought and action. They bend to incorporate new practices, and shift to accommodate evolving ideas, altered goals, and different circumstances. New patterns of behavior in fast-changing contemporary societies hold *aspects* of historic tradition, but these new patterns ultimately form altogether *new traditions*.

While all behaviors are in some way linked to past thought and action, obviously not all behaviors are traditional. For instance, singing Christmas carols is a traditional part of the holiday season for many Westerners, but if Karl Marx belted out "Away in a Manger" to the hammering of Led Zeppelin, his "caroling" would not qualify as "traditional," much less as an "historic, cultural tradition." The act of singing a Christmas carol is not enough to equate Marx's music with tradition—a *continuing pattern* and *methods*, including a belief structure, are critical.

What does this mean for EINA? If Tlingits of Southeast Alaska give away blankets and hides in the traditional manner of a potlatch, but do so only because a group of tourists paid \$10 per person to witness the event, they are not engaged in a traditional potlatch because neither their methods nor their mindset are traditional. And if a Makah goes hunting not for food, but only for the sake of maintaining a tradition, or for the sake of fostering a certain community spirit, they are likewise not engaged in a traditional hunt, an activity that was focused on the body of a whale itself, and the many uses of that body. Traditionally, there was no expectation that killing a whale might help to solve the communities ongoing, larger

problems. There was no thought of killing a whale simply because that is what their ancestors had done. They killed whale to acquire a whale; their end goal was the dead whale, which they employed.

What is important about the definition of "tradition" is that methods entail an inner quality; a mindset—the way people *feel* about and *envision* a particular activity. For instance, caroling has traditionally been viewed as a communal Christian expression of religious belief and a means of worship. Karl Marx would need more than a different back-up band to qualify as a "traditional" caroler. Similarly, Tlingits giving away blankets to please tourists, and to profit from tourist interest, do not engage in a traditional activity. And a Tlingit who gives away TVs, computers, and DVDs at a potlatch may engage in a potlatch for the same *reasons* as her ancestors (with the same thinking, or mindset), but not with the same material items. Tradition involves continuing patterns across time, including constancy of method and mindset. An early immigrant embarking on a seasonal hunt in the Yukon with an aluminum motor boat imported from Oregon, a steel rifle from Wisconsin, and a plastic compass made in Taiwan, stretches the term "traditional" to the point of breaking because of radically different *methods* (physical means) and mindsets. Hunting is no doubt a tradition of that individual's ancestors—as it once was for all peoples. But a hunt is by no means "traditional" simply because one's ancestors hunted, or because one hunts in the same area and at the same time of year as one's ancestors.

Gray areas are inevitable. If a devout Catholic pop-singer sang a Christmas carol accompanied by steel drums and electric guitars, she might be assumed to hold all the *inner* aspects, but none of the *external trappings* of traditional caroling, like the Tlingit giving away TVs, computers, and DVDs. And if Karl Marx were to sing a carol in a church accompanied by a church choir he might be viewed as having all the proper *external* aspects, but none of the necessary *internal* belief structures, like the Tlingit potlatch performed for tourists.

These simple examples demonstrate the ambiguity inherent in our current use of "tradition." But all is not lost; it is possible to categorize most activities as either

new traditions: activities linked to historic traditions but largely composed of methods developed in the past century and/or lacking core spiritual or philosophical aspects that once accompanied those actions, or

a continuance of old traditions: activities that consist largely of methods used a century ago, including core spiritual and philosophical understandings that accompanied those actions.

With this definition, actions considered "traditional" change over time. After a century of pop Christmas carols, pop caroling might qualify as a tradition. But today Madonna would be categorized as part of a *new* tradition, one born in the last few decades. Though gray areas remain, new traditions must be distinguished from old if "tradition" is to maintain any meaningful uses. If *all* of the above examples are considered "traditional," without qualification, then the meaning of this word is lost. If a seasonal hunt as carried out for hundreds of years in North America is "traditional" in the same sense as the Yukon hunter described above, then "tradition" no longer entails methods handed down across generations. Such a modern, high-tech hunt is best viewed as a *new* tradition of hunting that has stemmed from an historic hunting tradition. [iii]

Interpretation And Contemporary Times

Defining tradition is the first critical step. The next is to examine contemporary practices to see whether they are best defined as "traditions," or as "new traditions."

The wildlife ethic of early immigrants arose when people in North America struggled to survive in an environment that was bigger and more powerful than human beings, a time when there were fewer people, only rudimentary technology, and killing wildlife was essential to human survival. Conditions have changed. Human populations have skyrocketed, and North America now specializes in sophisticated outdoor equipment, including a proliferation of high-powered weaponry. North Americans import oil, sugar, and coffee; they travel by ATV, automobile, and aircraft; and they enjoy computers and television, microwaves and freezers. From the northern tip of Alaska to the southern tip of Florida,

early immigrants purchase products from across the country and around the world.

Today's North American descendants of hunter-gatherer societies enjoy some of the best medical care in the world. Populations have grown accordingly: the Navajo, brutally reduced to eight thousand in 1868, were fifty thousand strong in 1950, eighty-five thousand in 1961, and seventy-five thousand in 1991 (Brown 1991: 19). A decimated Makah population of around 550 in 1950 has more than tripled in just forty years, to around 1,700 in 1991 ("A Brief"). The lives of early immigrants, as for all North Americans, are much less apt to be threatened by common viruses, infection, or childbirth, and have increased exponentially in the last half-century.

EINA communities have generally opted against a traditional lifestyle, yet they are legally granted the right to engage in traditional subsistence practices—with sophisticated weaponry and high-tech fishing gear. The results have sometimes been sobering:

In February of 1998 a single early immigrant from the Northwest Territories of Canada "chased 162 wolves to their deaths on a snowmobile in a single season," while a dozen other early immigrants killed 500 more wolves during the same time period (Preece 166).

In Southeast Alaska EINA trapped and shot otters nearly to extinction for the price of their pelts. Because their methods cannot be regulated, early immigrants continue to use steel-jawed leghold traps, a device outlawed by roughly 70 countries around the world, and an increasing number of U. S. states, because these traps work indiscriminately and cause extreme suffering.

Gillnets have been judged "inexcusably detrimental to the environment—trapping even the smallest of fish" (Preece 167). Gillnets are illegal for most fishers, but early immigrants are legally protected from such legislation, and continue to choose to fish with gillnets.

EINA hunt and kill endangered, protected species. A Seminole gunned down an endangered Florida panther for the "ritual use of

panther parts;" nationally protected bald eagles continue to be shot for feathers (Schwarz 297, 293). Just a few years ago, along the Olympic Peninsula, the Makah chased and killed a gray whale, a whale listed as endangered by CITES, with the aid of high-powered boats and weapons, and a helicopter funded by the U. S. Government.

These brief descriptions of hunting, fishing, and trapping practices among early immigrants suffice to demonstrate that methods have changed from what they were one hundred and fifty years ago. They also reveal a stunning absence of the traditional wildlife ethic—evidence of an absence of traditional thinking, an absence of traditional spirituality. Each of these instances demonstrates that hunting methods have been modernized, and that a new mentality goes along with such practices. Consequently, each of these wildlife practices, if they are to be considered traditions, must be viewed as new traditions. They definitely do not qualify as ancient life-ways, or as historic traditions.

Today, instead of struggling to survive physically in a natural landscape that is large and powerful, early immigrants endeavor to survive culturally in a crowded world dominated by Western culture. To maintain their identity and a sense of community power, some early immigrants have fought for special hunting-gathering privileges based on historic traditions, historic identities: fishing rights, whaling rights, trapping rights, and hunting rights. Many such rights have been granted, based on treaties that permit the continuance of traditional means of subsistence. But there has been a "noticeable erosion" of the wildlife ethic, and of traditional practices and beliefs among early immigrants (Schwarz 291). In truth, almost nothing remains of "traditional means," or of the spiritual and philosophical worldview that accompanied these activities. (Fasting, prayer, honoring taboos, and ritual acts all constitute physical evidence of a traditional mindset, but few are practiced in contemporary times.)

Consequently, hunting, fishing, gathering, and trapping among early immigrants in North America in the year 2001 fails to qualify as "traditional." In light of the overwhelmingly non-traditional beliefs and practices of early immigrants today, hunting, fishing, gathering, and trapping are best viewed as new practices, or as potential "new traditions."

Legal Ramifications

Officials in U. S. courts attempted to interpret historic treaties as EINA would have understood these documents; they endeavored to make legislation that would protect intent. Intent cuts both ways: courts granted early immigrants those things that judges believed EINA who signed these documents anticipated gaining by adding their signatures; the courts must also *deny* practices that were not intended by these same signatories. Did these historic peoples believe they were protecting their “right” to locate whales with helicopters or sell hundreds of thousands of fish to the highest bidder?

Early immigrants one hundred and fifty years ago, who secured a continuance of subsistence hunting, fishing, gathering, and snaring practices via treaties, could not have foreseen the vast commercial enterprises of today. It is extremely unlikely that they intended to secure the right to half of the total “harvestable” fish and shellfish of Washington State. Wording clearly indicates that signatories, and those who drew up the treaties, wished to secure the right of EINA *to subsist as they had always subsisted*—to engage in traditional subsistence practices. *The intent of these treaties was to protect traditional practices that provided food and clothing for signatory peoples, not to license unnecessary consumption or environmentally unsound practices.*

EINA are neither the first nor the only people in the US to stretch the meaning of historic documents. The constitutional guarantee that US citizens be able to keep and bear arms was important when the nation was young, lacked an official military, and was defended by a militia. With the help of those who profit from the manufacture and sale of firearms, the original intent of citizen’s right to keep and bear arms—the protection of citizens—has been subverted by the proliferation of weaponry that endangers citizens. Interpreting historic documents is never an easy matter, and when there are profits to be had, interpretation becomes even more problematic.

Nonetheless, we benefit from examining, understanding, and honoring the original intent of historic documents. Fishing, hunting, gathering, and trapping practices that fail to qualify as traditions, as defined above, are not protected by treaties intended to preserve *traditional* subsistence

practices. Furthermore, where such non-traditional practices have been legally protected *because* of these treaties, they have been wrongly protected. Signatories could not possibly have intended to protect hunting, fishing, or trapping outside of *traditional* practices, *much less to protect practices that actually breach their traditional wildlife ethic.*

Individuals engaging in traditional subsistence practices ought to be protected by these treaties. Those who no longer retain subsistence traditions, complete with traditional spirituality, ought to abide by all laws regulating hunting, fishing, and trapping for non-EINA citizens.

Appropriate to Today?

While scholars have amassed considerable material on relations between ancient peoples and animals, "they hardly ever address questions pertaining to animal welfare and the animal as subject" (Noske 183). Scholars busy recording minute details of how people interact with the natural world, have seldom questioned—let alone challenged—such behaviors. Even if the EINA wildlife ethic and the practices that once accompanied this ethic *were* living traditions, it is not only reasonable but essential to question whether such practices are appropriate in contemporary times. This further inquiry provides a "no" on two counts: inherent danger and lack of necessity:

1. The wildlife ethic of early immigrants in North America portrays animals as powerful, in control of their own death, perpetually self-regenerating, and as *rightly* killed because their death is essential to human survival, and because they willingly consent to death. The EINA wildlife ethic offers a spiritual view in which animals must be killed for people to survive, and so animals acquiesce to being killed, and then return to offer themselves yet again. In this view killing wildlife is always justified—sanctioned by the dead, and the dead never really die because they return to life. In any event, hunting cannot be avoided.

In times gone by, when early immigrants lived more closely with animals, their wildlife ethic offered some way to harmonize their discordant reality: killing one's kin to provide sustenance. Their belief structure mitigated guilt and provided a spiritual understanding of wild animals that allowed people to both respect and kill those they viewed as close kin.

Times change, and so do people. Such spiritual practices as prayer, fasting, and the maintenance of taboos and rituals, outward signs of the ancient wildlife ethic of kinship and respect for wildlife, are now conspicuously absent from EINA hunting. Given contemporary firepower, motorized methods, and increasing human populations, a wildlife ethic that justifies killing as necessary, and as sanctified by the one killed, is extremely dangerous.

One might legitimately argue that such a wildlife ethic *never* provided adequate safeguards against human misuse and abuse of animals. It is easy to list a myriad of early immigrant activities, now readily identified as cruel and environmentally unsound, that existed long before Europeans crossed the Atlantic. The Koyukon hunted down and killed *rare* animals on site (Nelson 1983: 28, 112-113); EINA in the Southwest ritually killed deer and eagles by suffocation (Brown 1991: 74, Preece 193); throwing stones at birds and shooting squirrels were customary pastimes among the Sioux (Preece 94). James Swan, who lived among the Makah between 1863 and 1866 commented: "They however are cruel to all animals, and particularly birds, which they torture in every conceivable manner" (15). Historically, the list of ethically suspect and environmentally unsound EINA wildlife practices is considerable.

An ethic that considers killing animals essential, that views animals as complaisant in their own killing, and as never really dying, is inherently dangerous to wildlife.

2. The EINA wildlife ethic recalls a time when people had to hunt to survive—they *had no choice*. Hunting, fishing, gathering, and trapping were their *only* means of survival; without the hides and flesh of animals, human beings in North America would have perished.

The wildlife ethic of early immigrants condoned killing when necessary, but otherwise eschewed the taking of wildlife. Unnecessary killing was a symptom of disrespect, an attitude that would cause animals to be unwilling to die. This, in turn, would result in human starvation. This spiritual vision is perfectly reasonable: I would lay down my life for my kin if there was no other way for them to survive. *But I would be sorely disappointed if this generosity was later used to justify killing me when the need had passed.* EINA today, like other North Americans, need

nothing more than fresh-frozen, canned, and packaged foods, or the fresh produce that many groups can grow. Rather than purchase ammunition and weapons, hunting gear and outdoor paraphernalia, early immigrants can buy or grow additional plant-based food supplies. With the advent of advanced agricultural techniques, refrigeration, and extensive transportation, subsistence killing is obsolete for 99% of North Americans (Luke 33). Consequently, almost all early immigrants who hunt, fish, or trap in contemporary times abrogate the traditional wildlife ethic, an ethic based on taking only what is necessary for survival.

At the core of the EINA wildlife ethic lies a belief structure that rejects almost all hunting in contemporary times: nature as sacred, animals as spiritual guides and kin, harmony and balance, killing only when one must kill to survive. These underlying spiritual beliefs must be acknowledged as more fundamental than any actions rooted in these core beliefs, such as the historic practices of hunting, fishing, gathering, and trapping. EINA core beliefs and values reveal that the ancient wildlife ethic has become subverted in contemporary times, and that this ethic is now used to justify the raw act of killing—killing that lacks almost every vestige of tradition because it is now unnecessary for survival.

While hunting and fishing might remain the *preferred* lifestyle for some, EINA who hunt, fish, gather, or trap animals abrogate their traditional wildlife ethic, one that viewed animals as spiritually powerful kin, never to be harmed unless harm was necessary. EINA today ought to view flesh-eating as inherently destructive and wasteful *because there is no longer any need to eat animal products of any kind.* [iv]

Sound Core

One might argue that the extensive cruelty and violence caused by Christians down through history prove that the teachings of Jesus are inherently dangerous. But people often twist or ignore spiritual beliefs to suit personal ends. The vast majority of Christians agree that the core of Christianity is an ethic of love and compassion; if one is motivated by love and compassion, then the ethic that follows, and one's resultant actions, are not apt to damage others. The same is true for the wildlife ethic of early immigrants. The environmentally unsound behaviors of early immigrants stem from a *lack* of spiritual depth, rather than from an

inherently deficient ethic. When taken in its entirety, with an emphasis on *core beliefs* that *guide and regulate actions*, the EINA wildlife ethic speaks against contemporary practices, against any unnecessary killing.

Kinship with animals is primary for early immigrants (Schmidt 463). The core of the EINA wildlife ethic is a worldview in which all the world, and every act within the world, is sacred, in which powerful wildlife kin, who are similar to humans in fundamental and important ways, choose to die so that humans might subsist. This core belief *does not* allow for gratuitous killing, for cruel and painful deaths, but *does* hold the inherent assumption that to kill wildlife—kin—unnecessarily is grievously wrong.

This core belief system remains strong for some early immigrants. A Koyukon living in the far north recently wrote, "Sometimes people will hunt the loon, but me, I don't like to kill it. I like to listen to it all I can and pick up the words it knows" (Nelson 1983: 87). This contemporary EINA writer reveals a sense of camaraderie with the loon, knowledge that there is no need to kill his remarkable relative, and an unwillingness to harm his feathered kin unnecessarily.

This view is supported by some contemporary EINA. Makah elders Isabell Ides (age 96), Harry Claplanhoo (78), Margaret Irving (80), Ruth Claplanhoo (94), Viola Johnson (88), Alberta N Thompson (72), and Lena McGee (92) openly spoke out against reestablishing the Makah whale hunt. "It would be one thing if the whale meat were truly needed," Thompson remarked, "as in the times of the ancestors... But that is no longer true today" (Dunagan, "Tribal"). Other Makah agreed, including Vivian Lawrence, Mabel Smith, Dottie Chamblin, and Jesse Ides, who asked, "What will killing a whale accomplish for the Makah?" (Watson).

Environmental organizations provided space in the Peninsula Daily News, for Makah elders to speak their minds:

We are elders of the Makah Indian Nation (Ko-Ditch-ee-ot) which means People of the Cape. We oppose this Whale hunt our tribe is going to do.

...The Whale hunt issue has never been brought to the people to inform them and there is no spiritual training going on. We believe they, the Council, will just shoot the Whale, and we think the word "subsistence" is

the wrong thing to say when our people haven't used or had Whale meat/blubber since the early 1900's.

For these reasons we believe the hunt is only for the money. They can't say "Traditional, Spiritual and for Subsistence" in the same breath when no training is going on, just talk.

Whale watching is an alternative we support. (Ides)

Contemporary examples such as these demonstrate how the historic EINA wildlife ethic, where people kill only out of need, can be applied consistently in contemporary times. Those who suggest that early immigrant traditions require one to hunt or fish fail to distinguish *core teachings* (method and mindset) from contemporary *actions*. Those who view the EINA wildlife ethic as condoning contemporary hunting, fishing, gathering shellfish, or trapping are focused on acts *out of context*—acts that were once essential to survival, acts that were shaped and controlled by the spiritual understanding of kinship. The unsatisfactory nature of having to kill one's kin to survive was evidenced by early immigrant myths that pined after an ancient time when people did not kill animals for food. An opportunity to reestablish this ancient, peaceful time has, at last, come again.

Arrogance Or Dialogue?

Subsistence killing was once critical for survival. Today, most EINA no longer need to kill animals, yet such slaughter is legally secured based on recent interpretations of historic treaties that protect traditional subsistence practices. Most hunting, fishing, gathering, and trapping in contemporary times are traditional neither in the general nor the specific sense of the word; these practices are best understood as part of a new tradition, not protected by treaties, intended to secure historic subsistence practices.

Many might think it arrogant for one person, or group of people, to find fault with another. Such "outsider" attacks are not politically correct—especially against a group of people so beleaguered by whites. Is it right for someone of European descent to criticize EINA? Is it right

for someone of Asian descent? Is it right for Protestants to criticize Catholics, for men to criticize women—or visa versa?

At least in the world of academics, critical analysis need not be concerned with race, gender, or age—or with what is politically correct. Philosophers in particular support a free exchange of ideas, encourage replies, and ongoing dialogue. If there is to be any hope of global peace, any hope for steady human advancement to better ways of living, critical analysis and dialogue across genders, races, and borderlines are essential.

Open communication becomes yet more critical when suffering and loss of life are the topic at hand. *No one* is beyond reproach when it comes to practices that cost the lives of any living being, no one is above criticism when they engage in behaviors that terrify or harm. It was the Northern US that freed the South from slavery, part of Europe and the US that freed the rest of Europe from Nazi rule, and outside law enforcement that many hope will free any future cult members from the grip of people like Jim Jones, David Koresh, and the duo Joseph Kibwetere and Credonia Mwerinde. It is outsiders that criticize and disrupt practices such as incest, neglect, and the battering of wives. Is it reasonable to believe that outsider ought not to intrude into the lives of families rife with violence or neglect simply because they are outsiders? Neither families nor cultures are immune to scrutiny or criticism, nor *should* they be if their behaviors bring misery or death to others.

For those who are informed, to bill contemporary EINA hunting, trapping, or fishing practices as “traditions,” regardless of practices used, regardless of the mindset and purpose behind these actions, is wrongheaded. The word “tradition” has a specific meaning, and anything referred to as a “tradition” ought to fit this definition. It matters little whether the person who notes this wrongful use of a word is pink, tall, or foreign - such critical terms should always be exposed for scrutiny.

It is preferable if pressure for change originates from within, but this is often not the case, and the color of one’s skin, religion or nationality, gender or culture, should never prevent us from stepping up to the plate to consider and reconsider possible cases of abuse or deception. Such criticism is, after all, only criticism: it is not an end in itself, only a beginning. Criticism invites a response—an invitation to dialogue.

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Bibliography

"A Brief History of the Makah Tribe." Sunlink. 3 Aug. 1998.

Brown, Joseph Epes. The Spiritual Legacy of the American Indians. NY: Crossroads, 1991.

Eliade, Mircea. The Sacred and the Profane: The Nature of Religion. NY: Harcourt Brace and Company, 1969.

Eredoes, Richard, Ortiz, and Alfonso, ed. American Indian Myths and Legends. NY: Pantheon, 1984.

Feinup-Riordan, Ann. "A Guest on the Table: Ecology from the Yup'ik Eskimo Point of View." Indigenous Traditions and Ecology: The Interbeing of Comology and Community. Ed. John A. Grim. Cambridge: Harvard U. 2001. 541-558.

Feit. Harvey A. "Hunting, Nature, and Metaphor: Poligical and Discursive Strategies in James Bay Cree Resistance and Autonomy." Indigenous Traditions and Ecology: The Interbeing of Comology and Community. Ed. John A. Grim. Cambridge: Harvard U. 2001. 411-452.

Gill, Sam D. Native American Traditions: Sources and Interpretations. Belmont: Wadsworth, 1983.

Harrod, Howard L. Renewing the World: Plains Indian Religion and Morality. Tucson: U. of AZ, 1987.

Heizer, Robert and Albert Elsasser. The Natural World of the California Indians. Berkeley: U of CA, 1980.

Honor Our Neighbor's Origins and Rights, Inc. "Questions and Answers on Treaty Rights." 1993.

Jette, Rev. Jules. "On Superstitions of the Ten'a Indians (Middle Part of the Yukon Valley, Alaska). Journal of the Royal Anthropological Institute of Great Britain. London: Anthropos (1895).

Kwiatkowska-Szatzscheider, Teresa. "From the Mexican Chiapas Crisis: A Different Perspective for Environmental Ethics." Environmental Ethics 19 (1997): 267-278.

Luke, Brian. "A Critical Analysis of Hunter's Ethics." Environmental Ethics 19 (1997): 25-44.

Madson, Pamela K. and William Koss. Washington Salmon: Understanding Allocation. Washington State House of Representatives: Office of Program Research. WA DC: GPO, Aug. 1988.

Marr, Carolyn, Lloyd Colfax, and Robert D. Monroe. Portrait in Time: Photographs of the Makah by Samuel G. Morse, 1896-1903. Seattle: Makah Cultural And Research Center, 1987.

Matthews, Warren. World Religions, Second Edition. St. Paul: West, 1995.

McLuhan, T. C. Touch the Earth. N. Y: Promontory, 1971.

Nelson, Richard. Make Prayers to the Raven: Chicago: A Koyukon View of the Northern Forest. Chicago: U of Chicago, 1983.

---. Make Prayers to the Raven, KUAC-TV. Fairbanks: University of Alaska, Fairbanks, N.D. Videos #1, #2, #3, and #5.

---. "Passage of Gifts," Video #1. Make Prayers to the Raven, KUAC-TV, Fairbanks: U of Alaska Fairbanks, N.D.

The Northwest Indian Fisheries Commission. "Frequently Asked Questions about: Tribal Net Fisheries." Olympia. No date.

The Northwest Indian Fisheries Commission. "Questions and Answers On Tribal Treaty Hunting Rights." Olympia. No date.

The Northwest Indian Fisheries Commission. "Questions and Answers On Tribal Treaty Shellfish Rights." Olympia. No date.

Noske, Barbara. "Speciesism, Anthropocentrism, and Non-Western Cultures." Anthrozoos 10.4 (1997): 183-190.

Preece, Rod. Animals and Nature: Cultural Myths, Cultural Realities. UBC: Vancouver, 1999.

Robbins, John. Diet for a New America. Walpole: Stillpoint, 1987.

Schmidt, Roger. Exploring Religion, second edition. Belmont: Wadsworth, 1988.

Schwarz, Douglas O. "Indian Rights and Environmental Ethics: Changing Perspectives, and a Modest Proposal." Environmental Ethics 9 (1987): 291-302.

Singer, Peter. Animal Liberation. NY: Avon, 1977.

United States Government. "Treaty of Medicine Creek." 1854. US GenWeb Archives, Washington History.
<http://ftp.rootsweb.com/pub/usgenweb/wa/indians/treaties/medcreek.txt>.
Online. Internet. 21 Aug. 2004.

United States Government. "Treaty of Neah Bay." 1855. US GenWeb Archives, Washington History.
http://ftp.rootsweb.com/pub/usgenweb/wa/indians/treaties/neah_bay.txt.
Online. Internet. 21 Aug. 2004.

United States V. State of Washington. St. Paul: West, 1975.

VanStone, James W. Athapaskan Adaptations; Hunters and Fishermen of the Subarctic Forest. Chicago: Aldine, 1974.

Webster's Encyclopedic Unabridged Dictionary of the English Language. NY: Gramercy, 1996.

[i] ACE represents "after the common era" while BCE stands for "before the common era." Both terms are preferable for a diverse audience as they avoid the reference to a time-frame rooted in Christian theology (BC and AD).

[ii] "Harvestable" fish are those that remain "after deducting those necessary for spawning escapement and tribal subsistence and ceremonial needs (Madson 7).

[iii] A tendency to idealize the historic lifestyle of early immigrants fuels widely held misconceptions, and is accompanied by a strong yearning for the lost lifestyle of idealized peoples. Some people try to *return* to this imagined, idyllic past.

Current attempts to revive an idealized past can and do create *new* "traditions" based on what is *perceived* as historic (Shils 44-46). These lifeways are no less important than older ways to those who practice such new "traditions."

[iv] A vegan diet that avoids all animal products is nutritionally sound. Modern medicine has linked the consumption of animal products to at least thirty medical problems including heart disease, cancer, and osteoporosis (Robbins). There is now a multitude of evidence demonstrating that the consumption of animal products is completely unnecessary, and even contrary to optimal human health. For more information, search "vegan nutrition" on the net, or try

<http://www.govegetarian.org/>, <http://www.veganoutreach.org/wv/wv-textonly.html> **or** <http://www.vegsoc.org/health/>. **For the purpose of this paper, my point is that it is unnecessary to exploit anymals in contemporary North America for subsistence.**