Land Rights Movements

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Indigenous peoples in territories subjected to European conquest dating from the late 15th century onward have managed to focus national and international attention on their subjugation and dispossession. These various movements, primarily concentrated in Australia, Canada, New Zealand, South America, and the United States, began in different places at different times over the past several decades.

In New Zealand there was a single treaty between the British Crown and the Maori peoples. The Treaty of Waitangi, signed by the ranking British officer in New Zealand and 500 different Maori chiefs during 1840, became the primary instrument of dispossession of Maori. The Australian immigrants from England saw no reason for treaties since the Aborigines were assumed not to have title to the lands taken from them. In North America, the governments of Canada and the United States negotiated a large number of separate treaties with the many distinct Indian tribes as the Europeans flooded in. Some of these treaties entailed the payment of nominal sums of money for land and other assets. As in New Zealand, the North American treaties were not based on the existence of native title but arose, instead, from the presumption of possession.

Beginning in the late 1960s, a number of indigenous peoples began to organize political movements to re-establish their autonomy, and to reclaim lands taken from them. The Alaska Native Claims Settlement Act of 1971 provided Alaskan natives with over $900 million dollars and with 44 million acres of federal lands. In Australia, the proposed Kakadu National Park provided the impetus for recreating Aboriginal land rights in the far north (Western, et al. 1994). Legislation authorized governmental assistance to native peoples in the area of the park, but more importantly the new legal structure authorized joint management of park lands acknowledged to belong to Aboriginal peoples. Kakadu National Park recognizes the cultural heritage of the aboriginal peoples and blends resource conservation principles into a regime of “co-management” of the Park.

When Arizona and California were engaged in serious legal battles over allocation of water from the lower Colorado River, their quest took second place to the water rights “reserved” by the U.S. Supreme Court for Native Americans in Arizona. In the Great Lakes region of Michigan, Minnesota, and Wisconsin, the Chippewa Indians have been engaged in legal battles with the three states to regain “treaty rights” over traditional hunting and fishing grounds. When lands were ceded to the United States by the Chippewa Indians in the late 19th century, the Chippewa retained the right to hunt, fish, trap, and gather wild rice. Over the years, state governments have acted to eliminate all hunting and fishing by Indians off their reservations. In a series of decisions in Wisconsin in the late 1980s, those “off reservation” treaty rights were restored by federal judges. Now, Chippewa Indians in Wisconsin may exercise treaty rights to hunt and fish off their reservation as long as their activities do not threaten the viability of wildlife. The Great Lakes Indian Fish and Wildlife Commission collaborates with state-level conservation departments in the three states in yet another illustration of co-management.

Although South Africa presents an entirely different dimension of land rights movements, the democratic transition underway there since 1990 can be thought of as the ultimate triumph of

indigenous peoples over the historical process of European conquest. The early South African regimes were not materially different from those found elsewhere. But following World War II, when colonialism went out of style, and when many nations embarked on a more congenial relationship with their native inhabitants, the government of South Africa took a decided turn away from liberalization. Forced removals, usually in the middle of the night, resulted in the relocation of approximately 75 percent of the total population into "homelands" comprising less than 14 percent of the land. These black homelands were then governed by puppet black rulers propped up with financial and military assistance from Johannesburg. The intense population pressure in the homelands, coupled with the withdrawal of male workers to the mines and factories, left the homelands bereft of its best workers, and destitute. Poverty compounded the problems of natural resource degradation.

Unlike other land rights movements, the transition in South Africa is an instance of a clear majority finally overthrowing a distinct minority. Roughly 15 percent of South Africa is of European origins, yet this minority had controlled all aspects of economic and political life in the country since 1652.

Today, following the adoption of a new constitution, South Africa faces a prodigious land-reform problem. Land claims courts will have a set period of time to receive filings by the dispossessed. While this process moves forward, there are efforts to facilitate the purchase of white-owned farms by blacks. While most land rights movements are concerned with restoring some level of autonomy and cultural identity to indigenous peoples, the revolution in South Africa will significantly overturn 300 years of dispossession and suppression by a white minority.

In most places however, the land claims of indigenous groups are still confounded by national governments that have little interest in seeming to bend before the political pressure of small, often economically marginal, groups. The governments of China and India refuse to accept the concept of indigenous peoples because of the formidable task of establishing antecedence. Even where it is obvious which groups are, in fact, antecedent, the pertinent law is by no means clear. Of course indigenous peoples will claim, usually with good cause, that the law rarely helps them. On the other hand, nations with well-developed legal traditions adopt the canons of construction in which the language of treaties must be interpreted as the indigenous peoples would have understood it. Even then, these local treaties often are less than they would seem—and certainly less than the indigenous peoples would like for them to be. New Zealand is a case in point.

As above, here we see a clear—though brief—treaty between a colonizing power (Britain) and over 500 chieftains. Even so, it took legislative action by the government of New Zealand (in 1975) to acknowledge the pertinence of the Treaty of Waitangi. In the United States, the 11th Amendment to the Constitution prevents individuals and groups suing the federal government unless it agrees to be party to a suit. The various states, and the national government, are reluctant participants in the process of redress.

Therefore, indigenous peoples often find more legal traction in the form of international treaties and conventions. The Treaty of Waitangi is not the kind of external treaty obligation to which the government of New Zealand, historically, need pay much attention. On the other hand, New Zealand has become a party to several human rights instruments: (1) the International Covenant on Civil and Political Rights; (2) the International Covenant on Economic, Social, and Cultural Rights; (3) the Optional Protocol to the International Covenant on Civil and Political

Rights; (4) the International Convention on the Elimination of all Forms of Racial Discrimination; and (5) the Convention on the Elimination of All Forms of Discrimination Against Women. In essence, these international obligations bind governments in ways that local treaties do not. Within this international legal environment, it is then possible to apply the principles of local treaties such as Waitangi. This has been the course of events in New Zealand (Brownlie, 1992).

The land rights movement among indigenous peoples is strengthened by a growing sense of awareness and power among widely scattered peoples. A few international conferences have provided a forum for sharing ideas and strategies. Full autonomy from national governance is a distant dream. But enhanced opportunities for self-determination, and a renewed commitment to their land-based legacy, seem within reach for most indigenous peoples.

Selected References

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