

Moral Grounds for Indigenous Hunting Rights

*Makoto Usami**

Abstract

If indigenous people are to have the legal right to hunt a particular species that other citizens are denied, then it presents a significant challenge to philosophers to explore the moral grounds that justify the special right, especially in respect to the issues of normative weight and fairness. This exploration is the subject of the current paper.

1. Introduction

It is crucial for indigenous people living in the Arctic to harvest animals by hunting in a traditional manner, as is the case with such peoples in other parts of the world. The fundamental significance of hunting for native people can be illustrated by the case of the anti-sealing campaigns that environmental and animal rights activists conducted in the 1980s and 1990s. Their harsh condemnation, along with a decline in the market price of sealskin caused by the increased regard for animal welfare in Western societies, had serious adverse impacts on some Inuit populations in Canada. These impacts included malnutrition, poverty, reluctant relocation, and the collapse of long-standing culture. Given the nutritional, economic, and cultural importance of hunting for aboriginal people, it seems reasonable to say that they have the moral right to hunt animals in a sustainable way. Indeed, this right was established in a declaration made by a transnational Inuit organization¹⁴⁷.

On the other hand, non-aboriginal people are occasionally prohibited from hunting a particular species of animal in many societies. The rationale for such prohibitions includes

* *Professor of Philosophy and Public Policy* Makoto Usami (Japan; Kyoto University, Graduate School of Global Environmental Studies), usami.makoto.2r@kyoto-u.ac.jp

¹⁴⁷ The Inuit Circumpolar Conference calls on “national, provincial, and state governments to recognize the interent [sic] rights of Inuit with respect to sustainable hunting, co-management, and other subsistence activities.” The Kuuujuaq Declaration, 2002, available at <http://www.inuit.org/index.php?id=169> (accessed February 2, 2016).

the preservation of endangered species, restrictions on human intervention in ecosystem, and the protection of animal welfare. The question then arises: why do aboriginal people, unlike other citizens, have special hunting rights? There are two issues here. The first concerns normative weight: whatever argument justifies restrictions on hunting activities of non-indigenous citizens, the same argument, at least as a *prima facie* reason, should also apply to indigenous people in order to maintain consistency in moral reasoning. If special native hunting rights are ultimately justified, what is a reason against constraints on indigenous people's hunting, which can override that reason for the constraints? The second issue is that of fairness: how can it be fair to exempt only aboriginal people from legal constraints on hunting activities, which their fellow citizens must obey?

In the last decades, a growing number of legal, moral, and political philosophers have examined the moral foundations of various legal rights and rules governing citizens at large. The legal institutions they have studied include property rights, contractual duties, freedom of speech, and criminal punishment. If indigenous people are to have the legal right to hunt a particular species that other citizens are denied, then it presents a significant challenge to philosophers to explore the moral grounds that justify the special right, especially in respect to the issues of normative weight and fairness. This exploration is the subject of the current paper.

2. Cultural Plurality

Since native peoples have unique cultures, the idea of cultural plurality seems to be a useful point of departure in inquiring into moral justifications for their special hunting rights. The position I term the plurality view maintains that a group of people should be provided the legal right to sustain their cultural practices, even when other groups are banned from doing similar practices, if the right is reasonably expected to enhance the multiplicity and variety of subcultures in a society. To acquire this special legal right, the argument goes, the group must satisfy two conditions. First, the size of their population is a considerably small part of the whole population of the country in which they live. Let us call this the population condition. Second, their cultural practices, which are supposed to be distinct from those of any other groups, have been passed down over hundreds of years. Call this the duration condition. These conditions are met in the case of indigenous peoples' hunting: they constitute a small portion of the entire population, and they have engaged in hunting in a long inherited manner.

The pluralist therefore claims, for example, that Inuit tribes in Canada should be legally allowed to hunt seals even if other citizens are banned from doing so, because this allowance admittedly helps to make Canadian society more multicultural.

The plurality view appears cogent in justifying special aboriginal hunting rights. But this appearance is mistaken. To illustrate how the view can lead to implausible results, consider the case of foxhunting in Britain. British foxhunting dates back to the 16th century in the modern form in which red foxes are tracked, chased, and killed by trained foxhounds and a group of unarmed followers led by the master of the foxhounds on horseback. Having been practiced until quite recently, the sport was closely associated with the social class structure and constituted an important part of rural culture. In recent years, foxhunting was increasingly criticized by the animal welfare activists who objected to the cruelty of dogs chasing and killing foxes. Hunting animals with dogs was eventually banned by law in Scotland in 2002 and in England and Wales in 2004.

Those who practiced foxhunting until the legal prohibition satisfied the population conditions the number of fox hunters was considerably small in the whole population. They also met the duration condition: the sport had been enjoyed for several hundred years. Therefore, the plurality view implies that the fox hunters were morally entitled to play their sport and that recent statutes banning it violated their entitlement. It is noteworthy that the issue here is not whether a blanket legal prohibition of hunting animals with dogs is morally well-founded. The question is: did fox hunters hold the exclusive moral right to hunt foxes with dogs, even if the rest of the population had no right to hunt animals including foxes in such a manner? The positive answer to this question, which the plurality view gives, will strike many people as implausible. This counterintuitive result indicates that the pluralist fails to explain why British fox hunters had no moral privilege of their traditional form of hunting, while Canadian Inuit—and aboriginal peoples in other parts of the world as well—do have such privileges.

3. Disadvantages and Needs

There are several notable differences between British fox hunters and Canadian Inuit seal hunters, among which the following two are particularly relevant for the purpose of my discussion. First, the former group have enjoyed wealth, political influence, and fame in their

local communities and the society more broadly, whereas the latter have long suffered from poverty, political neglect, and stigma. Second, foxhunting was practiced as a luxury sport, while seal hunting is conducted as a way to obtain necessities of life. These differences between fox hunters and seal hunters suggest the idea that the right of aboriginal hunting is grounded in basic human needs, not cultural plurality.

The provision view, as I call it, develops the idea mentioned above by arguing that the disadvantaged should be vouchsafed the special legal right to sustain their social practices if these practices are necessary and effective in fulfilling their basic needs, such as staple foods and daily clothes. This view demands that a group of people fulfill two requirements to gain the right. One is the disadvantage condition, which denotes that the group is relatively disadvantaged in socioeconomic conditions. The other requirement is the needs condition, which means that the group's social practices constitute a way of meeting its basic needs. British fox hunters do not fit the disadvantage condition or the needs condition, whereas Canadian Inuit seal hunters satisfy both. By setting forth the two prerequisites, the provision view appears to supply solid grounds for the privilege of indigenous subsistence hunting, while rejecting that of luxury sport hunting.

Despite its apparent force, it is difficult for the provision view to pertinently draw boundaries of allowable hunting. Consider the case of whaling in Japan. Taiji, a small coastal town isolated by mountains on Honshu Island, has a long history of whaling. Since the early 17th century at the latest, the local people have hunted and eaten whales. A historical background of their traditional whaling is that they had suffered from meager rice crops for hundreds of years. The current inhabitants, who are ethnically not aboriginal but Japanese, are largely disadvantaged in economic conditions, as are many others who live in coastal areas distant from large cities. In 1982, the International Whaling Commission adopted a commercial whaling moratorium, which stipulated that the catch limit of whales for commercial purposes would be zero from the 1985/1986 season onward. In 1988, Japan abandoned commercial whaling practices in accordance with the moratorium. Today some whale hunters in Taiji hunt smaller cetaceans in a traditional manner, and others travel out of the town to work in the projects of scientific whaling that are authorized by the government with special permits.

Suppose that the inhabitants of Taiji, including whale hunters, passed the referendum that all whale meat should be traded and consumed within the town. Do the whale hunters

then have the moral claim to resume the hunting of large whales to meet the dietary need of the local people?¹⁴⁸ The provision view supports rather than rejects their hypothetical claim to restore whaling because they satisfy both the disadvantage and needs conditions¹⁴⁹. Many people will think, as I do, that this claim is unfounded even though all hunted meat is locally consumed. The ill-founded result implied by the provision view indicates that the view cannot grasp an important difference between Inuit whaling and Taiji whaling. We need to identify the difference in order to offer a robust moral argument for native hunting rights¹⁵⁰.

4. Respect for Indigenous Life

I have tried to show that neither the plurality view nor the provision view successfully distinguishes between native hunting and some forms of non-native hunting in the perspective of moral legitimacy. In other words, these views fail to identify the moral values that pertain to the legal right of aboriginal hunting. If I have been correct in assessing the two arguments as untenable, this right requires a third one.

In developing an alternative argument for native hunting entitlements, it is helpful to see how its two rivals suffer from difficulties. What both the plurality view and the provision view miss seems to be the autonomous character of indigenous life. Aboriginal people are not merely *patients* who are isolated and left behind by the majority of the population in each society. They are also *agents* who endeavour to inherit the cultural legacies of their ancestors, to sustain and develop them, and to bequeath them to their descendants, as they are proud of their lineage and language. It is true that they are struggling for survival under severe natural conditions, but they are also striving for dignity against the majority's indifference, prejudice, and discrimination. The plurality view pays attention to neither of these two aspects of

¹⁴⁸ It is worth noting here that indigenous people are authorized by the IWC to conduct whaling. The so-called aboriginal subsistence whaling is not subject to the commercial moratorium that the commission issued.

¹⁴⁹ Some proponents of the provision view might attempt to differentiate between Inuit whaling and Taiji whaling by referring to the degree of need for hunted animals. The former group of people crucially relies on whale meat for nutrition, while the latter has many other foods than whale meat to eat. Given this difference between the two groups, the proponents could decline the hypothetical right of Taiji whalers if they made the needs condition more stringent by saying that the group's social practices constitute an indispensable way of meeting their nutritional need. The stricter version of the needs condition, however, would deny special hunting rights to some native peoples who have been under the influence of the majority's food culture. Another problem with this version is that it would fail to appreciate the non-nutritional elements of aboriginal life, including clothes, dwellings, and religious ceremonies.

¹⁵⁰ The plurality view encounters the same difficulty as the provision view does. Since whale hunters in Taiji meet both the population condition and the duration condition, it does not reject their hypothetical claim to resume whaling.

aboriginal people; it looks at only their formal characteristics, such as population size and cultural duration. The provision view highlights the patient aspect, while neglecting the agent one. In so doing, it fails to explain a moral value involved in special hunting rights as distinguished from other legal measures intended to protect the interests of native people. For instance, this view will consider granting the Inuit whaling rights as morally equivalent to giving them food stamps for whale meat because these policies equally satisfy their nutritional requirements. The difference that this view finds between the two is economic: the government can save the cost of full-fledged whaling carried out with advanced technology if it allows Inuit tribes to hunt whales by themselves. However, there is indeed a huge moral difference between the two mechanisms, which has to do with the agent aspect of native people. Special hunting rights indicate the public recognition of and respect for the mode of life that they have shaped over many centuries; in contrast, whale meat stamps are simply a tool of food supply to the needy.

Recognizing and respecting aboriginal patterns of life seem to be the key to the question of moral foundations of special hunting rights. To develop this basic idea, I propose the respect view, according to which a group of people should be accorded the legal right to sustain their social practices if the right is reasonably read to convey the society's official recognition of and respect for the group's autonomous way of life on the one hand, and to assist them in satisfying their basic needs by themselves on the other hand¹⁵¹. There are two prerequisites for this right. First, the autonomy condition states that the group's social practices compose a significant part of the life mode that they have sustained independently from other groups in the society for a long period of time. Second, the needs condition, which is shared with the provision view, says that the group's practices constitute a way of supplying their basic needs. In virtue of the autonomy condition, the respect view excludes the hypothetical Taiji whaling claim from the realm of protected hunting. This is because the local people have the contemporary Japanese way of life that has been considerably influenced by American culture for several decades, just as those living in other regions do, except for their custom of eating whale meat. The respect view also appreciates the moral value of whaling rights granted to the Inuit as opposed to whale meat stamps given to them.

¹⁵¹ The basic argument underlying the respect view is that human life consists of two distinct but interrelated aspects: voluntariness and vulnerability. Legal institutions are required to show respect for citizens' voluntariness and to provide rescue to particularly vulnerable groups. I elsewhere present this argument at some length. E.g., M. Usami, "Justice after catastrophe: Responsibility and security," *Ritsumeikan Studies in Language and Culture*, vol. 26, no. 4, 2015, pp. 222-223.

Only the former policy makes it possible for indigenous people to meet their dietary need by themselves.

5. Conclusion

In previous sections, I explored moral grounds for exclusive legal hunting rights of indigenous peoples. To begin with, I examined the plurality view, which advances these rights by invoking the idea of multiple and various subcultures in a society. As I showed, this view fails to grasp the realities of aboriginal life because of its formalist approach, which utilizes the group's population size and cultural duration as prerequisites for the special rights. Its failure is exemplified by the fact that it does not differentiate foxhunting played as a sport by the wealthy British from seal hunting carried out for the daily necessity by Inuit populations.

The next target of my investigation was the provision view, which finds *raison d'être* of special hunting rights in meeting basic needs of the rights-holder group. This view correctly distinguishes between British foxhunting and Inuit sealing by taking a substantive approach that focuses on the socioeconomic (dis)advantages and material needs of a group in question. By centering its attention on human vulnerability and necessity, however, this view misses the agency aspect of native people. Its oversight is evident when it makes no distinction between the case of Taiji people's hypothetical claim of restored whaling and that of Inuit tribe's demand of traditional whaling, in both of which the disadvantaged have hunted and eaten the same species of animal to make their livelihood.

Based on my negative assessment of the plurality view and the provision view, I offered the respect view, which bases hunting rights of aboriginal peoples both on the recognition of and respect for their autonomously shaped mode of life and on the satisfaction of their basic needs. This view denies the supposed foxhunting right by taking the group's needs into account; it also declines the hypothetical claim of Taiji whaling by demanding autonomy of the group. Moreover, it draws a clear line of demarcation between granting native people whaling rights and giving them stamps for whale meat.

I have discussed the exclusive legal right to hunt a particular species that indigenous people have. But the basic line of my argument can be applied to the right to fish and the right to gather plants, if its details are appropriately changed. More generally, I hope that the

point of my discussion has relevance to other adopted or proposed legal rights and rules relating to aboriginal people in various societies, ranging from native language education to parliamentary seat quotas. Special rights granted to indigenous people are worthwhile only when they express the society's recognition of and respect for the mode of life that they have autonomously shaped and sustained on one hand, and empower them to tackle challenges in their realities on the other.

Bibliography

Literature

M. Usami, "Justice after catastrophe: Responsibility and security," *Ritsumeikan Studies in Language and Culture*, vol. 26, no. 4, 2015.

Philosophy of Law in the Arctic

edited by Dawid Bunikowski

The University of the Arctic

The Arctic Law Thematic Network

The Sub-group of Philosophy of Law in the Arctic

Rovaniemi 2016