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ontological beliefs. Nested within this widespread landscape were regional landscapes, and smaller places yet were framed within those. The Imperial City of any given time period contained its landscapes of cosmological beliefs, as did towns and villages. Households, too, encompassed religious landscapes. Typically these took the form of family shrines dedicated to ancestors.

Some places testify to contested identities. The Javanese temple of Borobodur stands as a case in point. It was built by a Hindu dynasty, with a layout and symbolic content reflecting its cosmology and social structure. When Buddhists kings succeeded in taking control of the area, they transformed the temple into a wonder of Buddhist iconography. However, the original edifice was not entirely destroyed in the process. Today, elements of both religious systems remain visible, literally etched in stone.

There are religious landscapes that do not necessarily reflect embedded values about the nature of the cosmos and the human place within it. What about when secular or profane space becomes sacred, as it has at former Nazi concentration camps, at places like Gettysburg and Wounded Knee, at the Oklahoma City or New York Towers terrorism sites, or when a mountain is transformed into a sculpture of famous American presidents? These are all deemed special and set aside as sacred, but not necessarily on the basis of spiritual experiences or ideas.

Religious landscapes are highly complex phenomena. Categorical definitions are problematic, and hence must be applied with caution. Taken as a whole, however, they may be generally understood as physical sites, as expressing convictions about the nature of the universe through story, and as sites of related human activities.

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See also: Anthropologists; Eliade, Mircea; Sacred Geography in Native North America; Sacred Mountains; Sacred Space/Place; Stonehenge; Trees – As Religious Architecture.

Law, Religion, and Native American Lands

The appropriation of North American native lands has been accomplished, as well as contested, over the last five centuries by means of complex culturally embedded assumptions concerning law, religion, and nature. While military conquest and outright theft have certainly played an important part in the loss of tribal lands, even more crucial have been the various legal and religious traditions animating the worldviews and negotiating positions of both colonizers and native peoples.

In the twentieth century, opposition to the legally secured control of native lands increased significantly. Tribal governments, individuals and intertribal groups frequently challenged the historic loss of native lands, employing strategies arising out of Congressional legislation, changes in the political climate, and their own marshalling of legal, political, cultural and economic resources. Since the passage of the American Indian Religious Freedom Act in 1978, a variety of claims invoking the sacredness of traditional lands have been brought both to the bar and into the channels of public opinion. These challenges to the means of American territorial expansion, or to what the Court of Claims in *United States v. Sioux Nation* (1975) referred to as "rank and dishonorable" action on the part of the government, have achieved limited success. Nevertheless, they raise a number of ongoing issues for the federal as well as tribal governments, not to mention the constituents they represent.

America's legal expropriation of native lands has its roots in the worldview of Renaissance Europeans. When Christopher Columbus first reached the island he called San Salvador in 1492, he was careful to display the royal standards, offer a prayer of thanksgiving, and secure witness from his first officers that he "was taking possession of this island for the King and Queen." The efficacy of the brief ritual employed to claim the island for his Castilian sovereigns depended on two assumptions about the Christian Church's station in the world. First, since the Church was universal in scope – there being no other means by which humans could gain salvation – Catholic thinkers such as Pope Innocent IV also claimed that the Church held a universal authority over temporal affairs. This doctrine had already served in efforts to subordinate European political power to that of the Church, and during the crusades it gave justification to the conquest of Muslim lands by Christians.

Second, since Christians had a duty to reclaim Muslim lands in order to extend the domain of the Christian religion, they also had a duty to bring the religion to those in the newly discovered regions of the world, a point that Nicholas V emphasized well before Columbus' first voyage. In *Romanus Pontifex* (1455), Nicholas connected the Church's goal of universal salvation with Portugal's

exploration of new territory along the western coast of Africa.

> This we believe will more certainly come to pass, through the aid of the Lord, if we bestow suitable favors and special graces on those Catholic kings and princes, who, like athletes and intrepid champions of the Christian faith, as we know by the evidence of facts, not only restrain the savage excesses of the Saracens and of other infidels, enemies of the Christian name, but also for the defense and increase of the faith vanquish them and their kingdoms and habitations, though situated in the remotest parts unknown to us, and subject them to their own temporal dominion (in Davenport 1967: 21).

For many Christian Europeans, although conquest was not in itself a just form of war, the retaking of the holy lands from the Muslims, and the spread of the gospel, were. Thus territory to be gained through crusade would be land reincorporated into Christian civilization.

As European exploration led to the Americas, this same doctrine of the Church as the provider of universal salvation shaped articulation of the "law of discovery." The only limiting factor, Alexander VI said in *Inter Caetera* (1493), on the claiming of land by one "Christian prince," was whether the land was already in "actual temporal possession of any Christian owner" (in Davenport 1967: 62). Even such staunch opponents of Spanish lust for gold as Bartolemé de Las Casas and Francisco de Vitoria understood the need for the extension of the Christian message to the New World by Christian princes. Vitoria, whose views appeared posthumously in *De Indis et De Iure Belli Relectiones – "Lectures on the American Indians and the Justness of War"* (1557) – was successful at least in countering prevailing views enough to persuade emperor Charles V that the Spanish should treat (negotiate) with Indians, rather than launch war against them upon failure to heed the *requerimiento* to convert to Christianity, as had been the case in the decades after Columbus' first landfall.

Undergirding the theory of the spread of Christian political power was also a theory of human nature, evident in the thinking of Spanish and Portuguese Catholics, but perhaps even more explicit among their Protestant English rivals – who made use not only of Christian ideas but also of the Germanic land laws inherited from the Anglo-Saxons. On this theory, the role of humans in a sinful world is to rise above their sinful inclinations through the discipline of work. Both biblical tradition and natural law theory endorsed the human transformation of nature. Columbus took pains to describe the people of the Indies as indolent, a point that continually frustrated him in his attempts to employ Indians as laborers in the gold streams, and evidently to minimize for him the horror of native loss of life as the islands underwent their rapid depopulation.

Although the Catholic French held much of North America for two hundred years, their own colonizing strategy, or lack of it, bypassed the acquisition of native land in favor of a general claim to royal title and offers of protection for the tribes, by which they maintained their dependence on native hunters and trappers. North America's English colonizers, however, did employ the theory of the Christian use of nature, though glossing it in decidedly non-Catholic ways.

John Locke, in his *Second Treatise of Government* (1689), drew on both biblical exegesis and the Germanic freehold tradition that shaped the view of private property found in English common law, explaining that land was free, held in common and without explicit title, until it had been transformed by labor. This transformation by labor gave both right to the laborer and value to labor's results. As Locke expressed the Christian use of nature, labor also functioned as a divine mandate.

> God, when he gave the world in common to all mankind, commanded man also to labor, and the penury of his condition required it of him. God and his reason commanded him to subdue the Earth, i.e. improve it for the benefit of life, and therein lay out something on it that was his own, his labor (Locke 1948: 17).

Thus, permanent occupancy, the transformation of natural resources into wealth through the application of systematic labor, and the individual holding of particular parcels of land, all became the normative markers of title in North America. The English accordingly saw nothing in the life-ways and subsistence economies of native tribes that gave them claim against the appropriation of land under the colonizer's flag.

In the early years of the American republic, a mixture of laws and practices kept the process for taking native land legally uncertain. Following the Revolution, New York State treated with the Oneida and other members of the Iroquois confederacy for the acquisition of several million acres in the western half of the state. Individuals also acquired land on their own, while the Trade and Intercourse Acts (1790–1802) mandated that states and individuals could not bypass the federal government's role in regulating trade with Indians. The discovery of gold in Georgia in the aftermath of the Redstick War (1813–1814), and the influx of white settlers onto Muskogee (Creek) land, created a social crisis in the south that spurred the development of legal doctrines having lasting effects on native land. Although the Northwest Ordinance (1787) had earlier held that "the utmost good faith shall always be observed towards the Indians, and their lands and property

shall never be taken without their consent," the confusion of law and the public's desire for southern land made Indian consent a malleable constraint.

On the one side, President Andrew Jackson – who defeated the Redstick Creeks in the 1814 Battle of Horseshoe Bend, and ended Muskogee resistance to white encroachment in the southeast – championed the right of the states to deal with Indian tribes as they saw fit. Jackson also employed a heavy hand in articulating the old doctrine of the Christian use of land. In his "Second Annual Address to Congress" (1830), for instance, while explaining the rationale for removing the Choctaws from their Georgia lands, he asked

> What good man would prefer a country covered with forests and ranged by a few thousand savages to our extensive Republic, studded with cities, towns, and prosperous farms, embellished with all the improvements which art can devise or industry execute, occupied by more than 12,000,000 happy people, and filled with all the blessings of liberty, civilization, and religion? (in Richardson 1901: 521).

In the hands of the populist Jackson, legitimating native lands appropriation thus became a simple exercise of common sense.

On the other side, Chief Justice John C. Marshall – often regarded as setting out an Indian doctrine antithetical to that of Jackson – played a singular role in establishing the legal mainstay of U.S. and tribal relations. Rather than championing Indian interests, however, as a strong federalist, he was most concerned to weaken the states rights position advanced by the Jacksonian Democrats.

In *Johnson v. McIntosh* (1823), which concerned conflicting claims to land acquired from the Piankeshaw tribe of Illinois, Marshall made clear that the English monarch's title to native land based on the doctrine of discovery had been taken over by the United States. The idea of Christian discovery acknowledged that natives at the time of discovery were sovereign nations, but this sovereignty was limited as a claim to title, since tribes did nothing more than occupy their lands. They thus fell short of the criteria for the possession of property that Locke and other Christians deduced from the Bible and natural reason. For Marshall, falling short of title still gave Indians rights of use and occupancy, but these rights were circumscribed, since

> their rights to complete sovereignty, as independent nations, were necessarily diminished, and their power to dispose of the soil at their own will, to whomsoever they pleased, was denied by the fundamental principle that discovery gave exclusive title to those who made it (in Cohen 1971: 292).

In trying to systematize the contending frameworks of law concerning Indians inherited by the United States, Marshall certainly could have reflected on the adequacy of the doctrine of discovery's theological underpinnings. He explicitly chose to avoid this task, however, saying "It is not for the Courts of this country to question the validity of this title, or to sustain one which is incompatible with it." Instead,

> if the principle has been asserted in the first instance, and afterwards sustained; if a country has been acquired and held under it; if the property of the great mass of the community originates in it, it becomes the law of the land and cannot be questioned (in Cohen 1971: 292).

As legal scholar Peter d'Ericco has commented, Marshall wound up "allowing power to justify itself" (d'Ericco 2000: 28). Marshall concludes as a legal positivist – encouraging subsequent Indian jurisprudence to rest complete with a narrow consideration of the constitutionality of government action.

In the years of national expansion the United States entered into 370 treaties with tribes, which Marshall framed in his second consideration of Indian lands as "domestic dependent nations" (*Cherokee Nation v. Georgia*, 1831). Marshall's oxymoronic term carried important implications. The federal government was to negotiate with tribes as it did with foreign, sovereign nations, but at the same time the federal government played the superior role in determining the interests and needs of its dependents, or "wards" in Marshall's terms.

Some 60 percent of the treaties ratified by the Senate provided for the transfer of lands. Although the superiority of Christian use slipped into the background as the explicit legal justification for these transfers, the sentiments were never really submerged among the American public, nor from the worldviews of those Americans administering the western reservations on which post-treaty Indians were confined after the Civil War. In restricting tribes to reservations, reform-minded whites had long hoped to instill Christian values, a national task Congress first undertook in the Civilization Fund Act (1819).

In the 1870s, this desire became explicit federal policy when President Ulysses S. Grant authorized the administration of western reservations by the various denominations. Virtually all Americans at the time saw the "Indian problem" as the perpetuation of Indian cultural patterns and land use incompatible with those of the larger society. One eager editorialist for the *Yankton Press and Dakotan* appealing to the broad public sentiment in favor of the 1874 gold rush into the Black Hills, wrote of the Lakotas:

> What shall be done with these Indian dogs in our manger? They will not dig the gold, nor let others

> dig it . . . They are too lazy and too much like animals to cultivate the fertile soil, mine the coal, develop the salt mines, bore the petroleum wells or wash the gold. Having all these things in their hands, they prefer to live as paupers, thieves and beggars; fighting, torturing, hunting, gorging, yelling and dancing all night to the beating of old tin kettles (Jackson 1966: 8–9).

Reformers – unlike editorialists who advocated extermination or imprisonment for native tribes – believed that through education, technical training and religious indoctrination, the clash of civilizations could be ended, and the loss of life diminished. As Colonel Richard Henry Pratt – who oversaw the first post-Civil War experiments in Indian boarding schools – put it, reformers would need to "kill the Indian to save the man." The complete intermixture of religious indoctrination with the development of agrarian and capitalist individualism common to the reformers' aims is evident in the words of Congregational minister Lyman Abbott, who argued in 1885 at the third of the Lake Mohonk Conferences of Friends of the Indian that "The post office is a Christianizing institution; the railroad, with all its corruptions, is a Christianizing power, and will do more to teach the people punctuality than schoolmaster or preacher can" (Prucha 1978: 35).

The normative notion of the industrious, individual owner of property had its culminating impact on the loss of tribal lands in 1887, when Congress approved Massachusetts Senator Henry Dawes's General Allotment Act. The act – which did not, initially at least, affect the lands of certain tribes, notably those of the Lakota (Sioux) on the Plains, the Cherokees and others removed to Oklahoma in the 1830s, nor the Pueblos in the Southwest – gave the president authority to subdivide treaty-designated communal lands on a fee-simple basis. Accordingly, following a 25-year agricultural apprenticeship, heads of household were entitled to 160 acres – the same size plot available to whites (following a five-year apprenticeship) under the 1862 Homestead Act – while other Indian individuals received smaller plots. The enormous surplus of tribal lands remaining after subdivision was then offered to the American public. In theory the Dawes Act would promote the productive enterprise of Indian individuals and incorporate them into the life-ways of civilized society. In practice, within a short time it led to even greater land loss and impoverishment, as land-holders were pressured to lease non-used fee-simple lands to non-Indians, a practice resulting in the checkerboard patterns of use and ownership visible on many reservations today. Before Congress abandoned the allotment system in 1934, the act diminished treaty land by 86 million acres, some 60 percent of Indian lands held in 1887.

The tribes were certainly not passive in contesting the loss of their land base, and just as the encroaching whites employed in addition to organized violence a synthesis of religious worldview and legal mechanisms in order to gain control of native land, tribes relied upon a variety of symbolic, ritual and legal strategies to cope with that encroachment. Law itself was an arena in the conflict of native and European culture, and although in some places law governing land emerged through a process of translation between tribes and colonizers – as in the *pays d'en haut* of the upper Great Lakes prior to the Revolution – for the most part tribes found themselves required to accept, and to function within, the imposition of European legal philosophy. The mixture of Roman, Saxon and Christian traditions was being secularized by the seventeenth-century colonial era, and the emerging positivism conflicted greatly with tribal assumptions about law as consensus, as sacred, and as shaper of tribal identities and resource economies.

As Europeans made initial contacts with North American tribes, many engaged the colonizers with rituals of incorporation. By bringing gifts and offering hospitality, they extended to the newcomers the web of family relationships governing so many of their own tribes. Interesting to note, Columbus, who received numerous gifts from the Tainos and other islanders, consistently misrepresented these acts in his journals, often ascribing the native willingness to give to simplicity of mind, acknowledgement of a socially inferior position, or a child-like ignorance of the real value of both resources, such as gold, and the land itself.

Two crucial elements of the European and American notion of title: exclusive use and alienation through contract, proved quite foreign to the traditions of native tribes. Tribal lands were generally held in common, although members of more permanently settled Eastern or Southwestern tribes passed their cultivated fields on to individual family members – as among the Iroquois women who were the primary users of fields.

Crucial features of tribal cosmologies linked communal and individual well-being to the land. Tribes rehearsed their rightful occupation of particular territory through sacred accounts, which might depict – as with the Hopi – their ancestors' migration or emergence from under the Earth, or their creation from pieces of the Earth by a superhuman being – such as the Anishinabeg (Ojibwa) hero Nanabozho. Once given land on which to dwell, the ancestors in these stories are also often given instruction on how to uphold social relations and how to make a living on the land, instructions that emphasize the people's continued dependence on the benevolence of other life forms or superhuman powers. Frequently, these instructions came from ancient figures, such as the Cheyenne prophet Sweet Medicine, or Deganawidah – the Iroquois Peacemaker – who brought from the Creator the constitution establishing the Haudenosaunee confederacy.

Tribes also developed a wide variety of rituals in order to mark these relations of dependence upon the land, which established or renewed their bonds when broken by human action, the passage of time, or mysterious causes. In addition, tribal members observed elaborate systems of proscription – taboos – governing the essential activities of hunting, planting and harvesting, and ensuring that individuals would not disturb the web of agreements by which animals and plants consented to offer themselves up to meet human needs. Through traditions of myth, ritual, community identity and moral action, then, tribes were often not easily inclined to see themselves in positions to sell land or extinguish title to other human beings, but rather as dependent upon the greater-than-human power embodied in the land.

Treaties for land transfer were typically troubled affairs, given the coercive tactics white negotiators frequently adopted in order to acquire signatures from some segment of a tribal community, and – by the 1820s – considering the military superiority that generally backed the U.S. design upon land. Only a small faction of the Cherokees, for instance, approved the signing of The Treaty of New Echota (1835), which divested them of their lands in Georgia, and resulted in their removal west of the Mississippi.

At the same time, tribes often took steps to incorporate treaties within their understanding of the sacred obligations binding them to the land. The Haudenosuanee wampum belt marking such treaties as the first one signed at Fort Stanwix, New York (1768), extended to the British membership in the confederacy's "covenant chain." The widespread formalizing of treaty negotiations through the smoking of pipes, for the native participants at least, carried the promises aloft as prayers. Even contentious treaties, such as The Treaty of Medicine Lodge Creek (1867) with the Kiowas and Comanches, and The Fort Laramie Treaty (1868) with the Lakotas and Arapahos, came to define particular treaty-defined territory as a crucial aspect of tribal identity.

Apart from *Cherokee Nation v. Georgia* (1831), in which arguably the most successfully acculturated of the tribes failed to obtain the Marshall Supreme Court's protection from white encroachment on treaty lands, Indians were generally unable to make good use of nineteenth-century courts to counter land loss. In addition to the cultural barriers impeding western tribal members' mastery of legal arcana, in 1863 Congress also prohibited the Federal Court of Claims from hearing treaty-related suits. This required tribes to seek redress directly from Congress itself, which was seldom interested in reversing itself on questions of land, or in giving up its "sovereign immunity."

Instead, tribes and factions in large numbers engaged in religious renewal to provide strategies to cope with the devastating consequences of land loss. Prophetic movements arose across the country between the Revolutionary era and the early twentieth century, inspiring political leadership and animating occasional militant campaigns. The prophetic movements, such as those of the Delaware Neolin in the 1760s, or the Shawnee Tenskwatawa in the early 1800s, were grounded in the visionary experience of individuals who had learned from sacred beings that white domination did not necessarily entail the tribes' permanent alienation from traditional life-ways and territory. Military leaders such as Pontiac, Tecumseh, and Blackhawk, were inspired by these movements to resist encroachment, and in some cases formed broad pan-tribal alliances to stem the tide of settlers into the Ohio River valley and other contested eastern regions.

Others preached coexistence or isolation, and drew – like the Seneca prophet Handsome Lake at the beginning of the nineteenth century – on visions to help them articulate a revamping of traditional religious and cultural practices. In some cases, these movements targeted aspects of traditional culture: witchcraft, or women's leadership; in others they focused on white influence as the source of contemporary social turmoil and loss of land. Many, as with Wovoka – the Walker Lake Paiute leader of the Ghost Dance whose teachings spread across western reservations in the 1880s – blended traditional tribal theology with aspects of Christianity. As in the dominant society, apocalyptic visions were widespread, in which world-transforming floods or fires restore Indians and animals and sweep away the whites too numerous for Indian bullets. In some cases prophetic teachings about the erosion of land or the loss of game animals could be incorporated within traditional individual and communal understandings of ritual. Since one function of rituals related to important agricultural or hunting resources was to petition for the annual return of the resource, some religious leaders turned to ritual solutions to restore land or game lost to American expansion. In other cases, such as that of Handsome Lake, although preservation of tribal lands was key to his message and politics, it receded under the power of his apocalyptic vision, where he foresaw believers in his *Gaiwiio* – the "Good Word" – ascending to heaven following the destruction of the Earth.

In one of the last of these renewal movements, the Crazy Snakes, the charismatic Muskogee orator Chitto Harjo urged his militant followers to retain traditional culture and reject allotment. In addition to engaging federal troops in 1901, and the Oklahoma National Guard in 1909, Harjo's group also undertook legislative campaigns, Washington lobbying, and succeeded in securing a U.S. Senate investigation of allotment efforts in Oklahoma, though not in halting the subdivision of Muskogee land.

The legal status of Indians, as individuals and as members of distinct political communities, changed over the course of the twentieth century in ways that affected land questions. The Supreme Court held in *Lone Wolf v. Hitchcock* (1903) – in which Kiowa and Comanche

plaintiffs complained that allotment could not proceed without the approval of three quarters of the adult male tribal members – that Congress had always exercised “plenary authority” over Indians. This absolute power was “a political one, not subject to be controlled by the judicial arm of the Government” (in Prucha 1990: 203). Thus Congress certainly had power to make and break treaties as it determined necessary, and this exercised power confirmed that the Allotment Act’s subdivision of treaty lands was constitutional. In 1920 however, in acknowledgment of Indian service in the First World War, Congress did approve jurisdictional acts for many tribes, waiving sovereign immunity concerning treaty claims, and offering tribes some theoretical means of redress before the Court of Claims.

Contradictory impulses shaped federal Indian lands policy making during the twentieth century. One was an explicit overturning of the Christian assumptions that had led to the acquisition of native lands and the dissolution sought for native cultures. The 1934 Wheeler-Howard Indian Reorganization Act, with its roots actually in the Hoover administration, mandated the most systematic reversal in Indian policy in American history. Under John Collier – President Franklin Delano Roosevelt’s appointment to head the Bureau of Indian Affairs – the federal government first advanced as goals the protection of tribal lands and culture. The Indian Reorganization Act ended allotment, restored surplus tribal lands not yet sold off to the public, and allowed for the purchase of additional tribal lands. Collier, who through exposure to the Pueblos had become a forceful advocate of Indian religious liberty and the necessity of preserving traditional cultures, saw tribal lands as a key ingredient to the health of Indian societies.

The “Indian New Deal” was contested by whites and by many tribes – such as the Navajos, who refused to implement some of its provisions – and subsequently judged harshly by those who argued that it remained a form of tribal domination. Nevertheless, it set the stage for a serious revision of the conditions under which Indians had been living since their first confinement to reservations, and sparked greater effort by Indians to master the legal and political machinery used to control their land.

The second impulse animating twentieth-century Indian policy was far more consistent with historical trends than was Collier’s New Deal. In the era after World War II, first the Eisenhower and then other Republican administrations replaced Collier’s policies of cultural preservation with “termination” or “emancipation.” For tribes such as the Klamath, Menominee and Potawatami, Congress made use of its plenary power to abolish trustee/ward relationships, dissolve tribal status and end federal responsibility for Indian people – resulting in the “urban relocation” of one quarter of the native population by the mid-1960s.

The primary means Congress offered tribes to contest acquisition of their lands reflected both trends in federal policy. Collier’s hope to address the injustice of tribal land expropriation bore fruit only following his departure, when, in 1946, President Harry S. Truman approved the creation of the Indian Claims Commission (ICC) to make a final disposition of land claims. Tribes readily took the opportunity to bring their grievances forward. By the end of the commission’s original five-year mandate, all 176 federally recognized tribes and bands had filed at least one claim. By 1978, when the commission finally dissolved, it had examined nearly four hundred, and authorized restitution in over one-third of these.

While the ICC focused national attention on native land grievances, and the $818 million it awarded the tribes was a significant sum in total if not per tribe or per capita, its very purpose – to settle grievances through financial compensation – conflicted with the land-restoration goals of many tribes. Unlike the seventeenth-century Manhattans, who supposedly gave up their island for a few trinkets, tribal treaty negotiators often appreciated the value of the dollar – Cornplanter and Red Jacket, for instance, the Seneca rivals to Handsome Lake – each received cash grants and annuities as personal compensation for signing The Treaty of Big Tree in 1797. Others, like the Lakota Red Cloud, who argued to his dying days that the Black Hills were worth far more than any government official was prepared to offer him, held out for the largest sums possible for their people. Nevertheless, most Indians did not see the swap of land for money as an ideal market transaction. Many tribes took up the opportunity to file with the Commission because it was the only means available for addressing their concerns, and in hopes that it would be simply a first step toward restoration of some portion of their land base.

The case of the Western Shoshones illustrates the limitations facing tribes as they dealt with the Commission and the courts. The Western Shoshones’ Treaty of Ruby Valley, signed in 1863, was primarily a treaty of “peace and friendship,” in which the Shoshones agreed to allow the U.S. to develop telegraph and rail lines, establish outposts and engage in mining and farming on their lands – nearly 25 million acres comprising most of Nevada, and adjacent lands in Utah, Idaho and California. The treaty remains the only formal agreement worked out between the government and the Western Shoshones for the disposition of their land, yet clearly omits any provisions for limiting territory, qualifying title or establishing reservation boundaries. In spite of subsequent resource and urban development, the majority of Shoshone land remains within the public domain, since the federal government administers 87 percent of the state of Nevada’s land base.

Under advisement of the Bureau of Indian Affairs, members of the Temoak band filed the original Shoshone

claim with the ICC in 1951 (*Western Shoshone Identifiable Group v. US*). The claim – which sought compensation for the "taking" of tribal land – remained unendorsed by most Shoshones and their tribal councils throughout its history, since they were not party to the claim, and the Temoak plaintiffs had no authority to represent other Shoshones. In 1962, the ICC ruled that although the U.S. had not signed any agreement dealing with the issue of Shoshone title, a history of "gradual encroachment of whites, settlers and others" had effectively deprived the Shoshones of any valid claim to continuing title. Accordingly, the Commission awarded the Shoshones, without interest, a figure based on an 1872 valuation of the land – a date with no significance in Shoshone history, but one that allowed the government to overlook the payment of royalties related to mining claims filed in the area under the 1872 General Mining Law.

Although the ICC lacked the necessary jurisdiction to settle questions of title, the courts have generally held subsequently that the ICC award for "taking" created the presumption that the land was actually taken. Shoshone organizers created the Western Shoshone Sacred Lands Association in 1974 in order to pursue the title question directly. In a ruling on the related case of Shoshone ranchers Mary and Carrie Dann (*United States v. Dann*, 1984), the federal district court held that Shoshone "aboriginal" title remained good until the final 1979 Court of Claims hearing on the ICC award. For the Supreme Court in 1985, the only issue needing adjudication was simply whether or not the Shoshones – who had refused the award – had actually been paid and the government's obligations therefore discharged. The Kafkaesque course of the Shoshone claim through the judicial system was acknowledged by the Court of Claims itself, which noted that "if the Indians desire to avert the extinguishment of their land claims by final payment, they should go to Congress" (*Temoak Band v. United States*, 1979).

The procedural focus in the courts' consideration of the Shoshone land claim – or those of most other North American tribes, for that matter – have sharply limited the extent to which tribes can expect an adequate weighing of their arguments for a just solution to the appropriation of their lands. In the case of the Dann sisters – who have, since 1973, been charged with violating the Taylor Grazing Act (by not obtaining livestock grazing permits) on land their family has made exclusive use of since "time immemorial" – the courts have been content to reemphasize the assumptions about the relation of native people to their lands contained in Marshall's "doctrine of discovery" and the Dawes Act, assumptions dependent upon the Christian worldview for their plausibility. The high courts' legal positivism is an interpretive mechanism that has obscured the Christian grounding of federal Indian law, without abandoning it, or bringing it into any critical juxtaposition with the worldviews of Indian plaintiffs.

Another legal front in the contest over tribal territory opened in the aftermath of the civil rights era, one focused specifically on native claims about the sacredness of land. In 1978, as the ICC ended its work, Congress passed – with little debate and by a large majority – a law that seemed to many to open the door to some form of land control for tribes, and even its potential return. The American Indian Religious Freedom Act (AIRFA) noted the long history of religious persecution that had accompanied the U.S. policy of civilizing Indians and opening their lands, and required federal agencies to report on how they could ensure that they were not prohibiting Indians from the "free exercise" of their religion. The act specifically underscored the prominent role that land plays in native religious life; its promoted authors – like John Collier in the preceding generation – the belief that this was a role the federal government should respect as part of its trustee relationship to the tribes.

Although AIRFA's sponsor in the House, Rep. Morris Udall, cautioned the leery that the law would have "no teeth," many tribes and interested parties quickly filed land-related suits under the act. These cases reflected a broad range of concerns: prohibited access to ritually significant sites, resource development of sacred areas, insensitive administrative and management priorities. Some, such as the Navajo Medicine Men's Association in *Badoni v. Higginson* (1980), the Eastern Cherokees in *Sequoyah v. Tennessee Valley Authority* (1980), and both the Navajos and Hopis in *Wilson v. Block* (1983), sought to constrain federal land agencies from damaging specific sacred sites; others – as with a group of Lakota and Cheyenne religious leaders in *Fools Crow v. Gullet* (1983) – aimed to prevent states from controlling Indian religious practitioners. Common to all these cases, Indian plaintiffs argued that fundamental features of their religious liberty were threatened by government policy.

In some cases the land concerned – administered by a state parks department, or the National Park Service – was small in scale, and the impact of protecting Indian religious practice could be weighed against the interests of other visitors to the park. *Sequoyah*, however, with its challenge to the TVA's flooding of the Little Tennessee River, and *Wilson* – in which Navajo and Hopi medicine men were concerned about the Forest Service developing a ski resort in the San Francisco Peaks – showed that AIRFA-fueled challenges might have a significant economic impact, and raised red flags on the part of development-minded politicians and resource industry groups, especially in the western states with their large acreages of multiple-use public land.

While AIRFA aided traditional Indian religious practice in some ways, the courts in general have rejected its ability to dictate land agencies' management of "what, after all, is the government's land," as Justice Sandra O'Connor concluded in *Lyng v. Northwest Indian Cemetery Protective*

Association, 1988 (489 U.S. 439, 454). In the AIRFA land cases the courts have consistently chosen to read "religion" and "religious liberty" in a very restrictive sense. In *Sequoyah* the court concluded that Cherokee claimants were motivated by "cultural" and not religious concerns – in spite of the fact that the Tellico dam would destroy both a burial ground, and the ceremonial center of Cherokee life – the place of their emergence in this world. *Sequoyah* also established the courts' practice of narrowing sacred land claims by maintaining that government infringement on religious liberty must stem from a directly coercive intent.

In First Amendment case law the courts have historically relied on several tests to determine whether government infringes on religious liberty: whether the affected religion is genuine, whether belief is sincere, whether government action causes a burden, and whether government exercises a "compelling interest" to override religious liberty. Traditionally, the courts have found indirect infringement sufficient to rule in favor of claimants, but in AIRFA cases – and not simply in the land cases – the courts have declined to restrict government infringement, even when – as O'Connor also noted in *Lyng* – it would so clearly destroy an Indian religion.

Observers have remarked that the high court holds a normative view of religion as something best exemplified by Christianity, which consistently prevents it from recognizing the legitimacy of native religious practices and understandings foreign to mainstream American culture. In *Badoni*, for instance, the court held that Navajo rituals performed at Rainbow Bridge were not essential to Navajo religious life because they were held infrequently, and not attended by sufficient numbers of Navajos – as though weekly church services provided the justices with their template for viewing ritual. Perhaps the most telling expression of this majoritarian bias to advocates of Indian rights was Justice Scalia's admission in *Employment Division v. Smith* (1990),

> It may fairly be said that leaving accommodation [of Indian religious practice] to the political process will place at a relative disadvantage those religious practices not widely engaged in, but that unavoidable consequence of democratic government must be preferred to a system in which each conscience is a law unto itself (494 U.S. 872, 891).

With the courts so frequently unable to aid Indians seeking control of sacred places or the return of traditional lands, tribal and pan-tribal organizations have turned to political forums. The Shoshones, the Lakotas and others have approached Congress in the last couple of decades, with little result. In the Shoshone case, although Congress could consider the transfer of public lands back to the Shoshones, it has been unwilling to do so, given concerns for precedent, for the enormous wealth which modern gold mining has extracted from tribal land, and for the vast spaces necessary for Department of Defense and Department of Energy activities in Nevada.

Likewise, following the Supreme Court ratification of the Lakota ICC award for the taking of the Black Hills (*United States v. Sioux Nation*, 1980) – the ICC's largest single award – the Lakotas were also unsuccessful in generating sufficient interest on the part of Congress. Black Hills Steering Committee coordinator Gerald Clifford was able to get a bill to Congress, sponsored by New Jersey Democrat Senator Bill Bradley, in 1985 and again in 1987. For Clifford and many other Lakotas, the return of the Hills was a religious cause. "Our first priority," he said of the committee's work "must be to keep faith with our sacred traditions. The Lakotas were placed around the Black Hills for a purpose by God . . . and it is a moral imperative that we reject the selling of land" (Lazarus 1991: 416). Bradley also framed his support in religious terms of embracing the nation's highest values and respecting Lakota traditions, which many had come to say accounted for their origins as a people from beneath the Hills. The bill provided for the creation of a Sioux Nation National Park on public lands as well as for compensation in addition to the ICC award of $106 million. Although the bill received the co-sponsorship of Senator Daniel Inouye, chair of the Senate's Select Committee on Indian Affairs, Inouye said it would also need support of home state legislators in order for him to bring it to the committee, a support never provided in deference to non-Indian constituents interested in preserving the existing Forest Service multiple-use policy. Western states' opposition to both the Shoshone and Lakota claims invoked the ironic threat of what Justice O'Connor framed as "de facto beneficial ownership of some rather spacious tracts of public property" (485 U.S. 439, 454) should Indians become able to dictate public lands policy to the larger society.

On a few occasions tribes have been successful in obtaining the return of sacred lands from the federal government, but this has generally required strong presidential endorsement of legislation, or the issuing of an executive order. President Richard Nixon, who replaced "termination" with "self-determination" as the goal of federal Indian policy in 1970 – prompted in part by Indian activists' eighteen-month occupation of Alcatraz Island – responded to Yakama Nation appeals for the return of a portion of Mount Adams, in 1972. The Washoe, Navajo, Havasupai and Warm Springs tribes also benefited from the reversal of government policy during the Nixon era.

Most widely noted at the time, Nixon intervened on behalf of the Taos Pueblo in their long-running struggle to regain control of Blue Lake, issuing a presidential order for its return in October, 1970. The lake – from which the Taos people emerged onto this world in mythical times, and

which is the site of yearly pilgrimages, had been included in the Kit Carson National Forest, created by President Theodore Roosevelt in 1906. Its return – and Nixon's personal interest in land restoration – encouraged native grassroots activists, tribal leaders and legal advocacy groups to persevere in the use of legal and political channels in spite of the ongoing obstacles presented by the courts and Congress. Nevertheless, tribes have found presidential support as difficult to obtain as congressional. The 500 thousand acres of land actually restored in the last few decades, when measured against the 110 million lost just due to allotment, might fairly suggest that the tribes face insurmountable hurdles in resolving the issue to their satisfaction.

In the years since Nixon, one finds even fewer bright spots. Congress did approve creation of the Zuni Heaven Reservation in 1984 (Public Law 98–498). President William J. Clinton was willing to use his authority – enacting Executive Order 13007, "Indian Sacred Sites" – to protect Indian land-based religious practice, although the courts have not yet weighed in on its ability to provide injunctive relief for sacred lands or to legitimate additional land-return campaigns. In addition, Congress has passed several laws in the wake of the judicial defeats trailing the AIRFA cases, such as the Native American Graves Protection and Repatriation Act (1990), the Religious Freedom Restoration Act (1994), and the National Historic Preservation Act (1996), which have offered some oblique protection, and if not land return, at least some potential of greater tribal participation in the management of sacred sites on public land.

Increasingly, though, tribes and native organizations have employed three additional strategies to promote land return, in an effort to bypass the limits of their ward-like reliance upon the federal legislative and judicial systems. First, native people have been able to marshal the post-1960s shift in popular culture to build a larger public consensus around the idea of land return. The Romanticist underpinnings of the 1960s counterculture and the 1970s environmental movement – invoking the noble savage tradition of real Indians as model human beings closer to nature than their alienated, urban Indian and non-Indian counterparts – provided native activists and cultural leaders with an opportunity to address wider and more sympathetic forums than in earlier periods. This has often merely resulted in the politics of celebrity gesture – such as Marlon Brando's refusal of his 1972 Academy Award for "The Godfather," in solidarity with the American Indian Movement's occupation of Wounded Knee, South Dakota. Nevertheless, tribes have also been able to advance their arguments through celebrity-endorsed media ventures, as in Robert Redford's narration of the two documentaries on the Western Shoshone claim, "Broken Treaty at Battle Mountain" (1974) and "To Protect Mother Earth" (1991).

Alliances with environmental groups have also developed in the last twenty years, overcoming some of the initial resistance to native land-use issues held by groups such as the Sierra Club. The Shundahai Network, for instance, coordinated by Shoshone elder Corbin Harney, is a grassroots organization combining the energies of west coast anti-nuclear advocates with proponents of Ruby Valley treaty rights, and devoted to civil disobedience, education and advocacy efforts at federal nuclear facilities such as the proposed Yucca Mountain waste repository site located in the middle of Shoshone territory.

In southern Arizona, members of the San Carlos Apache reservation in 1989 enlisted the "Apache Survival Coalition," a broad network of outside support, to assist them in their opposition to the Mount Graham International Observatory – sponsored by the University of Arizona, and by international research institutions such as the Vatican Observatory, the Arceti Observatory and the Max Planck Institute. Conflicting agendas, and differing perceptions of what makes Mount Graham sacred among supporting groups and within the San Carlos tribe kept this network from providing sufficient unified political pressure to cancel the project, which the Apache Survival Coalition maintained would disturb the Gaans, elemental powers of the universe residing within the mountain (Taylor 1995; Williams 1998).

A second front has emerged as tribes and pan-tribal groups have obtained international attention. Bucking Justice Marshall's presumption in *Johnson v. McIntosh* that tribal sovereignty does not extend to relations with foreign powers, delegates from the Iroquois, the Lakota, Western Shoshone and other tribes have appealed directly to international law in appearances before such institutions as the European Parliament and the World Court. As part of an emerging global movement of indigenous peoples, American Indians have also appealed to the Organization of American States and the United Nations – which has provided support for the development of non-governmental organizations, such as the American Indian Movement's International Indian Treaty Council. Appearances before the UN Commission on Human Rights have led to the publication of scathing indictments of federal Indian policies. A 2000 ruling by the OAS's Inter-American Commission on Human Rights finds the United States in violation of several counts of international human rights law in regard to its dealings in the Western Shoshone Dann sisters. However, the limited extent to which the United States wishes to acknowledge the authority of international bodies over its internal affairs indicates the questionable short-term utility of these efforts. Should the global indigenous movement gain increasing international support, however, the United States may prove more amenable to tribal claims – just as it had to accommodate 1950s demands for civil rights in

order to present itself as a principled opponent of communist totalitarianism.

More immediate as a strategy for land restoration, though less satisfying as a measure of justice, is the willingness of tribes to make increased use of the real-estate market. Alaska tribes since the early 1970s have fashioned themselves as corporations and used money obtained through the Alaska Native Lands Settlement Act (1971) to purchase additional lands, and to develop their resources. Other tribes have also used ICC awards to purchase at current market values historically or culturally significant acreages. Eastern tribes were able to argue that the original Trade and Intercourse Acts made invalid land transfers, as the Penobscott and the Passamoquoddy did in 1980 against the state of Maine.

Nationally, the development of nonprofit land trusts has also served the aims of tribes. Organizations such as the White Earth Land Recovery Project in Minnesota, The Cultural Conservancy and the Trust for Public Land have provided the nexus of capital and real-estate experience to enable tribes to recover historically significant portions of their traditional lands. The Nez Perce have purchased traditional sacred lands in Oregon's Wallowa Mountains to provide the basis for a tribally managed wildlife preserve. Other tribes, such as the Mashpee at Bufflehead Bay, are engaged in joint administration of refuge lands with state and federal authorities. In northern California the Sinkyone Intertribal Wilderness Area involves eleven coastal tribes, along with state conservation agencies and a land trust, in the creation of the nation's first intertribal land reserve. While these reserves are all small in scale, they speak to the seriousness of tribal aims, and to the long-term nature of tribal goals. In the most fundamental way, they are testimony to the failure of United States policy, which hoped through the instillation of Christian values and the insertion of native individuals into the marketplace to abolish tribal links to the land.

Students of Indian law have formed conflicting evaluations of the history of tribal land loss. For some, such as Wilcomb Washburn, the legacy of this history is not, when the American story is compared with those of other colonial powers, as bleak as it may seem on first count. Resistance, opposition, and some success in the courts and legislative halls of the conqueror show that the tribes have faced a more enlightened foe than they might have done. Others, such as Felix Cohen – famous for his comment that Indians, like Jews in Nazi Germany, function as "canaries in the coal mine" of the legal order – offer a somewhat darker reading of the tradition. On both of these accounts, however, the tribes remain dependent on the good graces of those outside their communities. That land remains a significant motivating force within these communities, however, is due less to public largess or legal achievement and more to the determination of the tribes themselves to retain the animating spirit they have long found in land.

Matthew Glass

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See also: Anishnabeg Culture; Black Elk; Black Mesa; Bison Restoration and Native American Traditions; Casas, Bartolomé de las; Devils Tower, *Mato Tipi*, or Bears Lodge; Ghost Dance; G-O Road; Haudenosaunee Confederacy; Holy Land in Native North America; Indigenous Environmental Network; LaDuke, Winona; Lakota; Lakota Sun Dance; Manifest Destiny; Miwok People; Mother Earth; Peoyte; The Sacred and the Modern World; Sacred Geography in Native North America; Shoshone (Western North America); Spirit of Sage Council; Yakama Nation; Yuchi Culture and the Euchee (Yuchi) Language Project.

Le Guin, Ursula K. (1929–)

Ursula K. Le Guin is known primarily for her science fiction and fantasy novels, but she also has written children's books, poetry, translation, and essays. These literary interests were formed by the intellectual and