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COMMENTARY

Indian Land, White Man's Law: Southern California Revisited

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As far as the eye can see and beyond, the hills and mountains, the deserts, even the coastal islands—all was once part of aboriginal territory. Then came Europeans and Americans. The rest is history, as they say. Today we are witnessing a small uprising, in that American Indians (or Native Americans, as many prefer to be called) have become increasingly proactive with respect to indigenous land and cultural resources. Local Indian communities again and again protest the lack of access to, or protection of, sacred places, burial grounds, and historic sites; assert claim to various aboriginal locales; and act as watchdogs during site developments.

Opponents of these continuing Indian land claims either fail to comprehend law and policy, misread history, or just refuse to acknowledge that indigenous rights are thwarted because of inequities in the "system." They do not want to accept the fact that land still remains the crucial issue in linking Indians to their past, their religions, and their lifestyles. Perhaps these opponents presume that land claims litigation is an event of the past; that the

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retirement of the Indian Claims Commission (ICC) in 1978 closed the books forever on virtually all land matters.[1] True, two California claims cases—both known as *Indians of California vs. United States*—were successfully litigated by the Indians of California, a legal entity, and monetary awards, however meager, were made to Indians up through the early 1970s.[2] Indian and non-Indian critics alike suggest that this litigation did far more to assuage our feelings of guilt than it did to restore any landed status to Indians. Also, as a point of fact, most Indian reservations were established in the last century; in Southern California, their final establishment occurred between 1875 and 1892.[3] For most people, the bases and the methods employed to establish reservations are lost in the past. Why, then, have these events of justice and administration not ended the Indian land question locally?

The fact is that the federal government continues to honor Indian rights by encouraging efforts to resolve long-standing grievances. This is national in scope. Indians are at liberty to bring suit, in part because statute of limitation rules rarely apply to historic Indian claims; they can approach Congress or negotiate with the Bureau of Indian Affairs (BIA) and other agencies. The BIA sustains an acknowledgment program, which gives non-federally recognized Indian communities—such as the Gabrielinos and Juaneños in California—an opportunity to make a case for legal status as a tribe or band and thus secure trust lands and services.[4] Moreover, enactment of the American Indian Religious Freedom Act[5] and other laws, including some state environmental acts, has given Indians both the confidence and the clout to seek the restoration and/or exclusive use of sacred sites and to represent Native American interests—usually their own—in the protection of cultural resources. Whenever village or burial sites are threatened by the bulldozer, we again witness active Indian involvement. Protection of indigenous cultural resources, for example, is articulated in the California Desert Conservation Plan,[6] and a number of communities (for example, Palm Springs) include cultural resources as part of day-to-day planning.

Indians are rightfully exercising their birth rights, yet many non-Indians have difficulty with this reality and assume a hostile position. I suspect it is because they do not comprehend the laws that have granted Indians such opportunities. Although many local Indians do not present a united tribal front, they have long felt that they are due the return of some lands and surely are the only true representatives to protect indigenous sites.

One may ask, What did "the Indian's day in court" achieve? Why didn't litigation end these kinds of confrontation? To some extent, litigation did lift a title cloud that has hung over millions of acres in this nation.[7] While not all land claims cases were argued and many more were not resolved favorably, in the public's mind the land issue was adjudicated according to the principles of law this nation upholds. But what of this law? Has it ever considered how Indians feel about land or been truly sensitive to native viewpoints and values? We applaud monetary awards, not recognizing that land, not money, is the long-standing issue. Despite the notoriety earned by the Indians of California (approximately 78,000 by 1964) who, with the assistance of famed anthropologist Alfred Kroeber (University of California, Berkeley), won a large monetary award in the second case before the ICC (1964), money, not land, was awarded. Although it was accepted by the majority, the award never sat well—a hollow victory that indeed yielded a paltry few hundred dollars per capita, or about $ .47 an acre.[8] A few Indian groups rejected the money; the Pit River band in the northeast, for example, became embroiled in an ejectment from national forest lands because they would not and still do not acknowledge the termination of their aboriginal rights.[9] Land claims litigation was supposed to right a wrong; it did adjudicate hundreds of claims, yet, by obliging Indians to forsake any further claims to land, it has left a bad taste in their mouths.

Actually, Congress further opened the door to claims and confrontation when it restored Blue Lake, a sacred site, to the Taos Pueblo (New Mexico) and similarly restored sacred sites to the Zuni and other tribes. Despite winning a claims award before the ICC, Congress consented to the transfer of some 90,000 acres to the Havasupai (Arizona), funded the purchase of forested land for the Passamaquoddy and Penobscot (Maine), and joined with the state of New York in granting acreage at a place called Ganienkeh to one group of Mohawk.[10] Why, then, shouldn't California Indians feel left out? Even though the California cases adjudicated all lands lost by unconscionable means (eighteen treaties that Indians accepted were rejected by the U.S. Senate in 1851), their adjudication did not change the landless status of most California Indians.[11] Ironically, a smaller number of Indians today do hold membership in bands that have reservations, such as the nearly three dozen in Southern California. Moreover, in 1975, Congress finally recognized the Jamul community in San Diego County and, three years later, placed land in trust for them;[12] much earlier,

it had provided a small acreage for a Paiute band upstate. Moreover, through land exchanges, many existing reservations in back country Riverside, San Bernardino, and San Diego counties received additional acreage.[13]

As a rule, these land transfers and other land restorations take acreage out of public lands—mainly Forest Service holdings and public domain administered by the Bureau of Land Management. Congress is the ultimate authority over the enactment of laws regarding both public and trust lands. It is my view that Congress needs to pursue this means of conflict resolution more rigorously, although it is doubtful that Congress will ever establish a standing policy toward land restoration. For one thing, there remains the fear that once the door is open, it will become a floodgate. Yet why not return a modicum of acreage as a gesture of goodwill if it would encourage and even assure the quieting of Indian land claims?

Opponents remind us correctly that restoration of land costs far more than just the land; it means providing services like those extended to existing reservation Indians. And, no doubt, it raises the question of whether selective land transfers will ever really end the land claims conflict?

Perhaps we need to negotiate not just in terms of law, but in terms of ethics and ecology: With the grant of a small reserve of familiar ground identified with native ecology and territoriality, we should insist that this will represent a final grant to a unified Indian entity—hopefully ending the fragmentation of Indian demands—and the Indians will have to abandon all other claims. Perhaps we can convince Indians to permanently transfer their emotional allegiance from one site to another, from everywhere to somewhere specifically. Current policy does require that, in order to be acknowledged by the BIA, an Indian community must present a continuing, functioning indigenous body. Establishing such a union is a long, slow process at best, in part, because too few Indian groups are willing to subordinate their differences in order to demonstrate the essential unity.

Opponents may well argue that additional reservations will expand the options of Indians to construct casinos. It is true that, across the nation, tribes have established gambling under the federal Native American Gaming Commission. For many Indian communities where only limited economic opportunities exist, gambling provides a new and vital option. It is up to them to decide the direction of their livelihood. After all, Indians are

taking the initiative to fulfill a national policy of self-determination endorsed by both major national parties. The issue of gambling should not burden decisions to restore land and make other commitments to Indians.

As for local Southern California Indian communities, especially in Los Angeles, Orange, and Ventura counties (there is one small reserve, the Santa Ynes in Santa Barbara County), no land was ever secured for them. As a consequence of the Hispanic, Mexican, and American occupancy, most of the coastal bands were dispossessed almost completely; they were overlooked or disregarded, or their claims were dismissed in the face of our zeal to finalize the establishment of reservations in Southern California. These surviving Indians were, in point of fact, left out. Their contemporary brethren who share in trust lands also gained the modicum of monetary awards for the loss of aboriginal lands.

Perhaps we are talking about simple fair play. There is suitable land in Southern California; the government could, once and for all, right a wrong by establishing reserves out of the Angeles and Cleveland national forests and some holdings of the Bureau of Land Management in the desert, but especially acreage closer to the metropolitan area, where the majority of these Indians live. If we ever really want to end the confrontation, we should follow a consistent, fair, and equitable policy of land restoration as a way to resolve indigenous claims and close this chapter in American land history.

NOTES

1. Indian Claims Commission, *Final Report* (Washington, DC: U.S. Government Printing Office, 1979).

2. The first *Indians of California vs. U.S.* was heard before the U.S. Court of Claims, 102 *Ct. Cl.* 837 [1944]; Cf. K.M. Johnson, *K-344 or the Indians of California vs. U.S.* (Los Angeles: Dawson's Bookshop, 1966). The second case was consolidated under the Indian Claims Commission and mostly resolved twenty years later, 13 *ICC* 369 [1964], but payments were made well into the 1970s. Cf. Omer C. Stewart, "Litigation and Its Effects," in *Handbook of North American Indians*, vol. 8, *California*, ed. R.F. Heizer (Washington, DC: Smithsonian Institution, 1978): 705–712.

3. Imre Sutton, "Land Tenure and Occupance Change on Indian Reservations in Southern California" (Ph. D. dissertation, University of California, Los Angeles, 1964), ch. 2.

4. Cf. Allogan Slagle, "Unfinished Justice: Completing the Restoration and Acknowledgment of California Indian Tribes," *American Indian Quarterly* 13:4 (1989): 325–45 .

5. PL 95-341 [1979]; Cf. C. Vecsey, ed., *Handbook of American Indian Religious Freedom* (New York: Crossroad, 1985).

6. Bureau of Land Management, *The California Desert: Conservation Area Plan* (Riverside, CA: Desert District, 1980). Two sections of chapter 3 are pertinent: "Cultural Resource Element" and "Native American Element."

7. Cf. Imre Sutton, ed., *Irredeemable America: The Indians' Estate and Land Claims* (Albuquerque: University of New Mexico Press, 1985).

8. Robert F. Heizer and Alfred L. Kroeber, "For Sale: California at 47 Cents Per Acre," *Journal of California Anthropology* 3 (Winter 1976): 38–65.

9. Annette Jaimes, "The Pit River Indian Land Claims Dispute in Northern California," *Journal of Ethnic Studies* 14:4 (1987): 47–64.

10. Sutton, "Incident or Event? Land Restoration in the Claims Process," in *Irredeemable America*, 211–32; see also Gail H. Landsman, *Sovereignty and Symbol: Indian-White Conflict at Ganienkeh* (Albuquerque: University of New Mexico Press, 1988).

11. Cf. Robert F. Heizer, "Treaties," in *Handbook of North American Indians*, vol. 8, *California*, 701–704.

12. Letter from Southern California agency, BIA, Riverside, California, 28 October 1986; cf. Florence C. Shipek, *Pushed into the Rocks: Southern California Indian Land Tenure, 1769–1986* (Lincoln: University of Nebraska Press, 1987), 103–105.

13. Southern California Indian Land Transfer Act of 1985.