

5-24-2021

## Native Nations' Land Ownership And Our Disservice To Their People And Culture A Proposed Legislative Solution And A Lesson To Be Learned

David E. Missirian  
*Bentley University*

Follow this and additional works at: <https://digitalcommons.law.seattleu.edu/ailj>



Part of the [Administrative Law Commons](#), [Civil Rights and Discrimination Commons](#), [Environmental Law Commons](#), [Indigenous, Indian, and Aboriginal Law Commons](#), and the [Land Use Law Commons](#)

---

### Recommended Citation

Missirian, David E. (2021) "Native Nations' Land Ownership And Our Disservice To Their People And Culture A Proposed Legislative Solution And A Lesson To Be Learned," *American Indian Law Journal*: Vol. 9 : Iss. 2 , Article 7.

Available at: <https://digitalcommons.law.seattleu.edu/ailj/vol9/iss2/7>

This Article is brought to you for free and open access by the Student Publications and Programs at Seattle University School of Law Digital Commons. It has been accepted for inclusion in American Indian Law Journal by an authorized editor of Seattle University School of Law Digital Commons.

---

## **Native Nations' Land Ownership And Our Disservice To Their People And Culture A Proposed Legislative Solution And A Lesson To Be Learned**

### **Cover Page Footnote**

B.A. Brandeis University, J.D. University of Tulsa; Assistant Tenure Track Professor of Law and Tax, Department of Law, Taxation and Financial Planning, Bentley University, Waltham, MA. The authors wish to thank Amanda Pine for her research assistance and Bentley University for the research support and Prof. Bryn J. Gravitt, of Tufts University.

NATIVE NATIONS’ LAND OWNERSHIP AND OUR DISSERVICE  
TO THEIR PEOPLE AND CULTURE  
A PROPOSED LEGISLATIVE SOLUTION AND A LESSON TO BE LEARNED  
*By David E. Missirian<sup>1</sup>*

I. INTRODUCTION .....		384
A. <i>Native American Land Ownership and the Disservice to their People and Culture</i> .		384
II. THE INDIAN DILEMMA: HISTORICALLY THE INDIAN PROBLEM.....		385
A. <i>Discovery of a People</i> .....		385
B. <i>George Washington Poses a Simple Solution to a Simple Problem</i> .....		386
C. <i>Who Has the Problem with Whom?</i> .....		387
D. <i>Four Decades Later Andrew Jackson has a More Expedient Solution to the Problem</i> .....		388
E. <i>EPA Enforcement as a Form of Colonization of Native Lands</i> .....		389
F. <i>The Southern States Fashion Their Own Solution</i> . ....		389
III. THE BUSINESS SOLUTION OF EXPEDIENCE AND IGNORANCE.....		392
A. <i>Problem Identification</i> .....		392
B. <i>Just Push Them Out</i> .....		393
IV. THE TRAIL OF TEARS .....		393
A. <i>A Different Point of View</i> .....		393
B. <i>Caught between a Rock, an Angry Nation, and a Hard? President</i> .....		394
C. <i>The United States Plays Hardball in a Game of Let’s Make a Deal</i> .....		396
V. A GREAT NATION FORGETS IT’S HERITAGE AND ANOTHER GREAT NATION IS MARGINALIZED TO PROTECT THE AMERICAN WAY OF LIFE?.....		398
A. <i>Nothing but Words</i> .....		398
VI. A CONCLUSION, A SOLUTION, AND A LESSON.....		399

---

<sup>1</sup> B.A. Brandeis University, J.D. University of Tulsa; Assistant Tenure Track Professor of Law and Tax, Department of Law, Taxation and Financial Planning, Bentley University, Waltham, MA.  
The authors wish to thank Amanda Pine for her research assistance and Bentley University for the research support and Prof. Bryn J. Gravitt, of Tufts University.

## I. INTRODUCTION<sup>2</sup>

### *A. Native American Land Ownership and the Disservice to their People and Culture*

In this paper, I examine historically imposed policies of the United States government toward indigenous Americans, hereinafter referred to as Native Nations, and argue that they demonstrate a false sense of protection, ultimately prioritizing individual profit over humanity and lead to the genocide of many indigenous tribes and people. Examining the legislative history is crucial to understanding how the law continues to disenfranchise Native Nations and how businesses did and do participate in marginalizing and disenfranchising people today. To repair the damage caused to Native Nations and others, this article proposes a legislative solution based upon native principles of land stewardship and care.

Native Nations have a long and complex history in the Americas.<sup>3</sup> The current popular term Native Americans is deceiving and simplistic because it categorizes large and diverse tribal nations and governments as one group, an idea emanating from Christopher Columbus's proclamation of all indigenous peoples as "Indians."<sup>4</sup> Many history books and standard educational curricula that claim Columbus discovered America and its inhabitants ignore the fact that America had already been occupied by its indigenous population for over 12,000 years and needed no discovering.<sup>5</sup>

In an attempt to correct this cultural mislabeling, the language shifted from "Indians" to "Native Americans."<sup>6</sup> Although this shift was perceived to more accurately describe native peoples, this new name is based on the false premise that non-Native Nations, in this case 20<sup>th</sup> century white Americans, know the best way to identify a people, even though they already have a name. This presumptive attitude blinds the white racial majority from consulting with the tribes to understand what they would like to be called. Through these homogenizing naming practices, the well-meaning collective treats the Native Nations at best as children to be shepherded and looked after and at worst, as a thing to be bought, sold, or moved out of the way, as demonstrated by history.

What seems true today was also true two centuries ago; the business of making money often takes priority over justice and legal principals. Examples of this can be seen in the lack of environmental enforcement by the EPA during the Trump administration, where business interests were placed ahead of the general welfare of the country.<sup>7</sup> This practice, of supporting business

---

<sup>2</sup> For the purposes of this paper, Native Nations shall be used to indicate, the indigenous people of America.

<sup>3</sup> History.com Editors, *Native American Cultures*, HISTORY.COM (Oct. 28, 2020), <https://www.history.com/topics/native-american-history/native-american-cultures> [https://perma.cc/M7PA-3EGY].

<sup>4</sup> Peter d'Errico, *Native American Indian Studies-A Note on Names*, UNIVERSITY OF MASSACHUSETTS (2005), <https://www.umass.edu/legal/derrico/name.html> [https://perma.cc/QUF9-SLE7].

<sup>5</sup> History.com Editors, *supra* note 3.

<sup>6</sup> d'Errico, *supra* note 4.

<sup>7</sup> Juliet Eilperin and Brady Dennis, *Under Trump EPA inspection falls to a Ten Year Low*, WASHINGTON POST (Feb. 8, 2019, 2:36 PM), <https://www.washingtonpost.com/climate-environment/2019/02/08/under-trump-epa-inspections-fall-year-low/> [https://perma.cc/HY8E-JZ4C].

development over people's rights which is oft supported by Governmental action or inaction, runs in stark contrast to the fifth amendment the United States Constitution which requires the Government to grant all its citizens due process under the law, also known as equal protection.<sup>8</sup> The fifth amendment also requires that if land is taken by the Government for a public purpose there must be just compensation.<sup>9</sup> This amendment was critical to obtaining ratification of the United States Constitution, as it was the States response to ratify the constitution. However, this constitutional requirement, can in the name of short-term profits be forgotten. The unspoken truth can be that profit is more important than the rights of a few people. Despite the protections of the Fifth Amendment, native lands and Native Nations are frequently exploited in the name of profit.

## II. THE INDIAN DILEMMA: HISTORICALLY THE INDIAN PROBLEM

Historically, Native Nations or "Indians," presented a problem for the white settlers of the United States.<sup>10</sup> The conflict between the white Americans and their Native neighbors was called "the Indian problem" by both the States and the Federal Government and was constant in the time of George Washington.<sup>11</sup> Native Nations were perceived as a problem or inconvenience throughout the development of the United States. Despite the presence of the Native Nations prior to the creation of the United States, we as a culture, continually wanted these Native Nations removed (or at least relocated).<sup>12</sup> President Andrew Jackson, stated at the time: "I have long viewed treaties with the Indians an absurdity not to be reconciled to the principles of our Government."<sup>13</sup>

### A. *Discovery of a People*

The original occupants of the land we now call North America were vast in number and diverse in culture.<sup>14</sup> The number of people occupying the Americas at the time of Columbus's landing is estimated to be around 10 million people.<sup>15</sup> Due to their large numbers and varied diversity, "anthropologists and geographers have divided [Native Nations] into 'culture areas,' or rough groupings of contiguous peoples who shared similar habitats and characteristics."<sup>16</sup> Instead of considering all indigenous Americans as a part one culture, "most scholars break North America—excluding present-day Mexico—into 10 separate culture areas: the Arctic, the Subarctic, the Northeast, the Southeast, the Plains, the Southwest, the Great Basin, California, the Northwest Coast and the Plateau."<sup>17</sup> As can be seen by the need for subcategorization, the Native

---

<sup>8</sup> *Solesbee v. Balkcom*, 339 U.S. 9, 16 (1950).

<sup>9</sup> *United States v. Carmack*, 329 U.S. 230, 241–42 (1946).

<sup>10</sup> J. Stanford Hayes, *Twisting the Law: Legal Inconsistencies in Andrew Jackson's Treatment of Native-American Sovereignty and State Sovereignty*, 21 J.S. Legal Hist. 157, 161 (2013).

<sup>11</sup> COLLIN G. GALLOWAY, *THE INDIAN WORLD OF GEORGE WASHINGTON* (2018).

<sup>12</sup> See Hayes, *supra* note 10, at 170.

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> History.com Editors, *Trail of Tears*, <https://www.history.com/topics/native-american-history/trail-of-tears>

<sup>17</sup> *Id.*

American peoples are far more diverse than they are homogenous. Consider if you will, the differences in geographic location across America. The differences in topography and location to waterways for fishing or agriculture. All of these physical differences impacted the Native Nations differently. In fact, today the Bureau of Indian Affairs recognizes 574 tribes in the United States alone.<sup>18</sup> There are also some states that recognize the existence of additional tribes recognized by the federal government.<sup>19</sup>

The federal government has treated the Native Nations as a single unit, much to their marginalization and frustration.<sup>20</sup> This paper argues that both the United States Government and business organizations in general fail to recognize differences in cultural and marginalized groups. This lack of awareness of the Native Nations societal complexity and cultural awareness lead society both at the Federal Level and at the State level to consider the Native Nations people as an impediment to the development of the American society rather than as a part of the American society.<sup>21</sup> Marginalization and whitewashing causes Native Nations to become invisible to the point that larger society denies that such destruction ever occurred. It is only through careful observation of the consequence of our actions that government and business leaders can avoid intentional and unintentional harm to Native Nations.

### *B. George Washington Poses a Simple Solution to a Simple Problem*

In the early years of American democracy, politicians posited simplistic solutions to the interaction between Native Nations and the encroaching white settlers. European colonizers viewed Native Nations as ‘savages’ who needed to be civilized.<sup>22</sup> This civilization was accomplished by making Native Nations as similar to white Americans as possible.<sup>23</sup> Thus the Native Nations were encouraged to “convert to Christianity, learn to speak and read English and adopt European-style economic practices such as the individual ownership of land and other property (including, in some instances in the South, African slaves).”<sup>24 25</sup>

The difficulty of ethnic whitewashing, as suggested by Washington, is that it presumes that Native Nations want to change and that the change is both necessary and for the better. The presumption of requiring a civilization to change presupposes some fault or problem with their

---

<sup>18</sup> *Mission Statement*, BUREAU OF INDIAN AFFAIRS (BIA), <https://www.bia.gov/bia> [<https://perma.cc/R649-MT8M>].

<sup>19</sup> Martha Saenez, *Federal and State Recognized Tribes*, National Conference of State Legislatures (March 2020), <https://www.ncsl.org/research/state-tribal-institute/list-of-federal-and-state-recognized-tribes.aspx> [<https://perma.cc/5B2A-7SEJ>].

<sup>20</sup> John P. Bowes, *American Indian Removal beyond the Removal Act*, *Native American and Indigenous Studies*, Vol. 1, No. 1, 65-66 (Spring 2014), available at <https://www.jstor.org/stable/10.5749/natiindistudj.1.1.0065>.

<sup>21</sup> *Id.*

<sup>22</sup> History.com Editors, *Trail of Tears*, HISTORY.COM (July 7, 2020), <https://www.history.com/topics/native-american-history/trail-of-tears> [<https://perma.cc/4SCG-B9R7>].

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

<sup>25</sup> Two points which I will revisit later are the concept of individual land ownership and that of slavery. Individual land ownership was not a concept embraced by the Native Nations in the conventional sense, but slavery was and had been practiced for years by Native Nations against neighboring tribes who found themselves on the losing end of a war or battle.

method of society. There was no problem of the Native Nation's society other than the presence of the Native Nations People. Native Nations had lived on the North American continent for thousands of years prior to the European invasion and the American expansion.<sup>26</sup> The rich history of Native Nations on these lands made it unlikely that the Native Nations would simply switch their way of life. Some tribes, however, did begin the process of assimilation, "in the southeastern United States, many Choctaw, Chickasaw, Seminole, Creek and Cherokee people embraced these customs and became known as the 'Five Civilized Tribes.'"<sup>27</sup> Forced assimilation, however, was not the cure for the problem the southern farmers were looking for. Assimilation of the Native Nations People did not address the real issue, which was that the Native Nations occupied land which was both valuable and desired by the States surrounding them.

### *C. Who Has the Problem with Whom?*

Labeling the conflict between the Native Nations and early white settlers as 'the Indian Problem' frames a unique juxtaposition of issues. From the perspective of American settlers, the Native Nations were the problem because they lived on: "millions of acres of land in Georgia, Tennessee, Alabama, North Carolina and Florida," which the new white Settlers wanted because this land as an ideal place to grow cotton and tobacco, lucrative cash crops.<sup>28</sup> Native Nations were viewed as a nuisance and an undesirable element to be removed.<sup>29</sup> "[President Andrew] Jackson considered **Native** Americans as belonging to a lesser category than the general population--subjects, not citizens since they lacked rights of citizens, they were equal in status with slaves."<sup>30</sup> Thus from the (albeit myopic) viewpoint of white settlers these inhabitants were less than humans and therefore could be disposed of as such.<sup>31</sup>

Yet, from the perspective of the Native Nations, the so-called 'Indian Problem' had a very different meaning. The Native Nations had lived on this land for many generations before Columbus and other Europeans arrived.<sup>32</sup> From the perspective of Native Nations, Columbus's "expedition" and subsequent colonialist bent was a foreign invasion.<sup>33</sup> It made no sense that the Native Nations need move, given that the land and its surrounds was their home. Therefore, the problem was the invasion of Native Nations' ancestral land.

It is the failure of society when we view a situation only from one perspective. This failure to consider other perspectives causes leaders to make illogical and unethical decisions. This one-

---

<sup>26</sup> History.com Editors, *Native American Cultures*, supra note 3.

<sup>27</sup> History.com Editors, *Trail of Tears*, supra note 16.

<sup>28</sup> *Trail of Tears*, supra note 22.

<sup>29</sup> *Id.*

<sup>30</sup> Hayes, supra note 10, at 170.

<sup>31</sup> Edmund S. Morgan, *Columbus' Confusion About the New World*, SMITHSONIAN MAGAZINE (October 2009), <https://www.smithsonianmag.com/travel/columbus-confusion-about-the-new-world-140132422/> [<https://perma.cc/2WF4-DUYM>].

<sup>32</sup> History.com Editors, *Native American Cultures*, supra note 3.

<sup>33</sup> *Id.*

sided viewpoint also causes society to miss out on the benefits and opportunities of learning from other cultures.

#### *D. Four Decades Later Andrew Jackson has a More Expedient Solution to the Problem*

After forty years of attempted assimilation, the “*problem*” still remained: these ‘Indians’ were still on valuable land and Southern farmers wanted it.<sup>34</sup> As white settlers moved south to make their fortunes growing cotton, raising cattle, and growing crops, the land’s value increased tremendously.<sup>35</sup> So too did the inconvenient fact of the Native Nations’ presence on that valuable land.<sup>36</sup> The white settlers “did not care how ‘civilized’ their native neighbors were: they wanted that land and they would do almost anything to get it”.<sup>37</sup> The white settlers “stole livestock, burned and looted houses and towns, committed mass murder, and squatted on land that did not belong to them.”<sup>38</sup>

General Andrew Jackson, a strong proponent of Indian removal, led numerous campaigns against Native Nations. His troops took hundreds of acres of land from Native Nations, turning it over to white farmers.<sup>39</sup> Jackson was a southern slave owner and a strong supporter of expanding federal territory westward for white settlers and for ever-enlarging cotton fields.<sup>40</sup>

Instead of assimilation, Jackson opted for the relocation of Native Nations and the colonization of their lands<sup>41</sup>: Despite President Andrew Jackson’s signing of the Indian Removal Act, (which did not allow the Federal Government to force the Native Nations to relocate), the President’s tactics in achieving relocation were often at odds with the actual law.<sup>42</sup> Robert V. Remini, a renowned American historian reminds us that “although [the Indian Removal Act] only gave the right to negotiate for their withdrawal from areas to the east of the Mississippi river and that relocation was supposed to be voluntary, all of the pressure was there to make this all but inevitable.”<sup>43</sup> Protection of the Native Nations from the raids conducted by the white land owners of neighboring states required intervention by the Federal Government.<sup>44</sup> Unfortunately for the

---

<sup>34</sup> Bowes, *supra* note 20, at 70.

<sup>35</sup> History.com Editors, *Trail of Tears*, *supra* note 16.

<sup>36</sup> Bowes, *supra* note 20, at 70.

<sup>37</sup> History.com Editors, *Trail of Tears*, *supra* note 16.

<sup>38</sup> *Id.*

<sup>39</sup> *Id.*

<sup>40</sup> Hayes, *supra* note 10, at 160.

<sup>41</sup> *Id.*

<sup>42</sup> *Id.* at 159. “Andrew Jackson was at the forefront of the federal government’s early dealings with the **Native**-American tribes. He negotiated **Native**-American treaties and shaped policies governing **Native**-American removal both during his career as a military commander and later in his capacity as President of the United States. Jackson also used his power and influence to advocate removal of **Native** Americans to western territory. Often, Jackson, and later his administration, employed tactics of questionable legality to achieve **Native**-American removal. These tactics were often at odds with the established federal policies governing removal at that time.”

<sup>43</sup> Robert V. Remini, *Andrew Jackson and the Indian Removal Act*, HISTORY.NET (August 2001), <https://www.historynet.com/indian-removal-act> [<https://perma.cc/CJK4-F9Q2>].

<sup>44</sup> Hayes, *supra* note 10.

Native Nations, this protection was intentionally denied.<sup>45</sup> This governmental inaction encouraged the illegal activities of the large cotton farmers to continue unfettered. When the rule of law is not enforced, a message is sent to law breakers that what they are doing, though unlawful and abhorrent, is in fact sanctioned by the Government. This hands-off approach by the Government when laws are broken sends a message to the violators that what they are doing is okay.

*E. EPA Enforcement as a Form of Colonization of Native Lands.*

It has long been acknowledged that Native Nations have a had a long tradition of protecting the environment. In 1970, in an acknowledgement of the importance of the environment, the federal government created the Environmental Protection Agency (EPA) and passed the Clean Air Act to monitor and protect the air quality of our environment.<sup>46</sup> In subsequent amendments, the EPA required power generation plants to install smoke stack scrubbers to remove hazardous material from the smoke before it exits into the atmosphere.<sup>47</sup> Unfortunately, the EPA currently has chosen not to enforce those regulations, and by doing so it sends a message to those industries that spending money to comply and protect the environment is not necessary<sup>48</sup> This lack of enforcement has a trickledown effect, encouraging further rule breaking. When laws are not enforced, as during President Jackson's era, opportunists, like the Southern Settlers take the opportunity to commit illegal acts against marginalized peoples like the Native Nations.

*F. The Southern States Fashion Their Own Solution.*

In addition to laws passed at the federal level, many states passed laws of their own to control the Native Nations who resided.<sup>49</sup> The state of Georgia, for example, passed a series of laws which said that the Cherokee Nation, much of which was located within Georgia, was under the complete dominion and control of the State of Georgia and had to abide by all laws passed by

---

<sup>45</sup> *Id.*

<sup>46</sup> Environmental Protection Agency, *The Origins of the EPA*, UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, <https://www.epa.gov/history/origins-epa> [<https://perma.cc/SU47-BS5Z>].

<sup>47</sup> Environmental Protection Agency, *Cleaner Power Plants*, UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, <https://www.epa.gov/mats/cleaner-power-plants> [<https://perma.cc/YN54-5WNR>].

<sup>48</sup> Eilperin and Dennis, *supra* note 7.

<sup>49</sup> Federal Judicial Center, *Cherokee Nation v Georgia*, FEDERAL JUDICIAL CENTER, <https://www.fjc.gov/history/timeline/ Cherokee-nation-v-georgia> [<https://perma.cc/WQT7-MDK6>].

the State of Georgia.<sup>50 51</sup> This purported extension of State sovereignty over Native Nations was another method of the States attempting to both circumvent, the Federal Law and Supreme Court decisions.<sup>52</sup>

The state statute violated the Supremacy and Equal Protection Clauses of the U.S. Constitution. The State of Georgia's legislative action demonstrated its failure to recognize the legal status of the Native Nations. Georgia would never think of passing a law which would deprive neighboring Alabamans of land, yet that is precisely what the State statute was doing to its neighboring Native Nations people.<sup>53</sup>

After this legislation was passed, the Cherokee nation sought injunctive relief from the Supreme Court of the United States. The Cherokee Nation asserted that it was a Sovereign nation and therefore could not be under the control of the State of Georgia.<sup>54</sup> The opinion was written by Justice John Marshall denied the Cherokee Nation's assertion:<sup>55</sup>

The Indians are acknowledged to have an unquestionable, and heretofore an unquestioned right to the lands they occupy, until that right shall be extinguished by a voluntary cession to our government. It may well be doubted whether those tribes which reside within the acknowledged boundaries of the United States can with strict accuracy be denominated foreign nations. **They may more correctly perhaps be denominated domestic dependent nations.** (emphasis added)

The last sentence of the above quote is the most telling; Justice Marshall describes the relationship of the tribal governments to the U.S. federal government as a "dependent nation," not as an independent free nation, but rather one whose decisions are dependent upon the State's approval.<sup>56</sup> The court went on to say:

They occupy a territory to which we assert a title independent of their will, which must take effect in point of possession when their right of possession ceases—meanwhile they are in a state of pupilage. Their relations to the United States resemble that of a ward to his guardian. They look to our government for protection;

---

<sup>50</sup> Hayes, *supra* note 10.

<sup>51</sup> Cherokee Nation v. State of Ga., 30 U.S. 1, 7–8, 8 L. Ed. 25 (1831). ("The effect of these laws, and their purposes, are stated to be, to parcel out the territory of the Cherokees; to extend all the laws of Georgia over the same; to abolish the Cherokee laws, and to deprive the Cherokees of the protection of their laws; to prevent them, as individuals, from enrolling for emigration, under the penalty of indictment before the state courts of Georgia; to make it murder in the officers of the Cherokee government to inflict the sentence of death in conformity with the Cherokee laws, subjecting them all to indictment therefor, and death by hanging; extending the jurisdiction of the justices of the peace of Georgia into the Cherokee territory, and authorizing the calling out of the militia of Georgia to enforce the process; and finally, declaring that no Indian, or descendant of any Indian, residing within the Cherokee nation of Indians, shall be deemed a competent witness in any court of the state of Georgia, in which a white person may be a party, except such white person resides within the said nation.")

<sup>52</sup> *Id.*

<sup>53</sup> *Id.*

<sup>54</sup> *Id.* at 2.

<sup>55</sup> *Id.* at 15.

<sup>56</sup> *Id.* at 17.

rely upon its kindness and its power; appeal to it for relief to their wants; and address the President as their great father.<sup>57</sup>

Here, the Supreme Court makes another critical yet subtle land title decision which, while diminishing the power of the Cherokee Nation, is done in such a way that it most likely went unnoticed. They do not say that the Cherokee own the land on which they live.<sup>58</sup> The Court stated that they possessed the land which they occupied.<sup>59</sup> The difference is subtle but key. One who owns the land cannot be disposed or generally forced to move from that land. But one who holds a mere possessory right to occupy the land similar to that of a tenant in a landlord/tenant relationship can be disposed at the pleasure of the landlord. In this instance the Landlord is the federal government. The Marshall Trilogy cases make it clear that the Native Nations Right to the land is akin to a possessory right.

As a way to circumvent the Supreme Court's decision, as well as to prohibit missionaries from inciting the Cherokee to exercise their rights, the State of Georgia passed a law requiring anyone who is not Cherokee to obtain a license from the State before entering Cherokee land.<sup>60</sup> This statute was challenged all the way to the Supreme Court in *Worcester v. Georgia*, 31 U.S. 515, (1832), where the Court struck down the statute:

The act of the State of Georgia, under which the plaintiff in error was prosecuted, is consequently void, and the judgment a nullity... The acts of the legislature of Georgia interfere forcibly with the relations established between the United States and the Cherokee nation, the regulation of which, according to the settled principles of our constitution, is committed exclusively to the government of the union.<sup>61</sup>

Thus, once again the states were thwarted in their efforts to force the Indian nations to submit to State pressures to move. Unfortunately, President Jackson felt differently, and send a message to the Supreme Court by stating in regard to the Supreme Court decisions, "if no one intended to enforce the Supreme Court's rulings (which he certainly did not), then the decisions would [fall]...stillborn."<sup>62</sup>

---

<sup>57</sup> *Id.* at 17.

<sup>58</sup> *Id.* at 17.

<sup>59</sup> *Id.* at 17.

<sup>60</sup> *Worcester v. Georgia*, 31 U.S. 515 (1832). ("All white persons residing within the limits of the Cherokee Nation on the 1st day of March next, or at any time thereafter, without a license or permit from his Excellency the Governor, or from such agent as his Excellency the Governor shall authorize to grant such permit or license, and who shall not have taken the oath hereinafter required, shall be guilty of a high misdemeanor, and, upon conviction thereof, shall be punished by confinement to the penitentiary at hard labor for a term not less than four years.")

<sup>61</sup> *Id.* at 535.

<sup>62</sup> RONALD N. SATZ, *AMERICAN INDIAN POLICY IN THE JACKSONIAN ERA* 49 (1974).

### III. THE BUSINESS SOLUTION OF EXPEDIENCE AND IGNORANCE.

Generally, businesspeople operate within the bounds of the law, depending on how those boundaries are expressed. President Jackson made it clear that he was not going to enforce decision of the Supreme Court, sending a message to cotton farmers in the South that they were free to fashion their own solution. Thus, with President Jackson's tacit approval, the Southern farmers were free to force the Native Nations to leave.

#### A. Problem Identification

Harriet Genever, a business strategist, states that there are 10 steps to problem solving.<sup>63</sup> The first step is to define the problem: "When a problem arises, it can be very easy to jump right into creating a solution. However, if you do not thoroughly examine what led to the problem in the first place, you may create a strategy that does not actually solve it."<sup>64</sup> Genever's ten steps revolve around considering your customers' wants and needs and evaluating the problem in that context.<sup>65</sup>

This modality is further implemented using a common practice known as a SWOT analysis.<sup>66</sup> The acronym, stands for "Strengths, Weaknesses, Opportunities, and Threats." A SWOT Analysis is a technique for assessing these four aspects of your business."<sup>67</sup> The difficulty in both Genever's method and SWOT analysis lie in their dependence on problem identification. Specifically, their use of the word, "problem" connotes a negative situation which must be resolved. But that is not always the case and is perspective dependent. A problem for one company may be a business boon for another company. Alabama and Georgia's lack of additional land on which to grow cotton may be no problem to the Native Nations living on the desired land. This problem so-called by the Southern Cotton Farmers, may in fact be an opportunity for those States to negotiate production exchanges with the Native Nations. One man's problem may be the second man's opportunity. It is all a matter of perspective.

Additionally, it may be better to characterize the circumstance as a challenge rather than a problem. This is because challenges are situations which many businesspeople love to overcome. It feeds into their creative nature. It allows them to analyze the full landscape. This notion of overcoming challenges is in fact what stakeholder theory, a relatively new concept, is all about.<sup>68</sup>

---

<sup>63</sup> Harriet Genever, *10 Step Process for Effective Business Problem Solving*, LIVEPLAN (July 22, 2020), <https://www.liveplan.com/blog/the-best-ways-to-approach-problem-solving-in-business/> [<https://perma.cc/7LUG-6A7D>].

<sup>64</sup> *Id.*

<sup>65</sup> *Id.*

<sup>66</sup> *Id.*

<sup>67</sup> University of Notre Dame, *What is SWOT Analysis*, UNIVERSITY OF NOTRE DAME (Oct. 8, 2020), <https://www.notredameonline.com/resources/business-administration/what-is-swot-analysis/> [<https://perma.cc/R86U-XHW8>].

<sup>68</sup> See R. EDWARD FREEMAN, JEFFREY S. HARRISON & STELIOS ZYGLIDOPOULOS, *STAKEHOLDER THEORY* (Aug. 2018), available at <https://www.cambridge.org/core/elements/stakeholder-theory/1D970D2659D47C2FB7BCBAA7ADB61285> [<https://perma.cc/K56C-5WA4>].

Stakeholder theory asks the businessperson, when solving a challenge to view all the stakeholders in the situation. A stakeholder would include more than customers and shareholders. It would include Native Nations who are impacted by the Southern Farmers predatory actions.

### *B. Just Push Them Out*

Unfortunately for the First Nations, the southern farmers did not look upon the those living on the land they wanted as people, but as interlopers, and ignorant savages, much the same way as George Washington did years earlier.<sup>69</sup> The fastest way to get rid of an infestation of locusts was to burn them out, a method employed by the Southern Farmers in an effort to scare the First Nations tribes off “their” land. When that failed, the Southern farmers went to President Jackson and asked if the natives could simply be moved somewhere else. They argued that these people were impeding progress; there was cotton to sell to England, America was growing and money from selling American cloth overseas was important to the national economy. The people simply occupying the land served no legitimate purpose, in their view. President Jackson was more than happy to lend a hand.

## IV. THE TRAIL OF TEARS

The ‘trail of tears’ was the great suffering endured by the millions of Native Nations in the mid-1800s, who were uprooted from their ancestral homes and forced to relocate on foot to the Midwest. Some would claim this journey was forced upon Native Nations out of necessity, while some claim the decision was made of ignorance.

### *A. A Different Point of View*

As with many tragedies in history, the clash between white settlers and their Native American neighbors came down to not understanding and accepting differences. Southern American Farmers grew cotton, tobacco, and other crops and sold them to the North. These farmers were businessmen, and the more land a farmer had to grow crops, the more money he could make. Their markets even expanded overseas: “Britain was a key foreign market for the South’s cotton, and the British textile industry was in the midst of an industrial revolution.”<sup>70</sup> As the British industrial revolution progressed, “British textile mills soon depended on the United States for over half the cotton they used.”<sup>71</sup> America was growing, and so too were its exports.

But native cultures were not set up to market their products to export to other countries. Instead, many Native Nations were more community-minded: “[Though] the Native Americans

---

<sup>69</sup> History.com Editors, *Trail of Tears*, HISTORY.COM (July 7, 2020), <https://www.history.com/topics/native-american-history/trail-of-tears> [<https://perma.cc/4SCG-B9R7>].

<sup>70</sup> *A Farming Society*, ENCYCLOPEDIA.COM, <https://www.encyclopedia.com/history/encyclopedias-almanacs-transcripts-and-maps/farming-society> [<https://perma.cc/H4JG-3NJH>].

<sup>71</sup> *Id.*

... [were] expert farmers, who grew staple crops like maize, beans, squash, tobacco, and sunflower, they organized their lives around small ceremonial and market villages known as hamlets.”<sup>72</sup> They produced what they needed for themselves and then sold or bartered with others at village markets.<sup>73</sup> The focus was entirely different. The Native American focus was more on community prosperity, whereas the white settler focus was on more individual gain.

The Southeast was home to the Cherokee, Chickasaw, Choctaw, Creek and Seminole, sometimes called the ‘Five Civilized Tribes.’<sup>74</sup> The neighbors of the Cherokee to the east and west were the states of Georgia and Alabama. These states were frustrated by the Native Nations’ different viewpoints on what to do with their land. The Cherokee as an example, were interested in using the land as their white counterparts did. Without homogenizing Native Nations as a collective, it cannot be lost that the Cherokee’s focus was a community-based society that was different than that of their neighbors to the immediate east and west.<sup>75</sup> Maximizing the growing of cotton or other goods as a valuable export was not part of their native culture. And it was this difference in culture that made their usage of the land seem absurd and wasteful to their white neighbors.

Out of the white settler’s ignorance and intolerance frustration grew. In 1830 the ancestral lands of the Cherokee nation were equivalent to the size of Georgia or Alabama.<sup>76</sup> Forcibly taking this land would increase each State’s land area by 50%, which was no small amount. Thus, for these States taking that land, by whatever means, away from the Native Nations seemed vital to their expansion. After all, though the State of Georgia lost in the Supreme Court, the rights in the land which the *Indians* squandered was a possessory one as opposed to one in fee simple.<sup>77</sup> They really didn’t own the land after all and therefore they could be driven out and better use of the land could be had.

### *B. Caught between a Rock, an Angry Nation, and a Hard? President*

President Jackson’s actions and the failure of the Supreme Court to grant the Native Nations sovereign status began to create divisions within the Native Nations.<sup>78</sup> There seemed to be only two possible courses of action: 1) the Native Nations could negotiate with President Jackson or 2) stay put without moving and risk the threat of raids from the settlers from Georgia

---

<sup>72</sup> History.com Editors, *Native American Cultures*, HISTORY.COM (Oct. 28, 2020), <https://www.history.com/topics/native-american-history/native-american-cultures> [https://perma.cc/M7PA-3EGY].

<sup>73</sup> *Id.*

<sup>74</sup> *Dawes Records of the Five Civilized Tribes*, National Archives (Oct. 3, 2016), <https://www.archives.gov/research/native-americans/dawes/background.html> [https://perma.cc/7M56-WY9Y].

<sup>75</sup> *Native American Cultures*, *supra* note 72.

<sup>76</sup> *Map of the former territorial limits of the Cherokee “Nation of “Indians; Map showing the territory originally assigned Cherokee “Nation of” Indians. Plate VIII*, Library of Congress (1884), <https://www.loc.gov/resource/g3861e.np000155/?r=0.071,0.012,0.84,0.582,0> [https://perma.cc/8Q8T-GJPA].

<sup>77</sup> *Worcester v. Georgia*, 31 U.S. 515, 535 (1832).

<sup>78</sup> Robert V. Remini, *Andrew Jackson and the Indian Removal Act*, HISTORYNET (August 2001), <https://www.historynet.com/indian-removal-act> [https://perma.cc/CJK4-F9Q2].

and Alabama. A group of “Cherokees held out, even though even they had begun to feel the unrelenting pressure,” from the President, the neighboring states, and the Supreme Court:

A so-called Treaty Party emerged within the Nation, made up of chiefs and headmen who understood Jackson’s inflexible will and had decided to bow to his wishes and try to get the best treaty possible. They were led by very capable, hard-headed, and pragmatic men, including the Speaker of the Cherokee National Council, Major Ridge; his son, the educated and politically ambitious John Ridge; and the editor of the *Cherokee Phoenix*, Elias Boudinot.”<sup>79</sup>

This group hoped that their collective appearance before the president might somehow soften his position and form some possible compromise. John Ridge, who had taken a lead role in the group, decided that the best strategy with the President would be to take a position of strength, even though it may be in appearance only.<sup>80</sup> So he asked the President directly if the United States Government would do anything to stop Georgia from encroaching on and into Native American Lands. The President said that the United States would do nothing.<sup>81</sup> The President “then advised Ridge most earnestly to go home and urge his people to move themselves west.”<sup>82</sup>

The Native Nations’ (mostly Cherokee) worst fear was realized; President Jackson would not help them. The Supreme Court, in *Worcester v. Georgia*, refused to declare the Cherokee a sovereign nation.<sup>83</sup> Given the President’s refusal to intervene, Georgia and Alabama were now free to use alternative methods to get the land they so desired.

The group of brave Native Nations who became known as the Treaty Party were forced to return to their Tribes and tell them that the only available avenue for the Native American people was to retreat to the Indian Reservation in the West and take whatever compensation if any the United States was willing to give. The Native American’s reaction to the Treaty Party’s failure was one of horror, dissatisfaction, and anger. Because they were powerless to take that anger out on the President, they chose to take it out on the messengers, who had failed them:

“The members of the Treaty Party risked their lives in pressing for removal, and indeed all of them were subsequently marked for assassination. Not too many years later, Elias Boudinot and John Ridge were slain with knives and tomahawks in the midst of their families, while Major Ridge was ambushed and shot to death.”<sup>84</sup>

---

<sup>79</sup> Remini, *supra* note 78.

<sup>80</sup> *Id.*

<sup>81</sup> *Id.*

<sup>82</sup> *Id.*

<sup>83</sup> *Worcester*, 31 U.S. at 535.

<sup>84</sup> Remini, *supra* note 78.

### C. The United States Plays Hardball in a Game of Let's Make a Deal

Given that the Indian Relocation Act required that the United States Government negotiate with the Native Nations regarding their relocation, the Cherokee nation put its trust in John Ross:<sup>85</sup>

John Ross, [was] a blue-eyed, brown-haired mixed-blood who was only one-eighth Cherokee. Nonetheless he was the principal chief, and a most powerful force within the Nation. He was rich, lived in a fine house attended by black slaves, and had influence over the annuities the United States paid to the tribal government for former land cessions. His appearance and lifestyle were distinctly white; in all other respects he was Indian.<sup>86</sup>

John Ross's stature in the Cherokee community along with his knowledge of the American Political system, made him an ideal choice to negotiate a settlement for his people with President Jackson.<sup>87</sup> The President knew of Ross and disliked him having at one time called him a great villain.<sup>88</sup>

The President was also aware that the Native Nations were politically fractured.<sup>89</sup> Some of the Cherokee Nation followed the National Party (a group opposed to relocation) of which Ross was a member and others belonged to the Treaty Party (a group who felt negotiation was the only viable alternative). Despite Ross's dubious title as Principal Chief of the Cherokee Nation (given his self-appointment), the President met with Ross. Ross knew that the nation's removal was a foregone conclusion and that the only point to be pressed was how much money they should be paid for their *voluntary* move.<sup>90</sup> By speaking to President Jackson, Ross thought he might have an opportunity to influence that allocation in his favor.<sup>91</sup>

It should be noted that this removal of Native Nations had nothing to do with them being less "civilized," nor were they a threat to the white settlers. The threat that they posed was to the economic prosperity of the farmers of Georgia and Alabama. If the Native Nations could be forced to 'voluntarily sell' their land a large profit could be made. And as discussed previously, encouraging them to leave their property was not really stealing the Native Nation's land, because after all, they did not own the land; they merely occupied the land, according to the Supreme Court.<sup>92</sup>

Ross began his negotiation strategy by setting the bar high. He asked President Jackson for 20 million dollars in compensation for the move.<sup>93</sup> Ross also asked for reparations for violations

---

<sup>85</sup> Remini, *supra* note 78.

<sup>86</sup> *Id.*

<sup>87</sup> *Id.*

<sup>88</sup> *Id.*

<sup>89</sup> Brian Hicks, *The Cherokees vs. Andrew Jackson*, SMITHSONIAN MAGAZINE (March 2011), <https://www.smithsonianmag.com/history/the-chokees-vs-andrew-jackson-277394/> [<https://perma.cc/WV2F-FZ4F>].

<sup>90</sup> Remini, *supra* note 78.

<sup>91</sup> *Id.*

<sup>92</sup> *Cherokee Nation v. State of Ga.*, 30 U.S. 1, 2, 8 L. Ed. 25 (1831).

<sup>93</sup> Brian Hicks, *supra* note 89.

of the treaties of 1817 and 1819 along with retention of a small piece of land bordering Tennessee, Alabama and Georgia as well as Federal Troop Protection for five years. The magnitude of the request was astronomic; the size and scope of his request was too great. Ross had overestimated his negotiating skills, and rather than nudging the President to make a counteroffer it caused President Jackson to almost cancel the meeting.<sup>94</sup> Realizing his mistake, he withdrew his request and suggested that the Cherokee Nation would take whatever the Senate agreed to as a figure.<sup>95</sup> Ross' strategy of pushing hard and then backing off to a more reasonable position backfired. Though the Senate did ultimately come up with a figure of 5 million dollars, the President signed the Agreement with the Treaty Party and not with Ross.<sup>96</sup> The treaty became known as Treaty of New Echota after the location of its signing, and included the following provisions:<sup>97</sup>

The Treaty of New Echota gave the Cherokees [5] million [dollars] and land in present-day Oklahoma in exchange for their 7 million acres of ancestral land. Though the majority of Cherokees opposed the treaty, and Principal Chief John Ross wrote a letter to Congress protesting it, the U.S. Senate ratified the document in March 1836.<sup>98</sup>

Martin Van Buren, newly elected in YYYY, aware of the Cherokee Nation's dissatisfaction with the treaty, gave the Native Nations until May 1838 to leave their ancestral land and move to Oklahoma.<sup>99</sup> By May of 1838 only 200 Native Nations people had voluntarily moved to Oklahoma, so the United States government sent 7,000 Federal Troops to evict the land's *occupants* forcibly.<sup>100</sup> The Government set up six forts in North Carolina to round up the wayward "savages," and escort them to their new "voluntary" home in the West.<sup>101</sup> The journey was grueling: "The 1,200-mile trek on foot, [of approximately 16,000 souls] began in October 1838, and lasted six months. An estimated 10 to 25 percent of the tribe died of disease, starvation and exhaustion along the way. Today, their route is known as the Trail of Tears."<sup>102</sup>

---

<sup>94</sup> *Cherokee Nation*, 30 U.S. at 53.

<sup>95</sup> *Id.*

<sup>96</sup> *Id.* at 57.

<sup>97</sup> North Carolina Department of Natural and Cultural Resources, *The Treaty of New Echota and the Trail of Tears*, NORTH CAROLINA DEPARTMENT OF NATURAL AND CULTURAL RESOURCES, <https://www.ncdcr.gov/blog/2015/12/29/the-treaty-of-new-echota-and-the-trail-of-tears> [https://perma.cc/4B68-S9JT]. "On December 29, 1835, U.S. government officials and about 500 Cherokee Indians claiming to represent their 16,000-member tribe, met at New Echota, Georgia, and signed a treaty. The agreement led to the forced removal of Cherokees from their southeastern homelands to Indian Territory west of the Mississippi River."

<sup>98</sup> *Id.*

<sup>99</sup> *Id.*

<sup>100</sup> *Id.*

<sup>101</sup> *Id.*

<sup>102</sup> *Id.*

## V. A GREAT NATION FORGETS IT'S HERITAGE AND ANOTHER GREAT NATION IS MARGINALIZED TO PROTECT THE AMERICAN WAY OF LIFE?

It is amazing to see how quickly the United States forgot where we as a country came from. The Declaration of Independence was signed in July of 1776.<sup>103</sup> It seems as though all of the great historic quotes from the Declaration of Independence and then The United States Constitution were nothing but words, ultimately forgotten when making money and profit are involved.

### A. *Nothing but Words*

Our nation was founded by people fleeing religious persecution in England.<sup>104</sup> Many of the original colonists desired to live and work in a place where they could worship as they chose and live as they chose.<sup>105</sup> Over a century later as the nation grew, it sought to sever its ties to England and rule itself as a sovereign nation. In July of 1776, the Declaration of Independence declared that “We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable rights, that among these are Life, Liberty and the pursuit of Happiness.”<sup>106</sup>

In September of 1787 in Philadelphia, we wrote in the United States Constitution:

“We the People of the United States, in Order to form a more perfect Union, establish Justice, ensure domestic Tranquility, provide for the common defense, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America.”<sup>107</sup>

These assertions collectively stand for the premise that the United States of America is a place that promotes justice and tranquility for all of its inhabitants. The preamble to the American constitution states that the nation will provide a common defense to insure, justice and tranquility.<sup>108</sup>

Given President Jackson's actions and the Congress of the day, the rights of the Native Nations were protected? The actions of the United States at this time made against the Native Nations was contrary to the will of our founding fathers, the constitution, and the treaties with the

---

<sup>103</sup> *Declaration of Independence: A Transcription*, National Archives (July 24, 2020), <https://www.archives.gov/founding-docs/declaration-transcript> [<https://perma.cc/6LWG-F5DR>].

<sup>104</sup> *Who were the Pilgrims*, PLIMOTH PATUXET, <https://www.plimoth.org/learn/just-kids/homework-help/who-were-pilgrims> [<https://perma.cc/WW6L-2NNG>].

<sup>105</sup> *Id.*

<sup>106</sup> *A Framing society*, *supra* note 70.

<sup>107</sup> *The U.S. Constitution: Preamble*, UNITED STATES COURTS, <https://www.uscourts.gov/about-federal-courts/educational-resources/about-educational-outreach/activity-resources/us> [<https://perma.cc/N9US-3E7J>].

<sup>108</sup> *Id.*

Native tribes which the federal government had signed. The Declaration of Independence in its oft-quoted preamble, “We the People,” did not mean to include the Native Nations.

Andrew Jackson referred to the Native nations as “our red children”<sup>109</sup> and treated them in a way more akin to street urchins who should be shuffled out of the way of the more civilized society. Native peoples were never treated as equals nor were their rights as a part of America’s culture upheld. The unfortunate truth was that the domestic prosperity of southern white settlers and the economy of the United States took precedence over the domestic tranquility of a people who merely wanted to live on lands which they had occupied for centuries.

The rich wanted to be richer.

## VI. A CONCLUSION, A SOLUTION, AND A LESSON.

To say what happened to the Native American people under the guise of helping them or under the notion that it was necessary at the time to benefit the nation is to fail to acknowledge the genocide we perpetrated on those Native Nations. Marching 16,000 people 1200 miles under guard to a land foreign to them should not be confused with escorting them on a leisurely walk for their protection. It was both immoral and horrific. This was a forced removal of a people from their homes who allegedly were under the protection of the United States Government. These people were supposed to have the same rights and privileges as all Americans. Native Nations were, according to the Supreme Court, “Wards” of the Government and to be protected by the United States Government.<sup>110</sup> Yet that duty of the Government was cast aside and our country’s once-sacred ethical values were thrown out the window for a handful of silver.

How can we undo the failure of our collective past? A modern solution that has steadily gained popularity is to pay reparations for the lands taken from Native Nations. But how is that different from what we did so long ago, by paying them 5 million dollars?<sup>111</sup> Is money the solution to taking one’s heritage? Are we not judging again the Native American’s value by a monetary standard?

Native Nations claim that their land was taken from them and therefore those lands should be returned.<sup>112</sup> The difficulty with this statement is that it is true from a limited perspective. It is true that large areas of land were taken from the Indians, but that action was taken after paying a price for it, albeit an unfair price and by force. As to the land being taken from them, the word *taken* implies ownership of the land. Individual land ownership was a concept white settlers brought from England and elsewhere to the United States. The Native Nations, not being English in origin, generally did not believe that they could own land individually. Some tribes did

---

<sup>109</sup> Robert V. Remini, *Andrew Jackson and the Indian Removal Act*, HISTORYNET (August 2001), <https://www.historynet.com/indian-removal-act> [<https://perma.cc/CJK4-F9Q2>].

<sup>110</sup> *Cherokee Nation v. State of Ga.*, 30 U.S. 1, 2, 8 L. Ed. 25 (1831).

<sup>111</sup> *Id.* at 53.

<sup>112</sup> Sam Levin, *This is stolen Land: Native American’s want more than California’s Apology*, THE GUARDIAN (June 21, 2019, 1:00 PM), <https://www.theguardian.com/us-news/2019/jun/20/california-native-americans-governor-apology-reparations> [<https://perma.cc/3G8N-X9RV>].

acknowledge that their tribe as a collective could have rights to an area of land.<sup>113</sup> They also felt that it was their obligation to care for the land.

Thus, the concept of caring for the whole and using the land for the benefit of the tribe as a whole was one which was common to most Native Nations. The questions become how can the United States government compensate them for their loss of this societal norm given where we are today? The answer may lie in the Government which abandoned and shunned part of their society so long ago.

Today the Secretary of the Interior is in charge of the Department of the Interior “protects and manages the Nation’s natural resources and cultural heritage; provides scientific and other information about those resources; and honors its trust responsibilities or special commitments to American Indians, Alaska Natives, and affiliated Island Communities.”<sup>114</sup> The Department of the Interior is the current-day protector of the land of the United States. Congress created the Department of the Interior to be the agency in charge of protecting the communal lands of the United States.

One possible solution is to amend the enabling Statute for the Department of the Interior, (43 US Code Chapter 31 Section 1451) such that the Secretary of the Interior be a triumvirate, where at least one of the Secretaries be of Native Nations descent. To do so would both acknowledge Native Nations relationship to the land and in a small way give them back authority over the lands which we had taken. It would be a fitting acknowledgment to their history and culture.

This action would then codify the historic position of most Native Nations that they are caretakers of the land. Restoring them to this position of power seems appropriate and overdue. This does not mean that conditions of native reservations are not important or that the present situation of Native Nations should be forgotten. It does mean that by placing them in a position of power again, instead of stripping them of their land and heritage, an acknowledgment can be made of their importance to this country in front of the United States society as a whole.

The lesson we as a nation can learn from our handling of the Native Nations is that their situation is not unique. African Americans have been enslaved and marginalized. Italians, Irish, Armenians, Mexicans, Guatemalans, and countless other groups have been trampled at any given point in our history. They were paid under the table a meager sum, forced to live in ramshackle shacks because no one would offer them a decent place to live and have worked in hazardous and arduous conditions all which violate the law. Our Government at both the Federal and State levels turn a blind eye and we as a culture also look away. And for what? Sadly, all in the name cheaper goods and services. If the labor costs are low, then the goods are cheaper to produce. Manufacturers can both sell the goods at a lower price and reap more profit. A win for all except those who are being preyed upon. One can only pray that someday we will worry more about

---

<sup>113</sup> Ryan McMaken, *Did the Indians Understand the Concept of Private Property?*, Mises Institute (July 09, 2017), <https://mises.org/wire/did-indians-understand-concept-private-property> [<https://perma.cc/F2VQ-WLT7>].

<sup>114</sup> U.S. Department of the Interior, *What We Do*, <https://mises.org/wire/did-indians-understand-concept-private-property>, Last visited 3-23-2021

how many peoples' lives have been negatively affected so that we may enjoy our lifestyle and chose to make their lives better.