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# **The Struggle for Oak Flat: Is History Repeating Itself?**

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## **Abstract**

This piece delves into the current legal battle for the rights to Oak Flat in Arizona and pinpoints how this relates to the colonial history of America. The prevalent views of the Colonial era, especially in regards to property rights, are still being used in regards to relations with the Native American people in the United States today.

## **Keywords**

United States, Land Policy, Removal, Colonial Land Policy, Arizona, Native American land rights, historic precedents, fully sovereign, indigenous sovereignty, San Carlos Apache, Resolution Copper, federally recognized

## **Introduction**

Over the course of history, there have been many defining eras, each with a profound effect on the future of the world. One such period that has a residual impact on society is that involving the interactions between European settlers and the Native American population during the exploration and eventual conquest of the New World. These two diverse groups were thrust into contact with each other as the Europeans started the colonization of what is now considered North America; previously each group had complete control over their own separate continents and had no prior knowledge of one another. Clashes over differences in ideology were bound to occur. However, the results of these clashes, especially in regard to land ownership and property rights, still plague the Native American population today.

## **Beliefs, Viewpoints, & Cultural Understanding**

When Europeans began the search for a trade route to Asia and stumbled upon the New World, the land of America was populated by various Native American tribes. Europeans and Natives both had established belief systems and viewpoints, which were sometimes at odds with one another. Regarding land, the Natives “saw land, the basis of economic life for both hunting and farming societies, as a common resource, not an economic commodity” (Foner, 2017, pg. 9). The land played a significant role in Native American religion. As animists, Native Americans communities often tied nature, and thus land into “religious ceremonies often directly related to farming and hunting” (Foner, 2017, pg. 8). This viewpoint certainly clashed with the European notion of land. Europeans viewed land “as a collection of potential commodities, a source of economic opportunity” and Natives “had not actually ‘used’ the land and thus had no claim to it” (Foner, 2017, pg.11). These major differences in foundational ideals were root causes in the proceeding land disputes between European settlers and the Native American tribes.

## **Expansion & History**

As westward expansion of the thirteen colonies and the eventual formation and expansion of the United States of America occurred, Native Americans were consistently pushed further west and were forced to cede land to the European settlers. Some of the land deals made between Native Americans and white settlers were fairly negotiated and others were duplicitous. For instance, the Walking Purchase caused strained relationships between the tribes in Pennsylvania and the settlers. Previously, the tribes in Pennsylvania had a positive relationship with Governor William Penn. After Penn died, James Logan became governor and negotiated the Walking Purchase, where a team of men were to walk for a day and a half, and the amount of land they traversed would be sold to the colonists. However, the governor “hired a team of swift runners, who marked out an area far in excess of what the Indians had anticipated” (Foner, 2017, pg. 117). This caused negative feelings to build in the Native American community and poisoned future dealings.

Even after the deal was complete “The Indians argued that even under such circumstances the whites had no legal right of possession” due to the fact that they “understood a sale to mean that the purchaser was given the right to hunt or fish on the land, but that the land itself still remained the property of the Indians” (Jacobson, 1911, pg. 16). Misunderstandings based on views regarding land ownership and false dealings began to shape the acrimonious relationship between whites and Natives that would, in turn, create the federal systems in place for present day tribal land ownership.

## **Legal Decisions**

It was during this period that the Union developed the public policy towards Native American tribes that is in effect today. In the early 1800s, Supreme Court Justice John Marshall created the legal framework for how the Union would deal with Native American tribes, claiming that tribes are “not fully sovereign” and “suggested that they are ‘domestic, dependent nations’ a phrase implying that they are ‘wards’ of the United States” (D’Errico, 1999, pg. 11). Removing the Natives’ sovereignty and replacing it with the idea of federal plenary power has created “a legal scheme especially useful to the United States because it denies indigenous self-determination in the name of indigenous sovereignty” and “justifies federal control over lands and economic resources” (D’Errico, 1999, pg. 11). This way of thinking allowed the United States government to relocate Native American tribes onto federal reservations and initiated the systems currently in place for the United States to deal with the Native American population.

## **Oak Flat**

In more recent years, Native American tribes continue to struggle to keep their claims on tribal lands. One particular example is the current fight to save Oak Flat in Arizona, a campground and religious site for the San Carlos Apache tribe. The tribe “currently has a lawsuit pending in US district court in Phoenix that seeks to stop the land transfer, which would have given the 2,422-acre Oak Flat parcel to Resolution Copper in exchange for land elsewhere in the state” (McGiveney, 2021). In the court’s ruling, Judge Steven P. Logan decided that “while the min-

ing project ‘will affect the Apaches’ religious practices deeply,’ the government was not violating their First Amendment rights by turning the land over for mining” (Oven, 2021). The Biden Administration initially put a hold on the land swap to review the environmental reports and assess the legal situation, as it was supposed to be completed within days of Biden’s inauguration. Recently, the Biden Administration announced that there is no reason to have a hold on the case any longer and that the land swap should proceed as planned due to the fact that the San Carlos Apache tribe “can’t bring allegations regarding past tribal treaties since they aren’t a federally recognized tribe” (Kelety, 2021).

From the Native American viewpoint, this claim is truly devastating. In a statement from the Apache Stronghold political interest group (2021), Dr. Wendsler Nosie Sr. claimed “Giving away our sacred land by the U.S. Government for destruction by a foreign mining company destroys our ability to practice our religion. It violates our First Amendment right to the free exercise of our religion protected by the Constitution.” While Resolution Copper has tried to claim that the land will be able to be used by the public until it poses a safety risk, the company plans to use a mining technique called panel caving, which, over time means “the vast underground operation will collapse on itself, swallowing this historic Indigenous cultural site into a 2 mile-wide, 1,000-foot-deep crater” (D’Angelo et al, 2021).

## **Conclusion**

Without regard for Native American views on land and spirituality, the United States government is, yet again, elevating economic growth above the rights of the Native tribes. How does this relate to an American sense of property law and rights? Joseph Singer, who described American property law as a system of rights built on legal principles, addressed the issue of morality and politics in the field of property law. He stated “because we believe that each human being is ‘created equal,’ we are not free to deny others the liberties we demand for ourselves” and that “Equal freedom can be achieved only if...one person’s actions do not impair the legitimate rights of others to equal freedom” (Singer, 2014, pg. 1326).

Furthermore, how can a country that is built on the values of freedom, liberty, equality, and the individual pursuit of happiness deny a subset of their nation the right to their own property and transfer said sacred property in a land swap to a foreign corporation in corporate pursuit of monetary gain? As history has shown us, the conflicting views between European settlers and the Native American peoples in regards to land ownership and spirituality have created a system where the Native Americans became an independent but subject people to the United States government. The Native American people have lost their rights, freedom, and now their land which the United States government had promised them, leaving them with no other option but to relocate and rebuild their sacred places again.

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