Racism and the Economy
focus on the Wealth Divide

Author: **Matthew L.M. Fletcher**

Title of proposal: **Systemic Racism and the Dispossession of Indigenous Wealth in the United States**

### 1.0 Introduction: Indigenous Philosophies on Property

Consider Indian treaties. Of the nearly 400 ratified treaties between Indian nations and the United States, the large majority established homelands for Indian nations, what are usually referred to as reservations. Indigenous leaders usually insisted that these reservations be owned and controlled by the tribe, rather than divided into parcels held by individuals. American treaty negotiators often asked that the reservation lands be allotted to individual Indians. There was rhyme to the reasoning of both camps.

American and Indigenous leaders brought widely differing philosophies to treaty talks. Indigenous philosophies frequently privilege the group over individuals. The Anishinaabeg, the Indigenous people I know the best, hold worldviews on community and individual rights and obligations that are diametrically opposed to western political philosophies. Anishinaabe people believe that humans are lesser creatures in the universe. Western political philosophies, heavily influenced by Christianity, see humans as superior to all other creatures, entitled to dominion over all lands and living things. But for the Anishinaabeg, the role of humans is limited. The Anishinaabeg are careful not to overstep their roles, to acknowledge the impact humans make on the world, and to do their part in maintaining harmony in the universe. The worst of the legendary monsters in Anishinaabe culture is the *windigo*, a terrifying cannibalistic monster that consumes

relentlessly but can never satisfy its own hunger.[1] Conversely, Anishinaabe people believe that human generosity is the greatest aspiration and, for example, often invoke the notions of *inaawendewin*, or relational accountability,[2] or *mino-bimaadiziwin*, the act of living a good life.[3] This Anishinaabe worldview is consistent with the philosophies of many Indigenous peoples.

For the most part, Indigenous nations looked generations into the future, seeking to preserve their lifeways through the establishment of permanent land holdings owned and controlled by the tribe. Because of this worldview, Indigenous leaders usually rejected efforts by American negotiators to force cash payments in lieu of permanent lands. Indigenous leaders were more interested in permanent homelands with access to water, fish and wildlife, natural resources, and culturally significant locations. Even to this day, when modern Indian nations possess a wealth of land, the tribes set aside those lands for wildlife reserves, cultural practice and preservation, and other uses that forbid or limit economic development.[4] Examples of tribally preserved areas include the heavily forested land within the Yakama Indian Nation's reservation that was the subject of a United States Supreme Court decision,[5] and Blue Lake at Taos Pueblo, the cultural center of the Taos Pueblo tribe. The federal government returned Blue Lake to tribal control in the 1970s.[6]

Conversely, American leaders preferred that Indigenous peoples adopt western views privileging individualism. Americans initially insisted that the treaties reserve allotted lands to individual Indians. American leaders assumed that tribal ownership of lands was uncivilized, even savage. As the great property rights theorist John Locke said, "In the beginning, all the world was America ..., uncivilized."[7] American policy equated individual domination of the land, land-based resources, and the creatures dependent on the land with civilization. The United States and its servants imposed its philosophical preferences on Indigenous peoples by subjecting virtually all Indigenous nations and lands to some form of confiscation and western property ownership preferences.

---

[1] John Borrows, Law's Indigenous Ethics 196 (2019).
[2] Nicholas J. Reo. Inawendiwin and relational accountability in Anishnaabeg studies: The crux of the biscuit. 39(1) Journal of Ethnobiology 65 (2019).
[3] Lawrence W. Gross, Bimaadiziwin, or the "Good Life," as a Unifying Concept of Anishinaabe Religion, 26 American Indian Culture and Research Journal 15 (2002).
[4] See generally Beth Rose Middleton Manning, Trust in the Land: New Directions in Tribal Conservation (2011).
[5] Brendale v. Confederated Tribes and Bands of the Yakima Indian Nation, 492 U.S. 408 (1989).
[6] Vernon G. Lujan, Taos Pueblo Blue Lake: A legacy of cultural perseverance, in Indigenous Perspectives on Sacred Natural Sites: Culture, Governance, and Conservation 109 (Jonathan Lijiblad and Bas Verschuuren, eds. 2019).
[7] Kathy Squadrito, Locke and the Dispossession of the American Indian, in Philosophers on Race: Critical Essays 101 (Julie K. Ward and Tommy L. Lott, eds. 2002).

The next section of this paper surveys several of those American interventions into Indigenous property interests and the continuing impact of those interventions on inter-generational wealth. The United States asserted that the justification for these interventions was the dependency of Indian nations and Indian people.

## 2.0 A Short History of Indigenous Wealth Dispossession

In relation to the Indigenous people and nations within (and without) its borders, the United States' national policy was geared toward efficiently and completely dispossessing Indian people and tribes of their lands and resources. For the most part, that national policy prevailed, although the efforts were far from efficient and far from complete. This section surveys the dispossession of Indigenous peoples and nations of their wealth.

Structural racism played a critically important role in the dispossession of Indigenous peoples of their wealth throughout the 19th and 20th centuries. We begin with the United States Constitution itself, as we must with any survey of American law and policy. The Constitution protects and regulates the property of American citizens, businesses, landowners, state and local governments, and even foreign nations.[8] The Constitution focuses on Indian tribes in the Commerce Clause, authorizing Congress to regulate commerce with Indian tribes.[9] From the Founding, then, the United States dealt with Indian tribes as commercial entities, possessors of lands and resources. But the United States Supreme Court rarely extended the Constitution's protection to individual Indians or Indian tribes until well into the 20th century. And by then, very little Indian and tribal property remained.

### 2.1 Indian Title

The first key step in Indigenous dispossession of wealth was the legal characterization of Indigenous land holdings as inferior to the property rights of non-Indian, Christianized nations and people. Indigenous peoples of the Americas developed and enforced complex property rights regimes. In what would become known as the Doctrine of Discovery, the United States and its European forebears established that "Indian title" was inferior to that of the "discoverers" of the western hemisphere. In *Johnson v. McIntosh*, the United States Supreme Court confirmed that

[8] The Fifth Amendment provides, "No person . . . [shall] be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation."
[9] The Commerce Clause provides, "The Congress shall have Power . . . [t]o regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes. . . ."

Indian people and nations could not alienate their own lands, except to the "discovering" nation.[10] "Indian title" was merely the right of occupancy subject to the discoverer's whims. The United States could extinguish Indian title by purchase or by conquest.[11]

Early American leaders knew that the future of the wealth of the United States was in the western frontier. The main problem for these leaders was the presence of Indigenous peoples. Armed with the powers enshrined in the Constitution and the Supreme Court's assertion that Indian people possessed inferior property rights, the federal government pursued land cession treaties with tribes. Through these land cession treaties and similar agreements, all but 2 percent or so of the remainder of the lands that now constitute the United States were acquired over the first century of the American Republic. In exchange for those land cessions, the tribes negotiated for permanent homelands, usually in the form of reservations, other tangible resources like water, hunting, and fishing rights, and the duty of protection (or what we now call the federal trust responsibility to Indians and tribes). The duty of protection is a creature of customary international law, where a smaller sovereign gives up aspects of its external sovereignty to a bigger sovereign, leaving the internal sovereignty of the small sovereign untouched.[12]

In the middle part of the 19th century, the presumed superiority of the Christianized American dovetailed with the worsening economic and social conditions of Indian people, on and off reservations. Drawing from statements in the Supreme Court's decisions in the Cherokee cases of the 1830s, *Cherokee Nation v. Georgia* [13] and *Worcester v. Georgia*,[14] the United States began to invoke the language of guardianship in relation to Indians and tribes. A guardian has near-total control over the lives and assets of its ward, who is considered incompetent before the law. By the 1880s, the United States had asserted dominion over virtually every aspect of the lives of Indian people.

### 2.2 Allotment

[10] 21 U.S. 543 (1823).
[11] For more on the Doctrine of Discovery, see Robert A. Williams, The American Indian in Western Legal Thought: The Discourses of Conquest (1992), and Felix S. Cohen, Spanish Origin of Indian Rights in the Law of the United States, 31 Georgetown Law Journal 1 (1942). For more on Indian title, see Felix S. Cohen, Original Indian Title, 32 Minnesota Law Review 28 (1947).
[12] For more on the duty of protection and the federal-tribal trust relationship, see Robert A. Williams Jr., The People of the States Where They Are Found Are Often Their Deadliest Enemies: The Indian Side of the Story of Indian Rights and Federalism, 38 Arizona Law Review 981 (1996); Statement of Matthew L.M. Fletcher Before the House Resources Subcommittee on Indigenous Peoples of the United States on the RESPECT Act (April 11, 2019), available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3370368.
[13] 30 U.S. 1 (1831).
[14] 31 U.S. 515 (1832).

The key element in that period of guardianship was the confiscation and redistribution of the lands and assets of Indian reservations through a process called allotment.[15] Recall that Indian nations owned reservation lands for the benefit of individual Indians in common. That communal land ownership and management regime was usually consistent with the property and governmental philosophies of many Indigenous nations.

In the allotment policy that began in earnest in 1887 with the passage of the General Allotment Act,[16] the United States forced the breakup of many tribally owned and controlled lands. The federal government would then declare the reservation lands that were not allotted to be "surplus lands" and place those lands for sale on the public market. The United States Supreme Court rejected a Fifth Amendment takings challenge to the allotment of an Oklahoma Indian reservation, invoking the guardianship metaphor.[17]

Upwards of 100 million acres of land (or about two-thirds of Indian and tribal lands) went out of individual Indian and tribal ownership and control during the height of allotment from 1887 to 1934.[18]

**2.3 Removals of Indian Children**

Meanwhile, the federal government aggressively began a program of removing Indian children from the reservation homes and placing them in federal or religious boarding schools.[19] Many Indian children were abused or even killed in these boarding schools. The schools did very little actual teaching, instead instructing Indian children to become menial servants and agricultural service workers. In summer, the schools engaged in "outing" the students, sending them to non-Indian homes, usually on farms, to perform service work. The schools would receive the pay for this work. Many Indian children never went home or saw their families again. Most of them lost their culture and their language, either to the distance from their families and tribes, the abuse they endured if they spoke their language, or both.

The removal of Indian children from their homes continued throughout the 20th century, this time by state and religious groups.[20] As the federal boarding school regime faded away during

[15] For further background on allotment, see for example, Rose Stremlau, "To Domesticate and Civilize Wild Indians": Allotment and the Campaign to Reform Indian Families, 1875-1887, 30(3) Journal of Family History 265 (2005).
[16] 4 Stat. 388.
[17] Lone Wolf v. Hitchcock, 187 U.S. 553 (1903).
[18] Stacy L. Leeds, Borrowing from Blackacre: Expanding Tribal Land Bases through the Creation of Future Interests and Joint Tenancies, 80 North Dakota Law Review 827, 831-32 (2004).
[19] For more on the history of Indian boarding schools, see Brenda J. Child, Boarding School Seasons (1998).
[20] For more on the history of the removal of Indian children by states in the 20th century, see Margaret D. Jacobs, A Generation Removed: The Fostering & Adoption of Indigenous Children in the Postwar World (2014).

the Great Depression, states began to assert jurisdiction and control over the lives of Indian children with the encouragement of the United States. In the middle decades of the 20th century, state governments removed about one-third of all Indian children from their homes, almost always for the vague justification of "child neglect," and almost always placing those children in non-Indian homes as far from their families as possible. Even today, in many states in the country, state child welfare agencies remove Indian children for neglect at a widely disproportionate rate.

A related federal policy in the 1950s encouraged (or, in some instances, coerced) Indian adults to move to American metropolitan areas. This was known as Indian urban relocation. Meanwhile, Congress also pursued the formal termination of the federal-tribal trust relationship.[21]

**2.4 "Guardianship" of Indian and Tribal Assets**

Even where an Indian nation retained significant reservation lands, the United States invoked federal powers under the guise of guardianship to assert control over tribal natural resources. Representative examples involve the extraction of coal and other minerals at the Black Mesa on Navajo and Hopi lands.[22] In the 1920s, the federal government was keen to open those reservation lands to non-Indian natural resources extraction interests, but these tribes were not organized into a cohesive national body competent to sign off on leases. It's likely that few Navajo and Hopi people were interested in allowing outsiders to dig up their sacred lands. The government's solution was to create Navajo and Hopi tribal council bodies that would sign off on the leases. And so they did. Under those leases, the tribes received a small fraction of the value of the resources extracted.

Decades later, as the messy business of extraction continued, the tribes began to assert their own interests in renegotiating the leases. Finally, in the 1980s, the Navajo Nation and the main coal company reached an agreement that would have paid the tribe that actual fair market value. The Secretary of the Interior held up the approval of the lease just long enough to force the tribe to renegotiate a much less favorable payment. Years later, the tribe would learn that the coal company had hired a friend of the Interior Secretary to lobby for the delay that led directly to the less favorable lease terms. The tribe sued and won a $600 million judgment against the United

[21] For more on relocation and termination, see Donald L. Fixico, Termination and Relocation. Federal Indian Policy, 1945-1960 (1986).
[22] For more, see Robert Begay, Doo Dilzin Da: "Abuse of the Natural World," 25(1) American Indian Quarterly 21 (2001); Charles F. Wilkinson, Home Dance, the Hopi, and Black Mesa Coal: Conquest and Endurance in the American Southwest, 1996 BYU Law Review 449 (1996).

States, but the Supreme Court reversed.[23] The tribe returned with a new legal theory and won again, but the Supreme Court reversed a second time.[24]

Other acute examples of the ravages of guardianship include the tragic saga of the Osage "headright" owners of the early 20th century.[25] The Osage reservation surface and subsurface rights were severed, meaning that owners of the surface lands did not necessarily own the mineral rights below their lands. The United States allotted the Osage surface lands, which led to the dispossession of many Osage allotment owners. However, the mineral rights remained held by the United States in trust for the benefit of individual Osage headright owners. The subsurface rights became incredibly valuable. Individual Osage citizens became similarly wealthy as federal royalty checks reached their bank accounts. Unfortunately, in the Oklahoma of the 1910s and 1920s, it was very easy to petition a state court to put an Indian person under a guardianship or a conservatorship. In dozens of instances, Osage Indians would marry non-Indians, who would then acquire a court order granting them control over the headrights. In many of these instances, the Osage "wards" would then die under suspicious circumstances. Several non-Indians murdered their own spouses and other close relatives to assume total ownership of the valuable mineral rights. The federal government did very little to prosecute these murders or to prevent the loss of the headrights through the abuse of the court process.

These are merely a few examples of the abuse of the guardian-ward paradigm that dominated Indian affairs for much of the 19th and 20th centuries.

### 2.5 Judicially Imposed Limitations on Tribal Inherent Powers

In the last half-century, just as the United States began to implement a national Indian affairs policy that enables tribal self-determination, the United States Supreme Court routinely interjected itself into the federal-tribal relationship to undermine tribal powers. Invoking what the Court calls the "dependent status" of Indian tribes, the Court has stripped tribes of the power to prosecute non-Indian lawbreakers[26] and to tax or regulate many nonmember activities that harm

[23] United States v. Navajo Nation, 537 U.S. 488 (2003).
[24] United States v. Navajo Nation, 556 U.S. 287 (2009).
[25] For more, see Dennis McAuliffe, Jr., Bloodland: A Family Story of Oil, Greed and Murder on the Osage Reservation (1994).
[26] Oliphant v. Suquamish Indian Tribe, 435 U.S. 191 (1978).

reservation lands and economic activities.[27] The Court even undermined the authority of the Department of the Interior to administer its trust responsibilities to tribes and Indians.[28]

Allotment and other federal policies brought many nonmembers onto reservation lands. In many reservations, nonmember population and land ownership outstrip that of Indians and tribes. Federal and state authority in relevant parts of Indian country is legally confirmed, but those governments are often slow to regulate nonmember activities. That leaves tribes to do it. But the court's limitations on tribal powers made regulation of nonmember conduct close to impossible (excepting those nonmembers that affirmatively consent to tribal jurisdiction).

The impact of the unregulated activities of nonmembers in Indian country on tribal wealth is understudied but is most certainly deeply consequential. Crimes rates in Indian country are high, likely related to the lack of effective federal and state prosecution of non-Indians. Efficient land use and zoning rules are all but impossible on these "checkerboard" pattern reservations because tribal governments cannot govern nonmembers. Nonmember waste dumping is rampant, making large portions of Indian country polluted. And because tribes cannot tax the property or business activities of nonmembers, tribal governments have little revenue with which to govern.

The next section will detail how the United States dispossessed the Michigan Odawa nations of nearly all their wealth.

## 3.0 A Case Study of the Michigan Odawa Nations: Failed Allotment and Deforestation[29]

The Odawa nations that executed the 1836 Treaty of Washington[30] and the 1855 Treaty of Detroit[31] suffered a vile and insidious dispossession of their lands, resources, and culture. The Grand Traverse Band of Ottawa and Chippewa Indians (Grand Traverse Band), the Little Traverse Bay Bands of Odawa Indians (Little Traverse Bay Bands), and the Little River Band of Ottawa Indians (Little River) are the now-federally acknowledged Odawa nations in Michigan. These

[27] For example, Montana v. United States, 450 U.S. 544 (1981) (licensing nonmember hunting and fishing activities); Atkinson Trading Co. v. Shirley, 532 U.S. 645 (2001) (tax nonmember business that benefits from tribal public safety services).
[28] For example, Carcieri v. Salazar, 555 U.S. 379 (2009) (forbidding Interior to acquire land in trust for tribes not "under federal jurisdiction" in 1934 absent Congressional authorization).
[29] This history is largely derived from Matthew L.M. Fletcher, The Eagle Returns: The Legal History of the Grand Traverse Band of Ottawa and Chippewa Indians (2011).
[30] 7 Stat. 491.
[31] 11 Stat. 621.

tribes are a part of the historic Three Fires Confederacy of the Anishinaabe, the Ojibwe, Odawa, and Bodewadmi nations.

The 1836 treaty came about when the United States instructed the Michigan Indian agent, Henry Schoolcraft, to gather a treaty council of Odawa leaders from Grand Traverse Band, Little Traverse Bay Bands, and Little River Band, as well as the Grand River Band of Ottawa Indians and the Burt Lake Band of Ottawa and Chippewa Indians. (Both of these tribes are not federally acknowledged but should be, as they are possibly two of the very few treaty tribes in American history to not be federally acknowledged). The federal government wished to extinguish the tribes' property rights in the upper third of the lower peninsula of Michigan. Additionally, under President Jackson and Secretary of War Lewis Cass, federal policy at the time was to insist on the forced removal of Indian nations to land west of the Mississippi River. These primarily Odawa nations grudgingly agreed to travel to Washington for the treaty council but had no interest in ceding lands to the United States – and definitely had no interest in leaving their traditional territories for foreign lands to the west.

In the end, Henry Schoolcraft outmaneuvered the Michigan Odawa leaders and forced the land cession. Schoolcraft, who had married an Ojibwe woman with ties to prominent upper peninsula tribal leaders, persuaded several lesser Ojibwe leaders to travel with him to Washington. When the lead Odawa treaty negotiator, Aishquagonabe, stated the position of the Odawa nations, Schoolcraft suggested that his Ojibwe allies would sign whatever treaty he placed before them. If the Odawas would not sign the treaty, then perhaps the Ojibwe would. Eventually, representatives of what is now the Bay Mills Indian Community, the Sault Ste. Marie Tribe of Chippewa Indians, and the Mackinac Bands of Chippewa and Ottawa Indians would execute the treaty and bind those tribes as well.

As a result, the 1836 treaty included a land cession from the Ojibwe and the Odawa nations to the United States that covered one-third of the lower peninsula and one-half of the upper peninsula – about one-third of the entirety of what is now the State of Michigan. Congress extended statehood to Michigan the very next year.

However, the Americans were not successful in persuading the Anishinaabeg treaty negotiators to move west. Initially, Schoolcraft agreed to the establishment of permanent reservations under the terms of the treaty, but the Senate unilaterally added provisions to the treaty that limited the life of the reservations to five years. The federal government, due to incompetence and corruption, failed to properly establish the Odawa reservations within the five-year period.

From 1836 until the 1850s, the Odawa nations lived in a state of impermanence. The federal government's failure to establish the reservations, coupled with the expiration of the five-year time frame in 1841, left the tribes in an uncertain state. Even so, the United States did not act to force the Odawa nations to the west (unlike several Potawatomi nations of southwest Michigan and northern Indiana and the Wyandotte, Kickapoo, and Odawa nations of southwest Michigan and northern Ohio).

The uncertainty of the 1840s and 1850s persuaded the United States to seek another treaty council, this one culminating in the 1855 treaty. The Michigan Odawa and Ojibwe leaders sought the restoration of the permanent reservations initially bargained for in 1836. Instead, the United States offered to set aside lands in each tribal territory for individual Indians to select. In effect, the federal government offered allotted reservations. The tribes accepted the offer and looked forward to making their selections.

The 1855 treaty allotment process was to begin with the creation of lists of eligible Indian heads of household and other classes of eligible individuals. After five years, the individual Indians could then make selections of 80 acres of land, which would then be recorded by the federal land office. Indians could then take possession of their allotments. For 10 years, there would be a federal restriction on the alienation of those lands. At the end of this period, the United States would issue a patent to the allotment owner. The issuance of the patent would end the period of restriction.

The allotment process was an unmitigated disaster. The incompetence and corruption of the federal government destroyed any hope that the Anishinaabeg had to establish a homeland. The federal government's failures began with the creation of the lists of eligible Indians, which took far too long and was riddled with errors. As years went by and few Anishinaabe people could make selections, non-Indian squatters entered the lands set aside for allotments. The federal government did nothing to exclude the trespassers. Even after the lists were created and Indian people began to make their selections, the federal government's continued incompetence ruined this complex process. Squatters continued to enter the set aside lands, often using threats of violence and trickery to deprive Indians of their lands. If an Anishinaabe allotment holder left their allotment to travel temporarily to sugar bush or fishing locations, squatters took possession of the allotment, claiming that the allotment had been abandoned. Additionally, federal officials participated in sham transactions where a small number of Indian persons would select land on behalf of land speculators, report that selection to the land office, and collect a fee. Non-Indians

acquired large swaths of set aside lands in this manner, with federal complicity. In the end, a precious few Odawa persons ever received a patent.

In the 1860s and 1870s, Congress passed several bills to remedy the failed allotment process, but these bills were too little, too late. Non-Indian settlers, land speculators, and thieves penetrated the region, overwhelming the Odawa nations. Eventually, the United States gave up. In the 1870s, the Secretary of the Interior illegally terminated the federal government's relationship to the Odawa nations (and the Potawatomi groups that remained in southwest Michigan). We now refer to this action as "administrative termination." In short, from the 1870s until the 1980s and 1990s, when the federal government re-affirmed the trust relationship with the Odawa nations, the tribes had no status.

Because of the failed allotment and the administrative termination of the Odawa nations, the Odawa people had no land base and no federal protections. Tribal members still retained hunting and fishing rights "until the [ceded] lands" were "required for settlement," in the words of the 1836 treaty. Few Odawa people owned land. And from 1850 until 1910, loggers deforested all but a few acres of the entire State of Michigan. Odawa people depended on the forests for shelter, hunting and gathering, and cultural activities. By the end of the 19th century, all of that was unavailable to Odawa people. In the early 20th century, the State of Michigan began to crack down on the exercise of hunting and fishing treaty rights, with the Michigan Supreme Court opining in 1930 that the treaties had been abrogated.[32] Odawa people had little or no land, could not vote, could not live off the land, and became dependent on seasonal jobs.

In 1934, Congress enacted the Indian Reorganization Act (IRA).[33] The Act encouraged Indian tribes to reorganize their tribal governments into American-style constitutional democracies. Many tribes voted in Secretarial elections to adopt the IRA and develop tribal constitutions. Other tribes declined. But the Department of the Interior, citing the earlier "termination" of the Odawa tribes, refused to hold elections for the Michigan Odawa nations. Odawa people received none of the protections or rights guaranteed by the 1836 and 1855 treaties. The State of Michigan also declined to provide governmental services to Michigan Odawa people.

Decades passed. Many Michigan Odawa men went to war and came home to unemployment and discrimination. Many of the few remaining Odawa-owned allotments passed into non-Indian ownership. By the 1970s, when the rest of Indian country began to enjoy the

[32] People v. Chosa, 233 N.W. 205 (Mich. 1930).
[33] 25 U.S.C. § 5101 et seq.

benefits of the modern tribal self-determination era spearheaded by the federal government, Michigan Odawa nations remained terminated. The Michigan Odawa people were often homeless squatters on their own lands, without electricity or heat, without basic governmental services. Around that time, Michigan Indians began to employ treaty fishing rights as political advocacy – and as a source of subsistence.

The Grand Traverse Band became the first tribe in the nation to be acknowledged under new federal administrative acknowledgement rules in 1980. When the first tribal council met, it collected funds in a coffee can from attendees. The tribe controlled a small, 12-acre parcel held by a local church in trust for the tribe since the 1940s. In 1994, Congress reaffirmed the federal government's acknowledgment of two other tribes, Little Traverse Bay Bands and Little River Band, but other Odawa nations remain unacknowledged.

Federal acknowledgment of three Odawa nations coincided with the new national policy of tribal self-determination. The three tribes quickly became national leaders in self-governance. This is when Congress appropriates money directly to the tribes through a compacting process to fund on-reservation federal government services, such as housing, health care, and public safety.[34] The tribes are then, effectively, federal government contractors. The responsibility of self-governance allows tribes to become more competent at it. In 1988, Congress' enactment of the Indian Gaming Regulatory Act[35] provided an additional source of governmental revenues – gaming. It is fair to say that since the 1990s, the three Odawa tribes have helped their citizens move from abject poverty to the lower middle class.

Still, the tribes never benefitted from their bargain with the United States in 1836 or in 1855. In 1997, as a result of a successful Indian Claims Commission case, Congress appropriated several million dollars to the tribes to remedy the unconscionable price paid by the government for the 1836 ceded territory, which was sold for about 12 cents an acre.[36] Even that sum was a pittance, as it did not include the modern-day fair market value of the land and did not include interest from the time of the sale.

Recently, the Grand Traverse Band asked Congress for a special jurisdictional act that would allow the tribe to sue the United States for the fair market value of the lands set aside in the

[34] 25 U.S.C. § 5301 et seq.
[35] 25 U.S.C. § 2701 et seq.
[36] Michigan Indian Land Claims Settlement Act, Pub. L. 105-143, 111 Stat. 2652.

1855 treaty that were never properly allotted to the tribe's members.[37] Congress has not yet passed the bill.

The heartland of the Odawa nations, northern lower Michigan, is incredibly valuable, beautiful country, with access to Lake Michigan and inland lakes and streams. But the Odawa nations that were promised a fair share of these lands and resources are surrounded by the beneficiaries of centuries of the dispossession of Odawa wealth.

### 4.0 Restoring Indigenous Wealth

Twenty-first century Indian nations continue to struggle and, occasionally, thrive in the tribal self-determination era. Of the 574 federally acknowledged Indian nations, however, few have been able to restore much of the wealth taken from them or promised them in agreements with the United States.

The rise of the tribal self-determination era in the 1970s ended the guardianship era in Indian affairs, hopefully forever. Now tribal governments receive federal appropriations used to govern and provide governmental services. Many tribal members work for tribal governments and tribal enterprises. For tribes privileged with substantial self-governance and enterprises revenues, Indian and tribe wealth is slowly returning.

When their own economic activities are insufficient, which is the case for most modern Indian nations, tribes usually turn to Congress to address their lost wealth. But Congress rarely affords relief. When tribes turn to the courts to raise land claims or reservation governance claims, the Supreme Court is often a barrier to relief. Even when tribal land claims prevail (for example, the Sioux Nation's claims to the Black Hills),[38] the tribes are not always interested in money damages. They are much more interested in securing a permanent homeland with access to resources and cultural sites that Indigenous people can govern and manage.

[37] H.R. 3133, 114th Cong., 1st Sess. (2015); H.R. 3068, 113th Cong., 1st Sess. (2013).
[38] For more on the Black Hills claim, see John P. LaVelle, Rescuing Paha Sapa: Achieving Environmental Justice by Restoring the Great Grasslands and Returning the Sacred Black Hills to the Great Sioux Nation, 40 Great Plains Nat. Resources J. 5 (2001).