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Compensation Regarding the Sioux Nation

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Abstract

The Sioux Nation has been treated unfairly during the Lakota Wars and is still facing many of the same problems with reservation land rights. By looking at past and recent incidents, such as the injustice of removing of Sioux from the Black Hills and the Dakota Pipeline, the problem is explained, and potential solutions can be discussed. The Sioux should be fairly compensated for the loss of land and further land violations such as the issues regarding the Standing Rock Reservation stopped. The possibilities of Tribal Sovereignty and recognition within the Black Hills are specifically mentioned as potential solutions to the ongoing battle between the Sioux Nation and the United States Government.

Keywords: Sioux Nation, Black Hills, tribal sovereignty, Sioux land recognition

Compensation Regarding the Sioux Nation

The history and current status of Native American reservations are an often-overlooked piece of the United States. A major example of the current reservation status is the Black Hills. The Black Hills are mainly located in South Dakota and were the Sioux Nations living and sacred grounds prior to Lakota Wars in 1876. The area is now partially owned by the United States government and includes Mount Rushmore and several national parks. During the Lakota War, the Sioux's remaining members were removed from the Black Hills and forced into smaller sections. Since the remaining members were poor and needed supplies the United States government made a deal. According to Sarah Elliot, "The U.S. government had promised to support the relocated tribal members with food and other supplies, but their commitments often went unfulfilled" (Elliot, 2014). The Sioux Tribe had no choice but to stay in the smaller sections, which are now called reservations, and give up their lands to the United States government. There are currently 5 reservations which are largely Sioux Nations. One major Sioux reservation is the Standing Rock Reservation. The Sioux Nation and Standing Rock Reservation have not been treated fairly according to the U.S. Constitution and other treaties giving them rights to the land. To justify this treatment, the Standing Rock Reservation and other Sioux Reservations deserve proper compensation for the loss of land.

The Battle of Little Bighorn

The Battle of Little Bighorn, otherwise known as Custer's Last Stand, was often considered the point of no return for the War on the Sioux Tribe. Custer led federal troops against the Lakota Sioux and Cheyenne warriors because of the gold discovery in Native American lands (Battle of the Little Bighorn, 2009). Custer's troops were overwhelmed by the Native Americans warriors and suffered a significant defeat. This caused many Americans to

image the Indians as wild and bloodthirsty and led to major efforts to subdue the Sioux tribe in reservations (Battle of the Little Bighorn, 2009).

Native American Legal Precedents

Article 1, Section 8 of the U.S. Constitution

In order to protect the Native American's rights, Article 1, Section 8 of the U.S. Constitution was used to define the tribe's power, "Congress shall have the power to regulate Commerce with foreign nations and among the several states, and with the Indian tribes." This Constitutional Amendment led to U.S. Supreme Court Chief Justice John Marshall's Statement that, "tribes possess a nationhood status and retain inherent powers of self-government" (Marshall, 1831). Due to the precedent John Marshall set, the U.S. should have very little power over the actions within Native Territory.

The Fifth Amendment of the U.S. Constitution

The 5th Amendment of the U.S. Constitution states that no person, "be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation." This allows the Sioux to take their case to the court in order to plead that the loss of the Black Hills Land was unjust. Also, if found to be unjust then the tribe could earn fair compensation for the lands that were taken. However, this may not mean the retrieval of their lands. Fair compensation is very broad and is dictated by the U.S. court system's decision of what is considered fair. The land is worth more now than when taken which leads to heavy controversy over how much a just compensation would be worth today.

Fort Laramie Treaty

Treaties were signed in order to set land aside for Native American groups. Many of these treaties were broken or unfairly abrogated. For Example, The Fort Laramie Treaty of 1868

stated, “the United States pledged that the Great Sioux Reservation, including the Black Hills, would be ‘set apart for the absolute and undisturbed use and occupation’ of the Sioux Nation” (Clark, 2016). This treaty stood for a short time but was later abolished; however, the destruction in 1877 was later taken to court by the Sioux Nation. This caused a major lawsuit between the Sioux and the U.S. Government. This treaty was recently found to still have value in the Supreme Court Case called the United States v. Sioux Nation.

Legal Cases Dealing with Sovereignty

Johnson v. M’Intosh

The first of the major court case was Johnson v. M’Intosh. A citizen of Illinois wanted the native land of the Piankeshaw Indians and had attempted to buy sections. During the Johnson v. M’Intosh case the request was for, “an action of ejectment for lands in the State and District of Illinois, claimed by the plaintiffs under a purchase and conveyance from the Piankeshaw Indians” (1823). The plaintiff claimed that the land should be theirs since it had been purchased from the natives and anyone there should be removed from the area. The District Courts of Illinois did not agree stating that, “A title to lands, under grants to private individuals, made by Indian tribes of nations northwest of the river Ohio, in 1773, and 1775, cannot be recognized in the Courts of the United States” (1823). Native Americans no longer possessed the power to sell their land. This precedent caused any lands sold to private individuals from the Native Americans to be unrecognized. Thus, having a major impact on the level of sovereignty the Native Americans were given.

The United States v. Sioux Nation

In the 1980’s, the Sioux took the case of the Black Hills to the Supreme Court to correct the injustices they believe had occurred when they were forced to leave the Black Hills.

According to Mark Scherer, “the United States still wrested control of the Black Hills of South Dakota from the Sioux Indian Nation, constituted a ‘taking’ of property under the Fifth Amendment, giving rise to an obligation to fairly compensate the Sioux.” (2011). The United States’ means of obtaining the property was in direct violation of the Constitution. The Fifth Amendment of the U.S. Constitution states that no person, “be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.” Meaning the U.S. Government needs to fairly compensate the Sioux Nation for the taking of their land.

Violations of the Sioux Reservation Rights

The Sioux of the Black Hills

The taking of the Black Hills from the Sioux inhabitants was unjust. The Fort Laramie Treaty protected the Sioux in the Black hills. When gold was discovered, the Natives were pushed out of the Black Hills leading to the Lakota War. Gruesome events such as the Wounded Knee Massacre took place during this timeframe. An account by Major Godfrey, a military officer during the Massacre, wrote, “They fired rapidly but it seemed to me only a few seconds till there was not a living thing before us; warriors, squaws, children, ponies and dogs—for they were all mixed together—went down before that unaimed fire, and I don’t think anything got nearer than a hundred yards.” (1896). The Sioux eventually lost and were forced into smaller less prosperous sections. Angela Riley wrote that, “Sioux were confined to a small portion of the reservation, deprived of horses and weapons, and then had their rations cut off until they agreed to sign an agreement of cession, which relinquished their rights to the Black Hills and abrogated the Treaty of Fort Laramie.” (2014). After some time, the Natives gave up their land in the Black

Hills. This land was used by the United States and became Mount Rushmore National Memorial and several national parks.

The Sioux fought many legal battles attempting to gain their lands back. Eventually, when Sioux Nation took this case to Justice Blackmun. He affirmed, “the Sioux Nation's claim that the United States unlawfully abrogated the Fort Laramie Treaty of 1868” (Riley, 2014). While it was found to be unlawful, only a monetary price was awarded back to the tribe. The awarded compensation was never taken by the Sioux Nation. They hoped for reconsideration in efforts to gain portions of the land back to tribal control (Riley, 2014).

Standing Rock Reservation and The Dakota Access Pipeline

Some attempts are still made to use native lands without compensation. A recent situation is the Standing Rock Reservation attempting to prevent the Dakota Access Pipeline from going through their reservation. The Loyola Law Review states, “Federal recognition gives the tribe rights to protect its land, water, and air” (Crepelle, 2018). However, there is still concerns of having their rights ignored. Since the pipeline risked poisoning the tribe’s water, the Army Corps of Engineering denied the permit for the river crossing that traverses land the tribe deems sacred. (Goffman, 2017). The tribe fears that even with their recent victory, future struggle may be ahead, “Under a Donald Trump administration, this ruling may be reversed” (Goffman, 2017). With Standing Rocks tribal sovereignty, the use of their reservation for outside projects, such as the Dakota Pipeline, must be given proper consent from the Sioux Nation.

Action involving Sioux Reservation Inhabitants

As previously stated, the Sioux Nation, dictated by the Fifth Amendment, have the right to fair compensation over the lands previously theirs. In the late 1990’s courts decided that, “the amount due to the Sioux had risen to more than \$600 million” (Sherer, 1991). However, the

Sioux nation does not believe this to be classified as fair compensation. To the Sioux fair compensation would need to take into consideration both the sacred background and the quality of the Black Hills. According to the Rapid City Journal, “\$1.6 billion on lodging, food, recreation and transportation in the Black Hills and Badlands region in 2018” (Mearhoff, 2019). In order to justify the amount and type of compensation, many details should be taken into account.

Sovereign Nation Inside the U.S.

Since the native group is constitutionally considered a sovereign nation through Article 1, Section 8, some activists suggest they should be treated as one. Up to this point, the Native American Reservations are controlled very strictly, an example of U.S. Government intervening in Tribal life is the Trust Doctrine, “virtually everything a tribe may wish to do with its land must be approved by the federal government” (Administration for Native Americans, 2014). The Trust Doctrine is limiting what the Sioux nation has the ability to do. Thus, not treating them as a sovereign nation. The article Lakota against the United States voices that, “some Indians-activists, defending the sovereignty of the nation, declare for its resignation from the United States and the establishment of the independent Republic of Lakota” (Pobedash, 2015).

In order for the reservations to be a true sovereign territory, Native Americans need to dictate their own decisions on how their land must be used. This would allow the natives to make deals for monetary gain or even chose to completely ignore any outside predicaments. With this in mind, the reservations would be able to set up businesses without restriction. Implementing this would allow the Standing Rock Reservation to alleviate the heavy economic struggles.

Returning the Land

Returning the land to the Sioux Nation would be the perfect scenario for the tribe and has legal documents potentially making it possible. Under the Fort Laramie Treaty protected the land stating it should be “set apart for the absolute and undisturbed use and occupation of the Sioux Nation” (Clark, 2016). It was forcible dissolved after the Wounded Knee Massacre. This was later considered an illegitimate destruction of the treaty. From this, the Fifth Amendment implies that fair compensation is due. Giving some of the land back could justify as an act of fair compensation. Another reason this is a possibility is that this land is a partially federal land. However, the Black Hills brings in a large amount of money through tourism in the area. Giving the land back to the Sioux may affect businesses and other U.S. Citizens. Also, the term fair compensation does not directly imply returning the land. Although this is a possible option, it is likely to cause backlash and major economic disruptions to the Black Hills. The United States would be unlikely to give up this land due to the economy and community disturbances that would be caused.

Recognition

In the Black Hills, there is a well-known statue named Mount Rushmore. Most Sioux individuals see this as offensive since the faces that are carved had direct influence in the taking of the land. In an article named Mt. Rushmore, “Charmaine White Face compares Mt. Rushmore to a statue of Adolf Hitler in the middle of Jerusalem” (Perrottet, 2006). Placing a memorial of people who the Sioux perceives to have played major roles in horrific acts done to their tribe has made Korczak take action.

Since the land of the Black Hill is a historically native land there is the possibility of using the area to recognize the Sioux culture. The Black Hills was a sacred land and an area should be set aside in recognition. Crazy Horse Memorial is currently being built in honor of the

Sioux Nation. The Memorial is the result of Korczak Ziolkowski. Korczak was asked to help Gutzon Borglum at Mount Rushmore during 1939. Lakota Chief Henry Standing Bear “wrote to Korczak to persuade him to create a lasting memorial to American Indians” (Antonio, 2012). After receiving the writings, Korczak decided to build a statue dedicated to Crazy Horse, “a Sioux warrior known for his bravery in battle and service to his people” (Antonio, 2012). Many statues like this could be built as a memorial to the land. A memorial would bring many tourists and set aside a portion of land to the Sioux. The area would allow the Sioux to have a piece of their Sacred land dedicated to their culture, without hindering the level of tourism this area brings in.

Conclusion

As shown by the U.S. Constitution and several other treaties, the U.S. Governments treatment of the Sioux Nation and Standing Rock Reservation was unlawful. According to Constitution, this unjust behavior needs to be reconciled through fair compensation. The lands held sacred value to the Sioux and now bring in heavy income for United States’ citizens meaning fair compensation must be very high. A single solution to this complex problem is not possible and to reconcile the countless years of improper treatment will require drastic changes. The solutions proposed will lead the U.S. Government in the direction to fix the reoccurring issue of the government controlling the Sioux land and compensating the Sioux Nation properly.

Enforcing tribal sovereignty should be a main priority. If we enforce the U.S. Supreme Court Chief Justice John Marshall decision that, “tribes possess a nationhood status and retain inherent powers of self-government”, then the Sioux Nation would be able to grow financially and protect the lands they currently inhabit. This would allow Natives Americans to protect themselves from any acts such as the Dakota Pipeline that may occur in the future. The action of

having a completely sovereign nation inside the United States is not going to happen immediately but taking steps towards this is a necessity to prevent further misjustice to the Sioux Nation.

When dealing with compensating the Sioux Tribe for the Black Hills, the U.S. government needs to adjust their idea of fair compensation. Suggesting that a relatively small monetary amount will cover the value of a prosperous sacred land is incorrect. To give the territory back would hinder the economic gain that comes from the Black Hills but if part of the land is dedicated to the Sioux, then the level of tourism would not be heavily affected and the land would give the Sioux Nation a place where their culture is preserved. The Crazy Horse Memorial points out over the land and has engraved, "My lands are where my dead lie buried" (Antonio, 2012), this is one example of how we can recognize and preserve the lands' culture. Monuments such as Crazy Horse Memorial should have stronger funding to better recognized Sioux culture in the Black Hills.

These solutions are only a start to resolving the unjust acts done to the Sioux Nation. As a start, to classify as fair compensation, the Sioux Nation needs to have more power within the confines of their land and the areas affecting it. While also having a part of the Black Hills which preserves their sacred land and culture. If the United States is to completely reconcile the years of injustice, then more will need to be done to justify fair compensation to the Sioux Nation.

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