

**U.S. House of Representatives
Committee on Natural Resources
Oversight Hearing on “Examining the History of Federal Lands and the
Development of Tribal Co-Management”
Tuesday, March 8, 2022**

Testimony of Professor Doug Kiel, Northwestern University

Chairman Raúl M. Grijalva, Ranking Member Bruce Westerman, and Members of the Committee,

Introduction

Shekóli swakweku (Hello everyone!) Thank you for the invitation to testify before this Committee today. I am a citizen of the Oneida Nation, and an Assistant Professor History and the Humanities at Northwestern University. I am a faculty affiliate at Northwestern’s Center for Native American and Indigenous Research (CNAIR) as well as an adjunct curator at the Field Museum in Chicago. I teach a variety of courses in Native American history, including the histories of federal Indian law and policy, and Indigenous social movements in the US and Canada.

Oneida people have engaged with members of the United States Congress from the time your predecessors in the Continental Congress first began meeting in Philadelphia. Today, I am here in my capacity as a historian to speak about the underpinnings of the current relationship between Indigenous nations and the United States.

Histories of Disrespect

The topic of today’s hearing is most of all about respect. In the brief time that I have, I won’t detail what you already know: that all of North America is Indigenous homeland; and that the United States acquired those ancestral lands through means that were at best morally questionable, and at their worst, were genocidal in either intent or effect. Rather than address how dispossession happened, and explain how many treaties ratified by the US Senate were subsequently broken, I would like to emphasize that these regrettable historical events are characterized by an American disrespect of tribal governments.

Take the United States’ founding documents as an example. Although the US Constitution (1789) implicitly acknowledges that tribes are self-governing, the earlier Declaration of Independence (1776) labels Native Americans as “merciless Indian savages.” Every Indigenous nation, at one time or another, has learned of this duplicity. The Oneida people, for instance,

were some of the United States' only Native American allies in the Revolutionary War, yet even the promises of President George Washington were not enough to secure our homelands in central New York.

While such stories about the chicanery of the rapidly expanding United States are perhaps broadly familiar, the disrespect of Indigenous peoples has extended to even our knowledge systems. For this reason, the tribal co-management of federal lands would provide a meaningful way to reground government-to-government relations with respect. What we refer to as Traditional Ecological Knowledge (TEK) is Indigenous science and should be respected as such; it brings a depth of place-based experience that non-Native Americans simply do not possess. It is this kind of science that led Indigenous peoples to explore the Pacific Ocean generations before Europeans; to selectively breed corn and create one of the most cultivated crops on Earth; and to engage in controlled burning of the landscape.

The United States holds Indigenous resources in trust, and adequately taking our knowledge into consideration is part of the federal Indian trust responsibility. As outlined in *Seminole Nation v. United States* (1942), the US "has charged itself with moral obligations of the highest responsibility and trust" when exercising its power in regards to Indian affairs.¹ That trust has been shattered before. The disastrous policy experiment referred to as "Termination" during the 1950s, and the events necessitating the historic *Cobell v. Salazar* (2009) \$3.4 billion class-action lawsuit settlement are but two examples of federal obligations being grossly mismanaged.²

United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP)

Today's dialogue also belongs in a wider international context. In 2007, the United Nations adopted the Declaration on the Rights of Indigenous Peoples (UNDRIP). The United States initially voted against it in the UN General Assembly, but has lent its support to the Declaration since 2010. This resolution is legally non-binding, but it nonetheless outlines human rights norms in regards to Indigenous populations. The Declaration is the product of over two decades of negotiation, a process reaching back to the 1980s, and it describes the Indigenous world as it should be. I raise the UN Declaration to underscore that the matters before you extend beyond the United States' federal trust responsibility to its Indigenous treaty partners, and intersect with international human rights law.

By having this dialogue today, we are enacting the spirit of Article 18: "Indigenous peoples have the right to participate in decision-making in matters which would affect their rights."³ Moreover, the proposed development of tribal co-management intersects with Articles 8, 11,

¹ *Seminole Nation v. United States*, 316 U.S. 286 (1942).

² *Cobell v. Salazar*, 573 F.3d 808 (D.C. Cir. 2009).

³ *United Nations Declaration on the Rights of Indigenous Peoples*, Resolution Adopted by the General Assembly on 13 September 2007 (Resolution 61/295).

and 12 of the Declaration—to name a few—in regards to providing redress for the dispossession of lands, and the rights of Indigenous peoples to maintain and protect sites of religious, cultural, archaeological, and historical significance. The UN Declaration and the federal Indian trust responsibility are linked in that they both call for the highest level of moral obligation toward Indigenous peoples.

Conclusion

In my opinion, the proposed development of tribal co-management of federal lands, as will be outlined by Dean Kevin Washburn, former Assistant Secretary of Indian Affairs, is an innovative means of sustaining productive nation-to-nation relations rooted in principles of good faith and genuine respect. Tribal consultations alone do not constitute real decision-making authority; what Dean Washburn proposes is shared governance in the interest of good governance. Yaw^ko (Thank you very much).