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The Allotment Plot

Nicole Tonkovich

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Since the early eighteenth century the federal government of the United States of America has exercised a unilateral and presumptive right to manage the sovereign Native groups classified by the Marshall Supreme Court in 1831 as “domestic dependent nations.” Since the nineteenth century the secretary of the interior has served as the trustee of record and has exercised the right to manage monies derived from Indian lands but has not, until relatively recently, been held legally liable for failing to produce a formal accounting for the management of those funds. In fact, not until 1987 was the Department of the Interior required by statute to “audit and reconcile” its tribal accounts and to report the results of its trust fund management to its Indian clients.

By that time the task of fully reconciling nearly two hundred years of inaccurate and incomplete records had become utterly daunting, and the department temporized.

Seven years later, in 1994, Congress passed the American Indian Trust Fund Management Reform Act to force compliance, but the Bureau of Indian Affairs “admitted that it was incapable of complying with the [congressional] mandates” and hired a professional accounting firm, Arthur Andersen, to perform the task. After an initial survey Andersen reported that to prepare the “full and complete historical accountings, audits, and reconciliations” would cost
$280 million. Unsurprisingly, Andersen and the government reached a compromise: Andersen audited the accounts for a twenty-year period (1972–1992), at a cost of $21 million (a price tag that was nearly double their initial estimate for that twenty-year year audit).  

In the face of these egregious failures on the part of the BIA, Native activist Eloise Cobell filed a historic lawsuit in 1996. Cobell v. Salazar charged the federal government with breach of trust and demanded acknowledgment, action, and financial redress on behalf of nearly three hundred thousand individual Indian money account holders. Recognizing that the fiduciary responsibility could be astronomical should Cobell win the lawsuit, the federal government quickly moved to establish a date — 31 December 2006 — beyond which lawsuits could no longer be brought in these matters. On 28 December 2006, just three days before the date that would limit federal liability, the Nez Perce Tribe filed a class-action lawsuit conjointly with eleven other tribes to demand a “full and complete [accounting] from the federal government for hundreds of tribal trust fund accounts worth billions of dollars.” Nez Perce Tribe, et al. v. Kempthorne, et al. joined hundreds of similar suits, all seeking to hold a paternalistic federal entity to fair and just standards.

These cases have their roots in a succession of disastrous policies by which the federal government has attempted to manage its relationship with Native peoples. Chief among these infamous policies was the Dawes General Allotment Act of 1887. The Nez Perces were among the first to be subjected to that law. The Dawes Act intended to expropriate Natives of their lands, extinguish tribal governments, and transform tribal cultures into disaggregated, atomized, individual citizens. Funds related to the sale and transfer of lands under Dawes were, of course, to be held in trust by federal guardians on the presumption that Natives would be incompetent managers of their properties and would be unable to keep track of where and how their monies had been invested and disbursed. The irony is too apparent to require comment.

The ironic mode, in fact, seems the appropriate voice in which to analyze the events associated with the application of the Dawes Act on the Nez Perce Reservation that are the subject of this book.
Here I have sought to bring together the topics of Native sovereignty, which has its roots in land, citizenship, and control of cultural property; the bungled federal attempts to erase that sovereign identity; the archive of records of that interaction; and the historical accounts drawn from those archives that have narrated the encounter.

Because the matter of federal attempts to manage Indian tribes and monies antedated the Dawes Act, this book begins in medias res. Although the federal government attempted to close the issue at the end of 2006, lawsuits such as Nez Perce v. Kempthorne insisted that such a closure was premature. Even should Cobell v. Salazar reach a settlement, these supplementary suits, which intend to pursue a full accounting and a full settlement, will keep the matter open. Hence, this book lacks a formal ending. In place of a tidy narrative resolution, I have offered after-words and after-images, in the anticipation that here, as in the lawsuits currently active, the Nez Perces will have—and should have—the final word(s).
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