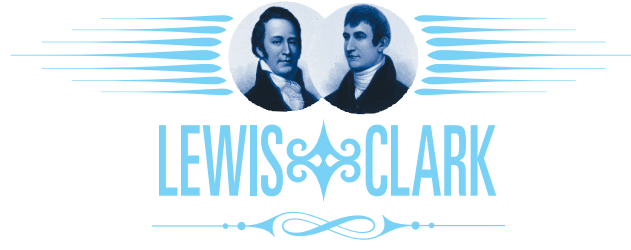


Unfinished Journey



The Lewis and Clark Expedition

EPISODE 104: LAW AND SOVEREIGNTY: THE POLITICAL AGENDA IN THE AMERICAN WEST

Peter Coyote: Welcome to “Unfinished Journey: The Lewis and Clark Expedition” from P-R-I, Public Radio International. I’m Peter Coyote. In this hour, a story with its roots in Lewis and Clark’s encounters with dozens of tribes as they trekked to the Pacific. That’s when American Indians started to lose crucial rights.

Roberta Conner: I think we’re like the salmon. There is no option but to continue to struggle to make things right, to get where we need to be.

Peter Coyote: Join me as we confront the troubling history of law and sovereignty in the American West after the day’s news.

Optional cutaway for News

Allison Frost: Welcome to this edition of the Latest Tidings, a special feature produced in cooperation with the Daily National Intelligencer. In 1832, it’s been America’s newspaper, for more than three decades. I’m Allison Frost.

This time we’re looking at the latest ruling on Indian affairs from the Supreme Court of the United States. The decision was handed down in the case of Worcester v. Georgia. But in recent years, John Marshall, the country’s fourth Chief Justice, has had to deal repeatedly with the difficult issue of the Indians, and has handed down a number of rulings concerning the Cherokees in particular. One of the premiere experts on the court and its Chief Justice since 1801 is Miss Judith Royster.

She says the outcome of these Cherokee cases has on the one hand made it clear that Indians do have rights, but on the other, it has clarified America’s right to exert control over the land within its borders. I asked Miss Royster if she thought if the question of tribal sovereignty has now been settled.

Judith Royster: To some extent I think that’s true.

Allison Frost: But not entirely?

Judith Royster: No.



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Allison Frost: To the extent that it is true, could you tell us a little more about how John Marshall went about answering that question, especially with regard to land rights, property rights?

Judith Royster: Absolutely...he uses the word title, but he uses it in ways that are difficult fully to understand....But he talks continuously as if the Indians really only have use rights to the land, or really only have possessory rights.

Allison Frost: But what else could Chief Justice Marshall have done? How else might he have ruled?

Judith Royster: One thing he could have done was to say that the Indians had no property rights, which would have led, I presume, to hostilities. The other thing he could have done is to say that the Indians had full property rights, which would have terminated virtually all American title to property that had been granted over the previous 50 or 60 years. He can't do that.

Allison Frost: I imagine not. He has to feel a certain obligation to the citizens of his own country, does he not?

Judith Royster: He has to.

Allison Frost: And to be fair, there isn't really a chance that the Indians would be in a position to use their vast amounts of land.

Judith Royster: No, they don't clear their fields, they don't plow their fields, they don't fence their fields. They plant crops together, they plant them in irregular rows and then they leave for the summer, which is not "farming."

Allison Frost: Finally, if the government of the United States, as I understand it, is now the only entity that has the rights to deal in the title of Indian land, can individual tribes now really be considered sovereign?

Judith Royster: A sovereign has four basic components: It has a government; it has a people; it has a territory. And those three components, Indian tribes have. The fourth fundamental requirement of a sovereign, according to international law, is the capacity to enter into foreign relations. And it is that capacity which Chief Justice Marshall took from the Indian tribes in the Cherokee cases in the 1830's, finding that their capacity to enter into foreign relations had been terminated by "discovery" and that all of their relations now must go through the United States.

Allison Frost: That was preeminent legal expert Judith Royster explaining the significance of the most recent Indian ruling and others handed down in recent years by Supreme Court Justice John Marshall.

Turning to the world of literature and science, Johann Wolfgang von Goethe has died. Our correspondent Colin Fogarty has this remembrance.

Colin Fogarty: It's nearly impossible to overstate the influence of Goethe. He was a poet, novelist, dramatist, and philosopher, having also served in several capacities in the Weimar government. One of his earliest literary works to bring him notoriety was *The Sorrows of Young Werther*, but this was perhaps overshadowed by his wildly popular *Faust*, a poetic drama published in two parts. In addition to his literary genius, Goethe made discoveries in the fields of botany and zoology, and developed a theory of colors, in opposition to that of Sir Isaac Newton's. Goethe breathed his last in Weimar at the age of 82. I'm Colin Fogarty.

Allison Frost: In other news, a cholera epidemic has claimed thousands of lives in New York, New Orleans and London. Major outbreaks have also been reported in Quebec, Canada and in France. And one last obituary to re-

port: Scottish writer Sir Walter Scott has died at age 61. He published scores of popular books, including Rob Roy, Lady of the Lake and Ivanhoe.

And that's the last chapter of this edition of the Latest Tidings, I'm Allison Frost. Our program is produced in cooperation with the Daily National Intelligencer. For more than three decades, America's newspaper, since 1800.

[Program theme music]

Peter Coyote: We think of the Lewis and Clark story as an adventure involving grizzly bears, prairie dogs and a famous Indian woman, not to mention the search for the Northwest Passage. Is that what it's really about?

Clay Jenkinson: To a point, but in essence it was what might be called a sovereignty mission. And Lewis and Clark were agents of America's imperial agenda in the West.

Peter Coyote: The Lewis and Clark Expedition left St. Charles, Missouri on May 14, 1804 and traveled 7,689 miles to the Pacific Ocean and back again. The trip took more than 28 months. The expedition was President Jefferson's brainchild, commanded by his friend and protégé Meriwether Lewis and his old Army friend, William Clark. It is considered the most successful exploration in American history. Joining me is Clay Jenkinson, our guide to this story and humanities scholar-in-residence at Lewis & Clark College in Portland, Oregon. Clay, back up that statement about sovereignty. What does sovereignty mean in the context of the Lewis and Clark Expedition?

Clay Jenkinson: Well, Peter, let's start with a definition of sovereignty, admittedly a rather cynical one. I called up P.J. O'Rourke and asked him to define sovereignty:

P.J. O'Rourke: Those who lord it over their fellows and toss commands in every direction and would boss the grass and the meadow about which way to bend in the wind are the most depraved kind of prostitutes. They will submit to any indignity, perform any vile act, do anything to achieve power. The worst off-sloughings of the planet are the ingredients of sovereignty.

Clay Jenkinson: Thanks, P.J. That's from his book Parliament of Whores. But really, that sarcastic definition of sovereignty surely has more to do with our world than with the world of Lewis and Clark.

Peter Coyote: Seriously, though, how could we call this relatively small military contingent "imperial agents"?

Clay Jenkinson: Lewis and Clark were agents of American imperialism in two senses. First and most important, they were official representatives of the government of the United States, and they entered into formal diplomatic councils with the Indians they met. They were trying to explain that the United States had purchased the Louisiana Territory from Napoleon Bonaparte, which meant that European colonial powers -- France, Spain, Russia and Great Britain -- had all legally yielded exclusive sovereignty over the region to the United States. Or to put it rather bluntly, the Indians of the American West would now be seen as America's Indians, and whatever formal diplomatic relations they had with white governments in the future would be exclusively with the United States and not with any other European nation. Lewis and Clark knew that time was on the side of the United States and that at some distant future date, white citizens of the U.S. would want to settle on most of the landscapes that were currently controlled by Indian nations. They did not say much about that, but it was implicit in their mission.

Peter Coyote: We have the benefit of historical perspective to see the truth of that, but what made Lewis and Clark believe that the U.S. could assert legal domination in the American West?

Clay Jenkinson: It has to do with a set of legal doctrines, dating back to the Middle Ages, concocted by European nations for European nations. Indians and other indigenous peoples were not negligible in these European legal maneuverings, but they were decidedly subordinate. With the Louisiana Treaty in 1803, the United States purchased general sovereignty over the entire Missouri River watershed. And one of Lewis' responsibilities on the expedition was to make sure that he passed out medallions, flags, and other "sovereignty tokens" that were designed to inform representatives of other European countries that the United States had purchased the territory. Captain Lewis actually read a speech to the Indians that announced America's claims:

Meriwether Lewis: Children: Commissioned and sent by the great Chief of the Seventeen great nations of America, we have come to inform you, as we go also to inform all the nations of red men who inhabit the borders of the Missouri, that a great council was lately held between this great chief of the Seventeen great nations of America, and your old fathers the French and Spaniards; and that in this great council it was agreed that all the white men of Louisiana, inhabiting the waters of the Missouri and Mississippi should obey the commands of the great chief; he has accordingly adopted them as his children and they now form one common family with us: your old traders are of this description....[fades]

Peter Coyote: Presumably he gave that speech in English? Did the tribes understand what he was saying?

Clay Jenkinson: That's not clear at all. Lewis did deliver it in English. And although there were translators accompanying them at certain times, they were few and far between and they were not professional linguists. You can imagine that there may have been considerable confusion about just what Meriwether Lewis was trying to communicate. Keep in mind that the United States wasn't the only nation with agents roaming around Indian country trying to assert territorial rights in North America. Listen to these two perspectives on an encounter between Lewis and Clark and representatives of the British North West Company:

Mr. La Rock and one of his men Came to visit us we informed him what we had herd of his intentions of makeing Chiefs &c. and forbid him to give meadels of flags to the Indians, he Denied haveing any Such intention, we agreed that one of our interpreters Should speak for him on Conditions he did not Say any thing more than what tended to trade alone—he gave fair promises &c.

William Clark, November 29, 1804

[W]as very politely Received by Capts. Lewis & Clarke & pass'd the night with them. Just as I arrived, they were dispatching a man for me, having heard that Intended giving Flags & medals to the Indians which they forbid me from giving in the name of the United States, saying that Government, look'd upon those things, as the Sacred Emblem of the attachment of the Indians of their country. But as I had neither Flags, nor medals, I Ran no Risk of disobeying those orders, of which I assured them.

Francois Antoine LaRocque, November 29, 1804

Peter Coyote: European nations were sending their representatives out as well, and every country had its own way of saying "we lay claim to this land." Professor Patricia Seed of Rice University has studied the different rituals they used.

Patricia Seed: The English took possession of the land by building on it, and planting in it. The Spanish took possession of people by reading a text prior to attacking them. The French took possession by having a ceremony that

involved a ritualized set of motions through space—a kind of choreography or dance, if you will. The Portuguese took possession by making a scientific measurement, a latitude measurement to be precise. And the Dutch took possession by drawing the coastline more closely than anyone had before. And since this is an era before any kind of international cooperation or any kind of international agreement, it was much more important that each ceremony...proved to the citizens or the subjects of a particular kingdom or republic that their fellow citizens had engaged in legally proper actions and speeches and declarations and processions in order to take possession of the New World, because what other powers thought of this particular action meant much less than what their own fellow citizens and fellow subjects thought.

Roberta Conner: What's difficult about it for me is the sense of injustice that comes with that dominion, not only dominion over nature but dominion over other people, the idea that by merely traveling through a landscape and enacting rituals you had the right to control another people.

Robert Miller: The land was not for sale according to many of the Indian tribes.

Peter Coyote: That's Robert Miller, a member of the Eastern Shawnee tribe of Oklahoma, a tribal judge, and a professor of law at Lewis & Clark College. And just before him, we heard from Roberta Conner, director of the Tamastlikt Cultural Institute near Pendleton, Oregon. Clay, what were European nations trying to accomplish with these rituals?

Clay Jenkinson: They were building trade networks and getting access to natural resources, particularly animal peltries, and they were asserting their exclusive right to purchase acreage from the Indians at some future time. That's really what the Louisiana Purchase was all about. I asked Professor Miller about Thomas Jefferson's views of Indian sovereignty and 19th century law governing territorial acquisition. He began with a more scholarly definition of sovereignty.

Robert Miller: Sovereignty to me, a rule of thumb definition is an entity that has power over people and territory. If you look in the dictionary or legal dictionaries, you get long descriptions of political entities, political bodies that have an international role and interact with other governments. Indian tribes met all of those definitions.

Clay Jenkinson: So the United States in 1803 purchases the Louisiana Territory from Napoleon. That's just not a simple land transfer from one sovereign to another.

Robert Miller: No. We did not buy the fee-simple title—that's what property attorneys call it—the fee-simple title to property is not what we bought from France. France did not own that. In fact, very few people know that the United States spent the next one hundred years signing treaties and agreements and even fighting a few wars with Indian tribes in the Louisiana Territory and paid over \$300 million more for the real estate title for the lands in the Louisiana Territory.

Clay Jenkinson: Correct me if I'm wrong, but what Jefferson did was preempt other European imperial powers from that district.

Robert Miller: Absolutely. Jefferson knew what he was buying. He understood what in the law is called the "doctrine of discovery." I've researched some of his writings. He explained in 1793 to the British ambassador what we owned in the areas we had gained from England at the end of the Revolutionary War and he said we had a right of preemption, the right as you just described it to be the only entity that would buy the lands from tribes when they

wanted to sell. And Jefferson told that to tribal chiefs that visited him repeatedly, that your lands are your lands forever, but if you ever want to sell them, we will buy them.

Clay Jenkinson: So far, we've been talking about how Europeans play with the planet, how they draw lines in the ocean and decide, 'this is your sphere, and that's your sphere and here's this sovereignty and I'm preempting you' and so on. From any common sense point of view, that pays so little respect to the indigenous traditions. What are Indians thinking of all this kind of abstraction that Lewis and others are talking about?

Robert Miller: Well, my most famous ancestor is the Shawnee chief Tecumseh and he's famous for the phrase, "Sell the land? You might as well try to sell the air." So apparently, Tecumseh had no idea or thought that you could sell land. Now, I'm less certain that every tribe felt the same way. Many tribes recognized property boundaries. Many tribes fought wars over what, I guess, we would say is territory, hunting grounds, berry grounds, those sorts of things. So, tribes understood private property, far more than we think today. But they of course did not have a European tradition of land ownership, land title, marking out your property exactly with a surveying instrument etc.

Clay Jenkinson: Do you think that on the whole, the American government acted in good faith in these negotiations?

Robert Miller: No, I do not. I wonder, though, what better could have happened, what else could have happened. It's almost ironic that the United States is looked at by the rest of the world as being the model of how to deal with its indigenous people. I think that says less for America and more for how the world has abused indigenous people. But, we have not been as bad as some people think, and we have probably not been as good toward native people as we think.

Peter Coyote: Lewis & Clark College law professor Robert Miller speaking with Clay Jenkinson. Now let's test your knowledge of the Lewis and Clark Expedition: Who was the influential foreign philosopher who witnessed the plight of Indian people a generation after Lewis and Clark traveled west and saw firsthand the Trail of Tears? We'll find out later in our program. And coming up, what if Lewis and Clark had met with a different reception from the tribes they encountered?

Ron His Horse Is Thunder: We should have not allowed them to continue on their journey and sent them back with a declaration of our sovereign claim to the land we occupied, and our sovereign right to protect our borders from any and all foreign armies or citizens.

Peter Coyote: I'm Peter Coyote. You're listening to Unfinished Journey on PRI.

[Program Break: Aaron Meyer/Bill Lamb-Unfinished Journey: The Lewis and Clark Expedition Soundtrack (Amazing)]

Peter Coyote: We've heard about Jefferson's understanding of the doctrine of discovery and his larger long-term agenda in the West. But Clay, what were his specific instructions to his protégé Meriwether Lewis regarding Indian encounters?

Clay Jenkinson: The instructions exhibit Jefferson's curiosity on the one hand, but they also reveal his commitment to commercial development of the American West. Let's listen to a very short excerpt from this remarkable document:

The commerce which may be carried on with the people inhabiting the line you will pursue renders a knowledge of these people important. You will therefore endeavor to make yourself acquainted, as far as a diligent pursuit of your journey shall admit, with the names of the nations and their numbers; the extent and limits of their possessions, their relations with other tribes or nations...in all your intercourse with the natives treat them in the most friendly and conciliatory manner which their own conduct will admit.
Thomas Jefferson, June 20, 1803

Peter Coyote: A "friendly and conciliatory manner" - the Corps of Discovery had a meeting with the Teton Sioux that really put Jefferson's instructions to the test. What happened?

Clay Jenkinson: That was the great crisis of the first year of travel, Peter. The problem was that they didn't even have a decent interpreter when they came into the heart of Teton Sioux territory.

[Voices in several languages]

We feel much at a loss for the want of an interpreter. The one we have can speak but little.
William Clark, September 25, 1804

Clay Jenkinson: In fact, William Clark says the translation problem was so severe that Captain Lewis had to curtail his standard sovereignty speech. This encounter with the Sioux or Lakota was one of the most important sovereignty moments of the expedition, and it could have easily led to bloodshed. Elliot West, professor of history at the University of Arkansas, explains that the Teton Sioux were a powerful tribe in the Upper Missouri region.

Elliot West: We know that part of the problem that Lewis and Clark had with the Lakota, with the western Sioux, was the fact that they were the linchpin, they were the trading power there, of the middle Missouri. They were very resentful. They were suspicious of these newcomers, these Americans that might disrupt that trade. They were entering an area not just of vigorous trade, but of trade relationships, of power arrangements that had been in place for some time.

Peter Coyote: So what happened?

Clay Jenkinson: There were some very tense moments. The expedition invited the tribal chiefs on board the keel-boat to show them American technology and weaponry, and then gave them a little bit of whiskey. But then Clark returned to shore with the Teton Sioux chiefs, and that's when the trouble started:

Three of their young men seized the cable of the perogue... the second chief was very insolent both in words and justures, declaring I should not go on, stating he had not received pressents sufficient from us. His justures were of such a personal nature I felt myself compelled to draw my sword.
William Clark, September 25, 1804

Clay Jenkinson: Both sides brought their own perceptions to this encounter. And both sides were rightly asserting their national interests. Gerald Torres is a professor of property law at the University of Texas at Austin.

Gerald Torres: It's important to remember the full extent of the Sioux nation, and the Sioux nation extended the entire northern reach of the territory that Lewis and Clark were exploring. You know, I don't think they understood it as a ceding of their territory and jurisdiction, because those in many ways were concepts that the Sioux—to the extent that they understood exactly what Lewis and Clark were saying—would have rejected. Remember, the Sioux was this nation, so the idea that these interlopers would come through and not be subject to the rules of the nation, I think would have struck the Sioux as both preposterous and arrogant.

Peter Coyote: And finally, how did all this end?

Clay Jenkinson: The Teton Sioux decided to let the expedition pass upriver.

I threw a carot of tobacco to 1st chief Spoke so as to touch his pride. Took the port fire from the gunner the Chief gives the Tobacco to his Soldiers, & he jurked the rope from them and handed it to the bows man....

William Clark, September 28, 1804

Clay Jenkinson: Poor Clark didn't sleep at all during this four-day encounter, and he called the island where all this took place "Bad-humored Island." It was one of the most dramatic moments of the entire expedition, but fortunately good sense prevailed on both sides.

Gerald Torres: When you look at this encounter, the last word that comes to your mind is a savage encounter. It was a diplomatic exchange, a tense diplomatic exchange, but guess what? We have tense diplomatic exchanges to this day. And that was something that was reassuring about humanity.

Peter Coyote: What if this encounter had turned into a battle that stopped the expedition in its tracks? We asked Ron His Horse Is Thunder, a member of the Hunkpapa band of the Lakota Sioux nation and president of Sitting Bull College in North Dakota to look at how things might have turned out differently if the response of tribes along the Lewis and Clark trail had been less friendly.

Ron His Horse Is Thunder: Some people say that you can't change the past, and that engaging in thoughts of "could have," or "should have," or "would have," are a waste of time and energy. But a learned scholar once stated that, "Not knowing what happened before we were born leaves us in a perpetual state of childhood." And we've all heard the saying that if you don't know the past then you are doomed to repeat it again.

Given that reflection on the past does serve a useful purpose, then what could have, would have or should have we as Indian nations done when we first encountered Lewis and Clark?

Well, we could have killed them. We could have promptly labeled them as terrorists and held them forever without a trial. That would have been easy enough.

However, others would have come sooner or later to do the same thing, found the same tribal nations and natural resources.

So, because they wore uniforms and carried documents of another sovereign nation, we should have received them as emissaries of a foreign power. What we should have done was accepted their gifts as tokens of good faith and then asked, what was their purpose in our country.

When they responded, under the orders of the President of the United States, we are here to discover, explore, and chart your land, and that under the European theory of law called the “doctrine of discovery,” that they claimed exclusive rights to extinguish our sovereign title to the land under the terms agreed upon by the French in a treaty document called the Louisiana Purchase, that upon hearing their intentions, we should have not allowed them to continue on their journey, and sent them back with a declaration of our sovereign claim to the land we occupied, and our sovereign right to protect our borders from any and all foreign armies or citizens and declare our sovereign right to make treaties with any other sovereign nation despite European laws of discovery! And that we would subject all foreign citizens within our borders to our laws and associated penalties, except that foreign dignitaries with diplomatic credentials would be accorded diplomatic immunity, but may be deported at anytime. If found within our borders after being deported, they would be subject to our laws. And that any other United States military officers and/or men found within our territory without our express consent would constitute an act of aggression by the United States, and such men captured would be treated as prisoners of war, subject to interrogation.

If America denied that such men were acting under express orders of its Commander in Chief, then said men would be treated as terrorists or spies, and depending on the tribal nation whose territory they were found within would be subject to various penalties of that nation, which could include, but are not limited to, immediate execution by hanging if found in the Dakota territory; by a firing squad if found in the Hunkpapa Lakota territory; bayoneted in the back if found in Oglala Lakota territory; held indefinitely without trial if found in the Apache territory; or if found in the Arikara territory, they would be infested with small pox.

We should have sent a message advising all other Indian nations about the white man’s intentions and requested that all Indian nations agree to establish designated ports of entry and trade.

We should have set aside our tribal differences and united to protect our territory. Now, knowing our past, we should unite, assert our sovereign rights or continue to forever be treated as children or wards of the United States government.

Peter Coyote: Ever since the diplomatic debacle with Lewis and Clark at the Bad River, the Lakota Sioux have had a tense relationship with the United States government. The Wounded Knee massacre in 1890 capped forty years of armed struggle, confining the Lakota to reservations. Then in 1973, Wounded Knee was the site of a standoff between native Americans and federal law enforcement officials. During the seventy-one day confrontation, two native Americans were killed and it finally ended in a shootout.

[Sound from television report: “...two people have been hit...” (fades)]

Tensions remained high and in 1975, two FBI agents in an unmarked car were shot and killed on the reservation. After acquittals of the first three native defendants on grounds of self-defense, the government re-opened its case against American Indian Movement leader Leonard Peltier who was convicted of the killings, though some felt wrongly. His ongoing incarceration, which has remained disputed more than 28 years, is at the center of a conflict between tribal members and the federal government.

Today, just a few miles from Wounded Knee, the federal and tribal governments are ensnarled in yet another controversy over 130,000 acres of the South Dakota Badlands known as the South Unit. Correspondent Curt Nickisch went out to tell the story.

Curt Nickisch: There’s a strong wind at my back as I walk across this dry plateau to where it drops off suddenly. I follow a thin slice of land that has managed to hold its own against thousands of years of erosion, jutting out into the gnarled landscape of the Badlands. Perched at the very tip of Stronghold Table are two markers from competing nations. The United States Geological Survey has cemented a metal spike with elevation data. A few feet away, the Tokala Warrior Society has adorned buffalo skulls with ties of tobacco.

George Tall: By ceremony, you know, they said through spirit, they will help you protect these lands. We made a ceremonial bowl into the ground, and that's where we feed the spirits, through there.

Curt Nickisch: That's George Tall at my side. To stake a claim to this tribal land, Tall and a few other Oglala Sioux started an encampment here in the summer of 2001. Since then, they've forced hikers to leave the area. They've also stood in the way of Park Service scientists looking for fossils. Tall tells me his Tokala group is in the right, because this national park land lies within the Pine Ridge Indian Reservation. As far as I'm concerned, it's a classic case of overlapping sovereignty, not so different from Lewis and Clark's confrontation with the Teton Sioux in 1804.

George Tall: If we don't put our foot down, it's going to continue on and on until they take all our lands.

Curt Nickisch: At the time of contact with Lewis and Clark, the Sioux roamed much of the northern Great Plains. White settlement forced them on to ever-shrinking reservations. Now the Pine Ridge Reservation is housed on just two million acres. The tribe is still clinging to its claim to much of the lost land, especially the nearby Black Hills, which I can see looking west from this promontory. The Oglala Sioux—some of the poorest people in the United States—have even refused more than a half billion dollars offered as financial restitution to keep their claim to the land.

The South Unit of the Badlands has become the front line in the tribe's effort to take back its territory. The fact that the park unit is on reservation land is one of the few facts undisputed by all parties. Here tribal and United States government sovereignties collide. Since 1976, the National Park Service has managed the rich natural resources here. Park superintendent Bill Supernaugh is taking the Tokala actions seriously. He has scaled back Park Service operations to only the bare minimum, he tells me, like putting out wildfires.

Bill Supernaugh: We're trying to carry out our stewardship responsibilities as we understand them—they're given to us by Congress and the American people—and yet not create an environment that could lead to something like a Wounded Knee Three.

Curt Nickisch: Instead of a standoff, Park Service and tribal representatives have faced each other across a table. The goal: to negotiate ways for the tribe to have more say in the management of the South Unit. Both sides tell me their first agreement has been a success.

Tony Wounded Head: Hey, welcome back! How are you guys doing? How was Wounded Knee?

Curt Nickisch: Ranger Tony Wounded Head greets tourists at the South Unit Visitor Center. When they come in, I watch many of them do a double take. Wounded Head's grey uniform and thin pony tail reveal that he's a tribal ranger, not a Park Service ranger. Under the new agreement, the Oglala Sioux have taken over interpretive duties here.

Tony Wounded Head: Look right over here. Lakota, Nakota and Dakota are the three dialects of the Siouan language. Okay?

Curt Nickisch: It strikes me that most of the questions tourists ask are not about the park. They want to know about the tribe. Later, Wounded Head tells me that's pretty much the case.

Tony Wounded Head: It looks a lot better that native Americans give the information on the history and culture, rather than someone that has no idea except for what they read in books.

Curt Nickisch: This experience has only whetted the tribe's appetite for more control over its traditional homelands.

Every morning, Cecilia Fire Thunder says a prayer in her native language before beginning her workday as Oglala Sioux tribal president. On this day, she speaks to me in English, my native tongue, to explain that one of her top priorities is giving the tribe a hand in managing the South Unit of the Badlands.

Cecilia Fire Thunder: It's still ours – it legally belongs to us. So what's really hard for us, is that we have to negotiate, to fight just to get back the 133,000 acres.

Curt Nickisch: As she explains more, it becomes clear to me that Fire Thunder sees the Badlands, with its ties to the past, as the way to the future. Her dream is to open a cultural center and natural history museum stocked with South Unit fossils to attract tourists. She also dreams of bringing back the buffalo. She wants to drive economic development, giving the tribe a modern livelihood from its ties to the land. And that's only the beginning.

Cecilia Fire Thunder: The ultimate goal is to get the Black Hills back.

Curt Nickisch: I can tell you that's an ambitious goal. Still, it's a vision the Oglala Sioux have had since they were driven from their homeland in the 1800's.

Bill Supernaugh: This is, I think, one of the most spectacular viewpoints in the park.

Curt Nickisch: Badlands superintendent Bill Supernaugh is standing at the edge of one vein of the South Unit. I have to agree with him, it is stunning to look out across this labyrinthine landscape. My eyes even start to hurt trying to sort out the formations.

As Supernaugh makes sense of the view, he says negotiating more tribal control over the national park is a slow and frustrating process.

Bill Supernaugh: And the Park Service doesn't believe we have a lot of latitude in allowing some of the activities to be transferred to the tribe.

Curt Nickisch: Supernaugh tells me he's still trying to figure out what everybody wants.

Bill Supernaugh: I don't think we're all using the same compass to decide which direction forward is.

Curt Nickisch: Across the eroding landscape, back at Stronghold Table, George Tall's compass points to the future.

George Tall: Fifty years from now, we want our children to know that this is their land. And this is where they're going to prosper, and this is where a new beginning is going to come.

Curt Nickisch: As I go back to my car, I think about how the gap between these two sovereign governments seems as wide and formidable to navigate as the Badlands. Still, to see the Sioux asserting their right to the land, and to see the National Park Service try in good faith to accommodate tribal wishes – it does leave me with a little hope: that these two disparate nations will find a way to govern this uncommon ground and eventually cultivate a common future. In the Badlands, I'm Curt Nickisch.

N. Scott Momaday: December 29, 1890. Wounded Knee Creek.

Peter Coyote: Pulitzer prize-winning author N. Scott Momaday.

N. Scott Momaday: In the shine of photographs are the slain,
frozen and black on a simple field of snow.

They image ceremony.

Women and children dancing,
old men prancing, making fun.

In autumn there were songs,
long since muted in the blizzard.

In summer, the wild buckwheat
shone like foxfur and quillwork.

And dust guttered on the creek.

Now in serene attitudes of dance,
the dead in glossy death are drawn
in ancient light.

Peter Coyote: Coming up next, indigenous people in North America are still working out sovereignty issues.

Stephen Dow Beckham: Right now, north of the 49th parallel in the province of British Columbia, there are more than 30 treaty protocols or negotiations ongoing, so the Canadian government is now, in the twenty-first century, resolving matters of sovereignty and rights of tribes.

Peter Coyote: We'll find out how the united states measures up after this break. I'm Peter Coyote and you're listening to "Unfinished Journey: The Lewis and Clark Expedition" on PRI.

*[Program Break: Aaron Meyer/Bill Lamb-Unfinished Journey: The Lewis and Clark Expedition
Soundtrack (Sacagawea)]*

Peter Coyote: Sovereignty disputes between federal and state governments and Indian tribes are far from over. And today, with the bicentennial commemoration of the Lewis and Clark Expedition, American Indians want to remind us that they are still here, that the sovereignty debate is very much alive. Clay, it seems that not everyone agrees on the basic set of issues. Some cultural spokespeople believe that the past is the past and that we all need to stop fretting about these issues.

Clay Jenkinson: Peter, it really depends on who you talk to. But there are plenty of Americans who argue that the 19th century is long in the past, that the Indian wars are over, that it's time for all of us to move on in harmony and that this sort of discussion is really counterproductive. Maybe the greatest expression of this point of view came from the twenty-sixth President, Theodore Roosevelt. He wrote a four-volume study called "The Winning of the West"—the West then meaning the Ohio Valley—and he was entirely unapologetic about the Indian wars.

Theodore Roosevelt: The most ultimately righteous of all wars is a war with savages, though it is apt to be also the most terrible and inhuman. The rude, fierce settler who drove the savage from the land lays all civilized mankind under a debt to him. American and Indian, Boer and Zulu, Cossack and Tartar, New Zealander and Maori—in each

case the victor, horrible though many of his deeds are, has laid deep the foundations for the future greatness of a mighty people. It is of incalculable importance that America, Australia, and Siberia should pass out of the hands of their red, black, and yellow aboriginal owners, and become the heritage of the dominant world races.

Peter Coyote: President Theodore Roosevelt from “The Winning of the West”, a four-volume work completed in 1896. Clay, what do others say about that subject?

Clay Jenkinson: First of all, let me say that we do not have to agree with Theodore Roosevelt. Some people say that the legal path that Lewis and Clark paved in 1804 is one that we are still walking along today, although perhaps not with sovereignty tokens, that a great number of practical issues still need to be worked out. Stephen Beckham, professor of history at Lewis & Clark College, has spent years documenting evidence on behalf of tribes seeking federal recognition.

Stephen Dow Beckham: Some of the relationships entered into between the United States government and the Indian tribes are a matter of federal law and most specifically treaty relationships. And those treaty relationships honor property, and property is guaranteed as a right under the American Constitution. Consequently, the right to hunt, to fish, to gather, to have land resources, is something that is inherent within the American system, and to deny that to native peoples is an abrogation of responsibility and a threat to the rights and privileges of all Americans. Therefore, one of the legacies that comes in the wake or footsteps of Lewis and Clark is the legal obligations of the United States. Now, running counter to that are the unratified treaties or the tribes with no treaties. What does the historian do, and what does the advocate do? You are compelled simply to say, “Those are interesting historical documents. They have no legal bearing today.”

The United States terminated all treaty proceedings with Indian tribes in 1871. Right now, north of the 49th parallel in the province of British Columbia, there are more than 30 treaty protocols or negotiations ongoing. So the Canadian government is now, in the 21st century, resolving matters of sovereignty and rights of tribes.

Peter Coyote: Canada isn’t the only country in the world that’s still negotiating with indigenous peoples about their sovereign rights. These seem to be some of the most significant conversations about human rights underway around the world right now.

Clay Jenkinson: That’s absolutely correct. There is a spirited international debate going on about indigenous cultures and human rights. Gerald Torres offers one view of how these sovereignty talks could alter fundamental relationships between governments and native peoples.

Gerald Torres: Indian law is the gateway through which human rights law is going to enter domestic adjudication, and that’s a gift that the tribes can give to us, that if we go back and take seriously the way in which we need to deal with tribes as nations, even nations that are part of our nation, what they say to us is that we are part of a world of nations and as that world of nations becomes more entwined, what’s going to bind us together is a commitment to human rights.

Peter Coyote: Clay, how long did it take for white people to recognize that the once-thriving nations Lewis and Clark passed through were altered forever by the United States’ territorial agenda?

Clay Jenkinson: Well, to a certain extent even Lewis and Clark realized that they were meandering through what might be called an “altered landscape.” Smallpox and other diseases had already reached the Upper Missouri, as well as guns and horses and European goods. It’s important to remember that Lewis and Clark probably would

not have acknowledged that the tribes they encountered had ever thrived. The men of the Enlightenment were not cultural relativists. Lewis and Clark believed that they were the harbingers of a much brighter future for American Indians. They could not quite see that a long tragic curtain was about to be lowered over the indigenous world of the American West. We see loss and devastation. Lewis and Clark saw hope and assimilation.

Peter Coyote: Earlier we asked you to identify the foreign philosopher who observed the state of tribes a generation after Lewis and Clark. And the answer is French writer Alexis de Tocqueville, who was born on July 29th of 1805, only a few days after Lewis and Clark reached the Three Forks of the Missouri River. In 1832, just six years after the death of Thomas Jefferson, de Tocqueville wrote passionately about the dispossession of Indian people.

[Begins in French]

Alexis de Tocqueville: At the end of the year 1831, whilst I was on the left bank of the Mississippi at a place named by Europeans Memphis, there arrived a numerous band of Choctaws. These savages had left their country, and were endeavoring to gain the right bank of the Mississippi, where they hoped to find an asylum which had been promised them by the American government. It was then the middle of winter, and the cold was unusually severe; the snow had frozen hard upon the ground, and the river was drifting huge masses of ice. The Indians had their families with them; and they brought in their train the wounded and sick, with children newly born, and old men upon the verge of death...[A]nd never will that solemn spectacle fade from my remembrance. No cry, no sob was heard amongst the assembled crowd; all were silent....

I believe that the Indian nations of North America are doomed to perish, and that whenever the Europeans shall be established on the shores of the Pacific Ocean, that race of men will be no more.

Peter Coyote: Meriwether Lewis died in 1809 before the great dispossession started. Clark lived until the time of Tocqueville. What was Clark's response to the devastations that followed in the wake of the Corps of Discovery?

Clay Jenkinson: Among other things, Clark became an Indian agent and he negotiated treaties with American Indian tribes in the decades following the expedition's return. In 1826, Clark wrote a remarkable letter tracing the evolution he had seen in the circumstances of Indian people within his own lifetime.

The events of the last two or three wars having entirely changed our position with regard to the Indians... While strong and hostile it was our policy and duty to weaken them; now that they are weak and harmless, and most of their lands fallen into our hands, justice and humanity require us to cherish and befriend them.

William Clark

Peter Coyote: Indians have their own views on Lewis and Clark, and they have ambitious plans for the future. Roberta Conner, Gerard Baker, and Robert Miller offer their views of today's sovereignty flashpoints.

Roberta Conner: I would say the flash points for us are cultural resources issues. Our tribe is one of the tribes involved in the litigation over the reburial of the man they call the "Kennewick Man," the Ancient One. The Columbia River spills for water on the dams is a flash point for us in sovereignty. The health and well-being of our people. It means we have to take care of all of the sacred foods in all of the places where we have usually gathered them over thousands of years in order to take care of the people.

Gerard Baker: And of course, the big one is being recognized by the government, that's the big issue now and I think it has been for a long time. But that's touched off some very strong feelings among tribes and especially those tribes that are hanging on by a sliver to their cultures, either to the east or the west.

Robert Miller: Economic development and resource issues are very important to Indian country. Tribes and Indian people are by far the poorest ethnic group in the United States. Poverty and then poverty problems, the social problems that come from those issues are endemic in Indian country. Water is an extremely important issue, what amount of water do tribes own, what can they do with it, who else can take it from them. In Indian life, culture and religion are really the same thing, it's just part of every day life. Most tribes are very interested in preserving their religious sites, their sacred sites, their ceremonies and their practices and they want to be able to perpetuate these practices into the future.

Peter Coyote: Roberta Conner says the important thing to remember as we think about today's sovereignty issues is that tribes like hers have survived, and are still fighting for their legal rights.

Roberta Conner: And I realize—and I'm reminded often—that we've never given up. I think we're like the salmon. There is no option but to continue to struggle to make things right to get where we need to be. Giving up has never been an option.

Peter Coyote: So what does the future hold? Our principal scholar, Clay Jenkinson, offers this reflection on Lewis and Clark and sovereignty issues.

Clay Jenkinson: Nobody could ever say that Lewis and Clark did not know what they were doing, but it is equally clear that they did not know what was coming in their wake. Although they never made any reference in their voluminous writings to the long-term impact of their arrival on the Upper Missouri, they must have known that they were engaged in what the anthropologist Allen Morehead has called "that fateful moment when a social capsule is broken open."

Lewis and Clark were the advance agents of a wave of human migration and technological revolution that would remake the North American continent in the hundred years that followed their return to St. Louis. In their wake, Lewis and Clark envisioned fur traders, secular missionaries, and eventually, family farmers. As they looked down the barrel of their single-shot, muzzle-loaded rifles, Lewis and Clark could not foresee a time when condors and grizzly bears and the salmon would become endangered. Or when the buffalo would be reduced to a handful of pitiful remnants of the millions that once grazed the Great Plains. They could not envision giant dams on the Missouri, the Snake and the Columbia. They certainly could not see Mahlstrom or Ellsworth Air Force bases or the Hanford nuclear facility.

There is a certain innocence in the low tech meanderings of Lewis and Clark. The continent was immense and the frail little thread of discovery that they stretched from St. Louis to the Pacific had little immediate impact on the peoples, the animals and the landscapes of the West. For the most part, the Indians Lewis and Clark met listened politely to the expedition's sovereignty speech, took President Jefferson's advice and warnings under advisement and then went back to the lifeways that had sustained them for decades. The Indians of the American West believed that Lewis and Clark were transients. The Indians were technically right, but they tragically misunderstood the future that Lewis and Clark imperfectly represented. From our perspective at the end of two of the most hectic and aggressive centuries of human history, we cannot see Lewis and Clark except through the lens of the Sand Creek massacre, the battle of the Little Big Horn, the assassination of Crazy Horse, or Chief Joseph's epic odyssey across Montana and Wyoming, and finally, of course, Wounded Knee—not to mention hepatitis, fetal alcohol syndrome and grinding poverty.

The Lakota writer Elizabeth Cook Lynne has said that the damming of the Missouri River severed once and for all the sole artery of her people. Surely the same argument would be made of the damming of the Columbia and the Snake and other waters. Nobody who has ever looked at the evidence honestly has failed to acknowledge that the white world's assault on the American Indian in the 19th and 20th centuries constitutes one of the most horrific outrages in the history of the modern world. It would be easy to load William Clark and Meriwether Lewis with the burden of the tragedy that followed their coming. There is no doubt that they were willing agents of America's imperial agenda. And at no point did they suggest that Indian cultures were anything but inferior to their own. They were men of their time, acting on orders from President Jefferson, a man whose general cast of mind is synonymous with enlightenment. To appreciate them, we have to try to view them from their own culture's point of view. To understand them, we must also struggle to make sense of them from our culture's point of view. And to avoid nonsense, we must know the difference.

If President Jefferson could be brought back to us, what would amaze him most, I think, is that Indians still exist as aboriginal peoples with tribal affiliations, reservations and homelands, and some semblance of an intact culture. It is as hopeful as it is troubling to realize that the story is not over. In fact, one of its most interesting chapters is just now unfolding. Indians are still here. There is a great deal of Indian self-help across the American landscape. Thanks in part to the casinos, there is money in Indian America, and it is beginning to change the face of the reservations.

Indians are not asking anything particular from white people, except perhaps not to get in the way. If this process continues, in the long run, American citizens should expect to provide financial compensation to displaced and disturbed tribes, and to approve of land restorations, the rewriting of our history texts and a future that involves a dual, not a subordinate, sovereignty for Indian nations.

Perhaps the future begins with a simple sincere formal national apology. And that's when the hard work begins. By any reasonable standard in this vast unfolding story, Lewis and Clark played only bit parts. For the Unfinished Journey, I'm Clay Jenkinson.

Peter Coyote: I'm Peter Coyote. This program was produced by Lewis & Clark College and Oregon Public Broadcasting. The producer is Eve Epstein, audio engineer Steven Kray, associate producer Sherry Manning. Original music composed and conducted by Aaron Meyer and Bill Lamb. The executive producers are Clay Jenkinson and Morgan Holm. Major funding provided by the National Endowment for the Humanities. Additional funding was provided by the National Park Service and the Jonsson Family Foundation. Support for this program also comes from this station and Public Radio International stations and is made possible in part by the PRI program fund whose contributors include the Ford Foundation and the John D. and Catherine T. MacArthur Foundation. To learn more about this series visit opb.org and click on the Guide to Lewis and Clark.