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FACING THE PAST FOR ACTION IN THE FUTURE: CULTURAL SURVIVAL IN NATIVE AMERICA

KELLY McHUGH

This article attempts to generate awareness regarding the challenges that Native Nations in the United States face in protecting their cultural heritage. Cultural sites are vulnerable due to both man-made issues such as resource extraction, tourism, development, as well as natural disasters and forces of nature. Statutory obligations contained in federal law have not offered full protection due to a lack of true consultation and consent with tribes. Cultural institutions charged with the stewardship of Native American cultural patrimony should make consultation, collaboration, and consensus a priority, as collections are linked to the people and places from which they originate. While Native organizations are working to facilitate connection and raise awareness of these preservation and protection efforts, the conservation community has an obligation to do its part to ensure that the same effort generated globally and domestically is applied to the protection of Native American cultural heritage.

KEYWORDS: Consultation, Collaboration, Cultural heritage, Human rights, Sacred site, Cultural patrimony

1. CURRENT CLIMATE OF CULTURAL HERITAGE PROTECTION FOR NATIVE NATIONS

The devastation of both natural and man-made disasters in places like Iraq, Afghanistan, Haiti, Japan, Syria, and New Orleans mobilized the cultural heritage preservation community worldwide and generated international support. Media outlets provided a zoom lens for these tragedies, keeping them in the forefront of our minds. Organizations like UNESCO, the US State Department Cultural Heritage Center, the Smithsonian Institution, and the American Institute for Conservation are dedicated to protecting and preserving the world's cultural heritage and have been critical in protection, recovery, and preservation efforts. However, these preservation efforts have not been applied with same level of attention to cultural heritage vulnerabilities for Native Nations in the United States.

War, terrorism, and cultural disaster have affected Native people in our nation for over 500 years. Buildings are crumbling in our own backyard, sacred sites are compromised, and Native communities are struggling but determined to protect, recover, and preserve their cultural record. Native people feel a sense of urgency at the prospect of losing their cultural material or sacred sites. Organizations such as the Institute of Museum and Library Services (IMLS), the National Endowment for Humanities (NEH), and the National Trust for Historic Preservation support community preservation initiatives, but perhaps the greatest mobilization is happening within Native America itself through organizations like the Association for Tribal Archives, Libraries, and Museums (ATALM) (<http://www.atalm.org>) and the National Congress of American Indians (NCAI) (<http://www.ncai.org>).

This article aims to generate awareness and to challenge us as a profession to think about our current and future actions. Understanding the past and the social, historical and legal circumstances that have contributed to a serious lack of protection for Native American cultural sites, and for an imbalanced authority in the stewardship of cultural patrimony held in Museums, provides a foundation for creating a different future for cultural heritage preservation in Native America. A future that works with Native nations to develop policies, and utilizes collective knowledge for the benefit of these communities and what they value.

1.1 A MODEL OF CULTURAL LOSS: DAMMING THE LITTLE TENNESSEE RIVER

The Tennessee Valley Authority (TVA) is a federally owned corporation that was created in 1933 by a Congressional charter. The purpose of the TVA is to provide flood control, electricity generation, and economic development in the Tennessee Valley. This region of the country was particularly hard hit during the Great Depression, thus motivating the federal government to create an organization that could modernize the region's economy and society.

The project to find possible dam sites along the Little Tennessee River began in 1936. Sixty-nine locations were considered when the TVA settled on the Tellico Valley as the site in 1968. Tellico was slated to be a multipurpose project that would generate sufficient electric current to provide power to 20,000 homes, additionally serving as a flat-water recreation and flood control area. The economic motivation was to generate jobs and stimulate revenue for the region.

There were immediate attempts to block the project on the basis that it did not conform to the National Environmental Policy Act. This resulted in an injunction that remained until 1973, when the US District Court ruled in favor of the TVA, ruling it was in compliance (*Environmental Defense Fund, Inc. v. Tennessee Valley Authority* 1972).

A University of Tennessee scientist found a previously unknown species called the snail darter fish (*Percina tanasi*) in the waters of the Little Tennessee. Four months after its discovery, Congress passed the Endangered Species Act of 1973. Citizens appealed to the US Department of Interior in 1975 to list the snail darter as an endangered species, and the fish was added to the endangered species list on October 8, 1975 on the basis that it is genetically distinct and reproductively isolated. The existence of the dam would result in total destruction of the snail darter habitat.

The following two years saw a battle played out in the courts through a series of injunctions and appeals, environmental vs. economic. The case finally made its way to the Supreme Court in 1978, where justices upheld the injunction based on the designation of the snail darter as endangered. After the Supreme Court halted construction of the TVA's Tellico Dam under the Endangered Species Act in 1978, Tennessee Senator Howard Baker and Representative John Duncan quietly attached an appropriations rider overruling the Endangered Species Act and other laws preventing construction of the dam. President Jimmy Carter failed to veto the override and the Tellico Dam project was fully funded. This maneuver by the Congress bypassed the Supreme Court ruling to complete the project without a legislative hearing (Echo-Hawk 2013).

This legislation not only affected the survival of the snail darter fish; it had a tremendous impact on the farmers in the valley. They were forced to abandon their farms, some which had remained in families for generations. Some residents sold willingly while others were forced to go. The tensions of displacement remain palpable in the region and the controversy, as it is presently understood, relates mainly to the destruction of the farms and the snail darter's habitat. In 1979 the Little Tennessee River was impounded and Tellico Lake was born. Today, the remnants of the farms that once existed are only evidenced by grain silos extending out of the water (fig. 1) The beautiful custom-built homes and championship golf courses that hug the shoreline allow the residents of the development, known as Tellico Village, to enjoy themselves on the lake while boating, fishing, kayaking, or paddle-boarding.

Not as widely known is that by damming the Little Tennessee River, two Cherokee sacred capitals, known as Chota and Tenasi, would be flooded and destroyed. Tenasi and Chota were capitals of the Cherokee Nation as early as the 18th century. In the late 1700s, the capital moved from Tenasi to Great Tellico and then to Chota, which was partially destroyed in the Revolutionary War and never fully recovered (Trope 1995) (fig. 2). The former Chota and Tenasi sites are listed together on the National Register of Historic Places and were given archaeological site designation in 1972.



Fig. 1. Image of grain silos from a farm partially submerged by the Tellico Lake impoundment (Courtesy of <http://bigdaddydavesbitsandpieces.blogspot.com/>)

The Cherokee Nation mounted its own campaign to stop the damming of the river, filing a lawsuit in 1979 under the Indian Religious Freedom Act, claiming the land along the Little Tennessee River is a vital part of Cherokee religious practices (Benally and Goodman 2005). The case was dismissed and the appeals court affirmed the decision to allow construction of the dam. Since 1979 Chota and Tenasi have been mostly submerged by the Tellico Lake impoundment.



Fig. 2. Proposed rendering of Chota in the 18th century (Courtesy of Richard Thorton, <http://www.examiner.com/article/chota-the-cherokee-town-of-refuge-under-a-tennessee-lake>)



Fig. 3. Monument at Chota site (Courtesy of [https://en.wikipedia.org/wiki/Chota_\(Cherokee_town\)](https://en.wikipedia.org/wiki/Chota_(Cherokee_town)))

To address Cherokee concerns, the TVA funded an archaeological initiative run by the University of Tennessee, which worked to identify significant sites and in some cases move important historic structures. The TVA built the Cherokee memorial at the Tanasi-Chota site and helped establish the Sequoyah Birthplace museum in Vonore (fig. 3). The grave of the chief Oconostota, which was uncovered in the 1969 excavations, was re-interred next to the monument. The Eastern Band of the Cherokee now manages the site.

The social remedy to this destruction is important to note, as it is part of a repeated American phenomenon. The TVA set up a memorial to the sacred capitals and Tellico Village acknowledged the Cherokee by giving the neighborhoods and golf courses Cherokee names. The courses are named Tanasi, Toqua, and the Links at Kahite, which the golf course website states, “are derived from the Native American Indians that once inhabited this area” (<http://www.lakeside-realty.net/communities/tellico-village>). This implies that Native Americans no longer inhabit the area and that somehow they disappeared or left of their own accord. Historical events such as the Trail of Tears or more contemporary events such as the destruction of these important Cherokee sites are not mentioned or acknowledged in the story. The practice of memorializing people and places that we as a society are responsible for destroying or nearly destroying negates our responsibility and denies the existence of people who are in fact still here.

In 2005 a bill was introduced to Congress to return 76 acres to the Eastern Band of the Cherokee, thus ostensibly returning their homelands to their control. The bill stipulates, however, that gambling operations cannot be established on the land and any shoreline development is subject to TVA approval (<http://www.congress.gov/bill/114th-congress/house-bill/3599>). This mandated oversight ultimately undermines Cherokee authority and control.

1.2 EMBEDDED SOCIAL AND POLITICAL PRACTICE

The example of the Tennessee Valley Authority’s relationship with and impact on the Eastern Band of the Cherokee represents a scenario that is repeated throughout US history and continues to the present day. These factors involve:



Fig. 4. Images of neighborhood signs in Tellico Village (Courtesy of <http://www.lakeside-realty.net/communities/tellico-village>)

- A deliberate decision to favor resource development, logging, mining, and tourism over the preservation of sacred Native sites. This is a man-made disaster on the part of the US government that is both calculated and intentional.
- A fundamental lack of legal protection of sacred spaces for Native Americans.
- Entanglements in complicated negotiations with federal and state governments, private landowners, and/or corporations as Native nations fight to gain or regain control over important cultural places or retain their cultural heritage.
- A frequent necessity for Native people to align themselves with environmental movements in order to seek protection.

1.3 MAN-MADE DISASTERS

Damming rivers throughout the United States has caused tremendous economic and cultural loss for tribes, and Tellico Lake is just one example. Land management or resource development policies often take precedence over cultural preservation or the religious beliefs of Native Americans, who are deeply affected by these development decisions. Below are a few examples.

1.3.1 Black Hills

After a long period of intense conflict between the US government and Plains Indian Nations, the faces of Presidents Washington, Jefferson, Lincoln, and Roosevelt were carved into the Lakota's sacred Black Hills, thus creating Mt. Rushmore. The insult of the presence of Rushmore to some Lakota is related to the fact that it was built on land taken from them by the government. The Black Hills in particular are considered sacred ground and the monument celebrates the appropriation of Lakota land and loss of life.

1.3.2 San Francisco Peaks

The San Francisco Peaks are sacred to many tribes in Arizona, including the Navajo, Hopi, White Mountain Apache, Havasupai, and Hualapai. These tribes are challenging the National Forest Service's plans to clear-cut 74 acres to use reclaimed wastewater to make snow for the Arizona Snowbowl ski area. The belief is that the use of reclaimed wastewater for snowmaking will desecrate the sacred mountain, by according to Yavapai-Apache Nation Councilman, "killing the spiritual force within it" (Benally and Goodman 2005). In August 2008, the Ninth Circuit Court of Appeals rejected their claim under the Religious Freedom Restoration Act.

1.3.3 Medicine Bluffs

Medicine Bluffs in the Wichita Mountains of southwest Oklahoma is a holy place for the Comanche, who averted a near-man-made disaster in 2008 in protecting the sacred site. The Comanche have assembled at this traditional site for prayers, to gather medicinal and religious plants, and engage in intensely private spiritual experiences tied to this natural setting since time immemorial (Benally and Goodman 2005). The southern slope is the pilgrimage route where plants are gathered for religious and healing purposes and where sweat lodges are built. Having an unobstructed view of the bluffs from the southern approach is central to the spiritual experience. This site was listed on the National Register of Historic Places in 1974. The US Army established Fort Sill in this location in 1869 and planned to build a 43,000-square-foot training facility in an open field at the base of the southern approach to Medicine Bluffs, which would have obstructed the view needed by Comanche religious practitioners.

The judge on the case, recognizing his need for better understanding, walked the site with Comanche religious leaders. The ruling went in favor of the Comanche and is seen as a major victory in the preservation of Native American sacred sites (Benally and Goodman 2005).

2. THE PSYCHOLOGY OF FACING HISTORY

As conservators, we can be hyper-focused on objects or the materials used to construct them. We often believe our responsibility does not extend beyond our laboratories or museum walls. How or why would the preservation of these large geographic areas be our concern? They reside in the realm of other institutional organizations such as the US Forest Service, the National Park Service, or state governments. The answer lies in the fact that these sacred geographic sites fall into the same category as the beaded baby carrier, ceramic vessel, or feathered fan we see in our conservation labs. Cultural heritage is all-encompassing and interconnected, and the unifying element is the people to whom this cultural heritage belongs. Native people have a right to guide the stewardship of their cultural property. Distilled down to the essence, it is about human rights and cultural authority.

Why is so little known about the cultural struggle facing Native nations? There is a larger social narrative at play that is essential to understanding this, and we as caretakers of our nation's cultural heritage need to understand it as well. Walter Echo-Hawk, a prominent Native American rights lawyer and author of *In the Light of Justice: The Rise of Human Rights in Native America and the UN Declaration of the Rights of Indigenous Peoples* believes that for this understanding, we have to start at the beginning. America, the great democratic experiment, has human rights principles embedded in its founding documents, the Declaration of Independence and the US Constitution, which offer the greatest level of freedom in western civilization (Echo-Hawk 2013).

Echo-Hawk argues that this legacy has created an inflated self-image called American exceptionalism, which sees the American people as the most exceptional people on earth. This view is impossible to maintain when injustices against Native Americans have not been adequately addressed. Acknowledging these injustices mars the great American origin story, which focuses on a nation founded on the consent of the governed (Echo-Hawk 2013). Further, Echo-Hawk states that “we are overcome by anxiety and discomfort at the thought of making amends for collective wrongs committed against Indians, because that is how our nation was built. So facing our history calls our legitimacy into question.” (Echo-Hawk 2013, 20) Until we are honest about the past, we cannot move forward. He sees two barriers:

1. This legacy challenges our self-image, core values, and origin myth, and we cannot face this without being overcome by paralyzing guilt.
2. Our legal system is capable of providing justice for wrongs against individual victims, but stops short of reparative justice for collective wrongs committed against groups of people, particularly when the offender is the United States of America (Echo-Hawk 2013).

3. FEDERAL LAW

Below is a summary of the major pieces of legislation that are often evoked in cases of cultural heritage protection. It is by no means a complete list and serves to simply articulate the possibilities and limitations of these pieces of legislation.

The **National Historic Preservation Act** of 1966 protects districts, sites, buildings and structures, and objects of significance in American history. The act measures the impact of all federally

funded projects on historic properties. The most recent amendment, passed in 1992, increased protection for Native American and Native Hawaiian preservation efforts.

A limitation to this legislation is that to be considered for regulatory provisions, a site be registered on the National Register of Historic Places. The Department of the Interior is the agency that makes the determination as to what gets on the registry, and it has not always acted in the interest of Native America.

The **Religious Liberty Protection Act** of 2000 is rooted in prior legislation. The government outlawed traditional Indian religions in the 19th and 20th centuries as part of control and assimilation practices. Throughout the country, the government supported direct and indirect Christian missionaries who sought to convert and “civilize the Indians” (Trope 1995).

During the reservation era, traditional Native American religions were outlawed. Suzanne Harjo, a prominent Native American rights lawyer and activist, explains that people could not leave the reservation and travel to sacred places. Therefore, the government argued that the sacred sites were not being used and took it as permission to develop them (verbal communication 2016).

In 1934, the government recognized the right of free worship on Indian reservations but denied access to sacred places to practice religion. Sites outside of reservations on federal land were not protected against development.

The **American Indian Religious Freedom Act** passed in 1978 granted access to sites and freedom to worship through ceremonies and traditional rites.

An important Supreme Court ruling in 1988 known as the *Lying v. Northwest Indian Cemetery Protection Association* set an unfortunate precedent for future cases based on the claim of religious freedom. Members of the Yurok, Tolowa, and Karok tribes unsuccessfully attempted to use the First Amendment to prevent a road from being built by the US Forest Service through sacred land. The land that the road disrupted consisted of gathering sites for natural resources used in ceremonies and prayer. The Supreme Court ruled that this was not an adequate legal burden because the government was not coercing or punishing them for their religious beliefs. The effect of the Lying decision established that the American Indian Religious Freedom Act is not available as an alternative mechanism for judicial protection of sacred sites (Echo-Hawk 2013).

On June 25, 1997, in a 6-3 decision, the Supreme Court ruled in *Boerne v. Flores* (No. 95-2074) that Congress’s enactment of the Religious Freedom Restoration Act exceeded its power under Section 5 of the Fourteenth Amendment and found the act unconstitutional. This brings us back to the Religious Liberty Protection Act, which is now often used by Native Nations in fighting for protection of sacred sites.

The **Native American Graves Protection and Repatriation Act** (NAGPRA) of 1990 states that if a burial site is found on federal land, tribes have the opportunity to intervene. Tribes or descendants will have ownership over human remains and associated cultural objects discovered or excavated on federal or tribal lands. However, NAGPRA does not empower tribes to absolutely bar disturbances of sites, which is a significant limitation, particularly where a site is considered to be an obstacle to development.

4. NATURAL DISASTERS

Climate change and development have exacerbated the effects of natural disasters on Native communities. Nowhere is this more evident than in the Arctic region. Melting ice is causing elevated sea levels and melting permafrost, threatening Native villages along the coast. President Obama, the first president to visit an Alaska Native village, established the White House Arctic Advisory council and budgeted \$400 million to cover unique circumstances confronting vulnerable coastal communities. This



Fig. 5. Isle de Jean Charles, Louisiana (Courtesy of www.isledejeancharles.com)

includes relocation expenses for Alaska Native villages. This is part of a proposed \$2 billion coastal climate resilience program, which remains to be passed by Congress (Mooney 2016).

Kivaline, Alaska serves as a powerful example of vulnerability, as the island is quickly becoming consumed by rising sea levels. The archaeological site of Walakpa, 12 miles south of Barrow, Alaska, is suffering from melting permafrost which is revealing objects and structures of well-preserved organic materials such as wood. A salvage archaeology project has been underway since early 2000 and serves as a good example of partnership between archaeologists and the people of North Slope Borough.

This crisis is also affecting a community in southwest Louisiana. The band of the Biloxi Chitimacha Choctaw tribe of Isle de Jean Charles has inhabited their barrier island since escaping from the Trail of Tears in 1830. They have lost 95% of their land mass to water as a result of pipeline development cutting channels through the wetlands and rising water due to climate change (fig. 5). The tribe is the first to receive a \$48 million grant from the US Department of Housing and Urban Development for resettlement. The members of the tribe, considered climate refugees, are trying to raise an additional \$50 million to fully fund the resettlement project. Many are looking to this project as a pilot for resettlement by other communities in the future.

5. AWARENESS INTO ACTION

The purpose of this article is to generate awareness regarding the cultural struggles affecting Native nations in the United States. Native history is American history and the same value, advocacy, and resources generated domestically and internationally should be applied to its preservation. But how do we turn this awareness into action? Echo-Hawk is urging Native nations to utilize the United Nations Declaration on Indigenous Rights as the legal framework in which to pursue cultural authority. The

Declaration was passed in 2007, the United States signed it in 2010 during the Obama administration, and Canada signed as a full supporter in May 2016. There is little doubt that the cultural heritage community will see this implemented by both countries more extensively in the future.

5.1 COLLABORATION AT NMAI

While action to preserve or protect cultural heritage through legal or large agency measures may be slow or daunting, there is something we as conservators can do to move equitable preservation efforts forward. This comes in the form of collaborative conservation practice. There has been a movement in conservation toward partnership and collaboration in some museums throughout the country. At the National Museum of the American Indian (NMAIC) Conservation Department, we are committed to and constantly evolving our collaborative conservation methodology (figs. 6, 7). With good intentions and patient partners and nearly two decades of experience, our collaborative stewardship practices have progressed. While we have not have achieved true and equal collaboration, we are moving closer to that model.

The collaborative conservation model allows for incorporation of different knowledge systems that converge to improve or correct misidentified or misinformed collection records, to inform proper handling, conservation, storage and display, and to provide access to collections, which can result in a number of outcomes that benefit source communities. It is not our duty alone to determine what is needed or gained by collaboration; this negates the idea of partnership. Engaging Native communities to assess and determine what is needed to increase cultural equity is essential.



Fig. 6. Mike Marshall and Steve Tamayo (Lakota) examine a child's elk tooth dress with previous Mellon Fellow Angela Duckwald (Courtesy of Kelly McHugh)



Fig. 7. Susan Heald, NMAI textile conservator, Deb McConnell (Hupa), Bob McConnell (Yurok), and Brianna Fraley (Tolowa) discuss basketry (Courtesy of Luba Nurse)

5.2 NATIVE ORGANIZATIONS

NAGPRA created a point of intersection between Native nations and museums and it can be said that the law inspired a cultural infrastructure that did not previously exist in tribal communities. There are now tribal historic preservation and cultural offices, museum studies programs are being taught in tribal colleges, and there has been tremendous growth in the number of tribal museums and cultural centers. This blossoming gave rise to the ATALM, which has grown exponentially over the years. A cultural infrastructure now exists in many Native nations with which to form partnerships.

5.3 FORMING PARTNERSHIPS

The School of Advanced Research (SAR) in Santa Fe, New Mexico has funded an initiative spearheaded by Conservator Landis Smith; Dr. Cynthia Chavez Lamar, Assistant Director for Collections at NMAI; and Brian Vallo, Indian Arts Research Center Director at SAR, which comprises a group of Native and non-Native museum professionals tasked to create a set of guidelines for collaborative collections care. The idea is that in order to have true collaboration, both parties need to come to the table with the same information. There is a set of guidelines for communities available on SAR's website (<http://sarweb.org/guidelinesforcollaboration/>) and another set for museums to be released in the near future. This not a "how to" on collaborating, but rather a resource to provide a structural framework to create informed and equal partners.

It is important for us to search for other models of collaboration. The NCAI has meeting each year at which tribal leaders throughout the United States gather to express their greatest concerns to the US government. Some of these concerns include international repatriation, the sale of sacred items at art

auctions abroad, violence against women, illegal adoption of Native children, and climate change, among others. We in the cultural heritage community need to understand that we fit into this larger framework.

The Departments of Interior, Agriculture, Justice, and Defense have created an interagency Memorandum of Understanding to coordinate their efforts on the protection of Indian sacred sites (www.achp.gov/docs/SacredSites-MOU_121205.pdf). The Forest Service is now implementing forward-thinking practices regarding collaborative stewardship relating to access and use of lands and plants. They are forming significant partnerships with Native communities and are moving forward. Perhaps most importantly, these agencies are coordinating themselves, listening and translating what they are hearing into action.

Museums should not operate as silos. We have the opportunity to network ourselves, to listen and respond to the cultural heritage concerns of Native people. One idea is for us to hold “listening sessions” at ATALM meetings to understand the needs and concerns of Native nations. Disaster models in places such as Haiti, Iraq, and Syria can serve as guides, although the model of working with Native America will look differently, as collaboration will be guided by the communities themselves as sovereign nations.

6. CONCLUSION

This is indeed a movement that is gaining momentum; a collaborative framework is under construction. We have a responsibility to First Nations people to face our history, to act, to advocate, and to collaborate. Collaboration, as Jim Enote, Director of the A’shiwi A’wan Museum and Cultural Center at Zuni Pueblo states, “is a higher order and involves reaching out and enlightening on equal terms, to decentralize power and leadership and share in problem solving. We will not oppose each other; rather, we will enable one another and allow the places, objects and people to speak.” (Enote, ATALM 2015) We have a tremendous opportunity to go forth with confidence that such a group of dedicated, responsible, conscientious, and resourceful members of the cultural heritage community can utilize our best skills and knowledge to benefit the members of our nation who were here first.

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