

MIKE LIVERMORE: Welcome to the Earth Day edition of "PLACE and Power." I'm Mike Livermore. The "PLACE and Power" series explores connections between human place-based relationships and the law and politics of environmental governance. The series is co-hosted by the Program in Law, Communities, and the Environment at UVA Law, as well as the *Environmental Law Journal* and the Environmental Law Forum.

We're joined today by two experts in Native American law, natural resources law, and environmental justice, Sarah Krakoff, the Moses Laskey Professor of Law at the University of Colorado, and Gerald Torres, Professor of Environmental Justice at the Yale School of the Environment and Professor of Law at Yale Law School. Our moderator today is Jon Cannon, the director of PLACE and the Blaine T. Phillips Distinguished Professor of Environmental Law at the University of Virginia.

The subject of today's conversation are the entangled issues of politics and justice at the intersection of environmental governance and the rights and interests of Native American peoples. I could not think of a better group than we have here today to explore these difficult and important questions, and I'm really looking forward to this conversation. Jon, I turn it over to you.

JON CANNON: OK. Thanks very much, Mike, for that introduction, and thanks very much to Gerald and to Sarah for joining us on this, at least in Charlottesville, Virginia, beautiful Earth Day, and, I know weather conditions vary throughout the country, but I hope it's beautiful in your places as well. So, today, we were going to focus on the importance of place and ancestral lands in American Indian life, and, particularly, the politics that swirl around the claims of Native Americans with respect to these ancestral lands.

So, the tribes ceded much of their ancestral territory under force or in exchange for land and other rights guaranteed under treaty and other laws. That land that was ceded was reallocated to white settlers or claimed by the federal government as public lands, including lands now used for wilderness and park land, to which, ironically, Native American access is limited and management roles are limited or nonexistent.

So, let me start with a general question, just to get the conversation started, and then we can get more specific as we go. But if place is a defining element of tribal identity, after so much displacement, how might place identity be reclaimed and protected among Native Americans? Sarah.

SARAH KRAKOFF: Yeah, you still have to call on us, even after all these years.

JON CANNON: Yeah, that's right.

SARAH KRAKOFF: Yeah, thanks for that great introduction, and it's really great to be here with you, and with Gerald, and Mike. It's a wonderful theme for Earth Day. And I think one of the many exciting things about this moment for Native American tribes and Native people is that I think there's more receptivity to the ways that they might answer the question that you just asked, Jon. And, you know, as you said, so many acres, many, many, many acres of ancestral, tribal lands, are now federal public lands, and the opportunity there is because they are public lands, which have the various requirements to consult with tribes, at a minimum, about actions that affect sacred and cultural sites.

And then, much more broadly, I think the federal government is beginning to think much more seriously about the full spectrum of collaborative to co-management on public lands, and that is a way for tribes to be involved in protection, and honoring the places that are historically theirs, and interacting with places that many tribes and tribal people still interact with for all kinds of uses and purposes, but that they could become, actually, part of the stewardship planning, I think, is one way that there's beginning, again, just beginning, and I know we'll talk more about examples soon, but to be that reconnection to place.

When it comes to private lands, there are also some possibilities there. Some tribes are, and have been since the era of self-determination, reacquiring some of their ancestral lands, repurchasing them themselves in fee. So there are options in both places, and, in some respects, the options are greater with regard to public land. So for all the sort of, we might think of, original sins of displacing Native people, the upside of those lands remaining public is that, today, there's that opportunity for tribes to come back in and have a say in a more formal and meaningful way.

**GERALD
TORRES:**

Thank you. I want to add a couple of things, and maybe place focus just a little bit, because one of the things, when you think about the relationship of Native people to a place, and the importance of place, and the, kind of, American imagination, the thing that's critical for re-evaluation of that place is to recognize that a couple of ideas that we think of as kind of centrally important in the American imagination, ideas like wilderness, for example, were creations, because they were created here, yet the landscape that the original colonists encountered, even though they thought that of it as a vast and trackless wildland, and as they moved west, continued open and wild space, in fact, was occupied and cultivated, and, in fact, it was a human-tended landscape.

And just attending to those kinds of realities, I think, are important to change the basic American idea about what those spaces mean and who ought to be credited with the formative notions of what the physical nation, the physical country, was like, so that, in fact, the place that people call "America" was a place that was cultivated by the people who were here, and the settlers who came ought to reflect on the human imagination and the human industry that actually produced what they later came to call "wilderness." And so kind of adjusting the whole mindset about what the landscape reflects would be a good first step, and I think Native people have been critical in getting people to adjust that perspective.

The second thing is the idea of place being critical. In some ways, the Native people have a connection to the place that the settlers-- and I'm going to use a term, and I don't mean to sound pejorative, but people will probably take offense, and I apologize in advance-- but the sense of place, that is, the sense of this being the homeland of the people who were here, created an ethos that, in fact, the American Romantic tradition of place is, to a large measure, parasitic of. And so, as we reevaluate, kind of, the Romantic tradition in American humanistic traditions, we ought to reflect on just where homelands and the idea of homelands come from.

JON CANNON:

That's great, and I think, particularly, the idea of wilderness, which has a certain cache, at least among folks in the environmental movement in the United States, the idea of wilderness as protecting land sort of misses the idea that it also is exclusive, in the sense that it excluded Native peoples who were using that land and living on that land in a sustainable way before Europeans showed up.

GERALD TORRES: Well, if I can say something, Theodore Roosevelt, who has done much for which he ought to be admired, if you go back and look at his letters, and look at his speeches, when he gave birth to the idea of national parks and wilderness areas, what he did is he saw them as places free of people, when, in fact, they weren't. You know, Mark Spence, in his book *Dispossessing the Wilderness*, talks about that whole process. And coming to terms with that process doesn't make the value of the landscape any less. It just means that we have to have a different relationship to it, and that different relationship is, in fact, I think, liberating, because, on some level, it's a more honest relationship.

JON CANNON: Sarah, do you have a rejoinder to all of that?

SARAH KRAKOFF: Yeah, well, I mean, I would just supplement it, because I agree, and it's even worse than Gerald said, in the following way. Not worse, but it's that, at the same time as the idea of preserving wild places was getting some traction in non-Native American consciousness, American Indian law, and Teddy Roosevelt was deeply involved in this too, was, in conjunction with public land law, actively divesting Native peoples of those lands. So the reservation policies, which were, roughly, 1840s to 1870s, focused on concentrating Native people onto smaller patches of land for the purpose of missionizing and converting them, and then it was like, oh, well, he didn't go far enough. Now we actually should carve up their lands. So the allotment policies followed, so that they could be converted to little yeoman farmers in the Jeffersonian tradition.

And, of course, both of those freed up vast amounts of public domain lands, which were open to settlers and otherwise reserved, then, as public lands that became, eventually, conservation areas and wilderness. And so law was part of that machinery, US law and American Indian law, even while American Indian law was also recognizing treaty rights that tribes have used successfully ever since. So it's a complicated story, but there's the overriding power of the settler-colonial control over that legal machinery that made both small, concentrated areas of Native lands and vast open spaces that could be preserved possible.

And then I think, if we're throwing Teddy Roosevelt under the bus, we have to throw John Muir under a little too, right?

[LAUGHTER]

He, as we know, was the popularizer of the wilderness ideal, and much lauded in environmental and preservationist circles to today. And, like everyone, I think, people are complicated. The founder of the Sierra Club also consorted with well-known eugenicists and racists of the time, and adopted and shared many of those views, you know, arguably, until toward the end of his life, including writing some of the most heinous things to read to this day about, for example, the Indigenous peoples of Yosemite, his beloved Yosemite. So it's not that we have to turn everyone into a villain, you know, but to reckon with the history of how and why our public lands, and national parks, and wilderness areas are very complicated places for Native people today. We have to understand the story that environmental preservation played in all of that, so just elaborating more on your points.

**GERALD
TORRES:**

And I think Sarah is exactly right, and the point she made when she began is also part of this, which is the preservation of public lands, not Indian lands, but public lands, created the capacity for us to rethink how those vast expanses ought to be used, ought to be regulated, ought to be considered. And, remember, Teddy Roosevelt suffered two kind of tragic reverses, and he retreated to the West to be restored. And so he looked at the landscape of the Northern Plains as a kind of moral and spiritual restorative. Well, you know, he was on to something, right?

What he was on to is that land had been part of the spiritual life of the people who occupied it long before he purchased the ranch out there and restored his physical and spiritual health. And thank God that the public lands were preserved to the extent that they are, because it does at least give us something to work with. I think, Sarah, I don't know if it was your last piece, but it was one of the most recent ones you wrote, which was "Not Yet America's Best Idea," actually does capture that, because it may not yet be America's best idea, but it has the germ in it, from which, if I can stay in the spiritual register, salvation might be found.

JON CANNON: Well, I'm going to give Sarah a chance to lay out the steps towards salvation--

[LAUGHTER]

--because now that we have the enticement before us, we want to make sure that we know how to get there. But, in the meantime, I'm going to sort of bring this to a level of specificity relating to particular controversies or events that are going on, or have been going on recently, in which tribes have been involved centrally, and use those to hopefully talk about the current political power of tribes, and their ability to negotiate within the current political setting of the country.

And the first is the Bears Ears National Monument, out in Utah, which is a site that has special significance for a number of different tribes, and it was designated as a national monument by President Obama. President Trump radically reduced its size, I think by about 85%, and now the Biden administration is in the process of reviewing that and trying to come to a different resolution. But I guess the question for you both is, what does this series of events, and it's not over yet, tell us about the politics of federal decisions affecting tribal sites and ancestral lands? I should say, if anything.

**SARAH
KRAKOFF:**

I mean, I think that-- And I want to acknowledge, I saw in the chat, Patrick Gonzales-Rogers, who is Executive Director of the Bears Ears Inter-Tribal Coalition, is here, so perhaps, in the Q&A, he can also provide some updates. So thanks for that note, Patrick. And I think, during the years building up to President Obama's proclamation, it was a time of optimism and promise, and a sense that the federal government was willing to see public lands protection in a different way, in a way that incorporated equity and justice, and this was true of Obama's other monument proclamations, too, not just Bears Ears. You know, there was an attention to, for example, the Latino community in Los Angeles, designating the San Gabriels, and then Harriet Tubman, I believe it was her birthplace.

There were a series of monuments that were about recognizing the darker aspects of our history, including our conservation history, to some extent, and then Bears Ears was consistent with that, but, also, in many ways, a watershed, the first time a national monument had ever been proposed by tribes, by the five tribes of the coalition. And I cannot speak for them, obviously, but, from what I know, and have read, and have talked to people about, it sort of felt, in many ways, like an act of reparations, because of the dark history we've been talking about, not just getting that connection to that place back, the Bears Ears place, which is extraordinary, and very much a lived place. If you've been there, it's just breathtaking in all the ways that we think of pristine wilderness as being, but also has signs of life, historic and ongoing, all over it, ancient Puebloan ruins, Navajo people still gathering pinyon and firewood up on the Cedar Mesa, and so on.

So I think it was sort of a way of recognizing the history of dispossession that the Antiquities Act, among other statutes, had helped to achieve, and using that same framework as a way to sort of reclaim and bring Native people back into their space that they had been using continuously, despite the legal boundaries. And then, since then-- Jon, you recounted briefly-- Trump, I think of it as repealed and replaced-- you can call it shrinking, but when you shrink a monument by 85%, it's hardly the same monument-- Bears Ears, and divided into two much, much smaller portions. And now we know that the Biden administration, under Secretary Haaland's leadership, which is, of course, historic, the first ever Native person in the cabinet, the first Native woman, the secretary of the interior, is taking another look, and it was one of the campaign promises, in fact, to restore the boundaries of Bears Ears, so we'll see how that turns out, hopefully, somewhat shortly.

But I think it plays into this larger conversation, too, because, like NoDAPL, which I think Gerald's going to talk a little bit more about, like the Standing Rock protests about Dakota Access, I think Bears Ears, too, ignited the national imagination and really brought a lot of focus and attention to these issues that, otherwise, I think were just obscure to people, and to many good-meaning folks who would just like to assume that there's something uncomplicated about our history of environmental protection. So I think it was part of that whole, sort of, growing movement of our reckoning with our past, and hopefully turning a corner in some positive ways, at least in terms of public lands policies.

**GERALD
TORRES:**

Yeah, and maybe we'll get the people who are there, at Bears Ears, to talk when we get to the Q&A. But, from an outsider's perspective, what it looks like was a road map for how the interests that are implicated in creating something like a national monument, which Bears Ears represents, might be respectfully attended to. So the tribal coalition had to resolve whatever internal issues it had. The private stakeholders, the federal stakeholders, the state stakeholders all had to be integrated into a process through which the President could finally designate the area that became Bears Ears. And I think the process that resulted in the national monument being created stood, at its completion, as at least a preliminary example of what ought to be done, or what might be able to be done, recognizing that claims of fee ownership and things like that are dispositive of the interests of the people in these areas.

Similarly, what Standing Rock did, in some ways it's really dramatic, because you could say that, at the simplest, and barest, and most naked expression, what it did was to reveal the bankruptcy of the consultative process between the federal government and Native people. That barely begins to capture the resulting difficulties. But, at root, what it said was, and this is why it goes across administrations, so Obama, Trump, Biden, the agencies, so the Corps of Engineers, has to take seriously, and this is what the resistance there did, is to say it is not a box-checking exercise. It is actually, and this is where a comparison to Bears Ears, for example, is in stark relief, an exercise in which the parties who have an interest, even if it is not a, quote, "ownership interest" have to have a legitimate ability to participate and to meaningfully affect the decision, rather than just say, you know, we met with them, we consulted with them, and this is the decision we're going to take.

The other thing was that it also internationalized the resistance, so that, at Standing Rock, it wasn't just Native people from the United States. There were Sami representatives there. There were representatives from Peru. There was a global resistance of Native people around issues of water and the importance of water. And I'm not in the West anymore, but when I was, you don't live in the West for very long without thinking about water, and the slogan that was broadly adopted, which came from Standing Rock, which is that "water is life," that resonated internationally, as well as domestically.

So, you know, I started, at the beginning, suggesting that Native people can educate the rest of us about our own imagination concerning the place we already inhabit. The resistance can also educate us about the limitations of things which we think of as sufficient process within the legal arena, and to suggest that, certainly, where you're dealing with potentially sovereign claims, the process has to reflect the gravity of those claims. And so I think, if you want to talk about place, and the importance of place, that's important, because even though the pipeline wasn't going to be located on Native land, it was just several yards from land held by the tribe, and by the river which supported the life of the tribe. So I think those lessons are important lessons to be learned.

JON CANNON: So that's a nice example. So Standing Rock and that pipeline were not necessarily crossing reservation lands, but they were on lands that the tribes were defining as "ancestral" in some important ways, and the question was the influence that the tribes could have and were to have in making that decision, the consultation process that Gerald was talking about. So that's sort of an example of what to do with public lands, but then there's this much broader issue of how we deal with tribal homeland interests on land that's not owned by the federal government, but subject to some sort of federal decision-making, a permit, in the case of the pipeline, or permits.

And then there's the case that I know Sarah has spent some time with, the Grand Canyon, which I think is a great case study, in which Sarah explores the ancestral uses of that land by a number of tribes, and the effect of having Grand Canyon now a National Park on the ability of tribes to continue those uses and to participate in managing the lands that were, and in some ways still are, importantly, their land. So, Sarah, what does that process tell us about politics in the current setting, and, particularly, the ability of tribes to have a voice in decisions affecting their places?

SARAH

KRAKOFF:

Yeah, I mean, I think Grand Canyon is very much a work in progress. And there were a lot of reasons I was motivated to write about Grand Canyon in this way, and, obviously, the overwhelming one was the one that is the theme of this series and this webinar, and that is how important place is, and how important our preconceptions are to how we understand and see a place. And I just was struck by having come to know Grand Canyon, I say, sort of sideways, because I was living on the Navajo Nation, working for legal services, and so I do believe that, literally, my first hike down into the canyon was from, really, the side, in terms of how people think of coming there as tourists, up from Flagstaff, and seeing the South Rim, was a side canyon down across Navajo lands, down into Marble Canyon, which is sort of the northwestern arm of what is now Grand Canyon National Park.

And so that's how I saw it then, which I think is unusual for someone like me, a white person who grew up in New Jersey, right? Like, this is part of Indian country. And then, as I started doing more hiking from various access points, and then I'd run the Colorado through Grand Canyon four times now with different groups, and was just struck, repeatedly, by how little people know about where they are, that, when you're on that river trip, Navajo Nation is to your left, and its boundary, if you listen to Navajo people, is to the middle of the channel. The Park Service would say maybe a couple hundred yards up. And then you go down, and on your right is all Southern Paiute land, including archaeological sites and mounds that they know better than any Park Service archaeologists. And then a hundred miles or so away are current Kaibab Paiute and other Paiute Bands' reservations. It's not just that these are ancestral lands. They're still here. And then further on down is Havasupai and Hualapai, and, of course, Hopi people have the Salt Trail and sacred salt mines that you float right by.

So, you know, that's sort of how I see the place, and I just was then, first of all, curious, like, how did this all go from being tribal lands to public lands? So I wanted to answer that question for myself, and tell the legal story, but also wanting more folks who go down the river and visit the park to understand the story of this place, the history, and the ongoing connections. So sorry for that backdrop, but that, I think, is part of the project that's ongoing today for the 11 tribes that today have these consultation relationships with Grand Canyon is, I think, for them, to begin to have everyone who visits see that landscape and those stories in that way, instead of as the blank space on the map, which is sort of the received story. Oh, it was a blank space on the map. It was unmapped until John Wesley Powell went down in his wooden boats with his ragtag band of explorers, so upsetting that story.

And, you know, John Wesley Powell has a place in it. He just comes in many centuries later. And connecting up the story of possession relationship with the story of dispossession, so that now, perhaps, optimistically, we can get to the story of reconnection and reintegration, so that the tribes have more than, as Gerald says, a check-the-box kind of consultation role with the park, but that it's all seen as an integrated landscape for the tribes, and integrated in the sense that they have cultural livelihood and connections that bleed right into the protected space of Grand Canyon National Park. And I feel like, in so many ways, that would not only honor the park, but enhance it, clearly for Native people, but I think for everyone, just to have that richer understanding of some of the really, truly, bittersweet aspects of our past, and yet being able to, again, use public lands as a way to reconcile those, to some extent make up for them, but also to allow tribes, through their own agency, to decide what their relationship can and should mean going forward, in a way that I think, optimistically, would be better for all of us.

JON CANNON:

That sounds similar to the idea that Gerald serviced at the beginning, I think, of relating our modern ideas about protection of federal lands more directly to traditional uses and visions of the land.

GERALD

Yeah, I want to underline something that Sarah said, because it's really important. It's really, really important.

TORRES:

What she said was that the knowledge gained by the perspective that she was proposing actually makes a richer landscape for everyone. So everyone who goes down that river, everyone who goes into that national park, everyone who experiences public land in the way that she suggests has a richer experience. It's something that makes your connection to that place deeper by virtue of the knowledge that she was suggesting. I think that's absolutely critically important, because what it does is it eliminates fantasy and connects it to the real history of the place we inhabit, and that's critical.

I remember when I first went to Chaco Canyon, and I'm sure Sarah has been to Chaco Canyon, and if you haven't been to Chaco Canyon, the first thing you need to do before you go is help people who are organizing to prevent fracking around Chaco Canyon to stop that. But when you go into Chaco Canyon, for me, it was a life-changing experience, because you go there, and you realize that this was a trading route that linked South America, the Eastern United States, as far north as Alaska and the Pacific Ocean, right in the middle of the country. It was on a mesa where you can see-- I'm going to exaggerate-- I want to say thousands of miles. I'm sure that's not true. But it feels like it, right? And that history, that history, even though it is no longer occupied, makes that part of the world just a-- I don't want to sound like a sap, but it sanctifies it in some ways, and not just for the inhabitants who created it, but for those of us who come upon it later, because it connects us to a thousand-year-old history, older than that, multi-thousand year old history of the people who were on the land.

And then you start to see the landscape that was on the land. You start to see, you know, Douglas fir timbers that are three feet on a side. And then you start to ask questions. Well, where did those come from? And you start to see kivas that could seat 300 people, and you say, well, who were those people? Why did this leave? And then it just opens doors that make the experience of the place just richer. So I thought Sarah's points earlier, just really, really important, and need to be underlined. So that was just underlining.

JON CANNON:

That's great. So this is such a great conversation, and I'm having to put aside some of the lesser questions I had, because this time is being so beautifully filled. But I did want to get in this one before we go to Q&A from those watching, and that is, we hear a lot now about the environmental justice movement as regaining strength and being taken very seriously in governmental circles and environmental organization circles, and I'm wondering, how do the tribes fit within the environmental justice narrative? And I think some of the things we've already talked about are part of the answer, but I'm interested in sort of a broader sense, from you, about the role of the tribes in the environmental justice movement going forward. I think the tribes have had a role, but maybe not as central a role. Can we imagine that role expanding or changing shape in the years to come?

GERALD

TORRES:

Well, I'd like Sarah, actually, to talk about this, because her experience with the various tribes in the Grand Canyon is so rich. But there's a couple of things that I want to say. First of all, there has always been an active Native presence in the environmental justice movement, and it remains so. One of the things, to take just a really pedestrian point, is to take the Justice40 Initiative that the President has articulated, and to ask, just in really explicit terms, what percentage of that is going to go to Native people to address the environmental insults that Native people have had to endure? So there's going to have to be some metrics that tie it directly to Native programs. So that's one.

Two, the capacity of Indigenous nations to manage the resources that they control is absolutely going to be critical. So you have to look at the various legal mechanisms that inhibit the control of those resources by Native people, and to ask, how can we change them to make a more robust capacity in nations? When you think about the role that Indigenous nations are going to play in the process of the green energy transformation, well, we need to start having conversations with the nations that have a lot of renewable energy resources that are not currently being used, and ask, how do we contribute to the development of that?

We also have to ask, and this goes to a slightly different point, but to the extent that climate change is directly affecting the resources of tribes, and here I'm thinking of shellfish tribes and fishing tribes, those injuries are happening now, and we need to start calculating those, and asking, what would an adequate response look like? You know, the Indigenous presence in the environmental justice movement has always been there. It raises slightly different questions than, kind of, the conventional approach, but they will nonetheless be tied, not just to, kind of, distributive justice questions, but questions of, well, I'm writing something right now called "contributive justice," so contributive justice questions as well, and I can talk about that later, if you want.

JON CANNON: Well, I like that, contributive justice, right? Sarah?

SARAH
KRAKOFF: Well, I think Gerald covered so many things well, and I know folks have questions. I guess I'll just say, very quickly, and it's just maybe sort of a reframing of what Gerald said, and that is that I think, historically, tribes and Native people have been at the core of the environmental justice movement, and, at the same time, there are commonalities and differences that are crucial and important, and have always been there, and I think are just, hopefully, emerging in a way that makes them more visible and better-known now. And those are, so, on one hand, you know, tribes and Native people in the US and globally have been on the receiving end of disparate impact from environmental harms and, also, on the short end of the stick in terms of receiving environmental privileges. So that's sort of a quick summary of all of environmental justice issues. Less of the goods from environmental protection, including preservation, more of the harms from industrialization and development.

And then the different piece for Native peoples worldwide, and in particular in the US, because of our legal framework, is tribal self-determination and sovereignty, and Gerald, again, alluded to this, or more than alluded to this, but the tribes as nations, as sovereign governments, part of the justice issue for them is the right and ability to control their own natural resources and environment, and that doesn't always accord with what non-Native environmentalists want to see. You know, there can be divergences there. But I think, for tribes and Native people, it's not a true tribal environmental justice issue unless it has both of those elements to it, right? So it doesn't just mean jumping on board someone else's campaign about environmental protection if there's also an aspect of it that could undermine tribes' own ability to make decisions about their resources in their landscapes, so just to kind of, maybe, clarify, put a fine point on it.

JON CANNON: Great. So let me pick up some of the questions here. So we had a comment from Pat Gonzales-Rogers, who had a thought about environmental justice and tribes. Pat, we can't patch you in to ask directly, but if you could post that on the Q&A, we can pick it up when we have that. In the meantime, there was a question about the Dakota pipeline. "My understanding is that the Dakota pipeline crossed unceded land under the 1851 Fort Laramie Treaty. What was the mechanism by which it was privatized or seized?" A more technical question, but these tech questions come up in these cases a lot.

GERALD TORRES: And Sarah should certainly weigh in on this, because the question of unceded land is a complicated question, largely because of the kind of relentless westward pressure that pushed tribes into reservations and essentially declared some land that the tribes claim as not tribal land, so that the process, and I don't know the specific process for the Standing Rock, but the process is a familiar one actually in American history, which is that the tribes were forced-- and "forced" is not too strong a word-- to yield claims to territory in ways that many of us, I think, today, were they done in a non-tribal context would be viewed as unjust and illegal. And the tribal nations continue to insist on the continued legitimacy of the claims they have to those territories.

SARAH KRAKOFF: Absolutely. And just to fill in a few of the details that Gerald's describing, the 1851 treaty was sort of what, in Indian law, was sort of a peace-and-friendship treaty. Like, OK, this is Great Dakota Nation territory. White people can pass through, but without the land cessions that became more common in the treaties after, roughly, 1860. And then in 1868 was the Treaty of Fort Laramie. That was the first shrinkage. But still recognized, basically, a vast amount of the Great Dakota Nation's traditional territory as theirs. Then the next stage was the reservation policy period, and it was after gold was discovered in the Black Hills, and, as Gerald said, the tribes were more or less coerced into abandoning the 1868 treaty for these much smaller reservation boundaries that are now the federally recognized tribes, with their reservations in North and South Dakota, and, to some extent, in Nebraska and other places.

So it is the workings of Indian law, in conjunction with discovery of resources and arriving of settlers, that is part of that legal story. And the Sioux tribes, of course, have sued to get the Black Hills back, and they won, but another piece of the Indian law story is part of the Indian Claims Commission was to interpret that statute not to allow tribes to get their land back through that mechanism, but instead to get money damages, and so that the unceded 1851 lands were gradually eliminated from Standing Rock's reservation, just as other lands were eliminated for all the tribes in the Dakotas and elsewhere through that sort of barely legal story of basically continually breaching treaty agreements, often with the threat of very violent force.

GERALD TORRES: You see this in the Pueblo Lands Act, where there is the veneer of legality that is the thinnest scrim to hide the illegality that's going on behind it.

JON CANNON: We're privileged to be joined, ad hoc, by Pat Gonzales-Rogers of the Bears Ears coalition, and he's going to put a question directly to you guys related to environmental justice or anything else he wants to.

PATRICK GONZALES-ROGERS: First of all, thanks, everyone. Very gracious of you to let me cull off the conversation for a second. I will say, it is refreshing and both instructive to listen to these really sage kinds of thoughts and insights from, really, oracles and seers of Indian law and policy, Gerald and Sarah. So I want to thank you for that, and I think that's a common feeling to anyone listening to this conversation. These are more like essential thoughts than a question.

First, I wanted to say, the Bears Ears coalition, really, at its primacy, is the exercise of sovereignty. The reason why this matriculation is near the finish line is because of the political status of tribes. And when people talk to me, what is the one thing you do? I say, I allow the tribes to exercise their sovereignty, for good and bad. And that, to me, simplifies the task. Now, that said, what I do want to say is, relative to environmental social justice, tribes stand above other conservation groups and nonprofits. They are first political entities, and so they are in the general classification, but they're really distinctly above everyone.

But what I would say to that is, during the last five years, we've received no funding. We've had to go to the foundational community, despite the foundational generosity. And so there's a real question here. Let's take climate change, for example. There is about \$3 billion on the street, mostly given to large conservation groups. BIPOC conservation groups, including tribal entities, receive 1%. That's roughly \$25 to \$30 million. My organization is \$2.5 million annually, which means we already take up 10% of the budget. So there is a huge, huge kind of inequality in what we're facing, tribes, as well as the other communities of color.

And the other point, and then I'll finish, is communities of color and tribes are most impacted by climate change, so they should be at the forefront of decision-making and problem-solving, but they're subordinated against the status quo of the benevolent conservation community. How? That was my rubbish for the day. Thank you, guys.

JON CANNON: So the gauntlet is thrown. Thank you very much, Pat. We have just a few minutes left, and I had one more question, and I think we're getting to the question in different guises. But there's discussion now about reparations for the enslavement of African Americans, and I'm wondering whether there is a similar conversation going on, or that should be going on, with respect to Native Americans, given that they were pushed off their ancestral lands and subjected to violence and atrocities of immense proportions. Is there a reparation movement, per se, or is that the wrong way to think about this corrective measure?

SARAH KRAKOFF: I mean, I think, just picking up on Pat's comments, the first people to turn to would be, of course, Native nations themselves to address that question, and I do think that both the legal framework and the kind of repair, my guess would be, would be different than the framing from within the African-American context, and that's because of the unique legal status of tribes as nations with homelands, much shrunken from what they were. But justice looks different for different groups subject to different kinds of injustice.

And maybe I'll pick up on one of the questions, which I figured we'd get this. It was interesting, the David Treuer article in *The Atlantic*, which used the vocabulary of reparations for the suggestion that returning national parks to tribes would be a form of reparations. So that's an example of how different it could look, again, depending on what that conversation would look like coming from within Native nations and Native communities themselves. And I thought the article was terrific. It was very well-done, and I love its provocative proposal, in no small part because, again, depending on what tribes themselves would argue for and push for, it makes a lot of solutions in between that I think the federal government could achieve with tribes, you know, consultation, co-management, collaboration, seem much more reasonable, just as any staking out of a really bold and audacious-- and I mean that in a good way-- idea makes other solutions on the spectrum seem more achievable.

GERALD TORRES: I second all of that, and I was wondering when we were going to get to David's article, because it really is a bold and provocative article. The other thing I would like to say is, the thing I teach my students every year is that decolonisation is not a metaphor. That it's commonly used as a metaphor, but if you take it seriously, that means you've got to rethink everything. And so the idea of reparations, in some ways, is the wrong lens, but it also means you destabilize a lot of things. Linda Smith, a Maori scholar, wrote a book called *Decolonizing Methodologies*, which I think everybody in the academy ought to read, and we need to take it seriously, especially in the areas that we work and write. So thank you, and thank you for having us today.

JON CANNON: Well, thank you. There's so much more we could talk about. This has been such a rich conversation. It's really a joy to be a part of, and I hope others have gotten the same pleasure out of it as well. A great way to spend Earth Day with you guys and on this topic. Thank you very much.

GERALD
TORRES:

Thank you very much, Thanks, Sarah.