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The time to return land to Native Americans is long overdue

BY MICHAEL ALBERTUS, OPINION CONTRIBUTOR - 03/09/21 4:01 PM ET

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President [Joe Biden's](#) pick for Interior secretary, Rep. [Deb Haaland](#) (D-N.M.) will be responsible for upholding the country's treaties with Native Americans. Haaland should use her unique position to rectify one of the most damaging early Indian policies of the United States, which sought to break down tribes and assimilate natives: the systematic dispossession of native land.

issues cast in high relief by the pandemic, can be traced to the attempted extermination and then assimilation of Native Americans through American land policy.

Land dispossession is at the root of contemporary property rights and landholding across the Americas. European colonizers and migrants displaced indigenous populations across the hemisphere and created exclusionary private property rights systems for themselves that ignored prior land occupants.

My research shows that many governments across the hemisphere exacerbated the problems that resulted from this initial displacement in the mid 19th to mid 20th centuries. They resettled native groups on reserves or returned selected private lands in an authoritarian fashion and structured property rights in restrictive and paternalistic ways such as withholding land titles, forcing diverse indigenous groups together into homogeneous communes and dictating how they could use their land. These policies divided communities and kept them weak and subservient to governments, facilitating enduring exploitation and manipulation.

Several recent high-profile legal cases in the United States have grappled with parts of this legacy. For instance, the Supreme Court ruled in 2020 in *McGirt v. Oklahoma* that roughly half of Oklahoma's land lies within the jurisdictional boundary of a Native American reservation. The case was a victory for tribal sovereignty with major consequences for criminal and civil law within the territory. But it stopped short of implicating land issues.

The United States lags behind many other countries in the Americas in its treatment of indigenous land claims and indigenous legal and political autonomy. Canada has offered official apologies to First Nations and founded a Truth and Reconciliation Commission to investigate the legacy of its Indian Residential Schools and provide recommendations to further reconciliation with its indigenous groups. Colombia and Bolivia have granted native communities enormous reserves of lands, and Mexico has given indigenous communities living in ejidos greater self-governance and property rights.

Dozens of tribes across the United States are now pushing for land restoration. And Haaland has voiced support for land returns.

Take for example the Mandan, Hidatsa and Arikara Nation in Missouri. After being forced onto a small reservation of their ancestral lands at Fort Berthold in 1870, the government flooded more than a quarter of it when the Garrison Dam was built in 1953, forcing most of

The Mandan, Hidatsa and Arikara nation now faces an all-too-common reality. It is bogged down in legal battles just to get the federal government to uphold its former promises. The nation's chairman, Marx Fox [points out](#) that "We have been marginalized and pushed off our territory and for more than a century the federal government has attempted to steal what their own experts agree is rightfully ours." Biden, he says, has the opportunity to right this historical wrong.

Land settlement reached a fevered pitch in the 1800s with southern and westward expansion. President Andrew Jackson's [Indian Removal Act of 1830](#) was one of the most brutal policies, sparking the infamous [Trail of Tears](#) that removed Indians from the southeast to designated "Indian Territory" west of the Mississippi River. The reservation system unfolded in subsequent decades, cordoning off Indians into designated and often undesirable areas away from white settlements.

But no single policy was more damaging than the [Dawes Act of 1887](#). The Dawes Act accelerated and systematized dispossession at a grand scale by focusing within reservations themselves.

Land was often tribally owned in a communal fashion within Indian reservations in the late 1800s. The Dawes Act sought to break up these tribal holdings by subdividing them into individually-owned plots through a process known as land allotment. Allotment sought to break down tribal cohesion and assimilate Indians into American cultural norms and capitalist economic practices.

When the government opened a reservation for allotment, families on the reservation were given plots of land that were held in trust by the Department of Interior. "Excess lands" not allotted could be sold off to private citizens from outside the reservation. This policy ultimately [stripped nearly 100 million acres](#) from reservation land.

The claims of many Native Americans who are fighting for their land hinge on an arcane bureaucratic process housed within the Department of Interior's Office of Federal Acknowledgment: the federal [recognition](#) of tribes. Consider the Mashpee Wampanoag tribe of Massachusetts. Despite being rooted in coastal Massachusetts and eastern Rhode Island for thousands of years and sharing in the [first Thanksgiving](#) with the Pilgrims, they were only [federally recognized as a tribe](#) in 2007.

A decades-long fight for land resulted in a trust of 300 acres granted to the tribe [in 2015](#). But because the tribe was not under federal jurisdiction in 1934, when President Roosevelt repealed the Dawes Act, the Department of Interior [stripped the tribe of its land](#) in 2018

Haaland should use her unique position to push forward the country’s reconciliation with Native Americans through land restitution. After all, land is at the core of her vow in her confirmation hearings to “honor the sovereignty of tribal nations.”

Michael Albertus is an associate professor of political science at the University of Chicago. His most recent book is “Property without Rights.”

TAGS AMERICAN CULTURE DEB HAALAND INDIAN RESERVATION INDIGENOUS PEOPLES OF NORTH AMERICA JOE BIDEN NATIVE AMERICAN HISTORY NATIVE AMERICANS IN THE UNITED STATES PLAINS TRIBES REGIONS OF THE UNITED STATES

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