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BLUE LAKE: A STRUGGLE FOR INDIAN RIGHTS

John J. Bodine*

On December 15, 1970, the President of the United States signed into law House of Representatives Bill 471, which gave trust title to 48,000 acres of land to the Taos Pueblo Indians of New Mexico. Thus ended a 64-year struggle by the Taos to regain their sacred Blue Lake and the high mountain land which surrounds it. This was the first time in the history of United States-Indian relations that a claim for land, based on the practice of aboriginal religion, successfully ended in the restoration of that land to an Indian reservation. As such, Indian people all over the United States watched carefully and, in many instances, actively supported the Taos in their efforts to battle the massive machinery of the federal government. Many did so within the more general context of American Indian rights. Some tribal groups, particularly in the Southwest, followed the struggle in terms of their own moves to regain land which had been taken from them. The Taos case stands as a hallmark of justice for all Native Americans. Hopefully, the complex fabric of the Taos situation will offer important clues to assist other rightful Indian claims.

It is apparent that the efforts of anthropologists, historians, and other scientific investigators of American Indian cultures can be decisive in helping to solve some of the critical issues that confront many American Indian groups. It is not in point to dismiss categorically the cries of exploitation that have been leveled at the scientific community by certain Indian spokesmen, e.g., Vine Deloria's *Custer Died for Your Sins*, but rather to emphasize that many years of patient research can be used effectively by Indians both to aid in the solution of practical problems and to enrich the knowledge that Indian people should hold of their unique heritages.

As an anthropologist who became involved in the struggle for Blue Lake, I do not contend that the case could not have been resolved without anthropological assistance. But I do believe that the evidence I provided was very helpful just as has been the case with the efforts of anthropologists in many other Indian claims.

It is important to recognize that in a case as complex as that of the Taos, every source of potential aid needs to be tapped. The Taos

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fought for 64 years to regain trust title to Blue Lake. It was only when all manner of conditions were right that the battle was finally won. Input from within the tribe and from without were required. However, nothing was more important than the persistent determination of the Taos people themselves. Had it not been for their ceaseless efforts, Blue Lake would still be part of the Carson National Forest, maintained and controlled by the Forest Service of the Department of Agriculture, rather than a legitimate portion of their reservation held in trust by the Department of the Interior.

The Taos Indians, currently numbering some 1,570 individuals, have resided at their present location in northeastern New Mexico since around 1300 A.D., although their ancestors were undoubtedly in the area earlier. Spain took effective control of this portion of the American Southwest through colonization which began in 1598. The Spanish crown subsequently granted to every pueblo approximately four leagues of land, measured from the center of each settlement. This in no way covered the territory over which each group had traditionally moved for subsistence and other purposes. Encroachment by Spanish settlers frequently occurred, but the problems were ultimately resolved and economically a kind of symbiotic relationship was normally established between the Pueblo Indians and their Spanish neighbors.

The United States took over the entire region in 1848, assuming sovereignty under the Treaty of Guadalupe Hidalgo. Importantly, the United States recognized the existent Indian and Spanish land grants, including that of the Taos which covered approximately 17,400 acres. All other land became public domain as far as the United States government was concerned, in spite of the fact that the Taos had traditionally used at least 300,000 acres surrounding their village. Anglo-American settlers began to filter into the area and settle on the traditional lands of the Taos just as the Spanish had done before them. But until the turn of the twentieth century, though land disputes were numerous, the Taos did not become overly alarmed by their presence. Blue Lake, the most important "shrine" of the Taos Indians, is high in the Sangre de Cristo Mountains behind their pueblo. Comparatively few non-Indians went into the area before 1900.

Blue Lake is the primary source for the water supply of the pueblo and consequently was of great importance to an agricultural people. It became the focal point for the annual pilgrimage of the Taos which is held in late August to publicly validate the final initiation rites of young Taos boys being taken into the traditional religion of the tribe. Blue Lake and the many other lakes in the mountains

behind the Pueblo serve as the watershed for Taos Valley in which reside, not only the Indians in their separate settlement, but several thousand Anglo and Spanish Americans in theirs. The latter did not interfere with the Indians' use of the mountains nor with the religious ceremonies held at Blue Lake until American settlement increased to the point where non-Indian livestock were run into the area, and Americans began to eye the wilderness surrounding Blue Lake as a prime target for the activities of sportsmen, timbermen, mineral prospectors, and recreationalists. The Indians complained officially in 1903, but their complaint went unheeded.

The most fateful event occurred in 1906 when Theodore Roosevelt took the Blue Lake lands and proclaimed them part of what is now the Carson National Forest. Roosevelt's reputation as a sportsman, and within that context as a conservationist, is well known. His opinion regarding Indians and their aboriginal land rights may be less so. He said, ". . . to recognize the Indian ownership of the limitless forest and prairies of this continent—that is, to consider the dozen squalid savages who hunted at long intervals over a territory of a thousand square miles as owning it outright—necessarily implies a similar recognition of every white hunter, squatter, horse thief, or wandering cattleman."¹

It is doubtful if the Taos in 1906 completely understood the ramifications of this act by the President. They were understandably ignorant of English-based American law; many were illiterate and spoke no English. They did come to understand that Blue Lake was no longer exclusively theirs. They could not go into the mountains to perform ritual, to hunt, to fish, nor to graze their livestock as they had long done completely certain of noninterference. And so began the 64-year-old struggle to regain the land which the Taos had traditionally used. Of crucial importance is the fact that they never ceased their efforts. However, they did move cautiously in the earlier decades of this century. Because of the special nature of their religion, they could not reveal all of the reasons they must have Blue Lake and the surrounding lands returned to them. They had suffered persecutions from the hands of Spanish missionaries in the past, and they were to suffer additional assaults on their religious practices, including their activities at Blue Lake, in the twentieth century. Necessarily, the religion of the Taos is secret both as a result of the above as well as the fact that its very organization demands special private knowledge held by a few and performed in seclusion for the benefit of all.

The Taos learned early in the relentless pursuit of their goal that many of their Anglo-American neighbors were more than willing

to aid them. The Anglo town of Taos, three miles from the Pueblo, has been inhabited by artists since 1898. Since that time it has attracted all manner of individualists who feel that Taos is a utopian world unto itself. Much of their attraction to it is based on the presence of the Taos Indians and the spectacular mountains behind the Pueblo which have been so important to the continuance of Taos culture. From the very beginning, therefore, the Taos had many allies in the Anglo community, some of whom aided significantly in their efforts to understand what had happened and the courses of action they should follow.

In 1912, agitation by the Indians and their supporters led to the recommendation of the Commissioner of Indian Affairs to remove 44,640 acres of the national forest and set them aside as an executive order reservation. The recommendation was rejected by the Secretary of Agriculture, who controls the national forests. The Pueblo Lands Board met in Taos in 1926. It determined that the pueblo was entitled to \$297,684 as compensation for the loss of reservation land to the Anglo and Spanish town of Taos. John Collier, spokesman for the Indians and later Commissioner of the Bureau of Indian Affairs, recommended again that the Blue Lake area be made part of the Taos Reservation. The Secretary of the Interior's representative on the Pueblo Lands Board likewise recommended that the proposal be accepted. His reason, however, was that if Blue Lake were part of the reservation and therefore controlled by the Bureau of Indian Affairs, the government could then prohibit the "improper and immoral" ceremonies which, he had heard, the Indians conducted. Actually the Pueblo Lands Board had no authority to grant land. It could only determine the proper amount of compensation for land already lost. The Indians offered to waive their right to the \$297,648 for the town of Taos in return for Blue Lake. The offer was rejected. They received neither the money nor the land.

After innumerable attempts to work out an agreement, a permit arrangement was finally proposed in 1933. This would grant the Indians resources of the land for their personal use, prohibit the intrusion of outsiders during the August ceremonies, and allow entry at other times only by special permission of the Forest Service and the Governor of the Pueblo. However, the permit, which was to be in effect for 50 years with option for renewal, also stipulated that the Secretary of Agriculture "shall define the conditions under which natural resources under the control of the Department of Agriculture not needed by said Indians shall be made available for commercial use by the Indians or others, and shall establish necessary and proper safeguards for the efficient supervision and operation of

the area for national forest purposes and all other purposes herein stated."²

The permit was passed, and revised in 1940, but the problems did not cease. Time and again the Indians complained of violations of the permit agreement. The Forest Service in turn accused the Indians of activities in the area *contra* to the agreement.

While all of this ensued, an historic move was made which has to date monetarily compensated many American Indian tribes for lands unjustly seized. In 1946 the Indian Claims Commission was established. For the Taos this was a bittersweet development. They reluctantly filed their claim but only with the inclusion of language that made it clear they wanted the Blue Lake area, not the money. Their claim to 300,000 acres was approved in 1965, though due to the existence of recognized Spanish land grants it was reduced to 130,000 acres. They steadfastly refused monetary compensation and continued in their efforts to regain Blue Lake by an act of Congress, recognizing now that this was the only way by which it could be made a part of their reservation. This would effectively remove the nettlesome presence of the Forest Service, which had by the 1960's evolved the philosophy of multiple use of the national forests. Such a philosophy opened the door for the recreational and economic development of the area and imposed generally stricter controls over the use which the Indians could make of the land.

Repeatedly the Taos made known their claims to portions of the national forest as non-Indian encroachment increased. The first bill to grant a trust patent was prepared in 1955. It was opposed in Congress and, instead, modifications of the 1933 permit agreement were submitted which simply enlarged the area originally covered. It was not until 1965 that the first bill was introduced to grant title of the watershed to the Pueblo. The Indians, by this time, had begun to plead their case on the basis of the protection of their religion. They always spoke very cautiously and usually in very generalized terms about the nature of their religious use of the area. Blue Lake was well known as an important "shrine," and the Indians, in an attempt to communicate their feelings in terms that Anglos would understand, referred to it as their "church." The bill of 1965 died in Congress just as subsequent bills were defeated. Finally H.R. 471, which would place 48,000 acres in trust for the exclusive use of the Pueblo, passed the House of Representatives and was sent to the subcommittee on Indian Affairs of the United States Senate. Hearings were held on July 9 and 10, 1970, during which the entire controversy was vigorously debated.

The subcommittee was composed of ten senators, eight from the

western states of North Dakota, South Dakota, Montana, Wyoming, Washington, Arizona, New Mexico, and Oklahoma. Two were from Alaska. This was to prove very important in determining the position of the majority of the senators. While all of these states contained large Indian populations, most were also rich in forests and park lands. They were subject to the powerful commercial and conservation lobbies, which also had a stake in the land. Of great significance was that Clinton Anderson, the senator from New Mexico, opposed the adoption of H.R. 471. Hence, the Indians did not even have the support of their own representative. Anderson felt that 48,000 acres was unduly excessive and introduced his own bill, S. 750, which would require continued control by the Secretary of Agriculture and segregate only 1,640 acres directly surrounding Blue Lake for the exclusive use of the tribe. All other protective provisions of the 1933 permit agreement would remain in force.

In the several years prior to these hearings, the Taos had succeeded in widely publicizing their claim. Taos delegations had traveled to many parts of the United States to plead their case. They had permitted a television documentary to be filmed at the Pueblo and at Blue Lake and had enlisted the support of many individuals and organizations. The case had become sufficiently well known so that on July 8, one day before the Senate hearings began, President Nixon specifically urged the passage of H.R. 471 in his message to Congress on Indian Affairs. The subcommittee was fully aware of administrative support, including that of Secretary of the Interior Walter Hickel, yet a number of the senators were unwilling to report the bill out without modification.

Testifying for the Indians, former Secretary of the Interior Stewart Udall used the term "singular" in his description of the Taos case. This was quickly translated to mean "unique." The Taos claim was "unique" because it was based solely on religious grounds and no other Indian tribe had approached Udall in his eight years in office with this kind of plea. Moreover, no other Indian tribe had made their claim so persistently for so long. Udall's characterization of the Taos claim as "unique" became the fulcrum on which Senators Anderson and Metcalf of Montana rested their opposition. Every witness called on behalf of the Taos, including the Taos Indian delegation, was asked to explain why the case was singular. None were able to do so to the Subcommittee's satisfaction. The senators pointed out that:

1. The Taos were already protected in the practice of their religion by virtue of the 1933 permit.

2. The Taos case could not be distinguished from the land claims for religious and ceremonial use made by other tribes including the Hopi, Cochiti, Santa Clara, San Juan, Nambe, Zuni, Jemez, and Mescalero Apache.

3. If granted, the Taos claim would establish a precedent in that all legitimate claims were settled by the Indian Claims Commission for which monetary compensation, not land, was granted. 90 per cent of the United States could conceivably be claimed by Indian people and claims already settled might well be challenged. Moreover, it is not the custom of the United States to compensate by payment in kind.

4. It would be unfair to all other Indians to grant land to the Taos and not entertain other such claims, even if they were late arrivals with their arguments.

It became very clear in the course of the hearings that any appeal on the grounds of justice to Indian people for past actions by the United States government or its citizens was not acceptable due to the existence of the Indian Claims Commission. Many in support of the Taos pleaded in this fashion. No argument based on economic grounds was relevant and much evidence was compiled by the Forest Service and the conservationists to suggest that the Taos, while sincere in their religious convictions, nevertheless would exploit the area for their own economic benefit. Some conservationists argued that the Indians were incapable of managing a wilderness area. All insisted it was unfair to grant them the exclusive use of spectacular mountain territory which should belong to all the people. Senator Anderson and Senator Jackson of Washington pointed out that "aboriginal use" or what has been commonly referred to as "Indian title" is quite different from "legal title." Hence, restoration of title is impossible, since the Indians never owned it.

The eloquent statements of Indian rights groups and many by non-Indian supporters were valuable contributions but not completely persuasive. The legislators continued to demand evidence that the Taos claim was "unique." The contributions of historian and archivist Dr. Myra Ellen Jenkins and Dr. Florence Hawly Ellis, an anthropologist, were excellent documents, but were shoved into the background. It was at this point that I felt obligated, as an anthropologist who had known the Taos Indians since childhood, and who had effected a Ph.D. dissertation on their culture, to attempt a contribution.

My lifelong association with them and the research I had conducted into the nature of change in their culture provided me with

information and insight into the nature of their religion. This is not an aspect of their culture which they wish revealed nor was it necessary to do so in such detail that the specifics of certain ceremonies had to be spelled out. The problem was truly one of translation. From the Anglo-American point of view, the attempts made by the Taos and others to explain their religion were couched in language which was frequently meaningless. The Taos themselves could not reveal their sacred knowledge. To do so would have been contrary to everything they had learned as initiated members of their tribal religion. But to argue simply that Blue Lake is "our Church," or that "we worship all of nature," meant little to those not knowledgeable about Indian cultures.

I emphasized, first, that control of the entire region, not just Blue Lake, was vital to the correct functioning of Taos religion since Blue Lake was but one of many "shrines" in the area and all were necessary. Second, the total ecology of the area must be undisturbed because of the use made of many plants and other environmental features in religious ritual. Ecological imbalance could lead to their disappearance and hence, imperfection in correct religious performance. Moreover, the very presence of non-Indians, even if they observed nothing of ritual, constituted potential contamination. But perhaps the most important statement was based on an understanding of the delicate interplay of the social institutions which go to make up Taos culture. Functionally speaking, damage to one, *e.g.*, religion, would in turn lead to the weakening of others, *e.g.*, the political system. In sum, the disappearance of Taos religion could lead to the dissolution of Taos culture. I argued, importantly so, that no other tribe's entire religion depended *to the same degree* on "shrines" in such a restricted area. Hence, the Taos claim was unique. All of these factors were spelled out in a statement I prepared and sent to the subcommittee for inclusion in the official record of the hearings.

H.R. 471 was reported out to the Senate on a split vote and debated on December 1 and 2, 1970. The subcommittee attached an amendment which would have granted the Taos an undefined right to "exclusive use" of the entire 48,000 acres, but it would have remained under Forest Service supervision. In effect, this would have preserved the status quo and therefore was unacceptable to the Taos. The amendment was defeated. The fight on the Senate floor was led by Senator Fred Harris of Oklahoma with strong support from Senators Percy of Illinois and Goldwater of Arizona. It was opposed by Jackson of Washington, Metcalf of Montana, and Anderson of New Mexico. When the vote came on the unamended bill, it passed

70 to 12 with 18 not voting. Of the subcommittee members McGovern of South Dakota, Burdick of North Dakota and Stevens of Alaska voted for the bill. Bellmon of Oklahoma and Gravel of Alaska did not vote. Jackson, Anderson, and Metcalf voted nay along with Fannin of Arizona and Hansen of Wyoming.

During the debate on the Senate floor, my statement was cited five times to support the Taos claim. Indeed, Senator Metcalf, who opposed the bill, wrote to me and said, "Your letter was the most clear cut and at the same time most understanding I received." Clearly my effort was not the deciding factor in the passage of this bill, but I do think I was able to interpret the situation in such a way that those who lacked training in the organization of cultural systems could better understand the Taos case.

In many respects what had transpired was a prime example of culture conflict. In spite of their denials to the contrary, many who opposed the bill did so from ethnocentric bias, *i.e.*, from the point of view of their own culture and its values and attitudes. Broadly speaking, there is probably no more important role for the anthropologist to play than to dispel the significant degree of ethnocentrism which has characterized so much of the interrelations of Anglo-Americans and Indian people. It has spawned prejudice and discrimination which at times have been insidiously destructive. It has also blocked justice, as in the case of the Taos claim, where the vast majority of those who opposed the measure did so believing that they were being fair. They were unaware that their position stemmed from misunderstanding the cultural system of an Indian tribe. In such situations, I feel it is the obligation of anthropologists to speak out. Hopefully, as in the Blue Lake controversy, they will be heard.

One final point of clarification needs to be made. I could successfully argue that the Taos case was "unique" from the anthropological perspective of cultural relativity which holds that each culture differs from every other for respectable reasons. In so doing, it has to be recognized that the Taos case is unique and theoretically so is every other Indian claim. Each case will have to be decided on its own merits, hence, the stance of establishing precedent is moot. Succeeding with the Blue Lake controversy in no way denies the legitimacy of other Indian claims to land unjustly seized, and it can only be hoped that the special circumstances which set each of them apart can be uncovered and properly presented. It is my opinion that Indian people are in a better position to do so now than they have ever been. To retire from the battlefield, as the Taos never did, is not a move that Indians can afford. Nor should the legal and scientific

professions cease to do everything they can to create a climate of justice for the myriad efforts that will have to be launched by and for Indian people.

NOTES

1. Vance, *The Congressional Mandate and the Indian Claims Commission*, 45 N.D. L. REV. 325 (1969).
2. 48 Stat. 108 (1933).

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