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# Evicting People from Nature: Indigenous Land Rights and National Parks in Australia, Russia, and the United States

## ABSTRACT

*The authors compare Australia, the United States, and Russia to provide a cross section of political and cultural circumstances impacting indigenous people as these countries recognize the value of protecting wild natural areas. All three nations initiated protected area systems in the late 1800s that excluded indigenous populations. Throughout most of the 1900s, indigenous peoples were separated from the land by legal, political, and cultural barriers. We conclude by demonstrating that within the context of international agreements, all three nations have slowly recognized the rights of indigenous peoples and their role within, or next to, national park lands.*

## INTRODUCTION

The general treatment of colonized indigenous populations has been the result of a host of interacting factors and attitudes that span politics, socio-cultural norms, and economics. Though far from perfect, the general treatment of indigenous peoples has improved in many countries over the past several decades. At the very least, governments are recognizing indigenous peoples and passing more laws to protect their existence, resources, and traditional culture. Indications of progress are found in international treaties and United Nations policies intended to protect indigenous cultures. In this article, the authors address a specific area of human rights policy: the evolving relationship between indigenous peoples and protected natural areas. Australia, the United States, and Russia are compared to provide a cross section of political and cultural circumstances impacting indigenous peoples as these countries recognize the value of protecting wild natural areas. After several centuries of exploitation and eradication of indigenous populations, each of the three nations has approached protected area/indigenous peoples relationships

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in a manner unique to its domestic political environment. An overarching theme of this article is that national parks in the three countries, though evolving differently, emerged from a nineteenth century idea of wilderness that marginalized and excluded native populations. Today, these views have not been entirely abandoned as policymakers attempt to accommodate traditional views in policymaking and park administration. The current trend in all three countries is moving toward recognition of the role humans have played in the natural landscape.

It is recognized that the term "national park" can be and has been used broadly, thus rendering its meaning somewhat ambiguous. Our definition of "national park" conforms to the International Union for the Conservation of Nature (IUCN) definition, which considers a park to be any area where "the highest competent authority of the nation having jurisdiction over it" is vested with the responsibility to protect that area and allow visitors to enter "for inspirational, educational, cultural and recreational purposes at a level which will maintain the area in a natural or near natural state...."<sup>1</sup> Hence, those areas in the respective countries that have been officially given a "national park" designation by the national government authorities come under this definition.

Despite the many differences between Russia, Australia, and the United States, several conditions allow for a useful comparison. All three nations expanded across large land areas encountering indigenous resistance over similar time lines. The expansions extended from European (or "civilized") areas to wild frontiers with ample opportunity for resource extraction and economic or political gain. In addition, the nations all underwent a reconsideration of the value of wild nature at about the same time and, 80 to 100 years later, came to an eventual recognition of indigenous peoples and their role in society.

The policy focal point for this article is somewhat easier to define in the case of the United States as the entire national park system is controlled at the federal level under political scrutiny of Congress and under the jurisdiction of the National Park Service (NPS) within the Department of the Interior. Though park superintendents wield great power over their fiefdoms, the essential policies of the NPS are exceptionally sensitive to broader political motivations that are frequently at odds with the NPS stated goals of resource protection.<sup>2</sup> Australia's system, on the other hand, is more decentralized and involves not only federal agencies but also interaction with state agencies. Nevertheless,

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1. IUCN COMM'N ON NAT'L PARKS AND PROTECTED AREAS WITH THE ASSISTANCE OF THE WORLD CONSERVATION MONITORING CENTRE, GUIDELINES FOR PROTECTED AREA MANAGEMENT CATEGORIES, Category II (1994).

2. WILLIAM R. LOWRY, *THE CAPACITY FOR WONDER: PRESERVING NATIONAL PARKS* 3 (1994).

Australian states retain "extensive powers...in relation to the environment" and wilderness preserves.<sup>3</sup> Analysis of the Russian system is complicated by the Soviet era when Russia was one of several Soviet federations. For the purpose of analysis, we will treat Russian and Soviet policy as synonymous because the post-Soviet Russian Federation inherited (for all intents and purposes) the Soviet system of protected natural areas. Then, as now, Moscow dictated wilderness policy to the outlying regions of Siberia and eastern Russia.

### NATIONAL PARKS: HISTORICAL OVERVIEW

The 1864 publication of George Perkins Marsh's famous essay, "Man and Nature," had an enormous influence on the idea of setting aside land for wilderness preservation for all three countries.<sup>4</sup> In the United States, however, economic forces dominated as national parks were closely connected to the political economy of tourism.<sup>5</sup> Yellowstone, established in 1872, was the first national park and was heavily promoted by the railroad industry, which had just completed linking the continent by rail. In fact, "the 1872 Yellowstone legislation stands as a resounding declaration that tourism was to be important in the economy of the American West."<sup>6</sup> Natives were seen as an unfortunate blight and an affront to the sensibilities of tourists. Frederick Jackson Turner provided a foundation for that idea, seeing indigenous peoples as part of the hostile environment that had to be conquered for the American West to develop and realize its "manifest destiny."<sup>7</sup> Consequently, a national policy of "dual islands" was established—one for uninhabited natural preserves and one for Indian reservations. The United States perspective on the relationship between wilderness areas and native populations combined with economic motives heavily influenced the way parks were developed. Yellowstone and its progeny became the model used by many other countries in the world. The model's essential premise devalued the role of indigenous resource management practices.

Marsh's conservation philosophy influenced Australia as well.<sup>8</sup> There, as in the United States, European perceptions of natives provided a

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3. DAVID LAWRENCE, *KAKADU: THE MAKING OF A NATIONAL PARK* 207 (2000).

4. See generally GEORGE P. MARSH, *THE EARTH AS MODIFIED BY HUMAN ACTION: A LAST REVISION OF MAN AND NATURE* (1885).

5. ALEXANDER WILSON, *THE CULTURE OF NATURE: NORTH AMERICAN LANDSCAPE FROM DISNEY TO THE EXXON VALDEZ* 227 (1992).

6. RICHARD WEST SELLARS, *PRESERVING NATURE IN THE NATIONAL PARKS: A HISTORY* 10 (1997).

7. FREDERICK JACKSON TURNER, *THE FRONTIER IN AMERICAN HISTORY* 1-16 (1920).

8. LAWRENCE, *supra* note 3, at 172.

similar rationale for their marginalization. Willem Jansz, the first European to see Australia, in 1606, claimed the territory was inhabited by "savage, cruel, black barbarians," a view that gained currency and shaped subsequent relations with the Aboriginal people.<sup>9</sup> The English arriving in 1788 viewed survival in terms of subduing both the land and the natives. English-Aboriginal relations were tenuous from the very beginning and quickly deteriorated into a guerrilla warfare resistance that continued into the 1930s. Though this resistance had initial success, the natives could not compete with superior western technology. Ultimately, the indigenous people lost their traditional land rights.<sup>10</sup> In Australia, natives were never removed from an area specifically for the purpose of creating a national park as was the case in the United States. That difference, however, is only marginally significant because the reality is that many of today's national parks exist on extensive lands where Aboriginals live and can potentially claim native title. Parks in Australia were created following the Yellowstone model for "the preservation of 'wilderness' areas of outstanding natural beauty and/or of considerable scientific interest...."<sup>11</sup> Established in 1879, Royal Park (today a suburb of Sydney) became the first Australian national park and the second national park in the world after Yellowstone. Today, Australia boasts over 500 national parks, many of which are so remote that they are hardly ever visited.

In Russia, translations of Marsh's influential book were available by 1866 and resonated within the scientific community. By the late 1870s, the Yellowstone model of a "national park" was perceived throughout the world as an ideal for the preservation of "wild nature."<sup>12</sup> One sign of emerging preservationist policy was soil scientist V.V. Dokuchaev's promotion of research stations to monitor the disappearing steppe habitat. The unique steppe ecosystem once stretched from Mongolia to Hungary with the most remarkable deep, rich soil characteristic throughout southern Russia and the Ukraine. Seen as potential farmland, the steppe was converted as fast as technology would allow. Russia had utilitarian and scientific as well as cultural-aesthetic-ethical reasons for protecting natural areas.<sup>13</sup> Throughout Russia's long history, the East (Siberia) was a source of marauders invading from across the steppe. As Russia expanded eastward, the relations between conquerors and conquered were driven by economics. As long as the indigenous inhabitants of the Siberian tundra and taiga<sup>14</sup>

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9. Willem Jansz, *Uncultivated, Savage, Cruel, 1606*, in *THE EXPLORERS* 17, 17 (Tim Flannery ed., 1999).

10. HENRY REYNOLDS, *DISPOSSESSION* (1989).

11. J. M. POWELL, *ENVIRONMENTAL MANAGEMENT IN AUSTRALIA: 1788-1914*, at 113 (1976).

12. DOUGLAS WEINER, *MODELS OF NATURE* 7-18 (1988).

13. *Id.* at 10.

14. Boreal forest characterized by a fir-spruce over story and moist soil conditions.

could provide furs, food, or shelter, they were useful and were allowed to follow their traditions. Those who inhabited the harshest climates were the most difficult to find and subdue. It was not until forced collectivization under Stalin that the Chukchi and Koriaks significantly altered their lifestyle.<sup>15</sup> In this case, however, indigenous people were not forced onto reservations.

A 1921 decree from Lenin initiated an extensive system of protected natural areas that include zapovedniks, national parks, and wildlife refuges.<sup>16</sup> Zapovedniks are strict nature preserves dedicated to research in which tourism and resource extraction are prohibited. Soviet era national parks were not fully established until 1971 when Estonia, Latvia, and Lithuania each established a single park.<sup>17</sup> Russia established its first two national parks, Losinyi Ostrov and Sochinsky, in 1983.<sup>18</sup> By 1991, 17 national parks protected approximately 3.65 million hectares of land across Russia.<sup>19</sup> Today, thirty-five national parks protect over 15 million acres and one hundred zapovedniks protect nearly 80 million acres.

Protected area legislation essentially ignored indigenous peoples, and after three-and-a-half centuries of destroying nomads, the new post-Revolution Soviet government was not inclined to protect indigenous rights.<sup>20</sup> Ethnic Russians inhabited most of the areas targeted for protected areas and indigenous people were either already absent or, in a few cases in Siberia, forced to relocate. Although over the course of the twentieth century zapovedniks and national parks have made allowances for limited visitation to sacred and spiritual areas, many nomads avoided the protected areas or simply moved to similar habitats within the vast reaches of the Siberian wilderness.

## INDIGENOUS VIEWS OF THE LAND

The British came to Australia in 1788 primarily to establish a penal colony for the excess "criminal class" of Georgian England.<sup>21</sup> They brought more than convicts, however, as the panoply of English culture came along with the human and material cargo. Ultimately, the British shaped the

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15. YURI SLEZKINE, *ARCTIC MIRRORS* 11-45 (1994); DENNIS BARTELS & ALICE BARTELS, *WHEN THE NORTH WAS RED* 21-23 (1995).

16. PHILLIP R. PRYDE, *ENVIRONMENTAL MANAGEMENT IN THE SOVIET UNION*, 213 (1991); for full text of the decree see *id.* at appendix 10.

17. *Id.* at 162-66.

18. N.M. ZABELINA ET AL., *ZAPOVEDNIKS AND NATIONAL PARKS OF RUSSIA* 5 (1998).

19. THE STATE COMM. OF RUSSIAN FED'N FOR ENVTL. PROT., *BIODIVERSITY CONSERVATION IN RUSSIA* 59 (A.M. Amirkhanov et al. eds., 1997).

20. SLESKINE, *supra* note 15, at 219-22.

21. ROBERT HUGHES, *THE FATAL SHORE* 1-2 (1986).

continent and imposed their culture in the antipodes. Similarly, in the United States, non-indigenous settlers totally transformed the land in ways Australians have not yet even begun to attempt. The Russian tsars and the Soviet government, likewise, expended enormous resources to "master nature." But in all three nations a small, dedicated cadre of preservationists influenced policy to highlight scenic, natural, or scientific values and set aside "wilderness." These areas, however, either marginalized or excluded humans altogether.

The range of indigenous groups and cultural variations in these three countries is enormous and impossible to specifically document within the parameters of this study. There is debate among scholars, however, about whether or not pre-European inhabitants of these lands understood "property" in the Anglo-European sense of the word today. One legal scholar, for example, provides a persuasive argument for the existence of private property rights among some Native American groups long before Europeans.<sup>22</sup> Others have made similar arguments about Australian Aboriginals.<sup>23</sup> Nevertheless, a case can be made that land had more than an extrinsic "commodity" value. Indigenous peoples valued land, flora, and fauna certainly for their survival but, more significantly, incorporated an intrinsic and spiritual value to nature. Nature was part of their cosmology and not something to be tamed.

Australia's Aboriginal peoples are the oldest continuous culture in the world, having inhabited the continent of Australia for at least 30,000 years by very conservative estimates.<sup>24</sup> The sophistication of Aboriginal survival skills and their remarkable adaptation to the land is testimony to their close connection to an environment that Europeans found threatening. Aboriginal history, it is said, "is written—in the land around us!"<sup>25</sup> Accordingly, Aboriginals see all life and all that is in nature as a "part of one unchanging, interconnecting system" and "one vast network of relationships...."<sup>26</sup> Aboriginal creation mythology, known as the Dreamtime, speaks of the spirit ancestors that emerged from the land, created everything, and established the natural laws that have guided Aboriginal society for thousands of years. After the Dreamtime, *i.e.* after the creation, it is believed the spirits re-entered the earth. These points of emergence and re-entry are sacred to the Aboriginal people. Thus, "life came from and

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22. See generally Kenneth H. Bobroff, *Retelling Allotment: Indian Property Rights and the Myth of Common Ownership*, 54 VAND. L. REV. 1571 (2001).

23. See generally HENRY REYNOLDS, *ABORIGINAL SOVEREIGNTY* (1996).

24. See JOHN MULVANEY & JOHANN KAMMINGA, *PREHISTORY OF AUSTRALIA* 1-2 (1999).

25. MUDROOROO, *US MOB* 197 (1995) (quoting SOUTH EASTERN LAND COUNCIL, *THE ABORIGINAL HERITAGE ACTS RECOMMENDATIONS* (1981)).

26. *Id.* at 199.

through the land and is manifested in the land. The land is not an inanimate thing: it is alive."<sup>27</sup>

The history of the earth and humans is equally interconnected with the land for Native Americans and Northern Asian indigenes. Native Americans attest that all in nature, "animals, fish, trees, rocks," are "our brothers, sisters, uncles, and grandpas. Our relations to each other, our prayers whispered across generations to our relatives, are what bind our cultures together."<sup>28</sup> The "Indian theory of relatedness demands that each and every entity in the Universe seeks and sustains personal relationships."<sup>29</sup> This spiritual connection to place and nature provides a unity that cuts across any linguistic or cultural boundary that may exist.

In Russia, the 26 "small peoples of the north" each have a tribal membership ranging from 500 to 30,000 members<sup>30</sup> whose lives have been tied to the land and the severe and unrelenting forces of nature. Traditionally, all natural objects have spirits, just as human beings and spiritual life is tied to seasons, places, and other living creatures.<sup>31</sup> The Charter of the Fourth Congress of Indigenous Peoples summarizes this view well by stating that nature is a source of life, "man is but a drop in the whirlpool of life..." and the "river of time is but a reflection of the past, present, and future and that is how our ancestors lived in the past is how we now live and how our offspring will live in the future."<sup>32</sup>

Deeply held pre-Christian and animistic earth-based philosophies are powerful testimonies to spiritual values that are most difficult to compromise. A noted Aboriginal writer has argued that the establishment of national parks may well be "the second wave of dispossession which denies [indigenous peoples] their customary inherited right to use land for hunting, gathering, building, rituals and birthing rites."<sup>33</sup> Hence, the dispossession argument goes considerably beyond physical removal from the land. Whether it is declaring a territory a national park by federal action and then physically removing its inhabitants as in the United States and Soviet Russia, or the more comprehensive dispossession as occurred in all three countries over time, the destructive, erosive effects similarly impacted

27. *Id.* at 201. Sacred emergence points, e.g. the "Sipapu," are also common to Pueblo cultures in the United States.

28. WINONA LADUKE, *ALL OUR RELATIONS* 2 (1999).

29. Pam Colorado, *Bridging Native and Western Science*, 21 *CONVERGENCE* 49, 55 (1988).

30. SLEZKINE, *supra* note 15, at 1; BARTELS & BARTELS, *supra* note 15, at xvi.

31. GEORGE KENNAN, *TENT LIFE IN SIBERIA* 214-16 (1871); SLEZKINE, *supra* note 15, at chs. 1 & 2.

32. *The Charter of the IV Congress of Indigenous Peoples of the North, Siberia and Far East*, Moscow, Apr. 13, 2001, at <http://www.raipon.org>.

33. Fabienne Bayet, *Indigenous People and Wilderness*, in *THE GREAT NEW WILDERNESS DEBATE* 314, 318 (J. Baird Callicott & Michael P. Nelson eds., 1998).



all indigenous cultures.<sup>34</sup> To some, the very idea of a "wilderness" without the indigenous peoples traditionally associated with that landscape is dehumanizing that population.

### JURISPRUDENCE

Australia and the United States, as former colonies of Great Britain, have legal systems based on English law. Australia's system is more distinct because it is a hybrid of both British and United States traditions of law as evolving through common law, statute, or constitutional interpretations of the courts (particularly the highest court). Russian jurisprudence provides a sharp contrast. Until 1917, Russia was ruled by an authoritarian tsar and the legal system was based on administrative law, a practice common in Europe. Judges ruled according to codes or statutes and when codes were inadequate, the jurist was guided by doctrine and a century of tradition.<sup>35</sup> After the revolution, the Soviet government had to develop a legal system consistent with Marxism-Leninism; thus, Soviet law was an entirely new, "proletarian" inspired system to meet Communist Party political ends. The pre-Soviet and Soviet judicial systems, however, were similar with respect to indigenous issues. That is to say that indigenous peoples of the north held no special or particular rights for land use above or beyond any other "citizen."<sup>36</sup>

In the United States, an implicit recognition of indigenous title to land existed through treaties made before and after the American Revolution. As will be demonstrated, this is in sharp contrast with British practice in Australia; entering into treaties implies the recognition of organized governmental authority to make treaties.

An overview of some key U.S. Supreme Court cases involving "native title" is appropriate at this point. *Fletcher v. Peck*<sup>37</sup> involved fraudulent land schemes in Georgia. Though the Cherokee Nation was not directly involved in the case, the Supreme Court was compelled to address the legal status of Cherokee lands because the lands in question had not been properly transferred from tribes according to treaty. The Court's ruling essentially rejected any notion that Indians could have absolute legal title but rationalized that any "title" was only comprised of hunting rights.<sup>38</sup> Notions of "title" in the usual European sense were conveniently extinguished by invoking the "law of discovery," a "rule initially used by

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34. See generally MARK DAVID SPENCE, *DISPOSSESSING THE WILDERNESS* (1999).

35. KAZIMIERZ GRZYBOWSKI, *SOVIET LEGAL INSTITUTIONS* 7-25 (1962).

36. CHARLES ZIEGLER, *ENVIRONMENTAL POLICY IN THE USSR* 78-79 (1987). See generally HAROLD J. BERMAN, *JUSTICE IN THE USSR* (1963).

37. *Fletcher v. Peck*, 10 U. S. (6 Cranch) 87 (1810).

38. JILL NORGREN, *THE CHEROKEE CASES* 88 (1996).

European nations to govern their relations with one another...to avoid the possibility of overlapping European colonial settlements" in North and South America.<sup>39</sup> The United States, it seemed to the Court, was the legitimate heir to the English claim of "discovery," a principle reinforced by *Johnson v. M'Intosh* about a decade later.<sup>40</sup>

In *Cherokee Nation v. Georgia*,<sup>41</sup> the litigants went directly to the Supreme Court to plead under "original jurisdiction" as a foreign nation. Using the "law of discovery," the Court ruled that the Cherokee Nation had no original jurisdiction before the Supreme Court because it was not a foreign nation but merely a "domestic dependent nation" under a United States protectorate. According to Norgren, the Court "represented Indian nations as being *domestic* in the sense that their territories were located within the exterior boundaries of the United States, *dependent* because of the limitations placed upon them with respect to war and foreign negotiations, and *national* because they were distinctively separate peoples outside the American polity."<sup>42</sup> Over several centuries, Supreme Court cases reached the same result of avoiding or outright rejecting indigenous land title claims with equivocating language.<sup>43</sup> Equally disturbing was the ruling in *State v. Elliott* by the Vermont High Court, and limited to that jurisdiction, that the Cherokee cases' concept of "occupancy" was nullified by "the increasing weight of history,"<sup>44</sup> a convenient shorthand expression to justify conquest and its subsequent consequences.

The British in Australia never entered into treaty arrangements with the Aboriginal people. There the doctrine of *terra nullius* prevailed. It held that natives were nomadic and essentially had no land title and no legitimate governing authority with which to negotiate treaties. This view dominated Australian jurisprudence with respect to Aboriginal land rights until the Australian High Court struck it down in the controversial *Mabo v. Queensland* decision in 1992.<sup>45</sup> The issue was that in 1879 Queensland, now an Australian state,<sup>46</sup> annexed the Murray Islands in the Torres Strait under

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39. *Id.* at 89.

40. *Johnson v. M'Intosh*, 21 U. S. (8 Wheat.) 543 (1823).

41. *Cherokee Nation v. Georgia*, 30 U. S. (5 Pet.) 1, 16 (1831).

42. NORGREN, *supra* note 38, at 103.

43. See, e.g., *United States v. Kagama*, 118 U.S. 375 (1886); *Tee-Hit-Ton Indians v. United States*, 348 U.S. 272 (1955); *Oliphant v. Suquamish Indian Tribe*, 435 U.S. 191 (1978).

44. *State v. Elliott*, 616 A.2d 210, 218 (Vt. 1992).

45. See *Mabo v. Queensland*, [No. 2] (1992) 175 C.L.R. 1.

46. At that time, Queensland was one of several English colonies on the antipodean continent. Federation of these colonies, and thus the creation of Australia as a nation, did not occur until 1901. For a history of Australia, see generally CLIVE TURNBULL, *A CONCISE HISTORY OF AUSTRALIA* (1965).

the doctrine of *terra nullius*.<sup>47</sup> The High Court ruled that *terra nullius* was a fiction and as a policy had "no place in the contemporary law of this country."<sup>48</sup> Guided by the *Cherokee* cases the Court upheld *terra nullius* in relation to the notion of sovereignty as a Crown prerogative confirming an earlier decision in *Coe v. Commonwealth*, which held that Britain's annexation of Australia was legal under the "law of discovery."<sup>49</sup> Historian Henry Reynolds succinctly argues that "Australian law sits uneasily somewhere between 1823 and 1831," the period of the *Cherokee cases*, and "logic provides momentum towards 1831, tradition holds it back."<sup>50</sup>

The Russian experience provides a sharp contrast to English-based Australian or American jurisprudence. In principle, Soviet environmental law guaranteed access to natural resources for all Soviet citizens (e.g., for collecting berries and firewood). Early Soviet policy held that the "small numbered peoples of the North" would be respected by Lenin's "Decree of the Rights of the Peoples of Russia."<sup>51</sup> Ostensibly, the rights of all peoples to "be free" to follow their traditional practices would be protected. Nonetheless, zapovednik and national park law essentially ignored the original human residents. Although these indigenous peoples were not placed on reservations, they were compelled to relinquish their nomadic life style. The biggest changes included the attempted end of reindeer-based nomadism, the introduction of Soviet education, and the rise in social stature of women. The cost of progress (i.e., education and benefits for women) was that through relocation to towns and cities the original cultures faced eventual eradication.<sup>52</sup>

In contrast to North America, Russian land ownership was not a contest between private individuals using it for profit and federal government ownership either to preserve or conserve natural resources (note that both groups were intent on stripping the land from the original inhabitants). In the Soviet Union, land management decisions fulfilled state purposes and disputes were intra-governmental. Industrial interests took precedent over all other uses and military reserves and protected areas

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47. The Torres Strait Islands people are historically and culturally different from mainland Australia indigenous groups though officially categorized as the same by the government until the Federal Parliament disaggregated the two main groups in 2000. *Terra nullius* was more problematic for the Torres Strait Islands people because they were never nomads and had a settled agricultural society long before European colonization of Australia. See *id.*

48. HENRY REYNOLDS, *THE LAW OF THE LAND* 187 (1987).

49. *Coe v. Commonwealth*, 53, Australian Law Journal and Reports, (1979). The case was subsequently reaffirmed in a post-*Mabo* decision in *Coe v. Commonwealth* (1993) 68 A.L.J. 193. See also DAVID H. GETCHES, ET AL., *CASES AND MATERIALS ON FEDERAL INDIAN LAW* 1011-25 (4th ed. 1998).

50. HENRY REYNOLDS, *ABORIGINAL SOVEREIGNTY* 13 (1996).

51. SLEZKINE, *supra* note 15, at 141-46.

52. *Id.* at 351-66.

excluded everyone "equally." The cultural difference was that ethnic Russians adapted village life to the harsh conditions of Siberia and could forego access to the "wild" forest areas. On the other hand, the indigenous peoples were forced to adapt to villages, relinquishing their lifestyle and access to wild areas. Thus, the cultural sacrifice for indigenous peoples was much more profound than for European Russians.

Since 1945, international law has come to play a more significant role on indigenous land and cultural rights issues.<sup>53</sup> The United Nations Charter touches on human rights in a number of areas but the most significant multilateral treaties are the International Covenant on Civil and Political Rights (1966)<sup>54</sup> and the International Covenant on Economic, Social and Cultural Rights (1966).<sup>55</sup> In 1993, the United Nations declared the International Year of the Indigenous Peoples followed a year later by the International Covenant on the Rights of Indigenous Nations, which reinforced the 1989 Indigenous and Tribal Peoples Convention (International Labor Organization Convention No. 169).<sup>56</sup> These treaties provide the foundation for the ethical and humane treatment of all people but specifically those peoples victimized by colonialism.

The Zaire Resolution on the Protection of Traditional Ways of Life (1975),<sup>57</sup> promoted by the World Conservation Union, is more directly relevant to the issue of indigenous land rights and national parks. The resolution called for governments not to displace people from traditional lands protected as parks or conservation preserves, and that taking into account the needs of indigenous populations should be a specific objective in the creation and management of national parks. Similarly, the Caracas Declaration of 1992 proclaimed that protected areas must be managed in a manner sensitive to the needs and concerns of local people, and the 1992 UN Conference on Environment and Development (Rio Conference) emphasized the role of indigenous communities in the management of natural and cultural resources.<sup>58</sup>

An important development along these lines is the World Heritage Convention of 1975, under the jurisdiction of UNESCO, which seeks to

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53. Beth Ganz, *Indigenous Peoples and Land Tenure: An Issue Of Human Rights and Environmental Protection*, 9 GEO. INT'L ENVTL. L. REV. 173, 173 (1996).

54. G.A. Res. 2200A (XXI), 21 U.N. GAOR, Supp. No. 16 at 52, U.N. Doc. A/6316 (1966) (entered into force Mar. 23, 1976).

55. G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. No. 16 at 49, U.N. Doc. A/6316 (1966) (entered into force Jan. 3, 1976).

56. *Convention Concerning Indigenous and Tribal Peoples in Independent Countries*, ILO Doc. No. 169, 72 ILO Official Bull. 59 (Sept. 5, 1991).

57. *Resolutions of the 12th General Assembly of the IUCN, International Union for the Conservation of Nature and Natural Resources*, 6 IUCN Bull. Special Supp. 1 (Nov. 1975) (resolution dated Sept. 18, 1975).

58. ADAM ROGERS, *THE EARTH SUMMIT: A PLANETARY RECKONING* 119-38 (1993).

promote international cooperation to protect those areas in the world deemed historically and culturally significant. It commits, though not legally binds, signatories to help identify, protect, and conserve those areas that are vital natural and/or cultural zones.<sup>59</sup> Australia, with the passage of its World Heritage Conservation Act of 1983, was one of the first countries to endorse the Convention and is the only country to have enacted specific legislation to protect World Heritage Areas, and maintain continuous membership on the World Heritage Council.<sup>60</sup> Although the United States disassociated itself from the United Nations Education, Scientific, and Cultural Organization (UNESCO) in 1984, it continues to participate in World Heritage Site listings, annual meetings, and information exchange.

World Heritage status has clear advantages to indigenous peoples because it "gives international conservation status to the protected areas and strengthens the prohibitions against any actions that may be contrary to the plans of management."<sup>61</sup> Today at least 124 countries are registered and there are now 721 such sites worldwide and the majority of sites (554) are listed solely because of their cultural value. Australia has 14 sites, the United States has designated 18, and Russia has 16.<sup>62</sup> The most prominent of these sites for the purposes of this discussion are Uluru-Kata Tjuta (Ayers Rock and the Olgas) National Park and Kakadu National Park,<sup>63</sup> both located in Australia's sparsely populated Northern Territory; Grand Canyon National Park in the United States; and Lake Baikal and the Golden Mountains of the Altai in Russia.

The publication of "Indigenous and Traditional Peoples and Protected Areas" in the IUCN-World Conservation Union's "Best Practice Protected Area Guidelines" series is another indication of the global trend.<sup>64</sup> Established in 1948, the IUCN is an "intergovernmental" organization that seeks to help countries conserve the integrity of nature. In conjunction with the World Wide Fund for Nature (WWF), the guidelines emphasize the rights of indigenous people to participate in the designation, demarcation, and management strategies for any new park. The guidelines stress that indigenous people need to be part of maintaining the health of the ecosystem, as well as benefit from a healthy, protected natural area.<sup>65</sup> Although there is no mechanism for enforcement of the "Guidelines," their

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59. LAWRENCE, *supra* note 3, at 216.

60. *Id.* at 215.

61. *Id.* at 232.

62. UNESCO World Heritage, at [http://www.unesco.org/whc/nwhc/pages/doc/dc\\_f3.htm](http://www.unesco.org/whc/nwhc/pages/doc/dc_f3.htm) (Dec. 2001).

63. Australia's best known World Heritage Area, however, is the Great Barrier Reef.

64. WORLD CONSERVATION UNION, INDIGENOUS AND TRADITIONAL PEOPLES AND PROTECTED AREAS: PRINCIPLES, GUIDELINES AND CASE STUDIES 1-17 (Javier Beltran ed., 2000).

65. *Id.* at 17.

presence and widespread distribution imply that protected areas throughout the world recognize the importance and significance of indigenous knowledge and use of natural resources. At least theoretically, national parks are no longer isolated from the original inhabitants.

### CURRENT POLICIES

Under the growing influence of international declarations, the trend in all three nations indicates a slow but certain "new" role for the participation of indigenous peoples in protected area policy and management. Additionally, the growing body of academic work dispels the myth of "pristine landscapes" and reveals how indigenes lived on the land and the subsequent policies of exclusion and eradication.<sup>66</sup> And finally, two important forces for change are the legal expertise among indigenous populations and the emerging activism of non-governmental organizations for indigenous rights.

Keller and Turek, noted scholars on Indian culture, have identified four distinct phases in the relationship between Indians and the NPS in the United States.<sup>67</sup> The first of these phases was the outright appropriation of Indian lands. The next phase saw a general disregard for indigenous rights and a lack of cultural sensitivity from park officials. In the modern era, with more Indian pro-active pursuits of tribal interests, the relationship evolved into today's relatively more cooperative cross-cultural arrangement. The NPS, they claim, "has improved in awareness and sensitivity during the past several decades."<sup>68</sup> There is more that can be done. *The Vail Agenda*, a consensus report from the NPS Seventy-Fifth Anniversary Symposium to discuss the future directions for national park management and policy, did not have any tribal representation among the list of speakers and presenters.<sup>69</sup> Indigenous issues were given token attention with vague references to "culture" and the need for the NPS to "aid" indigenous people "in expressing their own heritage."<sup>70</sup> Joint management is not likely now or in the near future as the NPS has become increasingly impacted by interagency squabbles and political pressures.<sup>71</sup> The continued tie with the tourism industry places the NPS in a position of subservience to these

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66. See, e.g., PHILIP BURNHAM, *INDIAN COUNTRY, GOD'S COUNTRY: NATIVE AMERICANS AND THE NATIONAL PARKS* (2000); SPENCE, *supra* note 34.

67. ROBERT KELLER & MICHAEL TUREK, *AMERICAN INDIANS AND NATIONAL PARKS* 233 (1998).

68. *Id.* at 234.

69. See generally *National Parks for the 21st Century*, Report and Recommendations to the Director of the National Park Service (1993).

70. *Id.* at 107.

71. See generally LOWRY, *supra* note 2.

economic interests. Native American groups, on the other hand, do not have the same legal/political clout and the Bureau of Indian Affairs is a relatively weak federal agency.

Nevertheless, cooperation with Native Americans is occurring, which demonstrates important departures from past policy. One change is the increasing use of Native American interpreters to provide unique cultural interpretations of the parks to visitors. Though important, these interpreters are few and poorly paid and they have little opportunity for key management roles or decision making.<sup>72</sup> At Mesa Verde, for example, less than 10 percent of the full-time permanent park staff are Native Americans.<sup>73</sup> A recent NPS policy paper stresses that the service must now go beyond the "interpreter" stage and "instead of protecting parks 'from' their ancestral peoples, the National Park Service must protect parks 'for' their ancestral people...."<sup>74</sup>

Alaska provides several fitting examples of cooperation. The 1971 Alaska Native Claims Settlement Act<sup>75</sup> recognized the rights of indigenous peoples to natural resources, even though the economic rewards from the Act have been limited.<sup>76</sup> In 1980 President Carter signed the Alaska National Interest Lands Conservation Act (ANILCA),<sup>77</sup> which added over 100 million acres of federally protected land including ten new units to the National Park System.<sup>78</sup> ANILCA "directs the [NPS] to manage parks in a manner that supports [an indigenous] subsistence [lifestyle], which is the cornerstone of the living culture of rural Alaska."<sup>79</sup> In other words, the Act allows Alaskan natives the right to live off the land according to their traditional hunting, fishing, and gathering practices. Today, Alaska's national parks comprise some 41 million acres, nearly 50 percent of the entire land mass administered by the NPS.<sup>80</sup> Denali, Wrangell-St. Elias, Glacier Bay, and Gates of the Arctic national parks, for example, are also traditional hunting grounds for the indigenous populations of Alaska and represent a more than 50-year struggle with the NPS to allow continued

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72. KELLER & TUREK, *supra* note 67, at 239.

73. BURNHAM, *supra* note 66, at 249-50.

74. Living Cultures: Living Parks, Issue Papers for a Report on the Future of the National Park System, National Park System Advisory Board, Nov. 2000, at 1.

75. 43 U.S.C. §§ 1601-1629 (1994).

76. Martha Hirschfield, *Tribal Sovereignty and the Corporate Form*, 101 YALE L.J. 1331, 1338 (1992).

77. Pub. L. No. 94-487, 94 Stat. 2371 (1980) (codified, as amended, in scattered sections of 16 U.S.C. & 43 U.S.C.).

78. Living Cultures: Living Parks, *supra* note 74, at 4.

79. *Id.* at 4.

80. Acreage calculated using OFFICE OF PUBLIC AFFAIRS AND THE HARPERS FERRY CENTER, DIV. OF PUB. NAT'L PARK SER., U.S. DEPT. OF INTERIOR, THE NATIONAL PARKS: INDEX 1999-2001 (1999).

hunting on these federal reserves.<sup>81</sup> Since the NPS retains ultimate authority over the parks, the extension of hunting rights does not equal the relative autonomy and authority Native Americans have over their own reservations.

The Havasupai Indians, who are the only indigenous people still living in the Grand Canyon, had a long fight with the NPS and the Sierra Club over traditional hunting rights after the 1975 expansion of Grand Canyon National Park resulted in the enlargement of the Havasupai Reservation. Already physically removed from a portion of the Grand Canyon when it was originally declared a park in 1919, the Havasupai succeeded in gaining the right to traditional use of the expanded land.<sup>82</sup> Perhaps the most telling evidence of ingrained NPS resistance, however, involves the Timbisha Shosone tribe and the expansion of Death Valley National Park. Tribal leaders have sought to control a large share of the park and acquire shared management of surrounding wilderness areas but have met with sharp NPS resistance.<sup>83</sup> The two sides did not formally negotiate until 1995, and what has emerged is the establishment of a 300-acre parcel of land within the national park set aside as a permanent tribal trust land and the agreement to "co-manage" a portion of the land (the amount of land is not at all clear at this point) within the park jurisdiction.<sup>84</sup>

In Australia, though native title over national parks is yet untested in the courts, concessions have been made well ahead of the United States. Although the *Mabo* case does not involve national parks, per se, there is nothing in Australian law that specifically enhances or diminishes native title to national park land. Australian federal legislation, with respect to national parks, must conform to the Racial Discrimination Act of 1975, which prevents any action to impair native title in a way not applicable to other land titleholders. Unlike the United States, which extinguished native title over national parks, the Australian National Parks and Wildlife Conservation Act of 1975 does not expressly extinguish native title though it does regulate it. Australia's movement to an ecosystem model, and its biodiversity premise, is more friendly toward maintaining a link between protected areas and indigenous people who have a history and a stake in ecological protection. Thus, as Australia has more readily endorsed the terms and conditions of the World Heritage Convention, it has also begun to incorporate the spirit, if not always the letter, of the Zaire Resolution. Australia has established a unique form of joint management with indigenous populations for some national parks. Federal legislation has

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81. See generally THEODORE CATTON, *INHABITED WILDERNESS* (1997).

82. SPENCE, *supra* note 34, at 135-36.

83. *Id.* at 138.

84. BURNHAM, *supra* note 66, at 6.



provided the legal foundation for joint management of parks such as the Northern Territory parks of Uluru and Kakadu and the South Australia park at Witjira.

Uluru-Kata Tjuta, just under 800 square miles with approximately 250,000 visitors per annum, is situated close to the geographic center of Australia.<sup>85</sup> Though small in area and with fewer visitors than most parks in the United States, Uluru is the most easily recognizable symbol of Australia after the kangaroo. In the local Anangu language, Uluru means "gathering place" and represents the very essence of Dreamtime creation mythology.<sup>86</sup> The land officially was returned to the Anangu people in 1985 by the Australian government, and they leased it back to the Australian Nature Conservation Agency with several conditions that reflect World Heritage Convention and Zaire Resolution guidelines.<sup>87</sup> The park today is managed by a board of management that consists of six Anangu members selected by the tribal leadership, the director of Parks Australia, one member appointed by the federal Minister of Tourism, one member appointed by the federal Minister of the Environment, and an Australian National Parks and Wildlife Service scientist experienced in arid land ecology.<sup>88</sup>

Witjira National Park, on the western edge of the Simpson Desert, covers more than 4000 square miles. It is part of the land associated with the Lower Southern Arrernte and Wangkangurru people, who in 1989 formed the Irrwanyere Aboriginal Corporation. In 1987, the then South Australian Department of Environment and Planning adopted a policy to develop joint management for those parks where Aboriginal people had a traditional cultural interest. The Witjira joint management arrangement is based on an acceptance of fundamental conditions espoused by the Lower Southern Arrernte and Wangkangurru people during negotiations on the arrangements. The principles considered crucial by the community are that Aboriginal customs must be part of the management plan protected through some form of tenure over the park. Similar to Uluru-Kata Tjuta, management consists of four Aboriginals, one of whom is the chairperson, and three from the government.<sup>89</sup>

The last site to be considered is Kakadu National Park, which is the largest land park in the Australian system at 12,000 square miles.<sup>90</sup> Though

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85. Uluru-Kata Tjuta National Park, Informational Handout (acquired by author, 2000).

86. See ANNA VOIGT & NEVILLE DRURY, *WISDOM FROM THE EARTH* 73 (1997).

87. See Handout, *supra* note 85.

88. *Id.*

89. Interview with Witjira National Park officials, at Witjira National Park, South Australia (Feb. 2000).

90. AUSTRALIAN NATURE CONSERVATION AGENCY, *KAKADU: NATURAL AND CULTURAL HERITAGE AND MANAGEMENT* 245 (Tony Press et al. eds., 1995).

remote, it is growing in visitor popularity, with more than 200,000 visitors per annum.<sup>91</sup> Kakadu is an important example of the complex nature of evolving joint management policies. Some of the park is Aboriginal-owned land. Lease-ownership agreements evolved until, in 1991, a stronger Aboriginal position emerged with direct Aboriginal participation on the board of management. The current lease contains significant language guaranteeing Aboriginal rights of use and occupation.<sup>92</sup> The creation of the Board of Management grants Aboriginal people a major voice in the management of Kakadu National Park following the model of Uluru-Kata Tjuta. The fourteen-member management board consists of ten representatives of Aboriginal traditional owners; the remainder are drawn from the Australian national park service.<sup>93</sup> The lease agreement gives the traditional owners an annual rent together with 25 percent of visitor gate and camping receipts and 25 percent of any charges, fees, or penalties made with respect to commercial activities within the park.<sup>94</sup>

The *Mabo* case has raised expectations that Australian federal and state governments would be compelled to make arrangements for substantial joint management of protected areas. This is not necessarily the case. Thus far, the fact that Aboriginal land is in a national park does not create or enhance the prospects for a native title claim. The claim to land must first be based on traditional or historical associations. If native title is found to exist and is not extinguished by legal, legislative, or executive action, a decision on whether that title has been extinguished by incorporation in a national park must be made. For a successful native title claim to national parks, Aboriginal claimants will have to establish rights to the land according to Aboriginal law and custom.<sup>95</sup>

Current policies in the Russian Federation have been subject to a much different set of circumstances than in either Australia or the United States. The collapse of the Soviet Union in 1991 completely changed the region's political and economic systems. Although Russia is more politically and economically liberal than during the Soviet era,<sup>96</sup> the level of freedom to participate in political activities or observe cultural traditions is debatable. Freedom House rates it as "partly free,"<sup>97</sup> and the country has been described as a "delegative democracy," wherein after an election, the

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91. *Id.* at 254.

92. *Id.* at 8-9.

93. *Id.* at 243.

94. LAWRENCE, *supra* note 3, at 201.

95. Ganz, *supra* note 53, at 188.

96. See generally RUSSIA IN THE NEW CENTURY: STABILITY OR DISORDER? (Victoria E. Bonnell & George W. Breslauer eds., 2001).

97. FREEDOM IN THE WORLD SURVEY TEAM, FREEDOM IN THE WORLD 2002: THE DEMOCRACY GAP (2002), at <http://www.freedomhouse.org/research/freeworld/2002/essay2002.pdf>.

president and governors have relatively unchecked power to make and implement policy.<sup>98</sup> Nonetheless, in 1989 the forces of democratization and perestroika began to have a positive effect on indigenous policy when the USSR signed the International Labor Organization Convention 169.<sup>99</sup> This signing was closely followed by the convening of the Congress of Northern Indigenous Peoples in Moscow.<sup>100</sup> The Russian Association of Indigenous Peoples of the North (RAIPON) was established in 1990 and now regularly publishes the journal *Indigenous Peoples' World—Living Arctic*.<sup>101</sup> Further effects of democratization are reflected in recent Russian environmental legislation including the 1992 Law on Environmental Protection,<sup>102</sup> the 1994 Federal Forestry Law,<sup>103</sup> and specifically the 1995 Law on Specially Protected Natural Areas.<sup>104</sup> Although the mechanism for implementation remains vague, these laws guarantee unprecedented indigenous rights by allowing indigenous peoples access to their traditional hunting grounds and way of life.<sup>105</sup>

Russia's 1995 Law on Specially Protected Natural Areas is the first protected area legislation that explicitly outlines the rights and responsibilities of employees to protect and manage the resources. It also indicates a shift in zapovednik philosophy towards tourism, environmental education, and managed access such as in the legislatively designated "Wilderness Areas" of the United States and Australia.<sup>106</sup> Providing the authority for Inspectors (rangers) to arrest trespassers while courting limited tourism presents a double-edged sword for improved relations between protected areas and indigenous peoples. From an indigenous perspective, the pantry is closed for gathering food but they are expected to hope that the tourists will bring in cash to go to the store. Indigenous

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98. Guillermo O'Donnell, *Delegative Democracy*, J. DEMOCRACY, Jan. 1994, at 59-60; RICHARD SAKWA, *RUSSIAN POLITICS AND SOCIETY* (2nd ed. 1996).

99. ILO Doc. No 169, *supra* note 56.

100. Olga Murashko, *Indigenous Peoples and Conservation of Their Environment in Russia*, RUSSIAN CONSERVATION NEWS, Spring 1999, at 13, 15.

101. See RUSSIAN ASS'N OF INDIGENOUS PEOPLES OF THE NORTH, RAIPON HOMEPAGE, at <http://www.raipon.org/english/index.html> (last visited Apr. 16, 2002).

102. See generally Andrew R. Bond & Mathew J. Sagers, *Some Observations on the Russian Federation Environmental Protection Law*, 33 POST-SOVIET GEOGRAPHY 463 (1992).

103. Paul A. Soler-Sala, *Principles of the Forestry Legislation of the Russian Federation* (1994) (unpublished USDA Forest Service document, on file with author).

104. Federal Law on the Specially Protected Natural Areas *Sobr. Zakonod. RF*, 1995, No. 33, Item 3 (translation on file with author).

105. See David M. Ostergren, *An Organic Act after a Century of Protection: The Context, Content and Implications of the 1995 Russian Federation Law on Specially Protected Natural Areas*, 41 NAT. RESOURCES J. 125, 132-39 (2001).

106. See generally David M. Ostergren & Steven J. Hollenhorst, *Convergence in Protected Area Policy: A Comparison of the Russian Zapovednik and American Wilderness Systems*, 12 SOC'Y & NAT. RESOURCES 293 (1999).

peoples are excluded from the strict nature preserves but foreigners are welcome as ecologically benign tourists. Recent Russian laws display a greater respect for the traditional activities and rights of indigenous peoples, though the implementation of such policies continues to be difficult.

The Russian National Park system has a different set of challenges than the zapovednik system to adapt to indigenous rights. National parks maintain an emphasis on recreation and include "economic" zones that permit the development of an infrastructure for tourism. The Russian national parks are more like the British model in that the Russian parks may incorporate communities or agricultural areas as part of the protected cultural and natural landscape.<sup>107</sup> In contrast to zapovedniks, where nearly all trespass is prohibited, the inclusion of working communities compels national park directors to implement more inclusive planning strategies. When a national park includes a village, the boundaries and agricultural activities are relatively predictable and managers can plan for most eventualities. On Lake Baikal (a World Heritage Site with two national parks and two zapovedniks) both the Yakuts and Evenk peoples live in relatively close proximity and may travel on or across park boundaries. The Yakut and Evenk are less predictable and managers may be more concerned with grazing or hunting activities within the protected area. National park managers continue to struggle with the fundamental problem of whether to allow indigenous peoples unfettered access or not.

Russia currently has an opportunity to cooperate with indigenous peoples in establishing twelve new national parks and nine zapovedniks.<sup>108</sup> In particular, the authorities should cooperate with the Altai peoples if the new Sailugem Zapovednik (241,000 hectares) is created in the Altai Republic within the Golden Altai Mountain World Heritage site. Extreme poverty is a tremendous obstacle to improved relations between indigenous people and the officials of Russian national parks. Not just indigenous peoples, but poor ethnic Russians are increasingly turning to the land to fulfill their basic needs. Poaching for food (*i.e.*, meat, berries, mushrooms, fish) reached epidemic levels after the fall of the Soviet Union, as did the black market for endangered animal parts (*i.e.*, tiger, leopard, bear gallbladders, and musk deer). As poverty, hunger, and unemployment rise in the Russian Federation the indigenous people will suffer disproportionately from any restrictions to hunting and fishing grounds. In

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107. See generally I.V. CHEBAKOVA, *NATIONAL PARKS IN RUSSIA: A GUIDEBOOK* (1997).

108. Posting of Anna Varshavskaya, *Russia to Create 9 New Preserves and 12 National Parks*, to Russian Environmental Digest, editor@teia.org (July 1, 2001) (copy on file with author); interview with Nikolai Maleshin, Director, Southern Zapovednik Directors Ass'n (Aug. 2001).

all Russian protected areas, the manager's primary strategy is to limit conflict and deal with violations through education.<sup>109</sup>

On May 7, 2001, Russian President Vladimir Putin signed the "Law on Traditional Nature Utilization by the Small Peoples of the North, Siberia and the Far East of the Russian Federation," which recognizes traditional land rights and uses for indigenous people.<sup>110</sup> The traditional land rights and uses include grazing and hunting but this law does not give (or cede) the land to individual groups. The law only permits the use of resources and allows for a return to "unrestrained" reindeer herding on lands not otherwise restricted to access. Military and border zones and ecologically sensitive areas remain off-limits.<sup>111</sup> It appears that zapovednik and national park directors also may have the discretion to limit access to protected areas. Many zapovednik managers resist unfettered access to the vast reserves by indigenous people because it may compromise the integrity of the ecosystem.<sup>112</sup> Indigenous peoples may argue that their activities will have relatively little effect on most preserves in Siberia and the Far East. For instance, the Taimirsky Zapovednik is over four million acres and contains immense breeding grounds for waterfowl and vast rivers of fish.<sup>113</sup> Under the new legislation the national parks will probably not limit access, but will attempt to regulate "excessive" impact. The problem for national park directors will be to balance the rights of indigenous peoples while protecting the resource. The law represents a growing recognition of indigenous rights by Russia and leaves the complicated details of implementation to park directors.

## CONCLUSIONS

The literature demonstrates that native access to the resources of national parks throughout the world remains essentially prohibited.<sup>114</sup> National parks in the United States, Australia, and Russia fundamentally adhere to the Yellowstone model of securing a land and protecting its "pristine" quality by not allowing traditional land uses and permitting access for visitors under carefully controlled conditions. The United States

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109. Personal communication with Nikolai Maleshin, Director, Southern Zapovednik Directors Ass'n (Mar. 2000).

110. This law (in Russian) is reprinted in the Russian language newsletter INDIGENOUS PEOPLES WORLD-LIVING ARCTIC, Issues 6-7 (2001), available at <http://www.raipon.org>.

111. *Id.* at 109.

112. Personal Communication with Nikolai Maleshin, *supra* note 109.

113. David Ostergren, *System in Peril: A Case Study of Five Central Siberian Zapovedniki*, 4 INT'L J. WILDERNESS 12, 15 (1998).

114. RESIDENT PEOPLES AND NATIONAL PARKS 372-77 (Patrick West & Steven Brechin eds., 1991).

particularly insisted that national parks be nature preserves without human habitation; thus, despite some relatively minor resource harvesting, traditional hunting and fishing rights of natives were abrogated and sacrificed at the altar of wilderness preservation. Today, due to tribal political and legal pressures, the NPS has made minor concessions in some areas. Australia succeeded in its early history to totally marginalize Aboriginal populations making all lands easy to take without the subterfuge of treaties or land "purchases." Once again, the political and legal climate in Australia has changed, leading to more recognition of Aboriginal rights.

Throughout the Soviet era, Russians and indigenous people alike were removed to create protected areas. In the 1980s, national parks incorporated agricultural landscapes and villages but maintained large natural areas off limits to human use. The greatest policy shift has been in the last decade as the Russian Federation has recognized indigenous human rights and the traditional use of land, although how much access will be allowed to national parks remains to be seen.

Australian indigenes have had greater success in gaining management and land ownership rights over some territories previously designated as national parks. The Timbisha Shoshone Natural and Cultural Preservation Area at Death Valley National Park comes closest to what Australian officials have been able to arrange at Kakadu, Uluru-Kata Tjuta, and Witjira. Such policies are worthy of consideration in the United States and should be expanded in Australia. Critics of joint management, or retaining indigenous people within protected areas, suggest that one (and by implication inevitable) risk is that indigenous people will eventually take advantage of their "ownership." The specter of a Holiday Inn rising next to Half Dome in Yosemite, perched atop Ayer's Rock in Australia, or intruding on the pristine shores of Lake Baikal is easily circumvented. In a spirit of cooperation, indigenous people should be partners in resource management and part of the natural balance that administrators try to strike when ecosystems are confined to artificial park boundaries.

This long-term process requires commitment from governmental bodies under whose jurisdiction these lands have been managed. The strong sense of identity and place from the indigenes is clearly well established, thus providing the other pillar to the foundation for future management. Joint management is not simply a conservation agreement, it is part of the wider issue of social justice, community development, and the preservation of cultural identity; all of which are values espoused by the World Heritage concept and mandated in international law.