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Irredeemable America: The Indian's Estate and Land Claim, Imre Sutton, Ed.

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IRREDEEMABLE AMERICA; THE INDIANS' ESTATE AND LAND CLAIM

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Irredeemable America is a collection of essays that tries to bring some order out of the chaos of the Indian Claims Commission. As in all collections of essays, there is a broad range here, from the informative, brief history of the Claims Commission by Harvey D. Rosenthal, to the unreadable nonsense about international law by Roxanne Dunbar Ortiz. On balance, however, most of the pieces are interesting and informative, particularly those that relate personal experiences. Ralph Beals' *The Anthropologist as Expert Witness* is especially interesting for its glimpse of the academy and of the conflicts created when scientists must face the adversarial system. Colleagues divided, as did research, depending upon which side was footing the bill. The picture of the activities of forensic anthropologists, forensic historians, and fornesic geographers highlights the obtuseness of the process, perhaps more than any other aspect of the book.

The approach of the book is interesting. It attempts, like *Rashomon*[1] to give a many-sided perspective to a process that has its roots firmly intertwined with the history of the United States. One assumes the editor thought that, through this multifaceted approach, a whole would emerge from complex legal, social, and moral issues. Unfortunately, this approach fails. It fails because there are some vital essays missing. The first missing essay might be entitled "Why?" Why did the United States have to pay Indians for land that had been taken in the remote American past? Although Wilcomb Washburns' article has a page on the early history and Rosenthal's article is descriptive of the Indians' legal struggle, there is no article setting out how Indians came to possess the aboriginal title upon which the government's obligation to pay rested.

Aboriginal title is largely the invention of Chief Justice Marshall.[2] Because of the unique situation that has evolved in the United States over the need to have confirmed paper title, a body of law had developed that recognized rights in property that protected a variety of users. The equivalents of the Enclosure Acts could not dispossess the unwashed in America. Every American would have title, or at least evidence of title, by

1. RYUNOSUKE AKUTAGAWA, RASHOMAN AND OTHER STORIES. (1970)
2. Johnson v. McIntosh, 21 U.S. (8 Wheat) 543 (1823).

having a deed. When the Supreme Court had to address the issue of the nature and extent of Indian property rights in 1823,[3] the body of unique American property law that had developed came to bear, not as law, but as social and political considerations. How could people who exercised dominion over land be denied any right in that land? In response to this problem, Marshall devised the doctrine of aboriginal title to recognize Indian dominion and made it coincide with his own desire as a federalist to have federal control over the western frontier. Marshall's doctrine had a dramatic effect on the expanding west. The continuation of the treaty process until 1871[4] was less a recognition of Indian tribes as domestic dependent nations than a need to ensure that Indian title be extinguished.

While one realizes that it is beyond the scope of the book to give a history of the complex legal relationship between Indians and the United States, a chapter detailing the land and status relationship is vital to give the process itself meaning. The very existence of land rights makes the relationship unique because those rights exist not from grace, but from law. The second missing essay is more personal. Of the fourteen named authors, none is an Indian. While this may be a realistic reflection of the number of Indians in the various disciplines represented, it also misses one of the very important aspects of the entire process. For many reservation Indians, the claim docket was an inheritance—a promise that somewhere down the road we would be paid for the taking of our land. When the Chemehueves received $1,300 each in 1970, it was the death of a dream. A lawyer we did not know, in a city we had never seen, had determined that the money was to be divided per capita between all lineal descendents. We couldn't use the money for development or education, and the lineal descendents disappeared back into the suburbs of Los Angeles. Almost every Indian I know has similar stories about the claims settlement, and it would have been appropriate to have at least one Indian write about the process.

In spite of these failings, the book is valuable for anyone interested in Indian policy or the history of the United States. As the book makes clear, the Indian Claims Commission not only failed in its purpose; it may have created more problems than it solved.

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3. *Id.*

4. The Appropriations Act of March 3, 1871 ch. 120, § 1, 16 Stat. 544, 566 (codified as 25 U.S.C. 17).