



5-29-2024

Conservation Co-Governance as a Cure: Investigating Aotearoa New Zealand's Conservation Co-Governance Model as a Blueprint for Restoring Navajo Sovereignty in Managing Canyon de Chelly

Shana R. Herman

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Recommended Citation

Shana R. Herman, *Conservation Co-Governance as a Cure: Investigating Aotearoa New Zealand's Conservation Co-Governance Model as a Blueprint for Restoring Navajo Sovereignty in Managing Canyon de Chelly*, 35 Vill. Envtl. L.J. 205 (2024).

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CONSERVATION CO-GOVERNANCE AS A CURE:
INVESTIGATING AOTEAROA NEW ZEALAND'S
CONSERVATION CO-GOVERNANCE MODEL AS A BLUEPRINT
FOR RESTORING NAVAJO SOVEREIGNTY IN MANAGING
CANYON DE CHELLY

SHANA R. HERMAN*

ABSTRACT

As a result of colonization, Indigenous Peoples, globally, have historically been excluded from managing their ancestral lands and the resources they supply. This exclusion infringes on tribal sovereignty and violates treaty rights. Recently, co-management schemes have emerged in the United States in an effort to restore tribal power in managing such landscapes and resources. Despite this intention, a couple of significant issues render these initiatives inadequate. Such issues include limited tribal participation and input in decision-making, and the retention of a Western management framework under which the land is still regarded as property to be managed by and for the benefit of humans. A new movement, known as conservation co-governance, has also recently emerged in Aotearoa New Zealand. This movement is similarly designed to redress historical treaty violations and restore tribal sovereignty in managing landscapes and resources from which Indigenous Peoples have historically been excluded.

* Associate Attorney, Hausfeld LLP, specializing in plaintiff-side complex environmental and strategic climate change litigation; J.D. with a Concentration in Environmental Law, The George Washington University Law School; B.A. in Political Science, Conservation Biology, and Environmental Justice, Swarthmore College. This Article is dedicated to the memory of Ngārangi Tony Marsh, who generously devoted his life to sharing his profound mātauranga (i.e., Māori knowledge) with the world, and who I had the immense honor and privilege of learning from while living and studying in Aotearoa New Zealand. E rere wairua, e rere, ki ngā ao o te rangi, whitiwhitia e te rā. Kua whetūrangitia koe. I offer my sincerest appreciation to Charles Dawson, Peter Horsley, Rosie Horsley, Lucy Carver, Ash Holwell, Giovanna Di Chiro, Carol Nackenoff, and Elizabeth Nichols, whose passion and wisdom motivated me to pursue this research during my time in Aotearoa New Zealand and beyond. I extend this appreciation to Randall Abate, Madeline Smedley, Emma Eisendrath, S. Craig Alexander, and Anne Finken for their invaluable guidance throughout the drafting and publication processes. I also express my deepest gratitude to the Ngāti Rangī iwi for welcoming me onto their marae (i.e., sacred meeting ground) and allowing me to engage in transformative kōrerō (i.e., discussions) during my time in Aotearoa New Zealand. Additionally, I am grateful to the Udall Foundation for providing me with an exceptional and enduring network of colleagues and friends, whose diverse work related to the environment, tribal public policy, and Native American healthcare continues to inspire and educate me, and to all those who have guided and supported me in developing and pursuing my passion for environmental justice.

In investigating this movement, this Article focuses on the Te Urewera Act 2014, which grants a former national park legal personhood and establishes a joint governmental and tribal Board – with the goal of increasing tribal representation over time – to act on behalf of the land. With a particular focus on the co-management scheme in place at Canyon de Chelly National Monument between the Navajo Nation and National Park Service, this Article asserts that because the co-governance scheme in Aotearoa New Zealand goes further than existing co-management schemes in the United States, it has greater potential to alleviate the existing challenges posed by co-management. This Article proposes that the United States enact federal legislation reflecting a modified version of the Te Urewera Act 2014, incorporating a transition to full rather than partial tribal representation and mandating that this transition occur over an expedited timeline in comparison to Aotearoa New Zealand’s model. Such legislation would help rectify the issue of historical exclusion of the Navajo Nation in managing ancestral lands, including Canyon de Chelly, and its consequent infringement on Navajo sovereignty.

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I. INTRODUCTION

For Indigenous Peoples across the globe, colonization is not something that simply exists in a history textbook; rather, it is a present reality.¹ For generations, Indigenous Peoples have suffered lasting impacts from historical and ongoing colonization, including profound alienation from Indigenous land and culture resulting from governments' assimilationist policies and practices.² An often-overlooked arena that these harms pervade involves conservation.³ Because society regards many conservation initiatives, such as the designation of protected areas to conserve natural landscapes and resources, as inherently beneficial, it often ignores the damaging impacts of such initiatives on Indigenous Peoples.⁴ In reality, the harmful impacts of conservation efforts have been, and continue to be, quite significant.⁵

Although colonizers initially stole Indigenous lands, many of which are sacred, for the purpose of settlement, over time, colonial governments began to designate these lands for other purposes.⁶ One such purpose was to protect the natural beauty and resources that these lands provided.⁷ Governments began designating former Indigenous lands as "protected areas" and exclusively managing these lands and their resources.⁸ Consequently, Indigenous Peoples across the globe, including in both Aotearoa New Zealand⁹ and the United States, have historically been excluded from the management of such areas.¹⁰ The governments' abuses in not only stealing

1. See, e.g., Paul Nicolas Cormier, *British Colonialism and Indigenous Peoples: The Law of Resistance–Response–Change*, 49 PEACE RSCH. 39, 39 (2017) (arguing that colonization of Indigenous Peoples has never ended because Indigenous Peoples are still part of political systems and governed by institutions created and defined by Eurocentric traditions).

2. See LINDA ARCHIBALD, *DECOLONIZATION AND HEALING: INDIGENOUS EXPERIENCES IN THE UNITED STATES, NEW ZEALAND, AUSTRALIA AND GREENLAND* 2, 12–15 (2006).

3. See Lara Domínguez & Colin Luoma, *Decolonising Conservation Policy: How Colonial Land and Conservation Ideologies Persist and Perpetuate Indigenous Injustices at the Expense of the Environment*, 9 LAND 65, 65 (2020).

4. See *id.*

5. *Id.*

6. See JENNY SPRINGER & FERNANDA ALMEIDA, *PROTECTED AREAS AND THE LAND RIGHTS OF INDIGENOUS PEOPLES AND LOCAL COMMUNITIES: CURRENT ISSUES AND FUTURE AGENDA 2* (Alastair Sarre ed., 2015).

7. See *id.*

8. See *id.* at 2–3.

9. "Aotearoa" is the Te Reo Māori word for New Zealand. The Māori Language Act 1987 established Te Reo as an official language of Aotearoa New Zealand. See Māori Language Act 1987, s 3 (N.Z.); *Our Languages - Tō Tātou Reo*, MINISTRY FOR ETHNIC COMMUNITIES – TE TARI MĀTĀWAKA (Dec. 13, 2023), <https://www.ethniccommunities.govt.nz/resources-2/our-languages-t/>.

10. See Andrew Curley, *Some Thoughts on a Long-Term Strategy for Bears Ears*, in *EDGE OF MORNING: NATIVE VOICES SPEAK FOR THE BEARS EARS* (Jacqueline Keeler ed.,

Indigenous lands but also excluding Indigenous Peoples from managing and using their own stolen lands are particularly profound due to the critical importance of the environment to Indigenous communities.¹¹ Moreover, the philosophies underlying governments' management of these areas are fundamentally in conflict with Indigenous worldviews,¹² exacerbating the cultural and psychological harm caused by this exclusion.¹³ Ultimately, the confiscation of Indigenous lands and subsequent exclusion of Indigenous Peoples from their management and use have served to substantially limit tribal sovereignty and self-determination.¹⁴ In turn, this consequence has perpetuated the slow genocide of Indigenous Peoples globally, including in both Aotearoa New Zealand and the United States.¹⁵

In recent years, Indigenous communities across the world, including in both Aotearoa New Zealand and the United States, have challenged this historical exclusion through the legal system. As a result of this opposition, governments have begun to take steps towards rectifying these historical abuses. For example, in Aotearoa New Zealand, negotiations relating to this exclusion have proven successful, resulting in the passage of several recent statutes that are indicative of a fundamental transformation in the country's approach to conservation management.¹⁶ Such statutes provide reparations to tribes affected by governmental confiscation and mismanagement of tribal ancestral lands and implement a new approach to conservation management that is designed to restore

2017) (noting that “[d]isplacing and evicting already marginalized people from natural areas is a problem in the establishment of national parks or biological reserves throughout the world”).

11. See Domínguez, *supra* note 3, at 65 (explaining that “[b]ecause traditional, indigenous livelihoods depend on access to ancestral lands, eviction in the name of conservation threatens indigenous peoples’ very survival”).

12. See Stephanie Romeo, *Concepts of Nature and Power: Environmental Ethics of the Northern Ute*, 9 ENV'T REV. 150, 159 (1985).

13. See Aresta Tsosie-Paddock, *Second-Generation Navajo Relocates: Coping with Land Loss, Cultural Dispossession, and Displacement*, 33 WICAZO SA REV. 87, 92 (2018) (discussing how “[c]ompulsory relocation causes multidimensional stresses that can be characterized into three types: physiological, psychological, and sociocultural (including economic) stress”).

14. See Alexander Mawyer & Jerry K. Jacka, *Sovereignty, Conservation and Island Ecological Futures*, 45 ENV'T CONSERVATION 238, 238 (2018).

15. Studies show, for example, that relocation due to land confiscation has hindered the retention and teaching of the Navajo language, culture, and morals, contributing to this slow genocide. See Tsosie-Paddock, *supra* note 13, at 93, 108.

16. See Brad Coombes, *Nature's Rights as Indigenous Rights? Mis/recognition Through Personhood for Te Urewera*, SPACE POPULATIONS SOCIETIES (2020), <https://journals.openedition.org/eps/9857> (discussing how Aotearoa New Zealand has recently applied this personhood model to several national parks and rivers, constituting “a striking reversal from how Aotearoa’s parks had been managed previously”).

tribal sovereignty through promoting the co-governance of these landscapes and resources by representatives from both the central government and tribes.¹⁷ Revolutionarily, these statutes also grant such landscapes and waterways the same rights that legal people are entitled to, in line with the Indigenous perspective of nature as animate kin.¹⁸

Co-management initiatives have also emerged in the United States, including the scheme in effect for managing Canyon de Chelly National Monument within the Navajo Nation reservation, which is the focus of this Article. Like in Aotearoa New Zealand, co-management efforts in the United States aim to give tribes more involvement in managing protected areas and represent a step in the right direction. However, they are still marred by two critical issues: limited tribal participation in reality¹⁹ and the retention of a Western management framework, whereby the land is still regarded as property that humans should manage for their benefit.²⁰

This Article investigates how transformative and restitution-based approaches to conservation management, such as those utilized in Aotearoa New Zealand, may be employed through the American legal system to assert treaty rights that have historically been violated and reaffirm tribal self-determination. This topic is ripe for exploration because many consequences, such as prohibitions on the exercise of traditional subsistence practices, are still being exacerbated by the continued exclusion of Native Americans in managing protected areas. Further, there exists a growing movement among tribal members in the United States to reclaim tribal sovereignty over managing these ancestral lands.²¹

Part II of this Article provides context regarding the history of Indigenous Peoples' cession of tribal lands and resources to settlers through treaties and other statutory mechanisms.²² Part III then contrasts Indigenous and Western perspectives on conservation and the

17. See, e.g., Josh Gale, *Finding Their Own Way, Together*, WILDERNESS MAG. (Nov. 2, 2013), <https://www.wildernessmag.co.nz/finding-way-together/>.

18. See Te Urewera Act 2014, s 11, subs 1 (N.Z.).

19. Barbara Dugelby, *Collaborative Management of Protected Areas, with Examples of Collaboration between Native American Tribes and US Federal and State Agencies*, ROUND RIVER CONSERVATION STUD. (Jan. 2012), <https://www.roundriver.org/wp-content/uploads/2019/10/Collaborative-Management-of-Protected-Areas.pdf>.

20. Sibyl Diver, *Co-management as a Catalyst: Pathways to Post-colonial Forestry in the Klamath Basin, California*, 44 HUM. ECOLOGY 533, 533 (2016).

21. See, e.g., LANDBACK, <https://landback.org/> (last visited Feb. 9, 2024). LANDBACK is a United States-based grassroots movement focused on reclaiming Indigenous land, language, governance, and more.

22. For a discussion of the historical cession and dispossession of tribal lands, see *infra* notes 31–74 and accompanying text.

environment more broadly to highlight how the traditional Western conservation model, and its application to historically tribal lands and resources, is at odds with Māori²³ and Native American values and worldviews.²⁴ After laying this conceptual foundation, Part IV delves into the current landscape of co-governance and co-management²⁵ in Aotearoa New Zealand and the United States, including discussion of their benefits and drawbacks.²⁶ Using the Te Urewera Act 2014 as a guide, this section draws parallels between Māori and the Navajo Nation and lends particular attention to the current co-management scheme involved in managing Canyon de Chelly.

This Article focuses on applying its proposed model initially – as a sort of pilot program – to the Navajo Nation because the Navajo Nation has the largest tribal reservation in the United States, encompassing about sixteen million acres,²⁷ and, therefore, the greatest geographic area for potentially implementing this management approach. Additionally, like the relationship between the central government and Māori in Aotearoa New Zealand, a singular treaty governs the relationship between the federal government and the Navajo Nation in the United States. Moreover, Canyon de Chelly is comparable to Te Urewera because both were designated as protected areas that were previously managed exclusively by the federal government in the United States and the central government in Aotearoa New Zealand, respectively. Additionally, a co-management initiative between the federal government and the Navajo Nation is already underway in managing Canyon de Chelly, making it ripe for evaluation. Assuming that the application of this model to the

23. “Māori” is an umbrella term for those Indigenous to Aotearoa New Zealand, similar to “Native American” in the United States. Just as individuals from different tribes or nations in the United States are more broadly Native American, individuals from different tribes (or “iwi”) in Aotearoa New Zealand are more broadly Māori.

24. For a discussion of Western versus Indigenous perspectives on nature and conservation, see *infra* notes 75–96 and accompanying text.

25. For the purposes of this Article, “co-management” refers to collaboration between the government and tribes within the context of existing structures. In contrast, “co-governance” denotes the emergence of a new structure, rather than simply working together through existing systems and means. Additionally, co-governance goes further than simply collaboration; it is rooted in a deeper recognition of tribal governance and sovereignty. See Harvey A. Feit, *Re-cognizing Co-management as Co-governance: Visions and Histories of Conservation at James Bay*, 47 *ANTHROPOLOGICA* 267, 268–69 (2005).

26. For a discussion of current co-governance and co-management initiatives, see *infra* notes 97–144 and accompanying text.

27. *Navajo Nation*, INDIAN HEALTH SERV., <https://www.ihs.gov/navajo/navajonation/> (last visited Feb. 9, 2024).

Navajo Nation is successful,²⁸ it could then be applied on a nation-by-nation basis.

Finally, Parts V and VI of this Article maintain that, to help restore Navajo sovereignty and redress the lasting harms of colonization on the Navajo Nation, existing co-management schemes in the United States, such as that governing Canyon de Chelly, must go further.²⁹ As such, Congress should enact legislation transforming Canyon de Chelly's current co-management approach to reflect a modified version of Aotearoa New Zealand's novel conservation co-governance model, encapsulated in the Te Urewera Act 2014. Through this legislation, Canyon de Chelly will cease to be a national monument and will instead be recognized as a self-governing legal entity with all the rights, powers, duties, and liabilities of a legal person. By centering Indigenous perspectives relating to the environment and Indigenous involvement in managing culturally significant landscapes, this solution would constitute a critical step in promoting environmental justice and tribal self-determination.³⁰

II. HISTORICAL CESSION AND DISPOSSESSION OF TRIBAL LANDS

A. Aotearoa New Zealand

A major basis for the Aotearoa New Zealand central government's confiscation of Māori lands involves the Treaty of Waitangi, a written agreement that the British Crown and more than five hundred Māori chiefs entered into upon the British settlement of Aotearoa New Zealand in 1840.³¹ Pursuant to this treaty, which is the founding document of Aotearoa New Zealand, the country became a British colony and Māori became British subjects.³² Due to the

28. Success should be measured by effectiveness in both restoring tribal sovereignty and protecting — and ideally improving — environmental quality.

29. For a discussion of the proposed legislative solution and concluding remarks, see *infra* notes 144–72 and accompanying text.

30. Studies also show that Indigenous Peoples play a vital role in biodiversity conservation. See CLAUDIA SOBREVILA, *THE ROLE OF INDIGENOUS PEOPLES IN BIODIVERSITY CONSERVATION: THE NATURAL BUT OFTEN FORGOTTEN PARTNERS* xii (Ellen Kwiatkowski & Linda Starke eds., 2008); *Indigenous Peoples*, THE WORLD BANK (Apr. 6, 2023), <https://www.worldbank.org/en/topic/indigenouspeoples#1>. Consequently, while it is likely that increasing Indigenous involvement in conservation management will bring environmental benefits, little evidence of such benefits exists with respect to co-governance, as it has only recently been adopted. As such, for the purposes of this Article, the benefits of and justifications for restoring tribal sovereignty in conservation management are confined to returning stolen land to tribes and restoring tribal sovereignty in managing it.

31. Claudia Orange, *Story: Te Tiriti o Waitangi - Treaty of Waitangi*, TE ARA: THE ENCYCLOPEDIA OF N.Z. (June 20, 2012), <http://www.teara.govt.nz/en/treaty-of-waitangi>.

32. *Id.*

language barrier that existed between Māori and the British settlers, two versions of the Treaty were produced: one in English and one in Te Reo.³³ According to the English version of Article II of the Treaty, the Māori chiefs “surrendered sovereignty (‘kawanatanga’) to the Queen of England, but kept their chieftainship (‘rangatiratanga’) over their lands, villages, and treasures (‘taonga’).”³⁴ In essence, Māori ceded their sovereignty in exchange for the promise that the Crown would protect their rangatiratanga.³⁵ Unfortunately, certain concepts do not clearly translate between the two languages; therefore, there existed a fundamental difference in understanding between Māori and the British settlers regarding the concepts of sovereignty and chieftainship, as there was no word for sovereignty in Te Reo.³⁶

In the subsequent decades, the Crown exploited this language discrepancy, resulting in unjust land seizure and purchase, exclusion of iwi³⁷ in resource management, and general failure to fulfill the promises and agreements of the Treaty.³⁸ By the late 1860s, settlers had taken 3.2 million acres of Māori land, comprising roughly five percent of the county’s land mass and more than fifteen percent of all land historically occupied by Māori.³⁹ Much of this land loss came in the form of government confiscations as punishment for Māori resistance to colonization, which the government regarded as rebellion against the Crown.⁴⁰ The New Zealand Settlements Act 1863 provided a legal mechanism through which such confiscations were justified and enforced.⁴¹ Through this Act, the government argued that Māori insurrections resulted in “great injury alarm and intimidation of Her Majesty’s peaceable subjects of both races and involve[ed] great losses of life and expenditure of money in their

33. *Id.*

34. G. A. Wood & Chris Rudd, *Founding the New Zealand State: Promises and Grievances*, in *THE POLITICS AND GOVERNMENT OF NEW ZEALAND: ROBUST, INNOVATIVE, CHALLENGED* 3 (2004).

35. Jacinta Ruru, *Managing Our Treasured Home: The Conservation Estate and the Principles of the Treaty of Waitangi*, 8 N.Z. J. ENV’T L. 243, 256 (2004).

36. *Id.*

37. Iwi is the Te Reo word for tribe; it “often refers to a large group of people descended from a common ancestor and associated with a distinct territory.” *Iwi*, *TE AKA MĀORI DICTIONARY*, <https://maoridictionary.co.nz/search?keywords=iwi> (last visited Feb. 9, 2024).

38. See Mary Katharine Downing, *Comparative Trends in National Indigenous Policies in the United States and in New Zealand*, 9 WICAZO SA REV. 91, 94, 96 (1993).

39. Bryan Gilling, *Chapter 2. Raupatu: the Punitive Confiscation of Maori Land in the 1860s*, in *RAUPATU: THE CONFISCATION OF MAORI LAND* 13, 13 (Richard Boast & Richard S. Hill eds., 2010).

40. *Id.*; The New Zealand Settlements Act 1863, preamble (N.Z.).

41. Gilling, *supra* note 39, at 16.

suppression”⁴² Consequently, the Act justified confiscating Māori lands under the guise of ensuring “the permanent protection and security of the well-disposed [i]nhabitants of both races for the prevention of future insurrection or rebellion and for the establishment and maintenance of Her Majesty’s authority and of [l]aw and [o]rder throughout the [c]olony”⁴³ The legislators reasoned that “the best and most effectual means of attaining those ends would be by the introduction of a sufficient number of settlers able to protect themselves and to preserve the peace of the [c]ountry,” and, therefore, it was essential to confiscate Māori lands in order to promote such settlement.⁴⁴

Beyond the Act’s proposition that these lands were confiscated to foster peace and security, other motivations underlaid the government’s decision to seize them, evident in the following quote:

There was a deeply felt need to punish [Māori] who were in armed opposition to the government and thus the British Crown – there was a long history in the British mind and law . . . of taking the land and possessions of rebels and traitors. There was a widespread feeling amongst colonists that since [Māori] had little personal property and, as a warrior people, really enjoyed fighting anyway, the only way to make them feel the punishment meaningfully was to take away their turangawaewae, the land to which they were emotionally and spiritually attached.⁴⁵

Other purposes underlying these confiscations include that land was needed to accommodate the influx of new settlers and to sell in order to finance the wars fought against Māori.⁴⁶ Given the passage of the New Zealand Settlements Act 1863 in close temporal connection to the Suppression of Rebellion Act 1863, which granted the military broad powers in combating Māori rebellion, and the New Zealand Loan Act 1863, which anticipated proceeds from the sale of confiscated lands, it is clear that “from the beginning, the [New Zealand Settlements Act 1863] was intended to take more land than merely the protective settles of which it talked.”⁴⁷ Over the subsequent century, various other acts allowed for the confiscation

42. The New Zealand Settlements Act 1863, preamble (N.Z.).

43. *Id.*

44. *Id.*

45. Gilling, *supra* note 39, at 16.

46. *Id.*

47. *Id.*

of Māori land for government projects, such as roads,⁴⁸ and for the conversion of Māori land to general land.⁴⁹

The inconsistent language in both versions of the Treaty, and the difference in understanding surrounding the concepts of sovereignty and chieftainship, were also historically used by the government to exclude iwi from conservation and resource management.⁵⁰ As scholar Jacinta Ruru states,

Once the Crown acquired ownership of the land, whether it was through legitimate or illegitimate purchases, confiscation, or use of legislation, such as public works legislation, the Crown assumed sole management authority over the land and its resources. This occurred even though many of the ‘mountains, forests, sounds, seacoasts, lakes, and rivers’ were considered taonga and had been managed according to tikanga [Māori] for hundreds of years.⁵¹

The ambiguous Treaty language and exploitative Settlements Act have significantly affected the Tūhoe people of Te Urewera, among many other iwi, through “large scale confiscation of [Tūhoe’s] best agricultural land, cutting off the tribe’s access to the ocean, brutal military campaigns targeting [Tūhoe] settlements and unjust land purchases.”⁵² In 1896, in a major victory for the Tūhoe, Parliament passed the Urewera District Native Reserve Act, creating a 2650 square kilometer reserve of Tūhoe traditional lands for a Tūhoe-controlled commission to manage.⁵³ For almost thirteen years, however, the government delayed electing a committee to govern the reserve, and shortly thereafter, began carving up and purchasing the very land that it was supposed to protect.⁵⁴ In 1921, the Act was repealed, and with it went the promise of the Tūhoe-controlled reserve – and the “only autonomous tribal district ever recognized in New Zealand law.”⁵⁵

48. See Public Works Lands Act 1864, preamble (N.Z.); *History of Māori Land*, TE PUNI KŌKIRI: MINISTRY OF MĀORI DEV. 6, 8, <https://www.tupu.nz/media/tjpmcal/history-of-m%C4%81ori-land-english-print.pdf> (last visited Feb. 9, 2024).

49. Māori Affairs Amendment Act 1967 (N.Z.); *History of Māori Land*, *supra* note 48, at 6, 8.

50. Ruru, *supra* note 35, at 248-49.

51. *Id.*

52. Gale, *supra* note 17.

53. Kennedy Warne, *Who Are Tūhoe?*, N.Z. GEOGRAPHIC (Jan. – Feb. 2013), <https://www.nzgeo.com/stories/who-are-tuhoe/>.

54. *Id.*

55. *Id.*

B. United States

1. *History of Native American Land Loss*

Although the history of Native American land loss and dispossession after colonization could fill volumes, and although it would be impossible to address the entirety of its complex history in this Article, two critically significant acts – the Indian Removal Act of 1830 and the General Allotment Act of 1887 – and the doctrine of discovery that underlies them warrant particular attention. The doctrine of discovery maintains that, through colonization, governments gained exclusive title to lands they “discovered.”⁵⁶ Given its exclusive nature, the doctrine of discovery inherently impaired the rights of Indigenous inhabitants of the land and their power to dispose of these lands at their will.⁵⁷

The Supreme Court of the United States first applied the doctrine of discovery in justifying the confiscation of Native American lands in the 1823 case of *Johnson v. M’Intosh*.⁵⁸ In relying on the doctrine of discovery to resolve a dispute over competing claims to a parcel of land, the Court determined that the title to the land passed to the United States federal government upon its “discovery” of it, and as such, the Piankeshaw Tribe had neither title to the land, nor a valid right to transfer it to the plaintiff.⁵⁹ This case established the precedent that the federal government owns the underlying title to all Native American land and that tribes merely have a right of occupancy — a right to live on, protect, and use the land — so long as they remain there.⁶⁰

This doctrine and the mentality it encompasses laid the foundation for the removal efforts that followed shortly thereafter. In 1830, President Andrew Jackson signed the Indian Removal Act into law, authorizing him to grant land west of the Mississippi River to tribes that agreed to abandon their homelands in the Southeast.⁶¹ Jackson’s government used this Act to coerce tribes into signing removal treaties, opening millions of acres of land east of the Mississippi to white settlers and initiating the forced relocation – sometimes through the use of military force – of tens of thousands of Choctaw, Cherokee,

56. *Johnson v. M’Intosh*, 21 U.S. 543, 573–74 (1823).

57. *Id.* at 574.

58. *See id.*

59. *See id.* at 587–89, 591.

60. *See id.* at 592.

61. *See Indian Treaties and the Removal Act of 1830*, OFF. OF THE HISTORIAN, <https://history.state.gov/milestones/1830-1860/indian-treaties> (last visited Feb. 9, 2024); Ken Drexler, *Indian Removal Act: Primary Documents in American History*, LIBR. OF CONG. (May 14, 2019), <https://guides.loc.gov/indian-removal-act>.

Chickasaw, Creek, and Seminole tribal members in a deadly march that has become known as the Trail of Tears.⁶²

Another statute that had an enormous effect on tribal land loss was the General Allotment Act of 1887. Congress used this Act to systematically break up tribal land holdings on reservations, consequently diminishing tribal identity, in order to assimilate Native Americans and make tribal lands available for extensive non-Indian settlement.⁶³ This Act resulted in the allotment of approximately forty-one million acres of former tribal land.⁶⁴

2. *History of Navajo Nation Land Loss*

In exploring the cession and dispossession of Navajo land, it is essential to understand the history of the Navajo reservation's creation. In the mid-1800s, settlers began to increasingly encroach on Navajo land in Arizona, New Mexico, and Utah,⁶⁵ fueling Navajo resistance. This resistance "encouraged U.S. officials to adopt a genocidal military solution," destroying Navajo food supplies and resulting in thousands of deaths and the ultimate removal of over eight thousand Navajo people to a concentration camp in Fort Sumner, New Mexico.⁶⁶ Five years later, the government finally permitted the removed Navajo people to return to their original territory and established the Navajo reservation.⁶⁷ The reservation, however, was too small to accommodate the needs of all tribal members, leading Navajo people to encroach onto Hopi territory.⁶⁸ After decades of subsequent dispute over the boundaries of Navajo and Hopi territory, Congress

62. See Drexler, *supra* note 61; *Forced Removal*, SMITHSONIAN NAT'L MUSEUM OF THE AM. INDIAN, <https://americanindian.si.edu/nk360/removal-choke/forced-removal.html#section-2> (last visited Feb. 9, 2024) (explaining how federal soldiers "forc[ed] Cherokee from their homes at bayonet point"); Paul G. Pierpaoli, Jr., *Indian Removal Act (1830)*, in *BEHIND BARBED WIRE: AN ENCYCLOPEDIA OF CONCENTRATION AND PRISONER-OF-WAR CAMPS* 151, 151 (Alexander Mikaberidze ed., 2019) (highlighting Indian Removal Act's focus on five "civilized" tribes listed).

63. DAVID H. GETCHES, CHARLES F. WILKINSON, ROBERT A. WILLIAMS JR., MATTHEW L.M. FLETCHER & KRISTEN A. CARPENTER, *CASES AND MATERIALS ON FEDERAL INDIAN LAW* 194 (7th ed. 2017).

64. *Id.*

65. From 900 to 1525 A.D., the heart of the Navajo homeland was in northwestern New Mexico. *History: The Navajo*, UTAH AM. INDIAN DIGIT. ARCHIVE (2008), <https://utahindians.org/archives/navajo/history.html>. By as early as 1620, Navajo people may have begun to move into southeastern Utah, and by the 1700s, they occupied territory in northeastern Arizona as well. *Id.* The modern-day Navajo Nation still extends into these three states, covering over twenty-seven thousand square miles. *History*, THE OFF. SITE OF THE NAVAJO NATION, <https://www.navajo-nsn.gov/History> (last visited Feb. 9, 2024).

66. Tsosie-Paddock, *supra* note 13, at 89.

67. *Id.*

68. *Id.*

enacted the Navajo-Hopi Land Settlement Act of 1974, partitioning the territory into Navajo and Hopi sections⁶⁹ and allowing for the corporate exploitation of subsurface minerals belonging to the tribes.⁷⁰ Using this Act, the federal government uprooted and displaced hundreds of Navajo families⁷¹ and ultimately affected over twelve thousand Navajo people and hundreds of Hopi people.⁷²

As a result of this Act, “[m]any Navajo families were literally torn apart, homesteads bulldozed and families relocated into foreign settings where they were not prepared to survive.”⁷³ In discussing its impacts in a Navajo Nation Human Rights Commission public hearing report, several commissioners note that “[t]he forced relocation was and remains a tragedy of epic proportions that spawned social ills of all manners for the relocated families. Alcoholism, depression, suicide, poverty and unemployment rates exceed all ethnic populations in the United States by as much as 300%.”⁷⁴ This historical context evidences the extent of harm caused by the government’s confiscation of Navajo land and underscores the importance of rectifying these injustices.

III. WESTERN V. INDIGENOUS PERSPECTIVES ON NATURE AND CONSERVATION

To understand the full extent of the harm caused by the government’s exclusive management of protected areas, it is essential to discuss the philosophies underpinning settlers’ and Indigenous Peoples’ relationships to and interactions with the natural world. It is vital to consider these philosophical differences because they increase the disparity between Indigenous and non-Indigenous land and resource management approaches.⁷⁵ For centuries and across cultures, there has existed a fundamental tension and discrepancy in colonial versus Indigenous perspectives regarding the environment

69. *Id.* at 91.

70. NAVAJO NATION HUM. RTS. COMM’N, *Public Hearing Report on the Impact of the Navajo-Hopi Settlement Act of 1974 – P.L. 93-531, et al.* i (2012), https://www.nnhrc.navajo-nsn.gov/docs/NewsRptResolution/070612_The_Impact_of_the_Navajo-Hopi_Land_Settlement_Act_of_1974.pdf [hereinafter *Public Hearing Report*].

71. Tsosie-Paddock, *supra* note 13, at 87.

72. *Id.* at 92.

73. *Public Hearing Report, supra* note 70, at i.

74. *Id.*

75. See, e.g., Romeo, *supra* note 12, at 157 (discussing how federal environmental protection laws often fail to meet tribal communities’ needs and ignore cultural issues); Jacinta Ruru, *A Maori Right to Own and Manage National Parks?*, 12 J.S. PAC. L. 105, 108 (2008) [hereinafter *A Maori Right?*] (highlighting how Aotearoa New Zealand’s Conservation Act 1987 restricts exercise of Māori cultural practices deemed to be at odds with environmental protection).

and humans' place in it.⁷⁶ These conflicting systems of beliefs and values are the foundation of many modern environmental and conservation issues globally, including in both Aotearoa New Zealand and the United States.⁷⁷

A. Western Perspective

Historically, the Western perspective regarding the environment considers resources such as land, water, and air to be inanimate, secular, and commodifiable.⁷⁸ As a symptom, the idea that humans have a right to exercise domination over, subjugate, own, and modify nature to their benefit took hold.⁷⁹ Even where Western settlers recognized the importance of protecting the natural world, this perspective of separation of humans from nature historically remained central to the emerging Western conservation model; this is evident in its focus on conserving “wild” landscapes that were perceived to be free from human intervention, despite that, for generations, Indigenous communities have occupied this land and relied on its resources for cultural practices and subsistence.⁸⁰ This sense of division is foundational to the concept of environmental stewardship, which underpins the Western conservation model. The concept of stewardship refers to guarding someone else's property, connoting a master-servant relationship.⁸¹ Because this perspective lies at the core of the government's creation and management of protected areas, lands designated as national parks became fundamentally colonial places, underscored by the new names and histories the government assigned to them.⁸²

B. Māori Perspective

The Western perspective that natural resources constitute inanimate commodities stands in stark contrast to the Māori perspective

76. See Romeo, *supra* note 12, at 159.

77. See, e.g., *id.* at 157; *A Maori Right?*, *supra* note 75, at 108.

78. Romeo, *supra* note 12, at 159.

79. See Annie L. Booth & Harvey M. Jacobs, *Ties That Bind: Native American Beliefs as a Foundation for Environmental Consciousness*, 12 ENV'T ETHICS 27, 31 (1990).

80. See Isaac Kantor, *Ethnic Cleansing and America's Creation of National Parks*, 28 PUB. LAND & RES. L. REV. 41, 43–44 (2007); William M. Adams & Jon Hutton, *People, Parks and Poverty: Political Ecology and Biodiversity Conservation*, 5 CONSERVATION & SOC'Y 147, 152 (2007) (noting that “[t]he establishment of [protected areas] that exclude people reflects a conceptual division between nature and human society that has deep roots in Western thought”).

81. Te-Aroha Henare, *Kaitiakitanga: A Definitive Introduction to the Holistic Worldview of the Māori*, in THE WOVEN UNIVERSE: SELECTED WRITINGS OF REV. MĀORI MARSDEN 67 (Charles Royal ed., 2003).

82. *A Maori Right?*, *supra* note 75, at 107.

that “the resources of the earth [do] not belong to man but rather, man belong[s] to the earth.”⁸³ For generations, Māori interactions with each other and with nature have been governed by the core principle of kaitiakitanga.⁸⁴ In essence, kaitiakitanga embodies the principle that humans have a responsibility to protect other living organisms and natural landscapes based on a perceived kinship between humans and other creatures.⁸⁵ This concept regards humans as guardians rather than stewards of the environment and is founded on a recognition of the innate and interconnected mauri – i.e., life-force – and tapu – i.e., sacred – nature of all creatures.⁸⁶ The Māori perspective regarding the animate and sacred nature of the environment and its component entities is also characterized by a recognition of and deep appreciation for the mana, or spiritual energies and presences, that inherently flow through the natural world.⁸⁷

C. Native American and Navajo Perspectives

Native American perspectives on nature and humans’ relationship to it bear great resemblance to the Māori view. For example, the Ute perspective mirrors Māori conceptions of mana, mauri, and the tapu essence of the environment, emphasizing that nature itself possesses a spirit and sacred power.⁸⁸ Moreover, similar to the Māori notion of kaitiakitanga, the belief that “the Earth is a living, conscious being” with “spirit and power,” and that humans are inseparable from nature and have a responsibility to respect and guard it, appears to be both shared by and central to many Native American cultures.⁸⁹

Forest ecology scholars Victoria Yazzie Piña and W. Wallace Covington echo these beliefs from a Navajo perspective, through which “[h]umans are not seen as having dominion over nature . . .

83. Te-Aroha Henare, *supra* note 81, at 67.

84. Merata Kawharu, *Kaitiakitanga: A Maori Anthropological Perspective of the Maori Socioenvironmental Ethic of Resource Management*, 109 J. POLYNESIAN SOC’Y 349, 350 (2000).

85. See John Patterson, *Respecting Nature: The Maori Way*, 29 THE ECOLOGIST 33, 33, 36 (1999); Te Ahukaramū Charles Royal, *Story: Kaitiakitanga – Guardianship and Conservation*, TE ARA: THE ENCYCLOPEDIA OF N.Z. (Sept. 24, 2007), <http://www.teara.govt.nz/en/kaitiakitanga-guardianship-and-conservation>.

86. See *id.* at 33, 34, 36.

87. Te Ahukaramū Charles Royal, *Story: Te Ao Mārama – The Natural World*, Page 5. *Mana, Tapu and Mauri*, TE ARA: THE ENCYCLOPEDIA OF N.Z. (Sept. 24, 2007), <http://www.teara.govt.nz/en/te-ao-marama-the-natural-world/page-5>.

88. See Romeo, *supra* note 12, at 159.

89. See Booth & Jacobs, *supra* note 79, at 32; Romeo, *supra* note 12, at 159–60.

The Navajo does not separate himself from the natural, he regards himself as a part of something larger rather than having a separate existence.⁹⁰ The authors go on to explain that:

In the Navajo culture, the earth is a sacred component of a unit family, a revered and respected member called Mother Earth. The mountains are sacred, for the Navajo came from them and depend upon them. The water courses are veins and arteries. They are the mountain's life, as our blood is to ou[r] bodies.⁹¹

Consequently, it is evident that the Western and Indigenous perspectives regarding the environment are “inherently irreconcilable.”⁹²

This fundamental conflict translates into different conservation management approaches taken by federal governments and tribes. For Indigenous cultures in the United States, the health and welfare of the tribe and the environment are inherently tied to one another, unlike the dominant Western culture.⁹³ Given the direct impacts of land and resource management on tribes, this relationship influences tribes' approaches to managing landscapes such as old-growth forests by, for example, “living within the carrying capacity of the land, agriculturally and as a people,” and “bring[ing] more equity in determining forest management for future generations.”⁹⁴ It is important to apply Indigenous views of nature to conservation biology and restoration ecology because recognizing the inherent value and rights of the environment, as well as people's innate connection to and reliance on it, can substantially improve land use and conservation strategies.⁹⁵ Additionally, centering an Indigenous view of nature has profound implications for environmental protection because Indigenous Peoples hold unique ancestral knowledge regarding biodiversity; as such, their meaningful involvement in conservation management programs would augment the comprehensiveness and cost-effectiveness of these efforts.⁹⁶ These philosophical differences, and their effect on conservation approaches and outcomes,

90. Victoria Yazzie Piña & W. Wallace Covington, *Conservation Biology, Restoration Ecology, and a Navajo View of Nature*, in U.S. DEP'T OF AGRIC. FOREST SERV. GEN. TECH. REP., RM-247, SUSTAINABLE ECOLOGICAL SYSTEMS: IMPLEMENTING AN ECOLOGICAL APPROACH TO LAND MANAGEMENT 122, 123 (1994).

91. *Id.* at 124.

92. Romeo, *supra* note 12, at 159.

93. Victoria Yazzie, *The Tribal Perspective of Old Growth in Frequent-Fire Forests—Its History*, 12 *ECOLOGY AND SOC'Y* (2007).

94. *Id.*

95. See Piña & Covington, *supra* note 90, at 124.

96. Sobrevila, *supra* note 30, at xii.

demonstrate how vital it is to incorporate Indigenous perspectives in conservation management, supporting the need for a movement towards co-governance.

IV. CURRENT CO-GOVERNANCE AND CO-MANAGEMENT INITIATIVES

A. Aotearoa New Zealand

Aotearoa New Zealand is home to more than ten thousand protected areas.⁹⁷ These areas span more than 8.6 million hectares of land, comprising approximately thirty-two percent of the country's total land area.⁹⁸ Sixty types of protected areas exist, the most important of which are: national and conservation parks; nature, scientific, scenic, historic, recreation, and other reserves; and other conservation land.⁹⁹ The Department of Conservation (DoC) is responsible for managing most public protected areas, and these areas are managed under six key laws: Wildlife Act 1953; Marine Reserves Act 1971; Reserves Act 1977; Marine Mammals Protection Act 1979; National Parks Act 1980; and Conservation Act 1987.¹⁰⁰

Because this Article explores a new management scheme relating to a former national park in Aotearoa New Zealand, the legislation most relevant to this Article is the land-management-focused Conservation Act 1987.¹⁰¹ This Act grants the DoC the authority to manage national parks and directs the administrators and managers to advance the principles of the Treaty of Waitangi in doing so.¹⁰² An important issue, however, exists with respect to this statute, and, therefore, with the DoC's management of national parks like Te Urewera. The Conservation Act 1987 "creates a dichotomy, for at its core are the preservation and protection of the conservation estate. The Act renders it near impossible to respect [Māori], and permit them to gather Indigenous flora and fauna from national parks, when the managers have a mindset to preserve and protect the environment."¹⁰³ As previously discussed, Article II of the Treaty of Waitangi explicitly secures iwi chieftainship in managing taonga, including culturally significant landscapes.¹⁰⁴ Consequently, the

97. Les Molloy, *Story: Protected Areas: New Zealand's Protected Areas*, TE ARA: THE ENCYCLOPEDIA OF N.Z. (Sept. 1, 2015), <https://teara.govt.nz/en/protected-areas/page-1>.

98. *Id.*

99. *Id.*

100. *Id.*

101. *See generally* Conservation Act 1987 (N.Z.).

102. *A Maori Right?*, *supra* note 75, at 108.

103. *Id.* (citation omitted).

104. *See* Wood & Rudd, *supra* note 34, at 3-4.

intentional exclusion of iwi in conservation management, and the resulting divestment of iwi chieftainship over their taonga, constitutes a clear and direct violation of this Treaty.

Aotearoa New Zealand's recent transition to bicultural conservation management is rooted in a recognition of and attempt to redress these historical Treaty breaches. The Waitangi Tribunal is largely responsible for increasing government awareness of these violations.¹⁰⁵ This Tribunal is a permanent commission of inquiry established by the Treaty of Waitangi Act 1975 that has the power to investigate government conduct to determine whether it has violated the Treaty.¹⁰⁶ Further, this Tribunal has the authority to make non-binding recommendations to the government in order to redress such violations.¹⁰⁷ In the early-to-mid 1980s, the Tribunal published several significant reports criticizing the degradation of natural resources and landscapes that had occurred under the central government's management and asserting that the government's negligence in protecting such resources had breached Article II of the Treaty.¹⁰⁸ As a result of mounting awareness regarding the government's historical failure to uphold Treaty promises, the government formed a Working Party in 1984 to consider substantially reforming the government's approach to managing natural resources.¹⁰⁹ The Working Party acknowledged that the government's existing approach had failed to "[recognize] either the conservation ethic [practiced] by the [Māori] community [i.e., kaitiakitanga] or their rights guaranteed by the Treaty of Waitangi."¹¹⁰

The shift in mentality over time concerning the importance of honoring the Treaty and the principle and practice of kaitiakitanga – and iwi's crucial role in this practice – has contributed to a transition away from a model of conservation management characterized by sole governmental authority, and towards one that centers co-governance and meaningful partnership between the government and iwi. A 2013 settlement package that resulted from a negotiation between Tūhoe and the Crown includes formal recognition of and apology for the Crown's breaches of the Treaty of Waitangi, a new legal framework for iwi-inclusive co-governance of Te Urewera, which was formerly managed exclusively by the DoC as a national

105. See Orange, *supra* note 31.

106. See *id.*; WAITANGI TRIBUNAL (Apr. 4, 2024), <https://waitangitribunal.govt.nz/>.

107. See Orange, *supra* note 31; WAITANGI TRIBUNAL, *supra* note 106.

108. Ruru, *supra* note 35, at 250-51.

109. *Id.* at 250.

110. *Id.*; Douglas E. Fisher, *The New Environmental Management Regime in New Zealand*, 4 ENV'T & PLAN. L.J. 33, 39 (1987).

park, \$170 million in financial and commercial compensation to Tūhoe, and more.¹¹¹ The following year, Aotearoa New Zealand Parliament codified this new legal framework by passing the Te Urewera Act 2014 to improve conservation management, provide compensation and reparation to Tūhoe, and facilitate reconciliation.¹¹²

This Act significantly re-envisioned conservation management through embodying a fundamental shift in perspective, evident in the decision to recognize Te Urewera as a self-governing “legal entity” with “all the rights, powers, duties, and liabilities of a legal person.”¹¹³ Through this Act, Te Urewera ceases to be: 1) vested in the Crown; 2) Crown land; and 3) a national park.¹¹⁴ As a result, Te Urewera also ceases to be managed by the DoC; rather, this Act establishes what is known as the Te Urewera Board to manage the land, consisting of both Crown and iwi-appointed representatives.¹¹⁵ By granting formerly protected land legal personhood and creating a mechanism for centering Māori philosophies and leadership, this decision deviates from and actively rejects the Western perspective of land ownership and the national park model that has for so long defined conservation globally, including in Aotearoa New Zealand.

The Te Urewera Act further re-envisioned conservation management by explicitly including Indigenous people and knowledge in management decisions, and by recognizing the Tūhoe as the *kaitiaki* – i.e., guardians – of this land and its resources, evident in the composition of the Te Urewera Board.¹¹⁶ For the first three years, the Board is intended to have equal membership consisting of four Crown-appointed and four iwi-appointed representatives.¹¹⁷ After

111. Gale, *supra* note 17; Te Rangimārie Williams, *Crown Offer to Settle the Historical Claims of Ngāti Tūhoe*, MĀORI L. REV. (2012), <https://maorilawreview.co.nz/2012/10/crown-offer-to-settle-the-historical-claims-of-ngai-tuhoe/>.

112. See Jacinta Ruru, *Tūhoe–Crown Settlement – Te Urewera Act 2014*, MĀORI L. REV. (2014), <https://maorilawreview.co.nz/2014/10/tuhoe-crown-settlement-te-urewera-act-2014/>.

113. Te Urewera Act 2014, s 11, subs 1 (N.Z.).

114. *Id.* at s 12.

115. Iwi members are appointed by the trustees of Tūhoe Te Uru Taumatua. Te Urewera Act 2014, s 21, subss 1–2 (N.Z.). Te Uru Taumatua “represents the Tūhoe nation and the lands and wealth held in common for Tūhoe.” *Te Uru Taumatua*, TŪHOE, <https://www.ngaituhoe.iwi.nz/tut> (last visited Feb. 9, 2024). Governmental members are initially appointed jointly by the Minister of Conservation and Minister for Treaty of Waitangi Negotiations, and subsequently by the Minister of Conservation. Te Urewera Act 2014, s 21, subss 1–2 (N.Z.). The Act requires that “[i]n making an appointment, an appointer must consider whether the proposed member has the mana, standing in the community, skills, knowledge, or experience to participate effectively in the Board; and to contribute to achieving the purposes of the Board.” *Id.* at s 21, subs 3.

116. See Te Urewera Act 2014, s 3, subs 6 (N.Z.).

117. *Id.* at s 21, subs 1.

the first three years, the Board will add a new representative and transition to two-thirds iwi management – six iwi-appointed and three Crown-appointed representatives.¹¹⁸ The Act’s commitment to upholding the Treaty, integrating iwi perspectives, and restoring the principle of kaitiakitanga in conservation management is further evident in the language of the Act itself. For example, Section 18(2) states that “the Board may consider and give expression to Tūhoetanga” and “Tūhoe concepts of management such as rāhui, tapu me noa, mana me mauri, [and] tohu.”¹¹⁹

The Act further makes this commitment explicit in Section 20 which declares that “[t]he Board must consider and provide appropriately for the relationship of iwi and hapū and their culture and traditions with Te Urewera when making decisions”¹²⁰ This section issues this mandate in order to “[recognize] and reflect Tūhoetanga; and the Crown’s responsibility under the Treaty of Waitangi,” acknowledge and support the role of the Tūhoe as the kaitiaki of this land and its resources, and protect and restore the iwi’s chieftainship in managing their taonga.¹²¹ Overall, “[t]he settlement is unique, both for the Crown’s willingness to negotiate over so prized a public asset as a national park and for its readiness to address the politically volatile concept of mana motuhake, the assertion of independent authority.”¹²²

118. *Id.* at s 21, subs 2.

119. *Id.* at s 18, subs 2. This section, “in accordance with the understanding of Tūhoe,” defines these terms as follows: “[R]āhui conveys the sense of the prohibition or limitation of a use for an appropriate reason;” “tapu me noa conveys, in tapu, the concept of sanctity, a state that requires respectful human behaviour in a place; and in noa, the sense that when the tapu is lifted from the place, the place returns to a normal state;” “mana me mauri conveys a sense of the sensitive perception of a living and spiritual force in a place;” and “tohu connotes the metaphysical or symbolic depiction of things.” *Id.* at s 18, subs 3. Tūhoetanga “gives expression to Te Urewera.” *Id.* at s 5, subs 1(c).

120. *Id.* at s 20; *see also* *Hapū*, TE AKA MĀORI DICTIONARY, <https://maoridictionary.co.nz/search?keywords=hapu> (last visited Feb. 9, 2024) (defining “hapū” as “kinship group, clan, tribe, subtribe – section of a large kinship group and the primary political unit in traditional Māori society A number of related *hapū* usually shared adjacent territories forming a looser tribal federation (*iwi*)”).

121. Te Urewera Act 2014, s 20 (N.Z.).

122. Warne, *supra* note 53. Because the Te Urewera Act was only recently enacted, there is not yet evidence of how it is working in practice, whether environmental benefits have flown from it, or whether there has been tension between the Crown-appointed and iwi-appointed Board members.

B. United States

1. *An Overview of Conservation Management*

As of 2024, the United States is home to 51,018 protected areas, covering approximately thirteen percent of the country's total land area and nineteen percent of its marine and coastal area.¹²³ Some key statutes that grant authority to federal agencies in managing such areas are the Federal Land Policy and Management Act, Park Service Organic Act, National Wildlife Refuge System Improvement Act, and Wilderness Act, to name a few.¹²⁴ The statute most relevant to this Article is the Antiquities Act of 1906, which authorizes the President, without the need for congressional approval, "to declare by public proclamation historic landmarks, historic and prehistoric structures, and other objects of historic or scientific interest that are situated upon the lands owned or controlled by the Government of the United States to be national monuments;"¹²⁵ this is how Canyon de Chelly came to be a national monument.¹²⁶

In recent years, co-management initiatives between tribal entities and the United States federal government have begun to emerge. Such initiatives involve partnership and collaboration between tribes and the federal government in managing certain federal lands and resources.¹²⁷ Through these arrangements, tribes assist with setting standards and desired conditions, as well as implementing laws.¹²⁸ Moreover, "[c]o-management models are most advanced in the context of fish and wildlife management, largely because of judicially enforced off-reservation treaty rights"¹²⁹ that secure tribes' ability to hunt and fish off the reservation in usual and accustomed places.¹³⁰

123. UN Env't Programme World Conservation Monitoring Centre, Protected Area Profile for United States of America from the World Database of Protected Areas, PROTECTED PLANET (Feb. 2024), <https://www.protectedplanet.net/country/USA> (last visited Feb. 9, 2024).

124. JAMES RASBAND, JAMES SALZMAN & MARK SQUILLAGE, NATURAL RESOURCES LAW AND POLICY 236–40 (3d ed. 2016).

125. Antiquities Act of 1906, 16 U.S.C. § 431 (1995); Rasband et al., *supra* note 124, at 688.

126. *See generally* 16 U.S.C. § 445.

127. Martin Nie, *The Use of Co-Management and Protected Land-Use Designations to Protect Tribal Cultural Resources and Reserved Treaty Rights on Federal Lands*, 48 NAT. RES. J. 585, 586 (2008).

128. *Id.*

129. *Id.*

130. *See, e.g.*, United States v. Washington, 384 F. Supp. 312, 331, 333, 356–57 (W.D. Wash. 1974), *aff'd*, 520 F.2d 676 (9th Cir. 1975) (preventing Washington from enforcing state regulations restricting when, where, how, what, and how much tribal members could fish off-reservation because these laws infringed on tribes' treaty rights to fish at all usual and accustomed places and were not reasonable and necessary for conservation); United States v. Winans, 198 U.S. 371, 378, 384 (1905)

Despite the seemingly beneficial nature of these co-management agreements, their history “is mixed in terms of their value to tribes, reception within the environmental policy and conservation sectors, and benefits to participating agencies.”¹³¹

The United States also has a number of tribal parks, which tribes typically manage and own exclusively, but often with federal funding.¹³² Because tribes exclusively manage such landscapes, the tribal parks model differs from co-management. The Navajo Nation currently manages several such tribal parks, including Monument Valley, Bowl Canyon, Little Colorado River Gorge, Antelope Canyon-Lake Powell, Window Rock, and Four Corners National Navajo Tribal Park.¹³³

2. *Canyon de Chelly*

In 1931, President Herbert Hoover issued a proclamation establishing Canyon De Chelly National Monument within the portion of the Navajo Nation reservation located in Chinle, Arizona, pursuant to the Antiquities Act and with the consent of the Navajo Tribal Council.¹³⁴ Unlike other protected areas managed by the National Park Service (NPS), “Canyon de Chelly is unique . . . as it is comprised entirely of Navajo Tribal Trust Land that remains home to the canyon community. Thus, although managed as a park unit by the NPS, the Navajo Nation retains ownership of the land.”¹³⁵

The enabling legislation provides a rough blueprint for the respective responsibilities of the Navajo Nation and NPS with regard to Canyon de Chelly.¹³⁶ The legislation tasks the NPS with overseeing the management of archaeological, cultural, and historic

(restricting individuals’ ability to operate fish wheels that caught majority of fish because they infringed on Yakima Nation’s treaty right to take fish at all usual and accustomed places).

131. Dugelby, *supra* note 19; see Mary Ann King, *Co-Management or Contracting? Agreements Between Native American Tribes and the U.S. National Park Service Pursuant to the 1994 Tribal Self-Governance Act*, 31 HARV. ENV’T L. REV. 475, 475, 481 (2007) (discussing how National Park Service has regarded Tribal Self-Governance Act of 1994 (TSGA) – precursor to co-management that “permits tribes to petition bureaus within the Department of the Interior (‘DOI’) to manage federal programs that are of ‘special geographical, historical, or cultural significance’ to the tribe” – “not as a step in a long path toward Indian self-determination, but as an aberration in public land policy and an intrusion into public land management,” and how “[i]t is not clear that the TSGA provides a sovereign nation with any more programmatic control and decision-making authority than a contractor”).

132. Dugelby, *supra* note 19.

133. *Id.*

134. See Proclamation No. 1945, 47 Stat. 2448 (1931); 16 U.S.C. § 445.

135. Dugelby, *supra* note 19.

136. 16 U.S.C. § 445; Dugelby, *supra* note 19.

resources, as well as objects and issues of scientific interest and visitor services.¹³⁷ The Navajo Nation is deemed responsible for managing more of the monument's natural resources, including water, forest, minerals, and subsurface resources.¹³⁸ The legislation also grants the Navajo Nation jurisdiction over grazing allotments and land use regulation and permitting.¹³⁹ While the enabling legislation provides for the rights of the Navajo Nation and Navajo people within the monument, it does not contain language mandating that the NPS cooperate with the Navajo Nation in managing this monument.¹⁴⁰ Nevertheless, the two entities do coordinate in various areas of management, including law enforcement, interpreting the legislation, and managing the monument's facilities.¹⁴¹

This cooperation, however, has not been equal, producing a "somewhat turbulent relationship" between the NPS and the Navajo Nation.¹⁴² As conservation and human ecologist Barbara Dugelby explains, "[a]lthough on paper, the Monument may represent the best example of a co-management arrangement between tribes and the NPS, in practice there has been limited participation by Navajo tribal members and periods of strong resistance to NPS staff and their efforts."¹⁴³ Although the Canyon's enabling legislation loosely defines the two entities' roles in co-managing the monument, Dugelby reveals that Navajo tribal members have had limited input in decision-making; rather, their participation has predominantly been limited to employment opportunities, such as providing some visitor services.¹⁴⁴ This reality clearly exposes some of the current co-management model's flaws and indicates that restoring tribal sovereignty in managing such landscapes requires a stronger approach.

V. SOLUTION

A. Co-governing Canyon de Chelly

As previously demonstrated, the current method of co-managing Canyon de Chelly has proven insufficient in meaningfully restoring Navajo sovereignty. Consequently, these efforts must go further. Aotearoa New Zealand's Te Urewera Act 2014, which embod-

137. Dugelby, *supra* note 19.

138. *Id.*

139. *Id.*

140. *Id.*

141. *Id.*

142. Dugelby, *supra* note 19.

143. *Id.*

144. *Id.*; see *Tribal Co-Management of Federal Lands*, U.S. DEP'T OF THE INTERIOR (Mar. 8, 2022), <https://www.doi.gov/ocl/tribal-co-management-federal-lands>.

ies Aotearoa New Zealand's revolutionary approach to conservation co-governance, provides a valuable blueprint for transforming Canyon de Chelly's management, and potentially the management of other protected areas in the United States, to achieve this goal.

B. Barriers to Adopting Co-governance in the United States

1. *Patchwork of Law Created by Many Independent Treaties*

Unlike in Aotearoa New Zealand, where one singular treaty – the Treaty of Waitangi – governs the relationship between the central government and all Māori iwi, in the United States, individual Native American tribes entered into independent treaties with the federal government. The existence of many distinct treaties has created a patchwork of “federal Indian law” whereby a unique set of rules governs each tribe's relationship with the federal government; this necessarily complicates the mechanisms for adopting co-governance in the United States.¹⁴⁵ For this reason, this Article focuses on applying Aotearoa New Zealand's conservation co-governance model to one specific protected area, Canyon de Chelly. This approach would solely involve the relationship between the federal government and the Navajo Nation, which is governed by a singular treaty, thereby circumventing the issues posed by this patchwork of law.

2. *Lack of Provisions in Treaties Explicitly Protecting This Application of Tribal Sovereignty*

In addition to the existence of various independent treaties, the absence of language in these treaties explicitly protecting tribal sovereignty in managing culturally significant landscapes and resources further complicates tribes' ability to rely on treaties to advance co-governance. Unlike in Aotearoa New Zealand, where Article II of the Treaty of Waitangi expressly preserves tribal sovereignty in managing their communities and resources, no comparable language exists in the Navajo Treaty of 1868¹⁴⁶ or comparable treaties. Consequently, the absence of such language makes it more difficult for tribes to sue the federal government for violating these treaties, thereby limiting litigation's effectiveness as a tool for promoting co-governance.

145. See, e.g., Getches et al., *supra* note 63, at 1.

146. See generally Treaty with the Navaho, U.S.-Navajo Nation, June 1, 1868, 15 Stat. 667.

3. *Domestic Dependent Status of Native American Tribes Places an Inherent Restriction on Sovereignty*

Another meaningful barrier to adopting co-governance in the United States is rooted in the federal government's perception of Native American sovereignty as limited. While the Supreme Court has consistently recognized that tribes do possess an inherent degree of sovereignty,¹⁴⁷ the Court placed a vital restriction on this sovereignty in *Cherokee Nation v. Georgia*.¹⁴⁸ In assessing the question of whether Native American tribes could be considered foreign nations, the Court concluded that tribes constitute neither foreign nations nor states of the union; rather, they could more correctly be categorized as "domestic dependent nations" whose "relation to the United States resembles that of a ward to his guardian."¹⁴⁹ Their dependent status undermines and necessarily restricts their independent sovereignty. As a result of this decision and the Court's articulation of this dependent status, subsequent cases have consistently held that tribes are prohibited from acting in a manner inconsistent with this status.¹⁵⁰

While the Court's decision in *Cherokee Nation* necessarily limits tribal sovereignty, it also serves as the basis for the federal government's trust relationship with Native American tribes.¹⁵¹ In articulating that the relationship between the United States and tribes "resembles that of a ward to his guardian," the Court laid the foundation for the now-entrenched principle that "the United States undertook a trustee's duty to protect the tribal land base and guarantee the Indian nations' right to self-government within this land base."¹⁵² Moreover, this trust relationship is now commonly

147. See Getches et al., *supra* note 63, at 416.

148. 30 U.S. 1 (1831).

149. *Id.* at 17.

150. See, e.g., *Oliphant v. Suquamish Indian Tribe*, 435 U.S. 191, 208–10 (1978) (holding that, absent affirmative delegation by Congress, tribes do not have power to exercise criminal jurisdiction over non-Native Americans because this would be inconsistent with their domestic dependent status).

151. See *Frequently Asked Questions*, U.S. DEP'T OF THE INTERIOR BUREAU OF INDIAN AFFAIRS, <https://www.bia.gov/frequently-asked-questions> [<https://web.archive.org/web/20240227122328/https://www.bia.gov/frequently-asked-questions>] (last visited Feb. 9, 2024) [hereinafter *DOI BIA FAQ*] (noting that "[t]his obligation was first discussed by Chief Justice John Marshall in *Cherokee Nation v. Georgia*"); SEC'Y OF THE INTERIOR, ORD. NO. 3335, REAFFIRMATION OF THE FEDERAL TRUST RESPONSIBILITY TO FEDERALLY RECOGNIZED INDIAN TRIBES AND INDIVIDUAL INDIAN BENEFICIARIES 1 (2014), <https://www.doi.gov/sites/doi.gov/files/migrated/news/pressreleases/upload/Signed-SO-3335.pdf> [hereinafter ORD. NO. 3335] (quoting from *Cherokee Nation v. Georgia* in recognizing that, "[d]ating back as early as 1831, the United States formally recognized the existence of the Federal trust relationship toward Indian tribes").

152. Alex Tallchief Skibine, *Towards a Trust We Can Trust: The Role of the Trust*

understood to impose a fiduciary duty on the federal government to protect tribal treaty rights and manage tribal resources in a manner consistent with the tribes' best interest.¹⁵³

Like every federally recognized tribe in the United States, the federal government regards the Navajo Nation as a domestic dependent nation, thereby qualifying the Navajo Nation's sovereignty. Consequently, the federal government may express opposition to increasing Navajo sovereignty and authority in managing Canyon de Chelly in the manner that this Article proposes, regarding such an exercise of power as inconsistent with the Navajo Nation's domestic dependent status. The federal government may also oppose the approach this Article advances on the grounds of its fiduciary duty to hold and manage land and resources in trust for the Navajo Nation, such that it would be inappropriate for the Navajo Nation to manage Canyon de Chelly on its own.

C. Overcoming the Barriers: Adopting Co-Governance in the United States Through Federal Legislation

Because the Navajo Treaty of 1868 does not contain language protecting tribal sovereignty over managing culturally significant landscapes and resources, the Navajo Nation faces barriers to litigating its exclusion from managing such landscapes and resources – including Canyon de Chelly – and advocating for co-governance in response to treaty violations. As a result, challenging this exclusion requires pursuing another pathway. Because Congress establishes protected areas through legislation, it follows that enacting new legislation or amending the Monument's enabling act would provide an effective means of redefining Canyon de Chelly's status and management scheme.

Passing such legislation would also align with the federal government's fiduciary duty to act in the best interest of the Navajo Nation given their trust relationship. As this Article demonstrates, the historical exclusion of the Navajo Nation in conservation management has restricted the Navajo Nation's sovereignty and harmed its cultural well-being. Moreover, because Canyon de Chelly is

Doctrine in the Management of Tribal Natural Resources, in *TRIBES, LAND, & THE ENV'T 7* (Sarah Krakoff & Ezra Rosser eds., 2012).

153. See *DOI BIA FAQ*, *supra* note 151 (noting that “[t]he federal Indian trust responsibility is also a legally enforceable fiduciary obligation on the part of the United States to protect tribal treaty rights, lands, assets, and resources”); ORD. NO. 3335, *supra* note 151, at 5 (setting forth guiding principle that requires all bureaus and offices of DOI to “[r]espect tribal sovereignty and self-determination, which includes the right of Indian tribes to make important decisions about their own best interests”).

located on the Navajo reservation, the land and its resources belong to the Navajo Nation and are merely held in trust by the federal government pursuant to this relationship. Consequently, the government has clearly failed to act in accordance with its fiduciary duty to support tribal self-governance, protect tribal resources, and act in the Navajo Nation's best interest.

In light of these barriers and this duty, this Article proposes that Congress adopt and implement the following statutory language:

Canyon de Chelly shall henceforth be recognized as a self-governing¹⁵⁴ legal entity with all the rights, powers, duties, and liabilities of a legal person. Canyon de Chelly will cease to be federally managed as a national monument. The passage of this Act shall establish a co-governance Board responsible for managing Canyon de Chelly in a manner consistent with the Canyon's interests. This Board shall initially consist of four¹⁵⁵ representatives from the National Park Service and four representatives from the Navajo Nation. These representatives shall act on behalf of the Canyon itself. Within two years of this Act's enactment, this Board shall consist of two rather than four representatives from the National Park Service and six rather than four representatives from the Navajo Nation. Within four years of this Act's enactment, this Board shall consist solely of eight representatives from the Navajo Nation.

1. *Imagining the Proposed Solution in Practice*

Functionally, the Board would convene on a regular basis – to be determined by the Board members – and as needed if pressing challenges arise. At such meetings, Board members would discuss their concerns regarding Canyon de Chelly's management,

154. The Merriam-Webster Dictionary defines self-governing as “having control or rule over oneself,” i.e., being sovereign. *Self-Governing*, MERRIAM-WEBSTER, <https://www.merriam-webster.com/dictionary/self-governing> (last visited Feb. 9, 2024). The functionality of this definition is that Board members would act on behalf of the Canyon itself as a sovereign entity; they would not impose their own wills upon it. Although Board members would manage the Canyon, they would act as conduits of the self-governing Canyon.

155. This statutory language proposes beginning with four representatives each from the NPS and the Navajo Nation, as well as transitioning to full Navajo management over four years, given the significance of this number in Navajo culture. This value represents both the four cardinal directions and four sacred mountains that define the boundary of the Navajo homeland. See Harold Carey Jr., *The Navajo Four Sacred Colors*, NAVAJO PEOPLE (Jan. 7, 2015), <https://navajopeople.org/blog/the-navajo-four-sacred-colors/>.

propose strategies for addressing these concerns, and decide which approach(es) to employ through unanimous agreement, whenever possible. As a default rule, any approach(es) employed should be unanimously agreed on, whenever possible, but the Board may consent to a “majority rules” policy if it so chooses. The funding for Canyon de Chelly’s management would continue to come from Congress, which currently provides funding to the NPS through its annual appropriations cycle and mandatory funds.¹⁵⁶ Rather than the NPS, however, Congress would allocate specific funding to the Board, which would oversee its use. Additional funding may come from other sources that the Board deems appropriate, such as private philanthropy and entry and user fees, which also currently fund the NPS.¹⁵⁷

For as long as the federal government retains representation on the Board, the federal government and the Navajo Nation would be responsible for jointly managing the landscape with equally meaningful responsibilities, determined on a case-by-case basis or however the Board sees fit.¹⁵⁸ In contrast to the current co-management scheme, whereby the responsibilities of the Navajo Nation are predominantly confined to employment, such as in providing visitor services, rather than decision-making, under this Article’s proposed model, the Navajo Nation would have a seat at the decision-making table and a hands-on role in managing the land. Additionally, because this model grants Canyon de Chelly legal personhood, such that Board members serve as guardians and representatives of the Canyon, it imposes an obligation upon the Board members to act in the best interest of the Canyon itself.

To better understand how the federal government and the Navajo Nation would handle environmental issues differently under this proposed solution as opposed to the existing conservation management model, consider a hypothetical scenario in which the overuse and insufficient maintenance of a hiking trail at Canyon de Chelly have caused degradation, requiring that the trail be restored. Recall that, under the current model, Canyon de Chelly is a national monument and the legislation governing Canyon de Chelly’s

156. *How Are National Parks Funded?*, NAT’L PARK FOUND., <https://www.nationalparks.org/connect/blog/how-are-national-parks-funded#:~:text=The%20National%20Park%20Service%20is,as%20well%20as%20private%20philanthropy> (last visited Feb. 9, 2024).

157. *Id.*

158. While this approach leaves significant discretion to the Board, this is an intentional choice, as this Article does not seek to prescribe or impose best practices. Because the purpose of this model is to help restore tribal sovereignty in managing landscapes and resources, Navajo Board members should have the flexibility and agency to determine how best to manage them.

management does not mandate that the NPS cooperate with the Navajo Nation in managing the monument.¹⁵⁹ As such, the federal government predominantly manages the landscape, with limited and voluntary co-management with the Navajo Nation. Consequently, in this hypothetical scenario, the current management model would allow for the federal government to independently determine and implement restoration efforts, choosing whether to collaborate with the Navajo Nation in doing so.

In contrast, under the initial iteration of this Article's proposed model, consisting of representation from both the federal government and the Navajo Nation, the Board would convene as soon as possible after its members become aware of the trail's condition. Members from both the federal government and the Navajo Nation would then present proposals regarding trail closure, restoration, funding, and more. Next, the Board would select a proposal to implement, ideally through unanimous agreement or potentially through a majority vote if the Board determines this is necessary and permissible. Such a proposal could recommend that, given their bureaucratic expertise, members of the federal government be responsible for procuring and allocating funding for the restoration while members of the Navajo Nation physically restore the trail, engaging with the land in a manner aligning with their beliefs and cultural practices. This hypothetical scenario provides one example of what this Article's proposed model could look like in practice, although there may be slight differences when it is applied in the real world.

This Article's proposed model would also help to address real and imminent environmental challenges currently facing Canyon de Chelly. For example, in recent years, extreme drought has plagued Canyon de Chelly, harming the valley's ecosystem and jeopardizing Navajo farming and culture.¹⁶⁰ Despite the increasing severity of these droughts, which will only be further exacerbated by ongoing climate change, disputes between the federal government and the Navajo Nation concerning water rights have led government officials to withhold water and funding for water infrastructure from Navajo communities.¹⁶¹ The current conservation management approach in effect for managing Canyon de Chelly does not

159. Dugelby, *supra* note 19.

160. Kirsi-Marja Hayrinen-Beschloss, "Over Half of the People Who Used to Grow Crops Here Can't Do It Anymore", THE NEW REPUBLIC (Oct. 16, 2020), <https://newrepublic.com/article/159418/over-half-people-used-grow-crops-cant-anymore#:~:text=Since%202017%2C%20extreme%20drought%20has,by%20lack%20of%20water%20infrastructure.>

161. *Id.*

prohibit such conduct. In contrast, under this Article's proposed model, representatives from the federal government become members of this Board, thereby assuming the responsibility to prioritize the health and well-being of the Canyon and to act in its best interest rather than in the best interest of the federal government. As such, the legal obligation that this model imposes would preclude the federal government from withholding water and funding in this manner. Moreover, because this proposed model allocates equal – and ultimately greater – decision-making power to the Navajo Nation, the federal government would be restricted in its ability to make such unilateral decisions posing harm to the Navajo Nation, as governmental representatives would not be the sole actors at the decision-making table. Consequently, this model would ensure the allocation of sufficient water to protect the Canyon's ecosystem and the Navajo Nation's rights.

2. *Benefits of the Proposed Solution*

This solution would alleviate the problems detailed at the outset of this Article in several ways. First, this solution would alleviate the historical exclusion of the Navajo Nation in conservation management by reducing the power of the federal government in managing Canyon de Chelly and increasing the power of the Navajo Nation in doing so. Instead of this landscape being managed exclusively by the federal government, as national monuments and other protected areas historically have been, this approach explicitly grants management and decision-making power to the Navajo Nation. Second, this solution would alleviate the existing issue of limited tribal participation in co-managing Canyon de Chelly by ensuring that tribal members are integral to all aspects of decision-making and management. Additionally, this solution contains an expedited timeline for a transition to *full* tribal membership on the Board, making tribal participation absolutely central to this management scheme. Last, this solution would alleviate the issue of retaining a Western management framework in managing Canyon de Chelly by fundamentally transforming this framework. Rather than regarding the land as property to be managed by humans for their benefit, this solution would grant the land legal personhood and make it a self-governing legal entity, whereby the Board would act in the interest of the land itself¹⁶² – i.e., managing people for the benefit of the land. By

162. The land's interests may be understood in terms of the emerging global recognition of the rights of nature, or the idea that "[n]ature in all life forms indeed has 'the right to exist, persist, maintain and regenerate its vital cycles,'" Allison McKenzie, "*Rights of Nature: The Evolution of Personhood Rights*," 9 *JOULE: DUQ. ENERGY*

regarding the land as a legal person entitled to its own rights, and legally obligating the Board to safeguard these rights by acting in the land's best interest, this approach rejects the Western perspective of land as property and of human dominion over nature, and, instead, centers the Indigenous view of nature as animate and as kin.

3. *Addressing Potential Objections to the Proposed Solution*

While it is indisputable that the Te Urewera model has significantly increased iwi representation in conservation management, there exist serious questions and concerns regarding whether this arrangement is genuinely beneficial for iwi. First, many argue that co-management systems perpetuate a dominant Western environmental management framework, and, consequently, fail to meaningfully integrate Indigenous perspectives and genuinely benefit iwi. Māori and Indigenous Studies scholar Rachael Harris argues that co-management forces iwi into “a mainstream model,” hindering self-determination and serving as more of a “concession” than “outright victory for Māori.”¹⁶³ Furthermore, while the Te Urewera Act 2014 essentially returns Te Urewera to the Tūhoe, they inherited a deteriorated landscape due to years of government neglect, and fear that the DoC will not take responsibility for the state of the landscape due to their diminishing budget and number of staff members.¹⁶⁴

Like the criticism that Rachael Harris highlights, scholars studying conservation co-management in the United States note that such initiatives may not benefit Native American communities in practice

& ENV'T L.J. 27, 28 (2021) (quoting *What are the Rights of Nature?*, GLOB. ALL. FOR THE RTS. OF NATURE, <https://www.garn.org/rights-of-nature/>), as well as to “flourish . . . and naturally evolve without human-caused disruption.” Tiffany Challe, *The Rights of Nature – Can an Ecosystem Bear Legal Rights?*, COLUM. CLIMATE SCH., CLIMATE, EARTH, & SOC'Y: STATE OF THE PLANET (Apr. 22, 2021), <https://news.climate.columbia.edu/2021/04/22/rights-of-nature-lawsuits/>. As such, this Board would act to protect the land's interests in maintaining its existence and vitality, rather than “human interests in natural resource exploitation or harvesting or even human recreational or restorative interests in the enjoyment of natural beauty.” Gwendolyn J. Gordon, *Environmental Personhood*, 43 COLUM. J. ENV'T L. 49, 62 (2018). This approach would not prohibit all human use and enjoyment of the land; it would simply prioritize the land's interests by ensuring that such use is respectful of and consistent with these rights, such that the land is not overexploited and has sufficient time to regenerate.

163. Rachael Caroline Harris, *The Changing Face of Co-Governance in New Zealand: How Are Ngāi Tahu and Ngāi Tūhoe Promoting the Interests of Their People through Power-Sharing Arrangements in Resource Management?*, UNIV. OF CANTERBURY RSCH. REPOSITORY 42 (2015), <https://ir.canterbury.ac.nz/server/api/core/bitstreams/51bd3d7d-8eb9-468e-87be-a5d49cd4dc24/content>.

164. Gale, *supra* note 17.

given their strong connection to state-based institutions.¹⁶⁵ As environmental scientist Sibyl Diver writes,

Risks of co-optation are a particular challenge for Indigenous communities working to achieve greater self-determination, a term that signifies the ability of Indigenous communities to participate meaningfully in the creation of the government institutions that they live with This is, in part, because Indigenous relationships with state-based resource management institutions are embedded within colonial systems that have historically excluded Indigenous communities from land management decisions¹⁶⁶

While these criticisms are valid and profound, Aotearoa New Zealand's co-governance approach is still significantly better¹⁶⁷ than the current situation in the United States, and it constitutes a meaningful step in the right direction. Additionally, it is notable that scholars who have advanced valid critiques of this approach have not gone so far as to conclude that this approach has proven more harmful than the traditional conservation model that it replaced. Moreover, this Article's proposed approach contains meaningful differences from the existing Te Urewera model to address these concerns. Notably, the model that this Article advances provides for a transition to *full* tribal representation, as opposed to the Te Urewera Act's transition to solely two-thirds tribal composition. Because this solution promotes a transition to full tribal representation on the Board, its reliance on state-based institutions will decrease over time. Additionally, the proposed model's initial transition to three-quarters tribal composition would occur on an expedited timeline of two years in comparison to the Te Urewera Act's three-year transition to only two-thirds tribal representation. Furthermore, although it is a somber reality, it is unrealistic that Congress would enact a more progressive policy than that proposed in this Article.

A second potential objection to adopting this Article's proposed model is that the existing tribal parks model in the United States sufficiently remedies the issues this Article raises, rendering a new model unnecessary. Although both the tribal parks model and this Article's proposed model involve landscapes being managed

165. See Diver, *supra* note 20, at 533.

166. *Id.* at 534.

167. For the purposes of this Article, success is defined in terms of returning stolen land to tribes and restoring tribal sovereignty in managing it. Although conservation co-governance has also generated discussion regarding its environmental benefits, little evidence of such benefits exists given the recent emergence of this model, and such a discussion falls outside of the scope of this Article.

entirely by tribes, thereby granting greater authority to tribes, the current tribal parks model still functions within the existing Western conservation management framework, and, therefore, does not constitute an adequate solution to the issues identified in this Article. The model this Article advances goes a step beyond the tribal parks model by granting such landscapes legal personhood, thereby fundamentally transforming the legal nature and treatment of the land and breaking out of this Western framework.¹⁶⁸ Consequently, full tribal management is only one element of this proposed model, making the two models meaningfully distinguishable.

A third potential challenge to this solution that could arise involves the limited degree of the Navajo Nation's sovereignty that the federal government recognizes as a result of its status as a domestic dependent nation. Courts have historically struck down exercises of Native American sovereignty that appear to go too far, such that they are incompatible with the tribes' status as domestic dependent nations.¹⁶⁹ Although this principle is deeply entrenched in American law and policy, so is the federal government's acknowledgment of its unique and inviolable trust relationship with Native American tribes, evident in the Supreme Court's consistent reassertion of this principle in a long string of cases since its first articulation in the 1831 case of *Cherokee Nation*, as well as in Congress's consistent reliance on and reaffirmation of this principle in legislation passed over the last few decades.¹⁷⁰ Consequently, a colorable argument could be made that, due to its role as trustee of this land, the federal government has an obligation to rectify the historical injustices caused by the exclusion of the Navajo Nation in managing it, which necessarily requires

168. For a discussion of legal personhood, the interests of the land, and the rights of nature, see *supra* note 162 and accompanying text.

169. See, e.g., *Oliphant v. Suquamish Indian Tribe*, 435 U.S. 191, 208–10 (1978) (holding that tribes cannot exercise criminal jurisdiction over non-Native Americans, absent affirmative delegation by Congress, because this would be inconsistent with their domestic dependent status).

170. See *DOI BIA FAQ*, *supra* note 151; *Seminole Nation v. United States*, 316 U.S. 286, 296–97 (1942) (noting that “[u]nder a humane and self imposed policy which has found expression in many acts of Congress and numerous decisions of this Court, [the federal government] has charged itself with moral obligations of the highest responsibility and trust”); *United States v. Mitchell*, 463 U.S. 206, 225 (1983) (acknowledging “the undisputed existence of a general trust relationship between the United States and the Indian people” and that “[t]his principle has long dominated the Government’s dealings with Indians”); STEPHEN L. PEVAR, *The Federal-Tribal Trust Relationship: Its Origins, Nature, and Scope*, in CAL. WATER PLAN UPDATE 1 (2009), <https://cawaterlibrary.net/wp-content/uploads/2017/05/The-Federal-Tribal-Trust-Relationship.pdf> (asserting that “[v]irtually every law enacted by Congress during the past 40 years involving Indians and tribes has cited to, and found its support in, the federal government’s trust obligations” and providing examples of such laws that explicitly acknowledge this trust responsibility).

providing the Navajo Nation with greater sovereignty and authority in a manner consistent with this Article's proposed solution.

More traditional legal minds may express opposition to the seemingly radical concept of recognizing the Canyon, a non-human entity, as a legal person, and awarding it legal rights and obligations. This concept, however, is not new in the United States; rather, it has been applied in other contexts for over a decade, most notably – and contentiously – with respect to corporations.¹⁷¹ In fact, the concept of corporate personhood can be traced back to William Blackstone's *Commentaries on the Laws of England* from the mid-1700s, which includes a chapter on the rights of corporations within its book on the rights of persons.¹⁷² Blackstone believed that “[t]he rights accorded to the corporate form . . . were granted in order to encourage cooperation among individuals with a view to socially useful ends.”¹⁷³ Environmental conservation is a socially useful end warranting the encouragement of cooperation among individuals. Just as corporations are regarded as their own legal entities that are simply managed by people, this same logic should extend to natural landscapes.¹⁷⁴

VI. CONCLUSION

As this Article has demonstrated, the historical exclusion of Indigenous Peoples in conservation management has had serious and harmful implications for tribal sovereignty. Recent co-management initiatives have emerged in the United States to provide tribes with greater power in managing protected areas. However, many of these initiatives, including that in place in managing Canyon de Chelly, have fallen short of achieving this goal due to limited tribal participation and input in decision-making, as well as the retention of a Western conservation management framework. As a result of these shortcomings, a new approach is needed.

Aotearoa New Zealand's conservation co-governance model, encompassed by the Te Urewera Act 2014, is designed to address

171. See generally *Citizens United v. Fed. Election Comm'n*, 558 U.S. 310 (2010) (holding that corporations have First Amendment right to finance political campaigns). Although the Court's logic relied on the notion that corporations are comprised of individual people, this opinion has commonly stood for the proposition that corporations, themselves, which are non-human entities, have the same legal rights as individual citizens.

172. Carson Holloway, *Are Corporations People?*, NAT'L AFFS. (2015), <https://www.nationalaffairs.com/publications/detail/are-corporations-people>.

173. *Id.*

174. While corporate personhood is a complex subject that is beyond this Article's scope, the comparison between granting legal rights to corporations and to natural landscapes is still relevant for the reasons detailed.

the same issues posed by these co-management initiatives. By establishing a co-governance Board to manage this landscape that will ultimately be comprised predominantly of tribal members, this model helps to alleviate the issue of limited tribal participation. Additionally, by redefining the legal status of a former national park, such that it is recognized as a self-governing legal entity with the same rights as a person, this model fundamentally transforms the conservation management framework in alignment with Indigenous rather than Western perspectives on nature.

Consequently, Aotearoa New Zealand's conservation co-governance model can serve as a blueprint for adopting a new approach to conservation management in the United States. To address shortcomings of Aotearoa New Zealand's model that scholars have identified, this model should be modified to mandate a transition to full rather than majority tribal representation on the Board, and to ensure that this transition occur on an expedited timeline in comparison to Aotearoa New Zealand's model. The United States should enact federal legislation applying this modified model to the management of Canyon de Chelly as a means of rectifying historical injustices and restoring Navajo sovereignty.