

SYMPOSIUM

U.S. V. OREGON: 50TH ANNIVERSARY

Beginning in 1854, the U.S. entered into treaties with the Northwest Tribes that saw the tribes cede vast territories in exchange for rights meant to protect their traditional salmon fishing. For 115 years after that, U.S. citizens and Oregon and Washington attacked those rights and the tribe members seeking to uphold them. The states implemented a harsh vision of their police powers and used that as justification to regulate and prohibit activities protected by the treaties. Meanwhile, citizens physically ejected tribe members from traditional fishing areas they were guaranteed to have access to.

In 1969, Judge Belloni's *United States v. Oregon* decision laid the legal groundwork to finally uphold those rights. Professor Wilkinson's moving tribute to *United States v. Oregon* showcases the timeline leading up to the decision and why it was a triumph of thoughtful reasoning and fidelity to the legal tradition of Indian treaty interpretation. The decision recognized the Northwest Tribes fishing rights and rebuked the states' position that their police power could alter treaty rights. It also laid the groundwork for future protections.

Professor Blumm and Cari Baermann explore the legal framework that preceded *United States v. Oregon*, and how Judge Belloni's decision was remarkable because it required the tribes be granted a "fair share" of the salmon harvest and foresaw continuing conflicts between the states' fisheries management and tribal access to traditional salmon fishing. The fair share requirement dramatically altered the states' obligations, and required they manage fisheries with tribal rights in mind. The conflicts between tribes and the states about what constituted a "fair share" persisted until 1977, when the states developed a management plan that incorporated Judge Belloni's holding. The Columbia River Comprehensive Management Plan was the outcome and has been in place for fifty years.

Professor Mills examines the important role treaty interpretation and enforcement has had in environmental protections across the U.S. He argues that Judge Belloni's decision in *United States v. Oregon*

helped reverse a national trend in treaty interpretation that had eliminated or reduced tribal treaty rights. The decision helped identify and balance the states and tribes conflicting rights, and judges across the U.S. used that decision to examine issues arising in their own courts. Specifically, the piece examines how Judge Belloni's reasoning helped usher in treaty right protections for Midwest tribes.

An article by Sammy Matsaw, Dylan Hedden-Nicely, and Barbara Cosens focuses on the colonial roots of Indian treaty interpretation by U.S. courts. The piece examines the issue from a linguistics perspective and identifies how the early interpretive frameworks used for Indian treaty jurisprudence excluded the Native voice and contributed to the persecution of Native people. The piece argues that the evolution of treaty cannons of construction began in *Worcester v. Georgia* in 1832, where the Supreme Court held that treaties must be interpreted how the Tribes would have understood them. Regardless, the authors argue that language remains a barrier to interpretation and recognizing how Native language operates is crucial to treaty interpretations that honor Native sovereignty.

Professor Litwak identifies how evidentiary requirements can jeopardize sacred archaeological sites. Agencies and courts must make decisions based on "substantial evidence." When a case involves the protection of a cultural site, this requirement can lead to disclosing the location and composition of pristine, sacred cultural treasures. Revealing such information can lead to further degradation when "cultural terrorists"—a term used by the judge overseeing a cultural site case—seek to disturb and destroy such sites. Professor Litwak argues that shifting the definition of substantial evidence to require fewer details would prevent harmful impacts and ensure protection for cultural sites.

The issue concludes with three pieces that are not tied to the Symposium. Professor Huffman's article evaluates the recent *Kramer v. City of Lake Oswego* case, where the Oregon Supreme Court was asked to determine the public's right of access to Lake Oswego. He argues that the court's convoluted opinion misconstrues the law of the public trust doctrine and public ownership of riparian and submerged lands. Professor John Ruple and Kayla M. Race analyze the National Environmental Policy Act's (NEPA's) litigation burden on federal agencies. They conclude that agencies have increasingly mastered NEPA compliance and any effort to streamline the NEPA process could erase those gains. Lastly, Dani L. Replogle, Legal Fellow at Earthrise Law Center, discusses how advocates can force agencies to evaluate the climate impacts of oil extraction on public lands through the NEPA process.

Environmental Law would like to thank the tribal members that attended the symposium and contributed to this issue. In addition, we thank the symposium presenters, attendees, volunteers and all others involved who made the symposium a success. We hope this issue fosters

dialogue regarding the continuing impact *United States v. Oregon* has had on the Pacific Northwest and on Indian Law overall.

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