

Chapter 1 : How the Indians Lost their Land | Territorial Masquerades

How the Indians Lost Their Land dramatically reveals how subtle changes in the law can determine the fate of a nation, and our understanding of the past. [Permalink](#) [Find at a Bookstore](#) [+/-].

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Chapter 2 : Why did the native Americans lose their land? | Yahoo Answers

How the Indians Lost Their Land dramatically reveals how subtle changes in the law can determine the fate of a nation, and our understanding of the past. Read more Read less Give the gift of reading, now \$

How the Indians Lost Their Land: Stuart Banner, a law professor, does not deny that between the early 17th century and the end of the 19th, nearly the entire land area of the United States was transferred from Indian to non-Indian ownership. But in *How the Indians Lost Their Land*, he offers an avowedly revisionist account of the way this happened. Previous scholars, he claims, have overemphasised the direct seizure of Indian land, failing to recognise that the process of acquisition proceeded mainly through legal forms: Banner criticises traditional accounts for denying that Indians had their own concept of private property and were tricked into selling land, and for maintaining that whites believed the native inhabitants had no real claim to land ownership. Actually, Banner insists, there were strong reasons to purchase the land and not simply to seize it. The early settlers lacked the power to dispossess the Indian population, and throughout the colonial era, with the French competing with the English for Indian loyalty, wholesale expropriation would have been politically counterproductive. Indeed, Banner argues, colonial governments and authorities in London generally tried to prevent settler intrusion onto Indian land before it had been purchased. This policy culminated in the Proclamation of 1763, which declared the entire continent west of the Appalachian mountains off-limits to white settlers. Even speculators like Washington paid Indians for their land. Banner is hardly unaware of the violence that underlay Indian-white relations. But he insists that the transfer of land was neither wholly coerced nor wholly voluntary. It embodied elements of both in a combination that evolved over time. In the early days of settlement, Indians sold land in order to cement alliances with European powers and to obtain manufactured goods that only settlers could provide. Especially after epidemics caused by contact with European diseases led to a disastrous population decline, Indians owned more land than they could possibly use, so selling some of it made sense. As time went on, however, the process became more and more coercive. By ending rule from London, where the authorities had tried to avoid conflict with the Indians, American independence severely weakened native bargaining power and the respect paid to their property rights. Independence created governments democratically accountable to voters who craved Indian land and to powerful speculators with claims on Indian property. Moreover, the federal government expected much of its income to derive from selling to white farmers land acquired from Indians. At first, the new American government insisted that Indians, most of whom had sided with the English during the War of Independence, had forfeited all claims to their land, which could be appropriated without compensation. But this was a recipe for continuous and expensive warfare. As the 19th century progressed, however, recognition of Indian property rights diminished. Nonetheless, to the end of the 19th century, even as the federal government forcibly expelled Indians from the eastern half of the country and then rounded up western tribes, forcing them onto reservations, legal forms persisted. Indian land was still acquired, on paper at least, through treaties and sales. In some ways, *How the Indians Lost Their Land* offers a valuable corrective to oversimplified views of Indian-white relations. Banner points to the existence of innumerable legal records of Indian property rights — land deeds, laws regulating purchase, court cases that restored to Indians land seized by whites — to indicate that recognition of rights was the norm. He notes that many scholars have confused the legal concepts of sovereignty and property: Rather than seeing Indians simply as victims, he makes clear their active agency in shaping relationships with whites. They sometimes played whites off against one another, and they learned to take full advantage of the real estate market. Like many revisionist writers, he considerably exaggerates his own originality. The idea of Indians as savvy negotiators is hardly new: Recent scholarship makes clear that to avoid constant warfare and ensure legally valid titles and an orderly distribution of land among settlers, the English generally recognised Indian property rights and purchased land rather than simply taking it. But while Parker carefully delineated the numerous systems of land tenure that existed among Indian tribes, Banner fails to tell us precisely how Indians viewed property. Sometimes, he seems to suggest that their conceptions of property were not all that different from those of whites. Yet he also notes that no market in real estate existed

before the coming of the Europeans. Indians did not buy and sell land among themselves. Most tribes seem to have allocated plots to individual families, while unclaimed land remained free for the taking. But he never examines the implications – legal, economic and ideological – of differences between white and Indian conceptions of property. Banner makes the essential point that the English colonies and, later, state and federal governments, controlled the legal system that defined property rights. This constituted as important a form of power as military might. Land transactions took place within a legal framework Indians had no role in shaping. But conflicts over land ran deeper than the legal definition of property. For Indians, land was essential to maintaining a traditional way of life. For whites, land meant many other things. It was the basis of power – huge land grants to companies and to well-connected individuals helped to lay the foundation for an American upper class. For settlers, land was the basis of personal independence, a concept that had little meaning in most Indian societies, where kinship ties, the well-being of the tribe and adherence to widely understood ideas of communal loyalty took precedence over individual autonomy and freedom. Dispossessing the Indians was, from the beginning, intrinsic to the fulfilment of the American dream. Over time, they displaced the original inhabitants of the New World far more thoroughly than any other European empire. Ultimately, *How the Indians Lost Their Land* illustrates the weaknesses of a history focused on laws and ideas divorced from their social, political and military context. Banner unnecessarily plays down the role of outright military subjugation in land acquisition. History tells a somewhat different story. It was the destruction of Indian forces by Anthony Wayne in the Battle of Fallen Timbers of 1794, for example, that led to a treaty transferring, for a fee, most of Ohio and Indiana to the federal government. Did the treaty represent purchase or conquest? After the Creek War of 1832, Andrew Jackson imposed a treaty on the defeated Creeks that ceded much of Georgia and Alabama, opening the door for the expansion of slave plantations in the Deep South. Discussing the removal of the Cherokees to Oklahoma from lands in the east, Banner remarks: Banner is quite correct to note that even after decisive military victories, Americans went through the process perhaps it is better to say the charade of signing treaties that made the land transfers appear to be mutually agreed transactions. This obsession with trying to reconcile conquest with legal procedures cries out for explanation, but it should not disguise the fact that it was conquest all the same. By 1890, the Indian population within the borders of the United States, which numbered in the millions when Europeans first reached North America, had been reduced to 250,000, most of them living in extreme poverty on reservations. Instead, their population began to rebound. It reached four million in the 1990 census. Meanwhile, thanks to the American Indian Movement, one of the numerous social crusades spawned by the 1960s, Indians embarked on a militant campaign for greater rights and historical restitution. Some tribes today are using the legal system created by whites to gain compensation for past injustices. Some tribes have become very rich as a result. One such group is the Pequot tribe of Connecticut. In 1637, as the result of a brief and bloody war, Puritan New Englanders exterminated or sold into slavery most of its members.

Chapter 3 : How the Indians Lost Their Land: Law and Power on the Frontier - Stuart BANNER - Google B

You may think you know how the Indians lost their land -- through fraudulent treaties, outright theft, forced marches, and war -- but Stuart Banner shows that there is much more to this complicated story.

How the Indians Lost their Land: Law and Power on the Frontier. Indian land cannot be reduced to a story of violent dispossession. He also discounts versions that put too much emphasis on trickery and the sort of cultural-lost-in-translation thesis. Banner wants to present a more complicated picture of Indian dispossession so that neither Indians nor whites are presented as monolithic blocs and due diligence is given to the wideness of the fluctuating spectrum between coercion and consent, involuntary and voluntary, conquest and contract. Trying to walk this line, Banner writes: It was the power to establish the legal institutions and the rules by which land transactions would be enforced. As the scales of power tipped in the other direction, colonists became land-grabbers and it was the English crown that began trying to regulate the rush, requiring all land to be purchased by colonist and regulated by colonial administrators. The ideological reasons included the similarity of Indian farming with pre-enclosure England as well as liberal theories of private property; material considerations included trade, amicable relations, and politico-diplomatic alliances against other tribes and other colonial powers. But the land rush continued and began creating greater conflicts with the tribes being pushed further west. The Proclamation of called for an end to private sales, which were chalk full of deceit, drunken deals, and other fraudulent activity. The Proclamation made the purchasing of Indian land an exclusive right of the government. The side-effect of this policy, which was aimed at keeping the peace with the tribes, was that it undermined the property rights of the Indians themselves who were effectively barred from alienating their own property. It created the perception that Indians had less than full property rights. The Revolution also threw Indian property rights into a tailspin. First, most tribes had allied with the losing side, a defeated power, and the Revolution could thus be cast as a war of conquest giving the new country rights to all its land. But that view was not hegemonic nor lasting, and the fledgling government quickly reverted to the colonial-type policy of allowing only the federal government to purchase Indian land. The federal government ended up ratifying these de facto settlements almost by default. A series of court decisions helped ratify this view of Indian tenants, and the notion of Indians as property owners began to recede from memory. An ideological component of this shift was the notion that Indian inhabitants of land were not proper farmers an outright lie , which undermined their land claim according to liberal property theory, making them occupants but not owners. All these developments are what set the conditions and possibilities for subsequent Indian removal, reservations, and allotment the Dawes Act. He shows how advocates for and against policies formed strange bedfellows with progress-professing humanitarians siding with land-hungry speculators; Indian tribes themselves were often split on such policies with some leaders advocating for such policies as defensive move, while others held out as long as they could until threatened by starvation.

Chapter 4 : US should return stolen land to Indian tribes, says United Nations | US news | The Guardian

Ultimately, How the Indians Lost Their Land illustrates the weaknesses of a history focused on laws and ideas divorced from their social, political and military context. To be sure, Banner is fully aware that 'formal law and actual practice could diverge.'

In lieu of an abstract, here is a brief excerpt of the content: Law and Power on the Frontier. Belknap Press of Harvard University, Oxford University Press, American Indian Autobiography and the Law. University of Illinois Press, The three volumes juxtaposed here reflect a recent burgeoning interest in law and American Indians. How appears in two of these titles and is implicit in the third, paraphrasable as "How did American Indians come to write autobiographies? The legal system perhaps offers contemporary sympathizers with Indian efforts to escape a colonial legacy a methodologically intelligible mode of access to the nature and meaning of the encounter between Native and European. The apparent stability of "the law" perhaps assuages the guilt of the invader. Coercion and consent alternated by circumstance and local balance of power at different times. Neither Indians nor whites were a single homogeneous category. Banner is thus able to tell a nuanced story of particular encounters and their collective power over time. Ownership of land, by settlers or Indians, is distinguished from claims to sovereignty over land a much broader category involving competing European claims to the same land. Moreover, humanitarian concerns to protect Indian interests in law and social action have been consistent but [End Page] have taken different forms in different periods. At all periods, however, justifications for land grabs assumed the superiority of European civilization and ability to use land productively. The Proclamation of recognized Indian ownership of land, so that it could be purchased not by individuals, but by the Crown. Initially the land was deemed empty, with sufficient resources to meet all needs. Implicit evolutionary theory combined with English struggles to close in the commons in village lands at home to justify taking land for settler use in America. Banner attempts to explore the Indian standpoint about land transfer and early treaties. Indians exercised agency even when they had different understandings than the Americans. Fraud occurred on both sides, but not in all cases. Authority to sell, fairness of price, and increasing disparity of power between the parties occurred over time. Colonial private contracts rapidly gave way to sovereign treaties. The thirteen states attempted to draw boundaries beyond which settlement was prohibited, but none could be enforced. After the American Revolution, however, Indians were understood as defeated nations whose lands were available by right of conquest, even though most had not been defeated. The transition from ownership to occupancy came gradually, with the devaluation of land tenure held by nomadic peoples and public attention glossing over the number of tribes that were actually agricultural. Frontier land settlement rarely followed Eastern legalities, and speculators bought land before acquiring title to it. The states consistently ignored federal claims to sole jurisdiction over land transfer. Moreover, the new American Republic depended on land speculation and sales for financial stability. By the time the occupancy theory of land use was applied to justify Indian removal in the early nineteenth century, there was an "erasure of virtually all memory that things had once been different" Banner depicts the violent coercion of the Cherokee Trail of Tears as a continuation of policies already established by legal decisions and increasing pressures toward You are not currently authenticated. View freely available titles:

Chapter 5 : Eric Foner: American Historian

How the Indians Lost Their Land: Law and Power on the Frontier Between the early seventeenth century and the early twentieth, nearly all the land in the United States was transferred from American Indians to whites.

Before the arrival of Columbus to the American continent, Native Americans roamed freely across not only all of Michigan, but the rest of the United States as well. But from the moment Americans first ventured into Michigan the U. As early as , when the first treaty was signed, the government began forcing native chiefs to sign treaties that ceded parts of their land for white settlement. This process lasted well into the twentieth century, and Native American land claims across the country, including some in Michigan, have still not been settled. One of the most significant events in the early history of land relations was the War of . When the War of ended in , tribal chiefs were forced to sign treaties with the U. These treaties promised to return those parts of Native American land that had been seized during the war. However, America broke this treaty, and no land was ever returned. Many conflicts over land stemmed from very different ideas about how land should be used. Native Americans generally adapted to the natural environment. They believed as Chief Black Hawk said in his autobiography: The Great Spirit gave it to his children to cultivate it they have the right to the soil. Nothing can be sold but such things as can be carried away. The earliest examples of differences between native and white land use came from their use of trails. Native American trails were often only 12 to 18 inches wide, permitting travel only by single file. When white settlers arrived, they broadened these trails to accommodate their horses and wagons. They built farms and cleared land of its natural growth to create space for crops and pastures. Settlers fenced in these spaces, claiming individual ownership over particular areas of land. These different ideas about land use led to difficulties when Native Americans and whites made agreements with each other. Hinsdale wrote in in *Indians of Washtenaw County*, "The most of them [Native Americans], if not all, supposed when they acceded to treaty bargains that they were simply granting the other party the same and only the same opportunities as they gave one another-that is, a place for a temporary home, rights to hunt in the woods, to navigate the streams and lakes, to breathe the air and to "enjoy" whatever other benefit might occur from the situation without molestation on their part. First, they wanted to open it up more land for white settlement. Second, they wanted to ease tensions between whites and Native Americans by forcing Natives to use the land like whites did. The government had a variety of strategies to accomplish these aims. Many treaties required Native Americans to become farmers in order to keep their land. Government officials often did not translate the documents Native Americans were forced to sign, and native chiefs often had little or no idea what they were signing. This letter describes one instance where white officials made one man named Caw-bu-be-quay sign a document that probably gave away portions of his land. The problem was that at the time Caw-bu-be-quay signed, the document was not translated for him, nor was he allowed to bring a translator. In this document , Louis Baroux, a French missionary wrote to his colleagues describing these unfair practices. One of the most important treaties in Michigan history was the treaty of with the Ottawa, Chippewa, and Pottawatomie nations. With this treaty the government confiscated Native American land in exchange some payment to members of the tribe, and 40 or 80 acre plots returned to each adult. This document shows a certificate returning a plot of land to Joseph Waw-be-gay-kake. While this treaty did not require farming, it did encourage Native Americans to farm instead of hunting because it confiscated large amounts of their hunting grounds and Native Americans were given small plots of land instead. The amount of land returned to Native Americans always came to less than the original tribal land. In addition, to receive either land or payment for land, in this example and in many others, Native Americans had to demonstrate their tribal membership to the satisfaction of white officials. In this document from one native woman tried to prove her membership in the Pottawatomie tribe so that she could receive payment for land confiscated in the treaty. However, some documents suggest that the government was often unfair in making these distinctions and used land as a kind of reward system and some Native Americans claimed that a person received land because of her or his willingness to farm, speak English, and dissolve any relationship with the tribe, not because of any documentation they might have of their ethnicity. Native Americans trying to reclaim land they

had already lost had two options. First, they could take up arms against the American government and try to forcefully reclaim lost land. A Sauk warrior called Black Hawk right led a coalition of about one thousand men, women and children from Sauk, Kickapoo and Fox tribes who wanted to reclaim lands they had lost. The conflict began in Illinois but quickly expanded to include Detroit and other parts of Michigan. Later in , Black Hawk and his followers were stopped in Wisconsin and Black Hawk was put in prison and forced to renounce any claims to leadership of his tribe. He died in , and Native American land remained in white control. Second, Native Americans could work within the American legal system and hope to force American officials to respond. This strategy, however was only of limited success at least until the second half of this century because the government found ways in which Native Americans had violated treaties they had made. In , one white official, Charles E. Mix, helped Native American tribes make legal claims against the federal government. In one letter, Mix wrote to the federal office of Indian Affairs and asked why money owed to the Pottawatomie tribe from treaties made in and still had not been paid. Federal officials were unsympathetic, and the reply from the federal government said that the Pottawatomes would never be paid because they had not properly vacated the land seized by the treaty. Around , the Chippewa nation also petitioned the government for payment according to the treaty mentioned above. In another instance, in a lawsuit was filed against the University of Michigan. Petitioners argued that the University was constructed on Native American land. Under a nineteenth-century contract, a portion of the proceeds of that land had been pledged to support the education of children from the Chippewa, Ottawa or Pottawatomie tribes. Those initiating the court claim argue that these payments were never made and want to recover damages from the University. As these cases show that Native American history is not a remnant of the distant past, but continues to shape life in Michigan today. What are some differences in native and white approaches to land, how it should be used, and who owns it? How have these differences affected Michigan history? Why did the U. How did the government take it? To what extent were they successful? What options did native tribes have if they wanted to reclaim their land? How well did these options work? What are some of the lasting legacies of struggles over land in Michigan?

Chapter 6 : How the Indians Lost Their Land – Stuart Banner | Harvard University Press

How the Indians Lost Their Land does justice to the complexity of this tragic story. It does not let whites off the hook; rather, it sets the record straight on just how the colossal transfer of land was accomplished.

Chapter 7 : Students On Site: Native Americans: Claiming Native American Land

Banner, Stuart. How the Indians Lost their Land: Law and Power on the racedaydvl.comd: Harvard University Press. Stuart Banner's main thesis is that the loss of U.S. Indian land cannot be reduced to a story of violent dispossession.

Chapter 8 : How the Indians Lost Their Land: Law and Power on the Frontier by Stuart Banner

The main reason that native Americans--and Australians, and Cape Khoisan-speakers, et cetera--lost their land lay in the technological and related disparities between themselves and the invaders.

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Removing Native Americans from their Land. President Andrew Jackson offered similar rhetoric in his first inaugural address in , when he emphasized his desire "to observe toward the Indian tribes within our limits a just and liberal policy, and to give that humane and considerate attention to their rights and their wants which is consistent with the habits of our Government and the.