

Restoring Indigenous Access to Medicinal Plants on Private Lands

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I. Introduction

Loss of Indigenous Lands: A Historic Injustice

Anyone who's flown over the United States in an airplane has likely gotten a bird's eye view of a strange patchwork stretching across the ground below: neatly spaced rows of identically sized conifers, rectangles of dried brown crops, perfect squares of stark orange earth, and enormous ponds in unnatural shades of pink or ice blue. This perspective *almost* allows us to sense the magnitude of land mass occupied by American industries like agriculture, forestry, mining, utilities and manufacturing, but statistics put it into stark relief.

Approximately 77 million private individuals and corporations currently own about 60% of the land in the United States, equating to about 1.4 billion acres (USDA, 2022). Over 63% of that privately owned land is in farms and ranches, while 32% consists of commercially managed forests. Corporations like Sierra Pacific Industries, Green Diamond Resource Co., J.D. Irving Company, American Forest Management and Weyerhaeuser own vast tracts of that land, and derive billions of dollars of profits from its usage (Hendrix J.M., 2018). These industries provide us with many of the raw materials needed to keep American capitalism chugging along: lumber, gravel, minerals, electricity, and food. They also radically alter the topography of the land, destroy wildlife habitat, release toxic pollutants into the environment, and make forests more prone to wildfires.

Contrary to depictions in history books and popular culture, these lands were not unoccupied and unmanaged prior to the arrival of European colonizers. They were (and sometimes still are) home to thousands of unique Indigenous Tribes, each with their own rich

traditions, histories, cultures and means of living in balance with the natural world. From the Alaskan tundra to the red hills of New Mexico and the subtropical shores of Florida, Indigenous peoples have cultivated relationships with local native plants, animals, fungi and minerals that provide them with medicine, nutrition and spiritual sustenance. These bonds are deeply rooted in their specific physical and cultural contexts, and, like any relationships, require continuous nurturing to maintain. When closeness with the land is lost, cultures are fragmented and traditions are broken; with these consequences come serious existential challenges like food insecurity, unequal access to medical care, poverty and malnutrition.

The impact of colonization on the physical health of Indigenous peoples in the Americas has been profound, leading to significant changes in their diets and contributing to the emergence of new health challenges and disparities in life expectancies. Over 50% of Indigenous adults over age 35 have type 2 diabetes, reaching epidemic proportions in some communities (United Nations, 2024). Indigenous peoples also suffer from disproportionately high levels of maternal and infant mortality, cancer, cardiovascular illnesses, HIV/AIDS and other infectious diseases like tuberculosis. The Indian Health Service (IHS), responsible for providing healthcare to Native Americans, has historically been underfunded, leading to difficulty accessing Western medical care (California Health Care Foundation, 2023).

The ability to grow and harvest traditional medicinal plants, and preserve related healthcare practices, is a critical aspect of health sovereignty for Indigenous peoples. This objective simply cannot be achieved without land. This research paper explores potential avenues to boost access to or rematriate traditional Indigenous lands that are no longer under Indigenous control, including the Land Back movement, collaboration with conservation groups, easements on private lands, and partnerships with corporate landowners like forestry companies.

II. Background

The Impacts of Colonial Violence on Indigenous Land Use

The transfer of the diverse lands of Turtle Island into the ownership and control of outsiders was neither consensual nor peaceful, occurring through violent forced removal, broken treaties, and hostile unilateral action by the nascent United States government (Central Michigan University, 2024). The Doctrine of Discovery, an international law developed in 1493 by the Catholic Church from papal edicts, justified taking lands perceived as unoccupied from non-Christian peoples by Spanish and Portuguese conquerors; this law established precedence for other laws introduced in the subsequent centuries-long push to fully colonize the Americas.

By 1887, Indigenous Tribes officially held 138 million acres of land, though that figure likely does not include federally unrecognized Tribal entities. The Morrill Act of 1862, which established land-grant colleges, seized over 10 million acres from the Tribal lands of Indigenous communities. The General Allotment Act, which claimed to assimilate Indigenous peoples into mainstream society by dividing Tribal lands into individual allotments, resulted in the loss of another 90 million acres by 1934 (U.S. Dept. of the Interior, 2024).

Current data indicates that just 56 million acres of land are held in trust by the United States for various federally recognized Tribes and individuals (Congressional Research Service, 2020), representing a tiny fraction of the 2.27 billion acres of land in the United States.

Furthermore, many Indigenous peoples have been displaced from their traditional lands and moved to reservations in other locations, separating them from the natural resources, sacred sites and other cultural context of their homelands.

Indigenous perspectives on private property vary, now and throughout history; prior to the arrival of white settlers, Tribal land management was often communal, operating to benefit Tribes as a whole rather than individual “owners.” The land is seen as sentient, encompassing many life forms and spaces, and cannot be separated from its people. Limiting access to culturally significant lands within reservation borders, or those protected under the National Historic Preservation Act of 1962, is not just impractical for the continuation of Indigenous traditions requiring large swaths of undeveloped land; it’s antithetical to Indigenous views of common Tribal usage. That’s not to say that Tribes didn’t sometimes clash among themselves over land, but the need to fiercely defend shrinking territories did not truly manifest until after colonization began (Boyd, T., 2020).

The theft of rightfully Indigenous land, and the forced assimilation associated with it, is directly responsible for an incalculable loss and degradation of culture, traditions, spirituality, language, knowledge transmission and economic opportunities, not to mention human lives. In terms of traditional medical and healing practices, Indigenous peoples are typically limited to tending and harvesting plants that can be grown within the boundaries of their federally allotted lands, or accessing those plants which may still grow on public lands of federal, state or local government ownership. Current laws, corporate strategies and attitudes do not allow sufficient access to culturally significant natural resources.

Societal Benefits of Indigenous Access to Traditional Medicinal Plants

The violent disruption of Indigenous knowledge and traditions has broader societal impacts, such as preventing the adequate exploration of plant-based medical breakthroughs. Over centuries, Indigenous Tribes gained vital knowledge of natural remedies in the Americas, and

passed it down to new generations. Throughout the 18th and 19th centuries, Indigenous peoples sometimes showed compassion to white settlers by sharing their medicinal plant knowledge, leading to the popular usage of plants like goldenseal (*Hydrastis canadensis*), echinacea (*Echinacea spp.*), yerba santa (*Eriodictyon californicum*), and cascara sagrada (*Frangula purshiana*). This knowledge likely saved many lives in a time without antibiotics and other pharmaceuticals, or access to traditional European medicinal plants. Today, more than 200 drugs that have been or still are listed in the Pharmacopoeia of the United States or the Natural Formulary were first used by Indigenous Americans, but neither reference acknowledges this fact (Anderson, M. K., 2017).

Indigenous methods of plant cultivation are intrinsically sustainable, nurturing plant life in a way that protects the environment, respects the needs of other species, and expands the availability of these resources, now and in the future. In fact, many of the agricultural practices that we call “sustainable” today are of Indigenous origin, including growing plants in a way that is heavily localized, regenerative, resilient to changing climate conditions, and less extractive than conventional tactics (Wluka, G., 2023). Practices like selective harvesting, careful prescribed burning, and rotational land use contribute to the conservation of plant diversity and the preservation of important habitats, and reduce the fuels that cause wildfires to spread out of control.

Restoring Indigenous access to traditional Tribal lands (and therefore, traditional medicinal plants) would help preserve and maintain knowledge and cultural practices related to sustainable agriculture and plant-based medicine, contributing to the health and wellness of Indigenous communities. It can also facilitate the sharing of traditional plant knowledge, not only within these communities, but to the broader public. At the same time, it’s essential for

non-Native people to understand and respect that many aspects of traditional medicinal plants are sacred, or privy to Tribe members only due to the risk of overharvesting and commodification. Outsiders need not benefit directly from the ethnobotanical treasures of Native peoples in order to support their restoration, preservation and use.

III. Local Perspectives

Ethnobotany in the Land of the Quinault, Washington State

Since the arrival of the first white settlers to the Olympic Peninsula in 1792, the Quinault People of Washington State have lost not just the bulk of their lands, but also the exclusive management of (and, in some cases, access to) some of their most treasured plant-gathering sites. In his 2022 book “Gifted Earth: The Ethnobotany of the Quinault and Neighboring Tribes,” author and Tribe member Douglas Deur records invaluable information sourced from Quinault cultural experts like knowledge-holder Justine E. James, including ethnobotanical information the Tribe has selectively decided to share with the public. He also examines the ways in which colonization and development have harmed the integrity of plant communities linked to Quinault culture.

Members of the modern-day Quinault Indian Nation are descendants of many Tribes, from the northwestern Olympic Peninsula to the northern Oregon coast, who were relocated to treaty-ratified Quinault lands in the 19th and early 20th centuries. These include the Chinook, Chehalis, Quileute, Queets, Hoh, Tillamook, Clatsop and others, as well as the Quinault itself. They live among some of the largest and richest estuaries on the west coast of North America, which include lush temperate rainforests, small coastal prairies, lakes, freshwater wetlands,

grasslands, sub-alpine forests and meadows, and rocky mountain peaks in addition to the rugged Pacific coastline.

Plant gathering sites, and the plants harvested from them, are crucial to the survival of the living Quinault culture. To the arriving Europeans, these sites looked like “untouched wilderness,” but signs of the presence of Quinault ancestors were just beyond their perception: enriching charcoal in the soil from old campfires; plant communities like huckleberries, cranberries, salmonberries, crabapples and camas thriving thanks to Quinault cultivation; culturally modified cedar trees, from which bark was sustainably harvested long ago; and carefully tended patches of sensitive beargrass swaying in the ocean breeze. Even the prairies themselves were created and maintained by prescribed burning. As the colonizers moved in, they pushed the Quinault ever farther from their traditional harvesting places, threatening the Tribe’s remarkably healthy salmon-rich diet and diverse medicinal pharmacopeia.

Medicinal plant allies of the Quinault include cascara, devil’s club, coltsfoot, fireweed, salal leaves, wild mint, various ferns, spruce pitch and much more. Finding ways to preserve these plants on a shrinking territory has been essential to the enduring vitality of Quinault plant use traditions, and the Tribe still actively develops new uses for plants based on experimental use, spiritual practice and dreams. Special gathering places endure, but are often limited to the Quinault Indian Reservation, which occupies just 324 square miles. The Tribe also contends with reduced opportunities associated with poaching, pollution, limits on access or harvest, and restrictions on traditional land management practices. The Quinault people have adapted by cultivating plants more intensively, and integrating novel native plant materials from other Tribal territories within the Pacific Northwest.

Restricted access to plant harvesting sites doesn't just harm the Quinault culture; it undermines the integrity of the plant communities the Tribe has long cultivated and protected. Recognizing that the fates of residents, Native and non-Native, are complexly intertwined and increasingly interdependent, the Quinault share their traditional plant-knowledge with hope that readers living in the Northwest will be inspired to join efforts to treasure and protect these plants (Deur, D., 2022).

IV. Barriers and Opportunities

Public Lands Are Not Enough

The United States Government has made a minor concession in the form of allowing Indigenous access to select plants that grow on certain public lands, which may otherwise be illegal to harvest. For instance, the National Park Service Plant Gathering Regulation 36 CFR 2.6 negotiates agreements with federally recognized Tribes who wish to gather plants or plant parts from National Park Service lands for traditional purposes (National Archives Federal Register, 2016). But the regulation does not apply to individual Tribe members, Native Hawaiians, state-recognized Tribes, or members of non-federally recognized Tribal groups. The process of requesting access from the government can be long and arduous, with no guarantee of approval.

When Tribes don't have direct control over the land and its resources, their traditional plants are at risk of being improperly or illegally harvested by non-Native people who lack the same level of knowledge, respect, and consideration for sustainability. Additionally, public lands are often under contract with resource extractors as a result of The Mining Act of 1872, which gives U.S. citizens the right to stake claims on federal land. One such mine, located in the

vicinity of the sacred Havasupai Tribe site of Mat Taav Tiivjunmdva on the South Rim of the Grand Canyon, extracts uranium ore for nuclear energy. Tribal members fear associated radioactive materials will contaminate their water supply, damage the plant and animal life in the canyon, and leave what's left of their ancestral homeland uninhabitable (Singh, M., 2024).

Land Back: The Return of Private Properties to Indigenous Communities

The simplest and most direct form of restorative justice is the repatriation of lands to the Indigenous peoples who historically and traditionally called them home, whenever possible. The “Land Back” movement calls upon the government and private landowners to voluntarily surrender properties to the ownership and control of these peoples. The United States government has made a modest gesture toward this aim with the Land Buy-Back Program for Tribal Nations, a decade-long effort that has consolidated and returned three million acres in 15 states to Tribal trust ownership through voluntary sales with individual landowners. However, the program focuses on Tribally-held lands that have been fractionated over generations of individual family land inheritances rather than land that was previously removed from Tribal ownership (U.S. Dept. of the Interior, 2023).

Some Tribes have successfully taken land ownership back into their own hands thanks to proceeds from their own tourist sites, including casinos; fundraising efforts in collaboration with conservation organizations; or outright donations from individual landowners. Examples include the Snoqualmie Tribe of Western Washington, which purchased 12,000 acres surrounding its primary sacred site, Snoqualmie Falls, restoring its ability to cultivate medicinal and edible species like wapato and camas (Snoqualmie Tribe, 2022); the return of 18,800 acres formerly

owned by the U.S. Government in the form of National Bison Range in Montana to a trust held by the Confederated Salish and Kootenai Tribes (National Archives Federal Register, 2021); and the acquisition of 465 acres along the Rappahannock River in Virginia by the Rappahannock Tribe after a long fight for federal Tribal recognition. That purchase was facilitated by the Chesapeake Conservancy, which worked with individual land donors and grant providers to strike the deal (U.S. Department of the Interior, 2022).

Agreements with Forestry Companies and Other Resource Extractors

Activities associated with resource extractors often represent the antithesis of how Indigenous peoples would treat the land, especially when it comes to mining and agriculture. Pollutants and dramatic alterations of landscapes render any medicinal plants growing in these areas, currently or historically, completely unusable. But, in lieu of outright transfer to Indigenous ownership, lands held by forestry companies may represent a unique opportunity to increase access to culturally significant ancestral sites. Because timber typically has long growth cycles of 20 years or more, many plots of commercial timberlands are free of industrial activities for decades at a time; maintenance during these periods is usually limited to the management of competing undergrowth. Forestry companies also commonly hold lands that function as buffers between actively managed plots and adjacent public or private lands, and sometimes offer access to these lands to the public for recreation, hunting, fishing and other activities.

Currently, no United States federal laws mandate that forestry companies and other landowning corporations must explicitly offer private land access to Indigenous peoples for any purpose. In 2022, the Sustainable Forestry Initiative (SFI) updated its forest certification

guidelines to include a new objective to respect Indigenous peoples' rights in the form of communication and collaboration between forestry companies and federally recognized Tribes that currently or historically live on or adjacent to their privately-owned lands. However, this guideline is voluntary; only applies to companies seeking SFI certification; and is vaguely worded, leaving it open to interpretation (Sustainable Forestry Initiative, 2022). Federal legislation and/or industry-wide protocols would likely be required in order to prompt forestry companies to accommodate Indigenous Tribes' requests to access their ancestral lands.

Canada offers a model of how this might be achieved, albeit a flawed one in need of its own revision. Forestry companies operating in Canada do not own land outright, but rather lease rights to grow and harvest timber on government-owned land. Industrial forestry typically occurs on the ancestral lands of First Nations Tribes and other Indigenous peoples. When forestry operations occur on reserve lands, they are governed by the Indian Act or the First Nations Land Management Act. Provincial and territorial legislation also applies, except where federal legislation takes precedence. The implementation of Indigenous rights and participation is otherwise voluntary, but most forestry companies follow the Social License to Operate (SLO), a concept of establishing mutually beneficial relationships between resource extractors and the communities in which they operate. These communities, which often include Indigenous groups, seek a share of the benefits and a role in decision-making. Over the last 30 years, Indigenous peoples, forestry companies and the Canadian government have established a wide variety of arrangements with respect to land access, forest management, and timber harvesting, some more successful than others (Wyatt, S., 2016).

For instance, Weyerhaeuser, an American timber company that owns nearly 12.4 million acres in the United States and manages 14 million acres in Canada, signs long-term license

agreements with provincial governments. Existing Indigenous or treaty rights are considered as parts of these agreements, as well as economic development initiatives, environmental stewardship, youth skill development and land access. The company works with two Indigenous communities whose territories overlap with the timberlands it manages in the Grande Prairie, Alberta area: Horse Lake First Nation, and the Aseniwuche Winewak Nation (Weyerhaeuser, 2024).

In 2017, Weyerhaeuser funded and launched a multi-year project empowering the Aseniwuche Winewak Nation (AWN) to track and document its cultural heritage sites on company-managed land, using a mobile app to geotag cultural sites in the field. AWN members trained in the technology accompanied elder knowledge-holders on trips to these sites, which include graveyards, sacred sites, abandoned camps and traditional plant harvesting sites, and recorded oral histories to preserve their knowledge for posterity (Weyerhaeuser 2023). The company plans to use its maps of geotagged sites to alter its timber management activities in order to limit disturbing these sites, and to allow access to AWN members to harvest cloudberries, among other activities. Cloudberries are used as a digestive remedy, and are an important source of vitamin C and antioxidants (Faleva et al., 2023).

It's important to note that Weyerhaeuser does not currently have any similar publicly stated agreements with Indigenous peoples in the United States, where no such Social License to Operate exists. Just as Canada's relationships between resource extractors and Indigenous peoples are still too weak to confer tangible co-management authority to First Nations and other groups, any relationships that could be similarly cultivated in the United States will be unlikely to have much substance without legal mandates.

Forestry companies rarely donate lands outright to dispossessed Tribal entities. In one case, prompted by the antiracist social justice movement that arose after the death of George Floyd in 2020, Washington state timber company Port Blakely Companies returned 125 acres of tidelands and two miles of coastline to the Squaxin Island Tribe, restoring the Tribe's access to shellfish beds (Port Blakely 2021). Similar actions by other companies would be a significant step toward healing some of the damage done to Indigenous peoples in the United States.

Easements and Partnerships with Environmental Conservation Groups

Conservation work within the United States is primarily focused on improving environmental conditions for plants, animals and other non-human species, failing to recognize the many ways in which Indigenous communities are intrinsically interwoven with these concerns. Only recently have Indigenous cultural rights become a part of larger conservation goals held by groups like the Land Trust Alliance, which has begun exploring legal options and other strategies to restore dispossessed Native lands (Land Trust Alliance, 2022).

Conservation Partners LLP, a legal consultancy firm that works with the Land Trust Alliance, has outlined some of these options. Of course, the most legally sound method is when fee title ownership is simply transferred to Tribes *a la* the Land Back movement. Land trusts and other nonprofits can help facilitate these deals by working with landowners; helping to obtain grants; garnering public support; and acting as bridge-funders, a tactic by which they purchase the land with the eventual goal of donating it to a local Tribe. Conservation easements represent another strategy, in which private landowners maintain fee titles to the land but grant legal easements in a variety of forms. These can include naming Tribes as direct grantees or naming

Tribes and land trusts as co-grantees, both of which allow Tribes to obtain and hold access rights in perpetuity (Fred E., 2021).

Alongside the option to donate property directly, the creation of legal conservation easements for Indigenous access to private land represents an impactful way for individual private landowners to help restore Indigenous peoples' cultural and spiritual connections to their traditional lands. Landowners interested in this option are encouraged to contact the Land Trust Alliance for legal and practical guidance.

V. Conclusions

Pushing for Progress

The United States still recognizes the Doctrine of Discovery as valid international law, perhaps because its many subsequent laws regarding possession of property by European colonizers stand upon it like a house of cards. Although it is not actively invoked in contemporary legal decisions, the foundational principles it established continue to affect Indigenous rights and sovereignty (Davis, J., 2023). The Doctrine has been widely criticized and condemned as unjust, racist, and a violation of human rights; the Catholic Church officially denounced it on March 30, 2023, after centuries of appeal by Indigenous peoples.

On September 13, 2007, the United Nations formally adopted the Declaration on the Rights of Indigenous Peoples, which acknowledges Indigenous peoples' rights to their land. The United States initially opposed the Declaration, citing concerns about language regarding “self-determination” and about the Declaration's provision on land rights, including the right to

recognition, observance, and enforcement of treaties. In December 2010, after a review process and consultations with Native American tribes, President Obama announced support for the Declaration; however, the U.S. still views it as an aspirational document that is not legally binding nor a statement of current international law.

These positions reveal enormous obstacles that remain in the quest to advance Indigenous sovereignty in the United States. The government is highly unlikely to spontaneously engage in efforts to heal some of the damage it has done to Indigenous communities without significant public pressure. However, attitudes may be changing, especially among America's youth, and coordinated campaigns pushing for action may eventually see some success. Similarly, corporations are more sensitive about their public reputations than ever. Forestry companies, in particular, are eager to escape unflattering public views of their operations and be seen in a new light, as responsible stewards of the land. A changing tide of public opinion could help push them toward greater engagement and collaboration with Indigenous peoples. In all cases, individual actions contribute to greater progress, and opportunities exist for all Americans to participate, whether they own property or not.

“I do not think the measure of civilization is how tall its buildings of concrete are, but rather how well its people have learned to relate to their environment and fellow man.” — Sun Bear, Chippewa Tribe

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