

Meskwaki族的案例 ▶

美國印第安法與美斯夸基族的困境

アメリカ・インディアン法とメスクワキの苦境
American Indian Law and the Plight of the Meskwaki

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The United States' first laws concerning American Indians were treaties designed to provide safe havens for native tribes while also assimilating them into American society. The Meskwaki signed one such treaty. These treaties were followed, in 1823, by an expansion of American Indian rights when the United States became the first jurisdiction to acknowledge the common law doctrine of aboriginal title. In *Johnson v. M'Intosh*, 21 U.S. (8 Wheat.) 543 (1823), Chief Justice John Marshall explained that Indian tribes and nations established aboriginal title by actual, continuous, and exclusive use and occupancy of land for a "long time." Aboriginal title, the Court ruled, could not be acquired except by the federal government by means of purchase, lease or conquest.

President Jackson's Policy Toward Native Americans

Five years later, Andrew Jackson was elected President of the United States. Jackson disagreed with Marshall's ruling in *Johnson v. M'Intosh* and the doctrine of aboriginal title. He also opposed his

美國 首批與美國印第安人相關的法律是意在提供原住民族安全避風港而又將之同化於美國社會的條約，美斯夸基族簽了這樣一份條約。接著，在1823年當美國成為第一個承認原住民族所有權之普通法原則的司法管轄區域時，美國印第安權利獲得擴張。在Johnson訴M'Intosh案（案號：21 U.S. (8 Wheat.) 543 (1823)）的判例中，首席法官約翰·馬歇爾解釋，印第安部落及民族藉實際、連續不斷且「長期」獨用及占用土地來建立原住民族所有權。最高法院裁決，原住民族所有權，除了聯邦政府經由購買、租賃或征服之外，均無法取得。

傑克森總統的原住民族政策

5年後，安德魯·傑克森選上美國總統，傑克森不同意馬歇爾在Johnson訴M'Intosh案中的裁決以及原住民族所有



predecessors' policy of establishing treaties with Indian tribes as if they were foreign nations. Jackson viewed the United States as a federation of sovereign states. He believed that the creation of Indian jurisdictions was a violation of state sovereignty under Article IV, Section 3 of the U.S. Constitution. As Jackson saw it either Indian tribes comprise sovereign states (which violated the Constitution) or they are subject to the laws of existing states, Jackson urged Indians to assimilate and obey state laws. He believed he could only accommodate the desire for Indian self-rule in federal territory and that required re-settlement of Indians to federal land west of the Mississippi River.

To this end, Andrew Jackson sought a policy of political and military action for the removal of American Indians from their lands. The Indian Removal Act, which he promoted, would authorize him to negotiate with American Indians in the Southern United States for their removal to federal territory west of the Mississippi River in exchange for surrendering their homelands. The Act was highly controversial. While most European Americans during this time favored the passage of the Act, many Christian missionaries, future U.S. President Abraham Lincoln, and Congressman Davy Crockett of Tennessee protested against passage of the Act. Nevertheless, after bitter debate in Congress, the Removal Act was passed and signed into law on 28 May 1830.

Through a series of treaties between 1804 and 1842, the Meskwaki agreed to sell all their claims to land in Illinois, Wisconsin, Missouri, and Iowa to the United States government for amounts substantially below market prices. Some of these treaties were secured by the U.S. government through the use of coercion and fraud, some Meskwaki signatories lacked authority from the tribe to sign the treaties, and the Meskwaki were never properly represented during negotiations.

權原則，他也反對前任總統與印第安部落締結條約的政策，使印第安部落宛若外國。傑克森視美國為由主權州（國）所組成的聯邦體制，他認為創設印第安司法管轄區域侵犯了美國憲法第四條第三項記載的州（國）主權。由於傑克森並不把印第安部落視為主權國（這是違憲的），或不認為印第安部落可適用現有州（國）之法律，因此，傑克森促使印第安人同化並遵守州的法律。他只通融印第安人在聯邦領土內自治的願望，並要求印第安人重新定居於密西西比河以西的聯邦土地。

為達此一目的，傑克森企圖採取以政治與軍事行動來使美國印第安人搬離其土地的政策。他所提的「印第安搬遷法」賦予他與美南的美國印第安人協商遷移至密西西比河以西的聯邦領土之權力，用以換取印第安人交出其母土。此法具有高度爭議。雖然此時大多數的歐系美國人贊成通過該法，但許多基督教宣教師、未來的美國總統亞伯拉罕·林肯和國會議員大維·柯拉奇（田納西州）均反對通過該法，然而，在國會激烈爭辯之後，「印第安搬遷法」通過，並於1830年5月28日簽署成立。

透過1804至1842年間的一連串條約，美斯夸基族同意將其位在伊利諾州、威斯康辛州、密蘇里州和愛荷華州的土地所有權以明顯低於市價的價格全數出售給美國政府，這些條約有些是美國政府採取脅迫和詐欺方式而獲得確保的，美斯夸基簽署人有些人並未獲得本族授權簽約，且美斯夸基人在協商過程中的代表性並不合宜。



美斯夸基族的民族憲法制訂者與憲法。(圖片提供：編輯部)



美斯夸基族的民族議會辦公室。(圖片提供：編輯部)

No Indian Tribe or Nation Would Be Recognized as an Independent Power

The American president's authority to make treaties with American Indians was terminated by the Indian Appropriations Act of 3 March 1871, which declared that no Indian tribe or nation would be recognized as an independent power with whom the United States could contract by treaty. However, this statute did not alter or abrogate the terms of treaties that had already been made. Indian treaties are still enforced today and continue to constitute a major federal source of American Indian law. In later years, Congress made provisions to permit American Indians to recover monetary damages for treaty violations by the federal government, but giving them the option of instead reclaiming their ancestral land was not offered.

Jurisdiction Over the Meskwaki

In 1845, most Meskwaki were removed to a reservation in east central Kansas. Some, however, remained hidden in Iowa, with others returning within a few years. In 1851, the Iowa legislature passed an act

原住民族的獨立主權不受承認

美國總統與美國印第安人訂定條約的權力，遭1871年3月3日訂立的「印第安撥款法」終止，該法宣告，原住民部落或民族不被承認為獨立主權，美國不能與之締約。然而，該法並未使之前已訂立的條約條款改變或失效。印第安條約今日仍然具有效力，並繼續構成美國印第安法的主要聯邦法源。此後，美國國會訂立條款允許美國印第安人因聯邦政府違反條約而獲得現金賠償，但並未提供他們可以選擇重新取得先祖土地的選項。

美斯夸基族的司法管轄權

1845年，大多數美斯夸基人被遷往堪薩斯州中東部的一塊保留地上。然有些美斯夸基人還躲在愛荷華州，其他族人在幾年間返回。1851年，愛荷華州立法機關通過一項美國史上前所未見的法案，允許美斯夸基族留在愛荷華州並購買土地。1857年，美斯夸基族買下愛荷



美斯夸基族的現代警察。(圖片提供：編輯部)



美斯夸基族賭場飯店大廳，展示著民族服裝。(圖片提供：編輯部)

unprecedented in American history, allowing the Meskwaki to remain in the state and purchase land. In 1857, the Meskwaki purchased 80 acres (320,000 m²) of land in Tama County, Iowa. The U.S. government tried to force the tribe back to the Kansas reservation by withholding treaty-right annuities, but the Meskwaki refused to relocate. In 1866, the U.S. government abandoned its efforts and reinstated annuity payments to the tribe. For the next 30 years, the Meskwaki were virtually ignored by federal and state policies. Subsequently, they lived more independently than tribes confined to reservations which were regulated by federal law. To resolve this jurisdictional ambiguity, in 1896, the State of Iowa ceded to the U.S. government all jurisdiction over the Meskwaki. In 1924, the Meskwaki were finally granted citizenship.

The Land Privileges of the Meskwaki

The legal status of the Meskwaki today is somewhat unique. They enjoy all the rights and

華州Tama郡一塊80英畝（32萬平方公尺）的土地。美國政府藉著扣住條約權年金，試圖強迫美斯夸基族返回堪薩斯州保留區，但美斯夸基族拒絕搬遷。1866年，美國政府放棄努力，恢復向美斯夸基族發放年金；此後30年，美斯夸基族簡直成了聯邦及州的政策三不管地帶。其後，美斯夸基族過著比保留區（受聯邦法律管轄）的原住民族更為獨立的生活。為解決此一司法管轄灰色地帶，愛荷華州政府在1896年將其對美斯夸基族的所有司法管轄權讓渡給美國政府。1924年，美斯夸基族終於取得美國公民權。

美斯夸基族的土地特權

美斯夸基族當今法律地位有些獨特，他們享有美國所有獲認定之原住民族所擁有的權利和特權。美斯夸基族是自治的，擁有其憲法、法律、警力和法

privileges held by all recognized American Indian tribes. The Meskwaki are self-governed and have their own constitution, laws, police, and courts. Unlike other Indian tribes, however, the Meskwaki chose where to live and purchased their own land. Since 1857, the Meskwaki have purchased additional land, which today totals nearly 10,000 acres (40.469km²). As such, the Meskwaki can sell, lease, or mortgage their land to parties other than the U.S. government. This is a right denied to Indian tribes on reservations, which are required to hold land in common and which is one of the reasons often cited by economists for the pervasive poverty on many American Indian reservations.

Current Challenges

Today, the Meskwaki operate a successful casino, hotel, convention center, spa, commercial bank, trading post, farms, and a ranch. These business ventures have brought prosperity to the tribe, but prosperity has also brought problems. The Meskwaki enjoy a higher standard of living than most American Indians, have excellent schools, provide medical care and social services, and fully fund any tribal member's pursuit of higher education. However, there has been political division about the use of financial resources, and the proliferation of television, computer games, and the Internet as well as greater contact with non-Indian peoples has threatened the continuation of the Meskwaki language, religion, and culture.

院。然而，不同於其他原住民族，美斯夸基族選擇自己要居住的地方，買了自己的土地。自1857年起，美斯夸基族另外再買土地，如今面積總計已近1萬英畝（40.469平方公里）。因此，美斯夸基族可將其土地出售、租賃或抵押給美國政府以外的他人，這是住在保留區的原住民族所沒有的權利，後者必須由族人共同持有土地，這是經濟學者常提到的許多美國原住民族保留區普遍貧窮的原因之一。

當前的挑戰

如今，美斯夸基族成功地經營著賭場、飯店、會議中心、spa、商業銀行、交易站、農田和牧場，這些商業活動帶給民族繁榮，但繁榮也帶來問題。美斯夸基族的生活水準高於絕大多數美國原住民族，他們擁有優秀的學校、提供醫療及社會服務、全額資助族人接受高等教育，然而，對於如何使用財政資源已產生政治分裂，而電視、電腦遊戲和網路大量出現，以及與非原住民族擴大接觸，已對美斯夸基語言、宗教及文化的存續構成威脅。◆



Craig Evan Klaffer

生於美國紐約，祖先為瑞士的羅曼什族 (Romansh/Rumantsch)。美國芝加哥大學歷史學碩士，英國牛津大學歷史學博士，專長為現代史。現任北愛荷華大學國際學程副教務長，負責學校的國際化事務。2012年夏天開始接觸美

斯夸基族，關心其語言文化的發展。