

Introduction to Cultural Resource Management in the United States



Especially for readers outside the United States,¹ but also for those of us within its borders who may not think much about such things in the course of our day-to-day work, here's some context on cultural resource management (CRM) as it's practiced in this country.

A Capitalist Democratic Republic

First, at least in theory, the United States is a democratic republic, in which power derived from the people is distributed among the federal government and the fifty states, the 3,000-plus counties, and the 4,000-plus cities. Several territories (e.g., Guam) and members of the United States commonwealth (e.g., Puerto Rico) unenviably exist in a sort of quasi-state condition. Indian tribes—provided they're recognized by the federal government—are theoretically sovereign and legally superior to the states, but there's a considerable distance between theory and practice.

For better or worse, the United States is deeply committed to private property rights and is rather aggressively capitalistic. In recent decades, this orientation has come into conflict with the need to protect the environment, including its cultural aspects. We have no good way to resolve this conflict; instead, we cobble together compromises. Our environmental and cultural resource laws are such compromises. There is no explicit provision for such laws in our Constitution.

Who Owns What

The land area of the United States comprises almost 10 million square kilometers; if submerged lands on the continental shelf are considered, it's much

bigger. Approximately 63 percent of its dry land is privately owned by individuals, families, and corporations. Few, if any, constraints are placed on how such landowners use their lands or what lies within or stands on them, though local governments (cities and counties and their equivalents under other names) and to some extent states do impose varying kinds of zoning and planning controls, sometimes oriented toward protecting the environment.

Let's be very clear about that business of "few, if any, constraints," because it bothers a lot of people in other countries—and in the United States, for that matter. The bottom line is that as far as federal law is concerned, if I have a "cultural resource" on my private property—let's say it's a seventeenth-century manor house containing a 10,000-year-old baked clay idol of an ancient Native American deity—I can with perfect legality tear the building down and grind up the idol for grit to feed my chickens. State or local law may stop me, or my neighbors may do so by force of arms, but federal law won't. That may be wrong, it may be shocking, but there it is.

About 6 percent of land in the country is controlled directly by state governments and is subject to whatever environmental, land use, and cultural resource laws such governments may enact. Some state laws apply to private lands as well. Some local governments and intergovernmental bodies have CRM or CRM-like programs and impose controls on private property owners.

Indian tribes have managed to hold on to about 5 percent of the lands they once occupied and used. Some of these lands are owned outright by tribes, some are held in trust for tribes by the federal government (the Department of the Interior) and make up the bulk of most Indian reservations, and some have been allotted by the Feds to individual tribal members, who hold them more or less as private property. Federal environmental and cultural resource laws in theory apply to most tribal land, as do laws enacted by tribal governments. Some tribes have rights to use land and waters outside the boundaries of their reservations, under the typically ambiguous terms of treaties with the federal government.

About 26 percent of dry land in the United States is controlled directly by the federal government. Most of this land is in the western parts of the country. Most is administered by agencies of the Departments of Agriculture and Interior, although the Departments of Defense, Energy, and Veterans Affairs also have large landholdings.

Landholdings in Alaska are peculiar in that the United States, after purchasing the peninsula from Russia in 1867 (without concern for native title), turned much of its land over to the state and to "native corporations," under the Alaska Native Claims Settlement Act of 1971.

Submerged lands on the continental shelves are mostly under federal jurisdiction, while those under bays, lakes, rivers, creeks, streams, and ponds may be controlled by state, tribal, and local governments, corporate interests, and individuals as well. Generally, environmental and cultural resource laws apply to such lands, but exactly which ones apply, and how, can be pretty ambiguous.

Where Most CRM Work Is Done

The ways in which things like CRM are done in the United States vary widely depending on location. For the most part, CRM work doesn't get carried out *at all* unless there is some involvement by the federal government. There are states like California and territories like Guam with laws that mimic those of the federal government, but most state and territorial laws are a lot weaker, or at least a lot more vague, than those at the federal level. So on the whole, CRM work is done only if the Feds are somehow involved—that is, either on the 31 percent of the land mass (plus submerged land) that's federally owned or held in trust for tribes, or on state, local, or private land where a federal agency is funding a project or is authorized by law to grant or deny a permit.

That actually covers a lot of ground, however. It's a rare large project—highway, reservoir, or power generation scheme, for instance—that doesn't have some federal involvement, no matter whose land is involved.

The National Register

Since 1966, when Congress enacted the National Historic Preservation Act (NHPA), CRM in the United States has been greatly influenced by having a National Register of Historic Places (NRHP). The NRHP is a list of places—pieces of real estate, for the most part—thought to be significant in American history, architecture, engineering, archaeology, and/or culture. The NRHP is maintained by the National Park Service. Anybody can nominate a place to be included in the list, but the process for doing so has become more and more complicated, bureaucratic, politicized, and nitpicky over the decades. Since the early 1970s, thanks to President Richard Nixon, federal agencies have been responsible for considering the effects of their plans and actions not only on places *included* in the NRHP but also on those *eligible* for inclusion. As a result, most CRM work in the United States is built around finding, evaluating, and managing places that are eligible for the NRHP. I'm sorry to say that I'll have a lot more to say about this rather tedious topic.

Where Does the Money Come From?

Unlike many countries, the United States has no central ministry of culture through which money flows to conduct CRM. Most funding for CRM comes from the following sources.

Agency Budgets

Federal agencies, and some state and local ones, budget for the CRM work they expect to do in the course of each fiscal year. This is usually part of a larger

budget designed to support maintaining and operating buildings and installations, managing land, and carrying out projects and programs authorized by Congress. The agencies responsible for overseeing compliance with CRM laws—the Advisory Council on Historic Preservation (ACHP) and the National Park Service (NPS)—also prepare and submit budgets, as does the NPS for management of the resources it controls and interprets for the public. If Congress approves an agency’s budget, CRM is then funded in accordance with whatever Congress has approved. Each state, tribe, and local government either budgets similarly for the CRM activities of its agencies, or does not.

Grants

Some United States laws authorize grants to support CRM work. For example, the costs of administering certain state, tribal, and local historic preservation programs (particularly by State and Tribal Historic Preservation Officers) are partly defrayed by grants from the NPS. Some states also have grant programs.

Tax Breaks

Since the late 1970s, the notoriously difficult and ever-changing United States tax code has provided incentives to people who own or develop certain kinds of cultural resources (e.g., historic buildings and structures) to preserve them and keep them in productive use. Many architectural historians and historical architects make their living by helping property owners and developers use the tax code. Few archaeologists are involved in this sort of CRM, and it’s always been marginal to my own practice, so I’ve not dealt with it in this book.

Compliance

Agencies of the United States government, when planning things like construction and land-use projects, have to comply with laws and regulations aimed at assessing and controlling environmental impacts. Compliance usually requires conducting studies to identify environmental variables that may be affected by whatever is being proposed. These studies typically include CRM work. Compliance often generates the need to mitigate the impacts of approved projects. The costs of environmental impact assessment and mitigation are routinely passed on to whatever non-federal or non-governmental parties are authorized to carry out projects—to build roads, to put in power plants, to develop housing projects, and so on. Compliance is probably the biggest rationale for CRM work done by archaeologists in the United States, and it generates most of CRM’s funding. Compliance with their own policies and procedures results in funding for international CRM by the World Bank

and the Agency for International Development, as well as by the United States Departments of Defense and State.

For better or for worse, this book is mostly about compliance-driven CRM—in which I've spent my career.

Note

1. Thanks to Wang Renyu for alerting me to the need for this background.