

American Civil Liberties Union - Montana (ACLU-MT)

Indigenous Peoples' Rights

<https://www.aclumontana.org/en/news/great-nations-should-keep-their-word-us-supreme-court-can-reaffirm-right-crow-tribe-hunt-and>

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Many commentators express astonishment that deliberate misinformation and broken promises are now the hallmarks of American government. Indigenous communities and individuals, however, don't share that surprise. For them, the last two hundred years are filled with broken promises and deliberate misinformation from a government hell-bent on occupying every corner of the continent. This fall, the United States Supreme Court has a chance to finally hold the government accountable for the promises that it made to the Crow Tribe in Montana. Those promises, ratified in the 1868 Treaty of Fort Laramie, guarantee the right of the Crow to hunt and fish on all unoccupied lands of the United States.

Treaties between Indian tribes and the United States government are contracts between two sovereign nations. The federal governments duty to fulfill the promises made to tribes in exchange for land is known as the trust responsibility. To this day, the federal government remains obligated to fulfill its trust responsibility to all Indian nations. Unfortunately, the governments track record of fulfilling its trust responsibility is shoddy at best. Indigenous peoples were pushed onto smaller and smaller tracts of land by the government and settlers working hand in hand. These settlers obtained such land through encroachment, purchase, and treaty.

Oftentimes, if not always, treaties were not properly translated to the language of the signing tribe. Tribes could never know for sure what they were signing or what certain words in treaties meant, given the difficulty government agents had in translating. Tribes were usually suffering and desperate to stop the further white encroachment on their already minimized land. Thus, the federal government held unequal bargaining power.

Tribes gave up land in exchange for various rights the federal government promised. One right that many tribes obtained in their treaties is the right to hunt, fish, or gather food outside the boundaries of their new (and smaller) reservations, as otherwise these tribes would not have access to the food they needed to survive. Unfortunately, along the way and as part of the colonization process, the federal government reneged on the deals it made with the tribes. Tribes are forced to uphold their end of the deal by giving up their sacred lands, but the federal government consistently falls short of its promises.

The Fort Laramie Treaty of 1868 is at issue in *Herrera v. Wyoming*, currently pending before the United States Supreme Court. In 2014, Clayvin Herrera and other members of the Crow Tribe in Montana went hunting on the Crow Reservation. When the elk they were hunting crossed a fence and entered the Bighorn National Forest in Wyoming, Herrera and his companions followed. There, on land ceded by the Tribe in 1868, they shot and killed three elk. They then returned with the meat to the Reservation. The State of Wyoming cited Herrera for taking an antlered big-game animal during a closed season a misdemeanor under state law. Herrera pleaded not guilty and moved to dismiss the citations, contending that in taking the elk, he was exercising his right to hunt on unoccupied lands of the United States pursuant to the 1868 Treaty.

The United States Supreme Court will now consider whether the government must live up to its treaty obligations to the Crow Tribe. That treaty was a boon to the United States, which received peace along with 30 million acres of Crow territory that gave rise to what is now the Bighorn National Forest. Wyoming seeks to deprive the Crow Tribe of its rights to hunt and fish pursuant to the Treaty. That is wrong. The Crow Tribe should also enjoy the benefit of the bargain, and be allowed to continue subsistence hunting in the forest lands it ceded away.

The ACLU of Montana filed an amicus brief in support of the Crow Tribe along with several experts in the field of public health, anthropology, and education. The ACLU of Montana is dedicated to supporting historically marginalized communities in fighting back against Government oppression. As part of its commitment to promote, protect and defend Indigenous rights, the ACLU of Montana believes that the United States Government and all of the states in the Union must live up to the obligations guaranteed by treaties with the Tribes. For over two hundred years Indigenous peoples throughout the country have been on the receiving end of one broken promise after another. This case presents the opportunity for one small step towards ratifying and recognizing the important principles of tribal sovereignty and self-determination.

by [Caitlin Borgmann](#), Executive Director, and [Lillian Alvernaz](#), Indigenous Justice Legal Fellow

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