

What We Need to Know About Federal Indian Policy

**May 20, 2017
Sedro-Woolley, WA**

This is a brief and interactive workshop on federal Indian Policy. All members of the public are most welcome and appreciated. The format for the day is one that encourages extensive question and answer opportunities while providing some basic information on the subjects noted below. Differing views, dialogue and debate is fundamental to learning, but must be conducted with mutual courtesy and respect. Please feel free to dine and move around during the workshop, as needed.

AGENDA

- 10:00** Greetings, Orientation and Introduction

- 10:30** Tribal Constitutions, U.S. Constitution and Washington State Constitution.

- 11:00** Federal Trust Relationship & Questionable State Trust Relationship

- 11:30** Land Status & Jurisdictions

- 12:00** Relationship of Washington State, Counties & Tribes

- 12:30** Water, Taxes, Gas, Roads – What Else?

- 1:30** Speaking up, Community Education Strategies

- 2:00** Formally adjourn; those wishing to stay for additional conversation are welcome to do so.

Recommended Reading on Federal Indian Policy

(Alphabetical Order)

First Nations? Second Thoughts... dissecting the concept of aboriginal issues as an ideology that sees aboriginal peoples as nations entitled to specific rights, by Tom Flanagan

Going to Pieces... the dismantling of the United States of America, by Elaine Willman

Hitting the Jackpot... the inside story of the richest Indian tribe in history, by Brett Duval Fromson

Killing the White Man's Indian... reinventing Native Americans at the end of the twentieth century, by Fergus M. Bordewich

Legalized Racism... federal Indian policy and the end of equal rights for all Americans, by A.R. Eguiguren

Mille Lacs who have no reservation... a history of the Chippewa Indians in Mille Lacs County, Minnesota up to 1934, by Clarence Ralph Fitz, BS, DVM, Volume 1

Slumbering Thunder... a primer for confronting the spread of federal Indian policy and tribalism overwhelming America, by Elaine Willman

The American Indian Law Deskbook, Compilation by Conference of Western Attorneys General

The Disuniting of America... reflections on a multicultural society, by Arthur Meier Schlesinger

The Enemies of Christopher Columbus... arguing that "enemies" of Columbus are using him as a proxy to attaché their real target: the values of Western Civilization, by Thomas Bowden

The Invented Indian... cultural fictions and federal Indian policies, by James A. Clifton

The New Trail of Tears... how Washington is destroying American Indians, by Naomi Schaefer Riley

The Second Civil War... Examining the Demand for Ethnic Sovereignty, by David Price

Sovereign Nations or Reservations... an economic history of American Indians, by Terry L. Anderson

Wampum... how Indian tribes, the Mafia, and an inattentive Congress invented Indian gaming and created a \$28 billion gambling empire, by Donald Craig Mitchell

Without Reservation... how a controversial Indian tribe rose to power and built the world's largest casino, by Jeff Benedict

Indian “Nations”— and other sham terms: Let’s Speak Clearly and Truthfully

By Elaine Willman, MPA

“We in America do not have government by the majority—we have government by the majority who participate...All tyranny needs to gain a foothold is for people of good conscience to remain silent.”

—Thomas Jefferson

How often do we hear that “Treaties are the supreme law of the land,” or that American Indian Tribes are “First Nations?” Do tribal governments in the United States have “aboriginal rights” since “time immemorial?” Well, in light of a new Era that calls for *America First*, I think that clarifying some of these grandiose terms is in order. After all, it’s very difficult to have 567 “First Nations” in One Nation - *America First*.

Our U.S. Constitution is written in clear, plain language, so let’s begin there. We frequently hear that “Treaties are the Supreme Law of the Land.” That is the last part of the Supremacy Clause in order, third in place, which states: “(1) *This Constitution, and (2) the Laws of the United States which shall be made in Pursuance thereof; and (3) all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; [parentheses added].* Were treaties truly supreme, no subsequent congressional acts, or judicial rulings would supersede. Tribes would have only beneficial use and occupancy of their lands (the federal government owned all the reservation lands); would have no governing or jurisdictional authority (that was the BIA under treaties); and would not even be U.S. citizens. Any monies owed to tribes through treaties were long ago paid, and federal funding might not be necessary once all treaty obligations were fulfilled.

Likely advanced by Indian Gaming and wealthy tribal coffers, the term “tribal sovereignty” has taken on such financial and political power that it is perceived by too many elected officials to be superior to the true sovereignties. Below are the only three *sovereigns* discussed in the Constitution, in order of priority:

1. **Citizen/Popular Sovereignty:** “We the People,” individual citizen sovereignty affirmed with the Bill of Rights;

2. **State Sovereignty:** The People of the thirteen colonies created the first “States” and the Constitution, and thereafter;
3. **The Federal Government** was created by: first, We the People; and second, the States. The few enumerated powers of the federal government were intentional to keep American people and their states as overseers of the federal government.

The Founders of our country never contemplated separate tribal governments, nor authorized such entities within language the U.S. Constitution. It is Congress, through Treaties and later legislation that arbitrarily authorized itself to create “Federally Recognized” tribes. Recently, Justice Clarence Thomas asked twice: “Where in the Constitution is the plenary (omnipotent) authority of Congress for federally recognized tribes and federal Indian policy?” (See. *U.S. v. Lara* (2004), and *U.S. v Bryant* (2016)). That power is not in the Constitution. The source of tribal sovereignty recognized in this country, is derived from a delegation of federal sovereignty extended by Congress to “federally recognized” tribes. Tribal leader voices almost never mention “federally recognized.” It connotes a direct relationship with the U.S. that is not nearly as glamorous as perceived separate “nations.”

The very existence of “federally recognized” Indian tribes is at the plenary pleasure of Congress, to recognize or de-recognize tribes as has been done in the past. Congress cannot create *nations* nor have any authority over free-standing legitimate *nations*. Tribal governments are “federally chartered” organizations under the Indian Reorganization Act of 1934. They are a blend of a federal corporate existence with the right to self-govern only its members and its lands owned in federal trust by the United States. That sure doesn’t sound like a *nation*, as such existence is entirely contingent upon Congressional and federal agency decisions. American taxpayers have been *indentured servants* for the funding of these federally chartered entities since 1934—to the tune of trillions of dollars.

In September 2007 the United Nations approved the United Nations Declaration of the Rights of Indigenous Peoples. Many, if not most, of the U.S. Tribes have signed onto this UN Resolution, and it likely explains the ramped up usage of the term “nations.” In December 2010 former President Obama formally supported this UN Resolution, as did then Secretary of State, Hillary Clinton. Unless and until Congress was to

approve such resolution, it has no legal impact; however, the political fallout has been profound and escalating among the U.S. tribes.

The interaction of the United Nations and Indian tribes has prompted a flood of new terminology that is intentionally repulsive to the existence of the United States and the U.S. Constitution. Examples include:

Aboriginal Rights. If such rights existed at all, they predate the establishment of the United States and the purchase through treaties of lands from Indians. We did not steal lands and continually, annually pay billions out to the 567 tribes. All of the North American continent, in fact all continents, were at some time aboriginal. When one hears specific tribes push this term publicly and frequently, that tribal government voice is absolutely adversarial to the country, and the taxpayers that provide its existence and annual funding.

Time Immemorial. This is a term used to promote American guilt because tribes claim that "We were here first." That is true, but the answer today is, "so what?" Indians are full American citizens along with the rest of us. My response to "we were here first," is to remind tribes of how fortunate they are that we were not here second. Most other conquerors during the Doctrine of Discovery period completely decimated those they conquered. We could be studying Indians like the dinosaurs but for extensive, but difficult efforts to get along with those who were here first.

Pre-European. The United Nations and Agenda 2030 folks are promoting this term as a method to marginalize and ultimately remove the existence of the United States on the North American continent. Maps of North American continent posted on Agenda 2030 websites show no states, or the United States. It shows "regions" governed by the United Nations. The UN is using U.S. tribes as pawns to facilitate the dismantling of our country, and of course, tribes are ever so willing, but continually demanding federal dollars. Tribes bite the hands that feed them, and if one protests, why, they are racist.

De-Colonization. This is a direct assault on the United States, its thirteen "colonies" and the formation of the U.S. Constitution and U.S. government.

All of these terms, *nations, aboriginal rights, time immemorial, pre-European, de-colonization* assault the very existence or legitimacy of the United States. These terms are not commonly expressed by the majority of enrolled tribal members who respect this country, their citizenship and their neighbors of all cultures. These spurious terms are mouthed by radical tribal leaders holding power over their members and vigorously working to un-settle (de-colonize) the West. Former President Obama and his rogue federal agencies have raised havoc in the western states. Unfortunately, too many state governors and legislators, dependent upon federal funds, and loath to be called a bad name, simply and spinelessly abdicate their authority to protect the state's sovereignty as superior to tribal sovereignty.

Hopefully, readers will not be swayed when hearing terms discussed in this article, but will push back with a simple comment: **Anything pre-constitutional or extra-constitution is unconstitutional.** And most certainly, Americans want the United Nations out of this country and minding its own business. America and its citizens has been a country of givers, and the takers are kicking us in the teeth. No more. America First! I have never heard the Native words for "thank you," or "enough," but a respectful attitude about our country might build better relations, and would be a good start!

Elaine Willman, MPA, is author of *Going to Pieces...the dismantling of the United States of America*, and *Slumbering Thunder...a primer for confronting the spread of federal Indian policy and tribalism overwhelming America*.

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KEY POLICIES EVERY ELECTED OFFICIAL AND CITIZEN WITHIN INDIAN RESERVATIONS SHOULD KNOW*

By: Elaine Willman, MPA (2017)

Tribal Sovereignty: There are three sovereignties identified in order, in the U.S. Constitution: 1) Popular (citizen) sovereignty; 2) State sovereignty; 3) Federal sovereignty. Tribal sovereignty is not contemplated or contained within the U.S. Constitution and is not superior to the sovereignties contained in the U.S. Constitution. Tribal (jurisdictional/governing) sovereignty is a delegation of federal sovereignty through the federal recognition process of Indian tribes.

Tribal Authority over Non-Members: Two important pieces:

1. Under **Indian Reorganization Act of 1934**, tribal constitutions, tribes have authority ONLY over their tribal trust lands and enrolled members. No authority over non-tribal persons or lands.
2. **Montana v. U.S.**, 450 U.S. 544 (1981) *Tribal inherent sovereignty does not apply to non-members or non-member land except: There is clear consensual agreement between the tribe and a non-member or When conduct threatens the integrity of the tribal government*

State Authority in Checker-boarded Indian Reservations: States, counties and municipalities located within Indian reservation boundaries have full jurisdictional, governing, and zoning, law enforcement authority over all fee (taxable) properties and non-tribal persons. Tribal governments have jurisdiction over their trust lands only.

Fee-to-Trust Process on Indian Reservations: Two U.S. Supreme Court rulings have significantly constrained the fee-to-trust process: 1) **Carcieri v Salazar** (2009) prohibits tribes that were not federally recognized of under federal jurisdiction on June 1, 1934, passage of the Indian Reorganization Act; and 2) **OHA v. State of Hawaii** (2009) Lands ceded to a state upon statehood may not be removed from state jurisdiction without consent of the state legislature (this includes Fee-to-Trust). Mere acquisition by a tribe of taxable land on the open market does not restore tribal sovereignty/sovereign immunity upon such parcels. *City of Sherrill v. Oneida Indian* (2005). **NOTE:** Under the Obama Administration, the Bureau of Indian Affairs has ignored both of these rulings and has gone totally Rogue. States, counties and municipalities, have seldom asserted their authorities over state property taxed lands due to the financial and political power of Indian tribes.

Challenging Fee-to-Trust Applications or Decisions: An individual citizen or local government within the *zone of interest* (direct economic/environmental impact) of an existing or proposed federal Indian trust parcel has legal ("prudential") standing to challenge the decision or status of the federal trust under the Administrative Procedures Act. **IF** the challenger is not claiming title, interest or a stake in the federal trust parcel, the Quiet Title Act does not apply. *Patchak v. Salazar* (2012)

Law Enforcement: With the exception of domestic violence, tribal police and tribal courts have no authority over non-tribal persons. In the event of cross-deputization (agreements between county/city police and tribal police), tribal members may detain, stop and cite motorists into their municipal or county courts only.

Taxation: A tribe may not tax a non-member, a non-member or property. *Atkinson v. Shirley* (2001)

Water: The *Winters Doctrine* (1908) requires that all Indian Reservations receive Federal Reserve Water rights to ensure that tribal members and properties have adequate water. "States have the absolute right to their navigable waters and the soils beneath them." *Tarrant v. Herrmann* (2013)

*All court cases are U.S. Supreme Court major rulings in Indian law and water

Are Your Elected Officials Forsaking You?

By Elaine Willman, MPA*

Let's get one thing clear: Tribal governments do not create Federal Indian Policy. The Executive Branch, Congress and the Courts do. Tribal government officials, lobbyists and legal counsels of 567 tribes have been heavily persuasive with our elected officials at every level of government, but tribes do not make federal/state law. Our elected officials or the Courts make the law. The problem? "Consultations" with tribal governments have now overwhelmed and replaced the Oath of Office taken by our elected officials to serve all Americans, not just 2% of America's population.

I have written and spoken for years about Executive Branch over-reaching under the Obama Administration, wishing mightily that the same would not be true of Congress. But Congress, the folks you and I elect, have betrayed us. Congress is now intentionally turning America's forests, waters, lands and energy over to tribal governments, to the direct diminishment of State authorities and removal of "life, liberty and the pursuit of happiness" (Amendments 1 through 10 of the U.S. Constitution) from the rest of us: 98% of America's population.

Here are just a very few examples currently rolling through the current Congress: *Westerman*-H.R. 2647 (forests); *Zinke*-H.R. 5259 (minerals, royalties); *Moran-Tester* S. 1931 (lands); *Tester*-S. 2636 (land); *Daines*-S. 2938 (mineral, royalties); *Inhofe* S. 2848 (water); *Tester*-S. 3013 (water); *Daines*-S. 3014 (forest); *Rounds*-S. 3085 (forest); *Tester*-S. 3261 (energy).

We have all heard and endured ongoing *revisionist history*, but what is happening today under the present Administration and Congress is actually **reversing history**...intentionally unsettling the West.

Two things were going on in the 1800s: 1) Congress was truly working toward American Indians becoming full citizens, even landowners; and 2) Congress was settling the West.

The federal government **purchased** "ceded" lands from tribes and formed bounded reservation areas within which tribal communities could live any way they chose with the goal of full citizenship within two generations. Land and water within the reservation boundaries were owned by the United States, and the BIA had the sole governance, or jurisdictional enforcement capability. Tribal governments under treaties had no ownership, governance or jurisdiction over reservation lands or waters. Tribes had only federally protected **beneficial use and occupancy** of lands and waters...nothing more.

Throughout the 1800s Congress was yelling "Go West Young Man..." even unto homesteading Indian reservations. Young Man settled the West, created the ranches, farms, schools, churches, towns...and now Los Angeles, San Francisco, Seattle, etc. Young Man was given nothing from the federal government to do these great things. Indian tribes were given annual dollars, blacksmiths, food, housing, schools, doctors and other supplies. During this period of time until the end of the Civil War, Black Americans were sold like cattle. The *only* population continuously receiving annual money, resources and protections from the federal government were Indians, and that was intended to be temporary until Indians could be full citizens which came with the Snyder Act of 1924.

Nothing within the four corners of the U.S. Constitution includes tribal governance, tribal sovereignty or any aspect of federal Indian policy. Congress has power over Indian commerce, not Indian tribes. Justice Clarence Thomas put a powerful challenge out to his colleagues on the Bench, and to Congress. Here are his clear words:

“Congress purported [alleged] Plenary Power [all-encompassing] over Indian tribes rest on even shakier foundations. No enumerated power—not Congress’ power to “regulate Commerce. . . with Indian Tribes,” not the Senate’s role in approving treaties, nor anything else—gives Congress such sweeping authority...And, until the Court rejects the **fiction** that Congress possesses plenary power over Indian affairs, our precedents will continue to be based on the paternalistic theory that Congress must assume all-encompassing control over the “remnants of a race” for its own good. [Emphasis added]

—Justice Clarence Thomas, *U.S. v. Bryant*, No. 15-420, U.S. Supreme Court, 06-13-2016

Terms like —*aboriginal rights* and *time immemorial*—are political propaganda. Anything *pre-constitutional* or *extra-constitutional* is **unconstitutional**...or we have no Constitution. The Constitutional priority tree of sovereignty goes like this:

1. Citizen (Popular Sovereignty, Inalienable rights).
2. State sovereignty (remember the States created the federal government).
3. Federal sovereignty (enumerated (limited) powers).

Why is the Constitution turned on its head, and why are federal, state and local elected officials who swore Oaths to our Constitution so persuaded that tribal sovereignty is superior to all other sovereignty in this country? Follow the money and follow political correctness. Tribal governments are the only governments (567 of them) that can cut large checks to political parties, incumbents and challengers to do their bidding. No other American governments may do so. And no elected official wants to be called "racist" if they deny or fail to support a single tribal whim.

Other powerful influences being supported by Obama, Clinton and too many Congressmen include globalism, Climate Change, Agenda 21 and socialism. All of these pressures are harmonious goals linked to the spread of tribalism as a system to ultimately take down States. Globalists and Agenda 21 folks would divide this country into 10 regions managed internationally, instead of 50 states. So a good start in the dismantling of at least 39 states is handing off their forests, minerals, waters, lands and energy to Indian tribes.

Across the Western States our federal senators, state legislators, county commissioners—too many behave as though their primary allegiance is to tribal governments, generally to the direct harm of all other citizens, and in violation of the Oaths of Office. The federal “trust” relationship with Indian tribes created by the Supreme Court (1823-1830) may never supplant the trust relationship that every elected official takes to the U.S. Constitution, including specifically the Ninth (natural rights in the Declaration of Independence) and Tenth Amendments.

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Ten 2017 Resolutions for ONE AMERICA... Make America Great Again!

Submitted by Elaine Willman, MPA
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The ten proposed Resolutions below would be a significant start to healing divisiveness that has intentionally pitted one American against another in the recent decade. In fact, taking such actions as suggested below could restore a pride and luster to the very term, "American." As citizens of our beloved country, we have all taken quite a political beating and dearly need to raise our head and shoulders as a proud and unified people:

1. **All citizens of the United States are Americans—no longer race-based, *hyphenated*-Americans.** We certainly practice our ancestral customs and traditions as we choose, but we are AMERICANS. No further federal funding for ethnic purpose.
2. **U.S. Census Bureau eliminates ethnic, race-based collection data.** If private sector needs such data it can create jobs and collect data through tax-paying new employment.
3. **Federal and state funding for poverty threshold persons will be based solely upon *annual household income*,** a neutral, objective measure that disregards, race, marital status, or lifestyle choice.
4. **All American business except qualified non-profits will pay taxes, including Native American businesses.** A level, competitive principle will reduce the outcome of tax-paying business closures due to competitive tax-exempt businesses.
5. **2017 will begin a two-year federal clock for transitioning tribal governments to non-profit corporations** with no jurisdictional authority and accountability to host states. Enrolled tribal members will be restored to full 14th Amendment protections of the U.S. Constitution; tribal constitutions will be repealed within one year. Tribes wishing to preserve their ancestral customs will freely do so, absent federal funding or historic "obligations" imposed upon taxpayers. The Bureau of Indian Affairs and all other such ethnic federal or state entities will be abolished.
6. **Lands held in title by the U.S. Government** on behalf of tribal governments will be forthwith returned in title to tribal governments and restored to the state tax base.
7. **Constitutional Government:** The only governing or jurisdictional authority conducted in America will be those recognized by the U.S. Constitution (local, state and federal).
8. **Tribal governments may no longer financially participate in American elections,** commencing in 2017. No local, state or federal government entities may financially participate in election campaign contributions, nor may tribal governments.

9. **The United Nations** may exercise no authority within lands of states in the United States.

10. **English** will be established by Congress as the official language of the United States. New legal immigrants pursuing citizenship will be required to learn English prior to receiving American citizenship. All governmental publications will be published in English-only, a substantial cost-savings to all American government entities as well.

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COMMENTARY – MY AMERICAN HOMELAND

By Elaine Willman, MPA

During the Vietnam War years I owned a lovely home on Stonybrook Drive in Anaheim, California. My children's learning, memories, family traditions and life-experiences were forged in that home. My children were native to that soil. Although we had to move away and have been gone for many years, it was the ancestral homeland of our family origins.

Recently I realized how deep our family roots were in that Stonybrook home; our ancestral, indigenous origins, so to speak. I sorrowed over the loss and the need to recover that piece of history for my family's future seven generations to come. So I wrote the current owners, and explained the importance of that property to my family. I told them we wanted the home back, asked them to send me the title and make plans to move out.

They told me to buzz off. A deal is a deal. And they were right to do so under our Constitutional government, federal and state property laws. That is the case for all citizens in this country. A deal is a deal; you move on with time.

Not so for American Indians.

Today, tribal voices inform our federal and state officials that their ancestors once walked through our forests, fished in our rivers, hunted in our hills, and they want their lands back for their seven generations to come. They assert aboriginal and time immemorial rights that pre-date the formation of the United States Constitution, government and country. They write letters to federal officials like I did to the current Stonybrook homeowners. The federal and state officials say, "Oh my, you're right, we'll get that land right back to you; we'll move off current private landowners, we'll deny American citizens the right to hunt and fish where you do; we'll turn our national forests over to you for tribal management and hiring practices. Oh, and our taxpayers will keep funding all your tribe's basic life needs forever, give you a monopoly on tax-exempt gambling, and allow *your* governments to be the only governments in the United States that can contribute money to candidates and political parties in our elections. You can buy our elected officials too, to give you even more. What else can we do for you?"

Oh, here's more. In 2010 Congress just opened up the country's power grid to you tribes, and funded billions for you to take over dams, water, utility and electric power systems across the country. And, you have no obligation to other Americans; you can't be sued nor is any previous experience required. But no matter! Need more? In 2012 Congress said you could long-term lease your federal trust lands to "religious" (Middle Eastern) countries. They have tons of money and want to position themselves across the U.S.—so that is another great opportunity.

This is exactly how aggressive tribal leaders of 0.5% of America's population (enrolled tribal members) are rapidly reversing the settling of the West, replacing state authority and protections with tribal jurisdictions, and expanding tribal land bases far beyond reservations.

While tribes can purchase elected officials and block-vote their members in elections, Congress remains their Santa Claus and lowly Americans of any other ethnicity are indentured servants—in perpetuity.

I'm not aware of any living Native Americans who are not currently assimilated. I don't know an Indian that's never been in a vehicle, used a telephone, television, enjoyed McDonalds, put quarters in a slot machine, or received high-tech medical services. But hey, tribes want their Old Life Ways back, their "aboriginal" lands back. They want America's yesterday, today and tomorrow...and 567 tribes are getting it done incrementally, and the process is accelerating every year.

Tribes are getting great support from environmentalists not fond of America, and have major resources available through the Indigenous Peoples Movement and other policies of the United Nations.

While their governments fund America's politicians and orchestrate block votes in local, state and federal elections, tribes have overwhelmed Washington D.C. and dozens of state capitols as well. Note: we purchased their lands through treaties, and anything pre-constitutional or extra-constitutional is unconstitutional. If this is not true, America will soon be gone.

I don't really want my home on Stonybrook Drive in Anaheim back. But I surely don't want apartheid and purchased elected officials to take my country away either. Do you?

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