

So this is only one section to a much longer book I have been working on for years. For an idea of my timeline “How the Raven got his Wings” was written around 2003. This version is less edited than the final product will be, and I strongly suggest that anyone reading to check updated sources.

The things I will be going over in this section are:

Part 1: How the Raven got his Wings: A quick history and tutorial of sovereignty and my own little rant about what it should mean.

1. Introduction to Part 1
2. Background
  - a. Brief History of Indian Law and the Tensions with it
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3. Analysis
  - a. The Justification for and the power behind the chains placed upon Inherent Power
  - b. Doctrine of Discovery
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## Part 1

### How the Raven got his Wings; Inherent Power - And the Most Important Students of Tribal Inherent Power, the Tribal People.

A summary of tribal sovereignty and its history. I include the laws pertinent and my own little rant about where it is, where it came from, and where it may or may not be going. At times I get radical, but let that be a lesson in itself, as there are both very patriotic folks within in Indian Country, and extremely radical in defense of their tribe's sovereignty, and sometimes you will find the same person (such as the author) with what appear to be mutually exclusive views of loving the United States as a great country to be a part of, and yet struggling against the United States for their own tribe's inherent power.

I come down hard in Part 1 on the United States, but never let that detract from my love of my country. As the great Camus said in his letter to a German Friend, there is the blind unthinking loyalty of a citizen, and there is the love of a true patriot that not only loves his/her country, but also wants from it to be the best it can ever be. To be proud of one's country, and to see that your country not always deserves that pride. The United States deserves a lot of pride, but as I hope my brief rundown of sovereignty issues reveals, it has work yet to do.

## Chapter 1

### Introduction to Part 1

Inherent Power. Both the United States Supreme Court and the United States Congress have used these words to describe that ‘something’ that all Native Tribes have. But what does inherent power mean? The debate of what that something is travels from *Johnson v. McIntosh*<sup>1</sup> to *United States v. Lara*.<sup>23</sup> The change in the face of North American Politics went from the international community recognizing well over 1000 Native Nations to recognizing only 3 European Nations in the span of a hundred years. Older “Indigenous” Nations gave way to the younger “Civilized” Nations. The United States, as one of the younger Nations, claims sovereignty over at least 537 of the older Native Nations. The United States lives on Indigenous land and rules Indigenous People as an occupying force. But how, or where, has the United States received the right to govern over these nations when it is as foreign to the Americas as say Japan or Russia?

This chapter will take an in depth look at how the United States has manufactured four sources of power over Indigenous Nations, and challenges the legitimacy of that power. These sources are; 1. the commerce clause, 2. doctrine of discovery 3. the treaty clause, 4. military strength. Finally this chapter wonders: Are today’s United States citizens comfortable with what their government has done and is still doing to Native peoples? And most importantly this chapter asks what Native Peoples will do as they

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<sup>1</sup> *Johnson v. McIntosh*, 21 United States 543 (1823). A property case on Aboriginal Title

<sup>2</sup> *United States v. Lara* 541 United States 193 (2004). A double jeopardy case involving a tribal government and the United States Federal Government.

<sup>3</sup> These cases discussed in depth later

realize their own inherent power and how to utilize it? The chapter takes a serious look at the United States Government's recognition as recently as 2004 by the Supreme Court that the Tribes have an Inherent Power that predates the creation of the United States,<sup>4</sup> and examines what that recognition really means in terms of both the law and the life of Native Peoples.

The United States has no legitimate power over the Native Nations beyond that of the occupier over the occupied. Its sources of power are even less legitimate than Iraq's were in holding Kuwait. The international community had no problem recognizing that Iraq had no legitimate right to hold Kuwait, during the 1992 invasion; but the international community refuses to recognize Indigenous peoples' right to true self-determination.<sup>5</sup> Because Indigenous Peoples do not fit the European view of what a Nation should be.<sup>6</sup> They are not recognized and their rights are far from protected.

Native Peoples have a right to self-determination,<sup>7</sup> and they have inherent sovereign power.<sup>8</sup> Modern Tribes still have their own courts, their own governments, their own police, their own land; but Congress has claimed complete control over these tribal groups, and with statutes like PL 280 it has begun to erode more and more of this power. At no time in the past 200+ years did Tribes give up that power, one cannot give up an inherent quality. Instead Natives negotiated treaties with the United States. In exchange for land, the Natives were to be left alone as sovereign nations, the United

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<sup>4</sup> *United States v. Lara* 541 United States 193 (2004). Citing; H.R. Rep. 102-61; P.L. 102-137, Criminal Jurisdiction Over Indians; House Report No. 102-61, 1991.

<sup>5</sup> VENNE, SHARON HELEN, *OUR ELDERS UNDERSTOOD OUR RIGHTS: EVOLVING INTERNATIONAL LAW REGARDING INDIGENOUS RIGHTS*, (Theytus, Books Ltd. Penticton 1998).

<sup>6</sup> monotheistic and pale

<sup>7</sup> The U.N. International Covenant on Economic, Social and Cultural Rights, part 1, art. 1, para 1.

<sup>8</sup>S. REP. 102-168, S. Rep. No. 168, 102ND Cong., 1ST Sess. 1991,

States agreed to supply Natives with military protection, education, healthcare, and freedom. The United States recognizes a relationship with the Tribes; a debt incurred through treaties and treaty obligations,<sup>9</sup> but it thinks it should be allowed to choose when and where to pay that debt, if it pays at all.

Many Tribal governments recognize Native Inherent Power, but many Native Peoples still currently have a need to stand up and recognize their own power. This chapter will confirm the United States Government has no jurisdiction or legitimate source of power over tribes. The United States is the occupying force; they are the debtors who have refused to pay their bill. They are not the ones who should be deciding how that responsibility should be met, or what Native Peoples should do with their property or rights. It is a responsibility of the Native Peoples to determine their own lives. For too long many Natives have accepted a foreign power's determinations of their path. But Natives need to realize that it is their path, and only they can choose where it will take them.

Delving into the ideological tensions in Federal Indian law reveals that the only real people that need to be convinced of Native inherent power are the Natives themselves. For generations, Tribal People have accepted the commandments of a government who is their equal. They have accepted the pronouncements of a legislative branch and judicial branch that is not their own. They have listened to corrupt tribal governments tell them that this was the way it had to be. They have allowed the Bureau of Indian Affairs to enter their homes and govern them as any occupying force governs

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<sup>9</sup> *Cherokee Nation v. State of Ga.*, 30 *United States 1* (1831).

the occupied. But perhaps it is time for those Nations to awaken to their own “inherent power.” What will it mean for Indian Country today? What could a future bring where the Natives stop asking the United States Supreme Court to decide, and start telling them to step back? When Natives stop asking the United States government to recognize their power, and start recognizing it themselves?

It is possible that such a realization of power could bring retaliatory violence from countries like the United States and Canada, but that should not stop the Native Peoples. They have a right to self-determination, a government that represents them and their values, and a right to end the occupation of their lands. Said simply, they have the right to those things from the United States government that the United States claims to want to give to the world. So it may bring a war, but Native People are at war now, a war to keep alive their political, cultural, and traditional ways, a war that has lasted over 500 years.

A myth resides in the world that Native Peoples in North America are assimilated, that they are a part of the great American dream, that they are United States, Canadian, or Mexican Citizens and that is that. Even some Natives hide their heads to their own Peoples’ inherent power. But, across Indian Country today, Tribes are fighting to keep alive their traditions, their culture, and their people. By recognizing their own inherent power the Native People can and should take responsibility for their lives in ways that governments have tried to deny them in the past. As the first Americans, Natives should not allow the younger Nations to decide the fate of Native peoples. This creates a duty to

both the younger Nations and the Natives to protect and advance self-determination to the point of total independence just as groups all over the world are striving for now.

## Chapter 2

### Background:

#### *a. Brief History of Indian Law, and the Tensions within it*

*“Federal Indian policy is, to say the least, schizophrenic. And this confusion continues to infuse federal Indian law and our cases.” Justice Breyer<sup>10</sup>*

Indian Law has a long and arduous history in the United States legal community. Finding its way from the United States Constitution to the Supreme Court, to Congress, and back again it has gone from a partnership of equals, to genocide of a people, to assimilation, to a “trust” relationship; all without once asking Native Americans themselves how it should be formed.

As the United States began to dominate though not conquer<sup>11</sup> the Native Tribes, it was placed in a predicament of how to view these groups which refused to assimilate into the Nation. Step by step the United States took the stance that these groups were both sovereign nations and conquered people.<sup>12</sup> At the birth of the United States it was decided that Natives should be treated as Nations, but that all their lands belonged to the United States government as a spoil of victory.<sup>13</sup> Unlikely as it seems the status of Native Nations was as independent equals and “pupils” or “wards” to their United States

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<sup>10</sup> *United States v. Lara* 541 United States 193, 1644-45 (2004).

<sup>11</sup> Few if any Native Tribes were conquered, this is the reason there are still treaties and a trust responsibility.

<sup>12</sup> PEVAR, STEPHEN, THE RIGHTS OF INDIANS AND TRIBES; THE AUTHORITATIVE ACLU GUIDE TO INDIAN AND TRIBAL RIGHTS 3<sup>RD</sup> ED., (Southern Illinois University Press, 2002)

<sup>13</sup> *Johnson v. McIntosh*, 21 United States 543 (1823).

“guardian.”<sup>14</sup> The Federal Government claimed a desire to protect the Indians from settlers even as it rewarded those settlers for stealing Indian land.<sup>15</sup>

This tension between the ideological view of Natives as sovereign nations and the actual governmental policy only deepened over time. Part of the problem was that many of the law makers assumed that with time most Tribes would die out and become extinct; and even when they realized that this was not occurring, they attempted assimilation by granting citizenship and “educating” the Native children by separating them from their culture.<sup>16</sup>

These problems and tensions were never resolved because Natives were not supposed to survive. But as time has grown, the United States has been forced to realize that Natives are not going away because of extinction or assimilation. With an economic growth rate that more than triples the national average,<sup>17</sup> Indians have proven they are here to stay. Worse for the hopeful politicians, Native Tribes today are as tightly knit as ever. They have begun to use the United States court system to protect their rights and their sovereignty.<sup>18</sup> Native Nations have learned the new system, and are using it to further their own goals, and to demand their rights as nations and citizens.

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<sup>14</sup> *Cherokee Nation v. State of Ga.*, 30 *United States* 1 (1831).

<sup>15</sup> PEVAR, STEPHEN, *THE RIGHTS OF INDIANS AND TRIBES; THE AUTHORITATIVE ACLU GUIDE TO INDIAN AND TRIBAL RIGHTS* 3<sup>RD</sup> ED., (Southern Illinois University Press, 2002).

<sup>16</sup> Children being taken for “education in boarding schools from the early 1800s to the late 1900s, followed by the Citizenship Act of 1924

<sup>17</sup> TEX HALL’S STATE OF THE INDIAN NATIONS ADDRESS: “HEALTHY COMMUNITIES: STRONG TRIBAL SELF-GOVERNANCE.” Par 11 (Feb. 5 2005) (transcript available in the National Congress of American Indians).

<sup>18</sup> As the multitude of modern cases suggests, an example is *Idaho v. United States* 532 *United States* 956 (2000), where the Coeur d’Alene Tribe fought to get its lake back. Also the many acts demanding Native artifacts and art to be returned and to only be done by Native Americans or those they choose

This refusal to disappear has begun to increase the tension in the contradictory views of Native Sovereignty. This tension seems to bubble over in cases like *United States v. Lara*, where the debate between inherent power and delegated power began to be settled, and Native power subtly dismantled.<sup>19</sup> Inherent power can be seen as that power a person or People hold within them, an inherent part of what defines them. Delegated power in contrast is power that has been given or delegated to the person or People from an outside force. If *Lara* or other cases had decided that the powers held by Native Governments was delegated by the United States Federal government, it would open the door for them to remove that power whenever they choose. But that is not how *Lara* was decided.

In *United States v. Lara* a non-member Indian was convicted in tribal court for striking a BIA police officer who was escorting him off the reservation pursuant to the Tribe's orders. After serving his time for the tribal conviction the Federal Government also arrested and tried Lara pursuant to a law making it illegal to strike a federal officer. Lara claimed double jeopardy. Double jeopardy is the constitutional protection against being put in "jeopardy" of life or limb by the same sovereign for the same act.

The United States Supreme Court in *Lara* held that double jeopardy only applied when a person was tried twice for the same crime by the same sovereign. The Court then recognized in bold language the inherent sovereign powers and authority of Indian Nations separate from that of the United States. The Court discussed the Tribe's Inherent Power found in each Indian Nation and held that while these powers were not delegated

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<sup>19</sup> *United States v. Lara* 541 United States 193 (2004).

by the United States Congress, they could be limited or restricted by the United States Congress.<sup>20</sup> The Court reaffirmed earlier holdings that dealings with the subordinated Native Nations was now the complete purview of the Legislative branch, and that branch could not grant any power the Tribes had not already possessed.

Simply speaking, however, these powers were not delegated because the Tribes always possessed them. As an occupying force, the United States had in the past merely restricted those powers.<sup>21</sup> Loosening and tightening the chains around the neck of the conquered was not granting or taking anything; it was merely trapping and releasing. This look at power is outlined not only in *Lara's* majority opinion, but discussed also in the concurring and dissenting opinions. It is ironic that the opinions recognized inherent powers and, at the same time, worked to erode the independence of each Native Nation without even consulting the sovereign that held that inherent power.

The next section will provide an in-depth look at the arguments found within Indian Law to reveal a deep and contradictory view of Native Sovereignty. This view holds simultaneously that Natives possess their own inherent sovereign powers, and that the United States government has the right to restrict, limit, or grant those powers all at the same time. This chapter holds that there are four main sources of power over the Native Tribes and illegitimizes each of those sources at the same time.

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<sup>20</sup> *United States v. Lara* 541 United States 193 (2004).

<sup>21</sup> *United States v. Lara* 541 United States 193 (2004).

*b. Modern Views of Tribal Inherent Power*

*“There are laws against the literal interpretation of words”<sup>22</sup>*

In the case of *Lara*, the Court outlined the modern view and source of tribal power. The Court stated that tribal power was and always had been inherent in so far as the tribal government was a sovereign nation. The Supreme Court<sup>23</sup> and Congress<sup>24</sup> have recently reaffirmed their recognition of this inherent power.

“(statement of Rep. Miller, House manager of the bill) (the statute "is not a delegation of authority but an affirmation that Tribes retain all rights not expressly taken away" and the bill "recognizes an inherent tribal right which always existed"); *id.*, at 10713 (statement of Rep. Richardson, a sponsor of the amendment) (the legislation "reaffirms" Tribes' power).”<sup>25</sup>

These quotes found within *Lara* and the Legislative history, reaffirm that Tribal power is inherent in that Tribe, and not delegated from Congress or any other external government. It also affirms that these Tribes hold onto any powers not specifically limited by the United States. It is an important distinction because Inherent Power cannot be removed only chained.

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<sup>22</sup> CHRYSTOS, NOT VANISHING, 26 (Press Gang Publishers, Vancouver 1988).

<sup>23</sup> *United States v. Lara* 541 United States 193 (2004).

<sup>24</sup> S. REP. 102-168, S. Rep. No. 168, 102ND Cong., 1ST Sess. 1991,

<sup>25</sup> *United States v. Lara* 541 United States 193 (2004). *Citing*; H.R. Rep. 102-61; P.L. 102-137, Criminal Jurisdiction Over Indians; House Report No. 102-61, 1991.

The United States government in its modern form recognized the inherent power in Native Nations, and yet it still believed it had the right to limit or restrict that power. The Court actually claimed in *Lara* that Congress was not taking or granting power to Tribes but restricting and unrestricting power the Tribes already had.<sup>26</sup>

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<sup>26</sup> *United States v. Lara* 541 United States 193 (2004).

## Chapter 3

### Analysis:

a. *The justification for and the power behind the chains placed upon  
Inherent Power*

*“They build funny houses no one lives in but papers”<sup>27</sup>*

So one must ask where the United States government received the right or the power to restrict or limit the Native Nations, as *Lara* seems to imply it has.<sup>28</sup> There are four main sources that the government points to for its power: the Doctrine of Discovery, Treaty Rights, Commerce Clause, and Conquest. Of these four sources only treaty rights include the input of the Native Peoples themselves, and that input ended sharply in 1871<sup>29</sup> if not earlier. Congress itself tossed out the Treaty Rights with a single act, and it lived on only in the Trust Doctrine.<sup>30</sup> As discussed below the Doctrine of Discovery and Conquest are sharply criticized as sources of power in the modern world. This leaves only the commerce clause, a clause that grants Congress permission to regulate trade with Indians.

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<sup>27</sup> CHRYSTOS, NOT VANISHING, 71 (Press Gang Publishers, Vancouver 1988).

<sup>28</sup> *United States v. Lara* 541 United States 193 (2004).

<sup>29</sup> 25 United StatesC. §71 (1871).

<sup>30</sup> *Cherokee Nation v. State of Ga.*, 30 United States 1 (1831).

b. *Doctrine of Discovery: The Racist Justification*

*“Today was a day like TB / You cough & cough trying to get it out / all that comes / is  
blood and spit”<sup>31</sup>*

The Doctrine of Discovery has a long history for European countries, but it is best outlined in United States Law by *Johnson v. McIntosh*.<sup>32</sup> In *McIntosh* several Tribes, including the Illinois and Piankeshaws, sold multiple plots of land to English investors for amounts ranging from \$24,000 to \$31,000 United States dollars, this land passed down through inheritance to a group led by Joshua Johnson. The Johnsons’ had attempted from 1781-1816 to have the United States Congress recognize the deeds given them by the Tribes. The United States Government claimed the lands and sold 11,560 acres to McIntosh. Johnson sued McIntosh claiming that he had superior title.<sup>33</sup>

The Courts disagreed. They claimed that historically speaking aboriginal Tribes only had a right to occupancy, not a right to ownership; and so could not have sold title.<sup>34</sup> The Courts rested this idea on the Doctrine of Discovery, which was the doctrine put forth by European Nations in regards to the conquest of non-European lands.<sup>35</sup> The claim is that title (and so ownership) could only come from a sovereign entity, which was only found in European/Western “civilized countries.”<sup>36</sup> The doctrine recognized that the

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<sup>31</sup> CHRYSTOS, *NOT VANISHING*, 17 (Press Gang Publishers, Vancouver 1988).

<sup>32</sup> *Johnson v. McIntosh*, 21 United States 543 (1823).

<sup>33</sup> *Johnson v. McIntosh*, 21 United States 543 (1823).

<sup>34</sup> *Johnson v. McIntosh*, 21 United States 543 (1823).

<sup>35</sup> *Johnson v. McIntosh*, 21 United States 543 (1823).

<sup>36</sup> *Johnson v. McIntosh*, 21 United States 543 (1823).

Indigenous people had a right of occupancy, but once “discovered” by a European Nation, that Nation gained all rights over the land against the claims of other European Nations.<sup>37</sup> They had the exclusive right to take that land through conquest or treaty. The United States having ‘freed the country’ from English rule inherited that exclusive right to title over ‘its’ lands.<sup>38</sup>

The Supreme Court could not really find any other way. Their country was young, near bankrupt after a war, and in need of expansion west. There was no way the country could afford to buy all the land it needed from the Tribes, and it could also not dare upset the Tribes<sup>39</sup> and risk war. So the Court coined this compromise, which allowed it to recognize Native rights to the land, but still allowed its country to trump those rights at any time it saw fit. This is the birth of the United States government’s idea that it can let the Tribes keep their rights, but only with the understanding that the United States can take them away or limit them at any time. The birth one might say of, “it’s yours but only so long as I let you keep it.”

The Doctrine of Discovery assumes that Native Tribes are too barbaric and/or underdeveloped to fully utilize their lands.<sup>40</sup> That they are merely occupying it until the rightful Christian rulers can come and claim it. The blatantly racist and Eurocentric views inherent in the Doctrine of Discovery are apparent to anyone bothering to look at its historical view in Europe<sup>41</sup> or its use as justification for the United States Government

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<sup>37</sup> *Johnson v. McIntosh*, 21 United States 543 (1823).

<sup>38</sup> *Johnson v. McIntosh*, 21 United States 543 (1823).

<sup>39</sup> many of which were much more powerful than the still young country

<sup>40</sup> LIPSCOMB, ANDREW A., WRITINGS OF THOMAS JEFFERSON 369-71 (1904). *Citing* a letter from Jefferson to William Henry Harrison dated Feb. 27, 1803.

<sup>41</sup> VENNE, SHARON HELEN, OUR ELDERS UNDERSTOOD OUR RIGHTS: EVOLVING INTERNATIONAL LAW REGARDING INDIGENOUS RIGHTS, (Theytus, Books Ltd. Penticton 1998).

to take Native land. There is the underlying assumption that only Christian Sovereigns were valid and that only European Nations had rights of ownership over their land.

All titled land in the United States comes from this Doctrine, meaning that ownership of land in the United States rests on blatantly racist doctrine. This doctrine is still reflected in the modern view of Indian Trust Land, where Tribes ‘own’ the land, but can do nothing with it, without the consent of the federal government.<sup>42</sup> The ability of the Doctrine of Discovery to keep and hold all land within the United States is a testament to people not wanting to see what they do not want to see. Landowners in the United States would never admit that they own their land through no other reason than a racist stance their government took 200 years ago, and still takes today. Few want to recognize that the very idea of land title rests on a cornerstone of racism.

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<sup>42</sup> PEVAR, STEPHEN, THE RIGHTS OF INDIANS AND TRIBES; THE AUTHORITATIVE ACLU GUIDE TO INDIAN AND TRIBAL RIGHTS 3<sup>RD</sup> ED., (Southern Illinois University Press, 2002)

c. *Treaty Negotiations: Broken Promises Create a Trust Relationship*

*“We gave them forest-clad mountains and valleys full of game, and in return what did they give our warriors and our women? Rum, trinkets, and a grave.” Shawnee Leader and English General Tecumseh<sup>43</sup>*

Art. II, Section 2, Cl. 2 of the United States Constitution grant the President “by and with the advice of the Senate, to make treaties,” including treaties with Indian Tribes.<sup>44</sup> Until 1871,<sup>45</sup> the United States Government and Tribal Governments dealt with each other through treaties negotiated by both sides. These treaties can best be seen as a contract, a trade. In exchange for land the Natives received promises of future United States action. The Supreme Court has viewed these treaties as creating a “trust” relationship between the United States and the Tribes.<sup>46</sup>

Upon first contact all exchange between the United States Government and Tribal Governments were through treaties and were so reliant upon the treaty clause. The United States was still a young country, and it actively courted the Tribes for help and land. Through the treaties the United States government exchanged Native land for promises of present and future action. In exchange for large tracts of land, the Tribes

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<sup>43</sup> Tecumseh, available at, <http://www.indigenouspeople.net/tecumseh.htm>

<sup>44</sup> United States CONST. art. II § 2 cl. 2

<sup>45</sup> 25 United StatesC. §71 (1871).

<sup>46</sup> *Cherokee Nation v. State of Ga.*, 30 United States 1 (1831).

were to receive goods<sup>47</sup> and services.<sup>48</sup> The exchanges were between equals, much like contracts between individuals.

The Tribes, having supplied their land, were soon to find that the United States was not good to its word. The United States reneged on promise after promise, sometimes years later, sometimes mere months later.<sup>49</sup> The Tribes, having become reliant upon the ever growing and strengthening United States, found themselves unable to enforce these contracts that they had entered into in good faith.

An example of a Tribe attempting to enforce its treaty rights is in the famous Cherokee cases against Georgia. In *Cherokee Nation v. Georgia*, the state of Georgia was attempting to bring the Cherokee under its power and laws. The Cherokee at this point were considered the “prime example of how far a Tribe of heathen hunters could progress under the benevolent guidance within one generation.”<sup>50</sup> The Cherokee had more Christian Missions and a stronger republican form of government than any other Tribe encountered by the United States.<sup>51</sup> They were doing everything the United States wanted them to do except they continued to occupy an area rich in resources. Georgia wanted those resources, and believed it had a right to them.<sup>52</sup> They passed a law deconstructing the Cherokee as a separate Nation. Georgia’s goal was to disband the

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<sup>47</sup> blankets, items of iron, medicine, food stuffs, guns, teachers, protection, the left over land, etc.

<sup>48</sup> Doctors, blacksmiths, being left in peace, etc.

<sup>49</sup> Examples include the Fort Laramie Treat of 1851 and 1868. In these treaties several plains tribes were promised that white settlers only need as much land as the “length of their wagons” as they traveled west. The United States immediately began sending settlers into Lakota territory to live, which lead to the slaughter of several Lakota and the 30 soldiers who attacked them; in a dispute with a Mormon over a dead cow.

<sup>50</sup> M'CLOUGHLIN, WILLIAM, *CHEROKEES AND MISSIONARIES: 1789-1839*, 245 (1995)

<sup>51</sup> M'CLOUGHLIN, WILLIAM, *CHEROKEES AND MISSIONARIES: 1789-1839*, 245 (1995)

<sup>52</sup> M'CLOUGHLIN, WILLIAM, *CHEROKEES AND MISSIONARIES: 1789-1839*, 245 (1995)

Cherokee as a separate tribal power and make them all Georgian citizens.<sup>53</sup> The Cherokee sued for an injunction to restrain the state from enforcing the law.

In its “opinion”<sup>54</sup> the Court claimed that the Cherokee could only bring the case against Georgia if they were a foreign nation. And then decided that the Cherokee, and indeed all Indian Nations, were domestic dependent Nations, and so had no standing to sue a state. The concurring opinion asserted that Native Tribes were not Nations at all.<sup>55</sup> The dissent reasons that they are obviously foreign nations.<sup>56</sup> Because the Native Nations had their inherent power from before the formation of the United States and since it had not been taken through conquest or any other method their sovereign status could not have simply disappeared.<sup>57</sup>

The accepted opinion of the Court claimed that the United States government had a “trust relationship” with Native Tribes, but that it also had plenary control over the Tribal people.<sup>58</sup> So the Court reinforced the previous treaties, and at the same time claimed that the United States Congress could change this treaty relationship at any time in any way they choose, without consulting the Tribes. With one fell swoop the Supreme Court claimed complete dominance of not one, but about 600 foreign Nations.

When the Tribes entered into these treaties with the United States government many of them did require that the United States take a responsibility for them that most Nations would find odd.<sup>59</sup> But no matter what duties the treaties placed on the United

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<sup>53</sup> *Cherokee Nation v. State of Ga.*, 30 *United States 1* (1831).

<sup>54</sup> the court was split 2 voting for the opinion, 2 in the concurring, and 2 in the dissent

<sup>55</sup> *Cherokee Nation v. State of Ga.*, 30 *United States 1* (1831).

<sup>56</sup> *Cherokee Nation v. State of Ga.*, 30 *United States 1* (1831).

<sup>57</sup> *Cherokee Nation v. State of Ga.*, 30 *United States 1* (1831).

<sup>58</sup> *Cherokee Nation v. State of Ga.*, 30 *United States 1* (1831).

<sup>59</sup> Supplying food, protection, requesting the US to become the military force,

States government, the only right the treaties granted to the United States was land use. The United States had already taken possession of the lands though, and the Tribes had little hope of getting that land back. One half of the promise had been kept, and now the Supreme Court claimed complete subjugation as an added price. The treaties were not renegotiated, the Native peoples were not asked if this price was acceptable, the United States had moved into its new house, and saw no reason to keep paying the mortgage.<sup>60</sup>

So the only source of the United States' power over Native Tribes that actually brings in the Natives themselves, was immediately tainted by the Government's refusal to keep its word. It is finally buried under the trust doctrine which removes all previous negotiations and places Natives under the plenary power of the United States Congress, without once asking the Tribes if this was their wish.

Basically, under the treaty clause, the United States did not dominate the Native Tribes through warfare, but lies. First the lies inherent in each treaty they signed, and then with the greatest lie, that Tribes had agreed to complete subjugation when they agreed to the treaties. This is the worst lie, this last one, the worst because so many Tribes and United States citizens accepted it. Even to this day too many Tribes implicitly accept that they are under the power of the United States, a people with few rights to true independent sovereignty. But the truth can be shown, that they never relinquished their rights or power, and perhaps with that realization they can help the United States realize that it has a duty to keep its word, and pay the mortgage so long overdue.

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<sup>60</sup> basically we would hate to see the United States Government's Credit Report

*d. Commerce Clause: Power to Control Contact with Tribes,  
therefore Power to Control Tribes*

*“This boy will probably never understand that it is not right to take without giving. He  
doesn’t know how to give.”<sup>61</sup>*

Art. I, Section 8, Cl. 3 of the US Constitution, grants Congress the power to “regulate Commerce [...] *with* the Indian Tribes.” (Emphasis added)<sup>62</sup> Congress has used this clause to claim plenary power over the Native Tribes, but it was originally intended to make sure Congress controlled contact and trade with the Tribes, as it does with other foreign governments.<sup>63</sup> In the modern world this is predominately the clause cited by the government to regulate Tribes. But not in the way it was traditionally understood. Instead of granting the power itself, the Commerce Clause seems to be an originator, or parent of the circumstances that leads to the source of modern power.

In *United States v. Kagama*,<sup>64</sup> an Indian man, Kagama, killed Iyouse another Indian, on the Hoopa Valley Reservation. Under the newly enacted “Major Crimes Act” the Federal Government tried Kagama, who claimed that the “Major Crimes Act” had no power over him since the United States Congress and not his tribal government enacted

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<sup>61</sup> CHRYSTOS, *NOT VANISHING*, 34 (Press Gang Publishers, Vancouver 1988).

<sup>62</sup> United States CONST. art. I, § 8, cl. 3

<sup>63</sup> *United States v. Kagama*, 118 United States 375 (1886).

<sup>64</sup> *United States v. Kagama*, 118 United States 375 (1886).

it. The United States argued that the Act was applicable because of the Commerce Clause.<sup>65</sup>

The Supreme Court decided that it was too “strained” an argument for power over the Tribes to originate in a right to monopolize trade with them. But this right to monopolize trade coupled with the fact that the Tribes live within the “geographic limits of the United States” did.<sup>66</sup> The Supreme Court relied heavily on the fact that the Tribes lived under the “political control” of the Federal Government.<sup>67</sup> So the nature of the argument was that the United States had “political control” of the Tribes, because of the commerce clause coupled with the fact that the Tribes were under the “political control” of the United States. A slightly circular argument one will notice.

But the question of how the commerce clause gives Congress plenary power over Tribes is not fully answered; it seems a legal fiction must be accepted. Legal fictions are found all over the United States legal system,<sup>68</sup> and the mere presence of one does not invalidate the claim, but it does give pause. Why is the legal fiction created for Native Tribes and not for other foreign nations? Foreign nations are also specifically mentioned in the commerce clause, and the same power that is granted Congress in reference to the Tribes is granted to them in regards to foreign nations.<sup>69</sup>

It is not because of “political control” when the United States has political control over many countries that they do not claim as domestic dependents. They in fact have

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<sup>65</sup> *United States v. Kagama*, 118 United States 375 (1886).

<sup>66</sup> *United States v. Kagama*, 118 United States 375 (1886).

<sup>67</sup> *United States v. Kagama*, 118 United States 375 (1886).

<sup>68</sup> Many vaulted rights such as the right to privacy and the way many other aspects are understood in a modern context are legal fictions. They are a well-accepted and understood part of the United States Judicial System

<sup>69</sup> United States CONST. art. I, § 8, cl. 3

military bases in multiple countries,<sup>70</sup> and have placed in power many governmental leaders.<sup>71</sup> It is not because of “geographic location” because the United States only held the land on reservations because they claimed to hold it. The Tribes never gave up that land in any treaty or agreement. The reservations were the lands that the Tribes specifically held back from the United States government.

Would the Supreme Court have held the same about Iraq? The United States at one time held complete military and political control over the country, and it held the landmass.<sup>72</sup> But it is doubtful that the United States Supreme Court would have a similar holding if Congress passed an Iraqi Major Crimes Act, which took the power of punishing these greater crimes from the Iraqi government and gave it to the United States Federal Government.

If one finds the ideas of the Commerce Clause and the powers it grants over Tribes muddy or confusing, that is because it has to be. For the United States to get its way, it must muddy the waters of its own constitution. The government would rather confuse and muddy the issues rather than follow the laws it does not like.

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<sup>70</sup> Germany, Panama, Turkey, etc.

<sup>71</sup> Pinochet, Saddam Hussein, Noriega, the Interim Iraqi Government, Haiti, etc.

<sup>72</sup> in trust for the Iraqis perhaps?

e. *Conquest/Manifest Destiny: Might Makes Right*

*“Deeply embedded traditional ways of carrying out state policy...’or not carrying it out- ‘are often tougher and truer law than the dead words of the written text.’” Justice Frankfurter<sup>73</sup>*

From early in its existence the United States populous believed in the Idea of Manifest Destiny, that they as a country were destined to rule from coast to coast the continent of America.<sup>74</sup> They saw as their right the lands of all Native peoples, and it waited only for them to take it. As they justified their power over Natives with the first three sources of power, they created a war machine that was able to actually exert that power, and fulfill their ‘god given destiny.’

Might makes right, is probably the most honest source of the United States government’s power over Native Tribes. Few would argue that the United States occupation of its current land mass through Manifest Destiny was not a military driven action. It is a matter of historical record that the United States used its military strength to coerce Tribal Governments, even (if not especially) those with whom it had on going treaties with.<sup>75</sup> It used that might to intimidate nation after nation that it had once called ally.

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<sup>73</sup> Poe v. Ullman 367 United States 497, (1961).

<sup>74</sup> PEVAR, STEPHEN, THE RIGHTS OF INDIANS AND TRIBES; THE AUTHORITATIVE ACLU GUIDE TO INDIAN AND TRIBAL RIGHTS 3<sup>RD</sup> ED., (Southern Illinois University Press, 2002)

<sup>75</sup> Look at *Cherokee Nation v. State of Ga.*, [30 United States 1 (1831).] and it’s history as a perfect example.

It is not only the most honest but the most ironic. Many Tribes sided with England in the Revolutionary war, because England had been more consistent in keeping settlers off Native land. But once the war was over, the newborn United States had reason to fear it's much more powerful neighbors. The Tribes had also suffered great pains during the war, and were willing to accept peace with the United States. Though they were the more powerful, they accepted the United States' claims to sovereignty and freedom. This compassion from the Tribes lasted until the United States was strong enough to stand on its own.

Like coming onto a sick man the Tribes took that man in and aided him in his healing. They offered food and goods; they let the man regain his strength. But when the man regained his strength, when any decent person would repay such kindness with kindness in turn; the man stole all he could and killed those who stood in his way. The Tribes were repaid for their compassion and generosity with lies, theft, murder, and invasion. The United States' racist view of the Native Peoples never allowed it to see its own arrogance, its own hypocrisy, and its own sin.

Instead the United States decided that its civilization built upon deceit was the greater, and attempted to force it onto the Natives. Those that would not be assimilated into the greater system were hunted, those that fought back were considered renegade, and those who bowed down were pushed one way then another. As the great Shawnee Chief Tecumseh asked, "Where today are the Narragansett, the Mohican, the Pakanoket, and many other once powerful Tribes of our people?"<sup>76</sup> Asking in affect, where are those

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<sup>76</sup> Tecumseh, *available at*, <http://www.indigenouspeople.net/tecumseh.htm>

who trusted and helped the United States? He asked knowing the answer, they were gone, destroyed by the one they had called brother.

This playing on the Tribes' compassion, leaving Washington to call them 'deluded,'<sup>77</sup> backed up by military force, and attempted elimination was not lost on one man. Adolph Hitler claims in his book *Mien Kemp*,<sup>78</sup> and more in depth in his second unpublished book (titled *The Lost Book* by many modern scholars), that the United States model to rid itself of the unwanted and racially impure Nations of Indians was perfectly done. He also cited it as the source of his own desire and methods to enact Manifest Destiny upon the European continent.<sup>79</sup>

The military might of the United States has stood the test of time, and allows it to live daily in occupied territory. They live on land because of a brutal and ultimately genocidal destruction of Native Peoples. Their country is founded and continued through the occupation and subjugation of over 600 other Nations.

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<sup>77</sup> RICHARDSON, JAMES, MESSAGES AND PAPERS OF THE PRESIDENTS 1789-1897, 104-105 (1899); *citing* PRESIDENT WASHINGTON, GEORGE, 3<sup>RD</sup> ANNUAL ADDRESS TO CONGRESS

<sup>78</sup> HITLER, ADOLF, MEIN KAMPF (Mariner Books; Reissue Editions, 1998).

<sup>79</sup> HITLER, ADOLF, HITLER'S SECRET BOOK (Random House Value Publishing, 1986).

*f. Who asked the Indians?*

*“In leading them thus to agriculture, to manufactures, and civilization [...] in preparing them ultimately to participate in the benefits of our Government, I trust and believe we are acting for their greatest good.” Thomas Jefferson, Sally Hemings’ Rapist<sup>80</sup>*

Of all four of the sources only the use of treaties bothered to negotiate with or ask for justification from the Native Peoples. And this is also the one source that is no longer cited, or truly traditionally respected. It has been replaced through the Supreme Court by a trust relationship. Of the other 3 sources (and even the eventual twisting of treaties into a trust relationship), one must wonder, who asked the Indians?

One must realize at this point that nowhere above or below in the chapter has the idea come up that the United States ever has asked or ever will ask the Natives if it has any real power over them. The United States Supreme Court has stated that Congress has Plenary Power over Natives. The United States Constitution claims Congress has power over the Natives. The United States congress claims it has power over the Natives. But nowhere is the Native’s voice heard. Native American Governments never gave the United States Congress power over them. Native American Governments never gave the Supreme Court the right to decide that Congress had power over them. Native American

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<sup>80</sup> RICHARDSON, JAMES, MESSAGES AND PAPERS OF THE PRESIDENTS 1789-1897, 352 (1899); *citing* PRESIDENT JEFFERSON, THOMAS, SPEECH TO CONGRESS

Governments never gave the United States Constitution the right to decide that Congress has power over them.

It is the same as if the United States Supreme Court, United States Constitution, and the United States Congress all decided that Congress had plenary power over Canada. Canada would have no duty to respect the opinions or the decisions of these groups and neither do the Natives. The United States has no mandate or will of the Native people to rule over them, all it has and/or ever will have is the end of a gun. Are Native people willing to legitimize a rule restricting their power, when they had no say in that rule?

## Chapter 4

### Implications

a. *Is this really your country, what happened to accountability?*

*“I must dissent ‘Great nations, like great men, should keep their word’” Justice Black<sup>81</sup>*

Can the United States claim a legitimate place in the international community when it has such a long history of defaulting on its promises and ruling peoples who have not and will not give their consent? The Modern Citizens of these United States want to believe that their country can bring democracy and freedom to the world. They use catch phrases like “accountability” and demand a standard of human rights and honor from the rest of the world. But how can they see this chip in their neighbor’s eye, and not see the log in their own?<sup>82</sup> If they desire the world to become a place of accountability, they must first deal with their own country’s creditors.

Perhaps it is ideological thinking of the author, but one would wish to believe that the majority of the United States wants to live in a home they paid for. But instead they have spent 200 years neglecting their mortgage. One would hope that United States Citizens would demand that the country legitimize the power it wields, instead they are found allowing their country to rule through the fear of military action. One would hope

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<sup>81</sup> *Seneca Nation of Indians v. United States*, 338 F.2d 55, 57 (1964).

<sup>82</sup> THE CHRISTIAN BIBLE, Mathew 7:3

that the majority of the United States Citizens would want to repay a kindness done to them. When their country was weak from war and the birthing of a new politic, the Native people showed pity and compassion upon them. Instead one finds them allowing their country to repay that kindness with occupation and destruction.

Perhaps it is just more ideological thinking, but the author does not believe that United States Citizens wish to be living in an unpaid for home for no other reason than the bullying of people who showed them kindness. Most United States Citizens allow their country to rule in such a repugnant way because the information has just been so poorly disseminated. The United States People are good people, they hold high ideals, the author is one of them, and they have a sense of justice and a desire to do the right thing. The only explanation for them not paying their debts is that they simply do not understand what they owe.

Farfetched, not really, with so many misconceptions in the World about Indigenous peoples, and the Natives of North America especially it is easy to believe. Some people believe that Natives still live in Teepees on the reservations, or that they are just another race clamoring for equal treatment. Many do not realize that the Natives have spent the last 200 years rejecting modern western civilization, or the lengths the United States has had to go through just to reach the current state of assimilation (read about the Residential Schools for a single horrific example), which has still not separated Tribes from their traditional affiliations. But after reading this chapter, and books like it, you as a United States Citizen can awaken to the debt you owe to Native Peoples. You

can understand that the power your country is trying to exert is illegitimate, and demand from both your government and your legal system, a complete accounting.

b. *What can the Indians do: flexing inherent power?*

*"Set goals worth fighting for and if you fail to achieve them, don't let it be because you tripped over your foot. Let it be because the forces arrayed against you caved your skull in." Maori proverb shared by Chief Judge Joe Williams<sup>83</sup>*

Native Americans are placed in an interesting spot, they are living as occupied peoples and yet their occupiers are clamoring to claim the occupied have inherent power. They are faced with someone telling them how free they are and that they must obey at the same time. But like each person in her own life Native Peoples need to realize that they are free. They have a choice in every moment of their lives. They have spent the last 30 years with their heads down accepting the pronouncements of a foreign power, accepting someone else's foot on their neck.

It is time for those Tribes that want freedom to recognize their own inherent power. Stop asking the United States to recognize it and recognize it themselves. Close off their original borders, demand in International Courts that their treaties are kept, and show the world that the illegitimate power the United States is trying to wield will not be accepted by a free people. Only by refusing to accept the United States' pronouncements on Native rights will the Natives be free. It is time; their kindness has lasted too long. They have exhausted their polite remedies in dealing with their equal, and it is time to

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<sup>83</sup> MAORI CHIEF JUDGE JOE WILLIAMS, *available at*, <http://www.turning-point.ca/index.php/article/view/102/1/28>

demand a response. They have been the world's nicest landlords, but now it is time to demand the rent be paid, and paid in full.

What is stopping most Tribes from claiming this? This chapter has looked at the four sources of power the United States has over the Native Nations, and found that only Military strength is a valid, if no more legitimate, source of power. So is it fear of soldiers and bombs falling from the sky that stop the Tribes from breaking free? One must admit the military strength of the United States is impressive and even with the return of all Native Americans that are currently serving in the Armed Forces, the sides are relatively uneven. So the Native Nations face a question, the most important question.

Is freedom worth it? Will the benefits of being truly free outweigh the possibility of bloodshed and suffering? Can they hope to overcome their fears in exchange for freedom? The answers will not be easy; each Tribe, each Native, must make its choices, and fight its own battles. The greatest, and most terrifying, aspect of self-determination is that the choice is yours.

## Chapter 5

### Conclusion to Part 1

*“Liberty lies in the hearts of men and women. When it dies there, no constitution, no law, no court can save it” Justice Learned Hand<sup>84</sup>*

In conclusion, there are four claimed sources of United States power over the Native Nations. These sources are; 1. The Doctrine of Discovery, 2. The Treaty Clause, 3. The Commerce Clause, and 4. Military strength. Each of them lacks legitimacy for one reason or another. The Doctrine of Discovery is obviously a racist and troubling doctrine. The Treaty Clause would be legitimate if the United States kept up its side of the treaties and they still practiced it. The Commerce Clause gives the federal government only the right to regulate trade with the Indians, not control over them. And Military Strength is seen as illegitimate in the modern world as a source of ruling power. On top of each individual source having its problems, there is the overall problem of not having the will of the Native People behind it. This is the greatest source of illegitimacy of all, not once did the Native People get to put in their thoughts or use their voice in how they would live their lives or be governed.

Seeing how all these sources of power are illegitimate, one then asks, what the United States Population thinks of that, and what it might do, if willing, to fix the

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<sup>84</sup> JUSTICE LEARNED HAND, THE SPIRIT OF LIBERTY, 190 (3d ed. 1960).

problem. This population exists within a democratic government, and so is ultimately responsible for the occupation that has occurred. If the United States Population wants to legitimize its government's actions, it needs to force that government to become accountable for the promises the government has made and the actions it has done in the past. Until such a time the United States government cannot claim legitimacy and neither can its citizens.

Finally the chapter looked into what Native People can be doing to recognize and flex their inherent powers. They are the only legitimate wielders of that power. With this though comes the responsibility to wield it. They waited patiently and politely for the United States to recognize it and act on that recognition, but as the Supreme Court said in *Lara*, the United States never took it merely restricted it, chained it. And those chains, as shown above, are illusory, like a rope seen in the dark and mistaken for a snake. There are no real chains binding them, and Natives can and are facing that in the modern world.

The United States will never truly recognize the Tribes' independence; it will never on its own say, "sorry man, here you go." The Tribes can reclaim their inherent power only by recognizing it and utilizing it. They will face opposition, they will face struggle, but freedom is worth it. Nobody can give another freedom, it is something that is truly inherent in each person and People, and it is there to be found. It is up to Natives if they want it or not, no one can or should tell them what to do in regards to it, this is their choice, their responsibility, their inherent power.

I have added this section mainly to emphasis to those coming to work in Indian Country that it is highly likely you will encounter thinking as radically or more so. As a

people we are proud and very much wanting to keep/regain control of our own government and lives. Be wary of how you approach the subject when dealing with tribal leaders, and do not be surprised when we respond to several questions with, “ya we are a sovereign nation.”

## **Part 2**

### **The Current State of Affairs**

The current state of affairs in Indian Country is in flux. Every tribe is different, and each one has an ongoing murky relationship with their state and the federal government.

## **1. Tribal Law and Politics**

The first step is tribal law and politics, you will after all be working in Indian Country under a tribal entity that will determine much of your day to day operations. There is going to be politics, let me repeat that so everyone hears it, there will be politics. It is unavoidable, and a natural part of the work. No matter what your position is in Indian Country you will be faced with politics on some level that shall effect your job. The key is to manage these areas successfully, and be prepared before even accepting a job for a specific tribe. Even with all the prep work though, there will be shocks and awes that you will be faced with. Understand the community and the landscape, and over time you will be navigating these waters with a skilled hand.

You will be dealing with Tribal Members, Tribal Council, and Tribal Resolutions, all of which may be unique to that specific tribe. The climate of the community will often determine your ability to navigate these groups, and it is important to have a full understanding of what you will be dealing with before ever except a job with a specific tribe. The tribe is a government, and as such you will be expected to care about things most business men only give lip service to. I would suggest taking a deep look inside to ensure that you can honestly and with integrity care about the issues the tribe does before taking on a job in Indian Country. Authenticity will go a long way, and you will be embroiled in community issues and concerns from day one, so be sure your desires align

with the tribe's before jumping into bed with them. I have found that managers that already have a deep desire to care about their employees and the communities they will be affecting have little or no problem with this area, but it's best to do some research on your tribe, and those key players that will make or break you time there.

### **a. Tribal Membership**

Tribes are made up of enrolled tribal members, think of these members as stock holders that all share an equal amount of stock in your company. It will go much more in-depth than that though, as they will often be your employees, supervisors, and even when they are not they will often be very vocal about how things should be done. Your actions in the business will potentially affect their community and families so they have a very personal stake in the job you do. Expect to be questioned, expect those questions to matter. Memberships in the modern age will range from the completely uneducated to very high degrees, people who have never had a job, to people who have ran large complex industries, and all these people matter. They care, and they care enough to make a change. They will usually speak officially through a tribal council, though they will also likely be speaking through social media and local papers, or just on the back step of someone's house.

One of the first places a possible applicant into Indian Country is going to want to look is at the tribe itself. Do not make the mistake of just pulling up their website and checking it out. Their website is most likely the face they want you to see, but it may not always be the full truth. Tribes in the modern era are savvy, they understand image and perception and often use it to their advantage. Their websites will most likely be professionally done and include not only business information, but history and current projects. They are a hodgepodge of differing business ventures, government agencies, and simple projects tribal members found interesting. Their websites will reflect this, and

will often have interesting tidbits of history that are designed to help you understand the history of the tribe and most likely the struggles they went through to get to where they are at.

Look at news stories about the tribe, are they often fighting with the state or partnering with a church group? Do they donate lots of money or constantly get hammered for shady behavior. Many of these stories will be slanted depending on pro/anti feelings the writer has about tribes, but you can still learn about the directions the tribe has been going, and will likely go again.

A bit more complex view will be a tribal paper. Look if they have a tribal paper and see about getting a few back copies. Most tribes these days have papers that are filled with articles by and about tribal members. It is the tribe's attempt to educate their own members about what the tribe is doing and why. The editorial section especially will help you get a feel for the pulse of the community. There will be all the things you expect in the paper, tribal ordinances recently passed, pictures of kids winning awards, obituaries, editorial sections (ranging from well thought out ideas, thank you's, and local crazies who need a voice). The paper will be focused on their own members, and again the tribe is most likely savvy enough that this is at least partially a sales pitch to their community about those issues the tribal government wants to be important. You can trust it will be edited and at times even regulated with an eye on convincing the membership that things are how the tribe wants them to be. That said, most tribal papers I receive are highly

informative, and often great journalism, they cover local and national news that they feel the membership should know about. A great source of community info.

I cannot stress enough, look into social media and look beyond just their standard official sites, look for sites about free speech and members' only pages. These pages will often be filled with the most radical of members, but you will be at least partially dealing with them, so get a feel for how they think and feel, the issues that are important to that specific group. Read it all with a handful of salt, as these folks will not always reflect the majority of the membership, but the comments will often reflect the deeper feelings of the community. Several council members will have a personal page and council page, learn to spot the difference, and find out what kind of people they are. These will often be your employers through government and your employees through the business, so it's good to have a firm understanding of the types of people you will be dealing with.

All of this is really designed to get you to know the families and players involved in the community and how the power structure not only currently works, but what the members think about it. Tribes are democracies, usually with small voting pools, and this means government (i.e. your boss) will care deeply about their concerns, whether misguided or well thought out. Be prepared for a new form of management, that to be successful should resemble Servant Leadership, or better yet a conglomerate of ideas that help you navigate your employees often being your boss, or a close relation (I call my own Trust Based Management). Those managers who are use to managing by fear and

intimidation will only find limited success as it is hard to intimidate a chairman's wife or mother.

*i. Servant Leadership*

Because of the family and community nature of tribes, one must learn to care about the employee beyond just a number on a screen, or a body doing a job. They must become family. You must learn to care about their lives and the communities they are living in, as you can bet the tribe you work for cares, and they will value management that shares that care. Your employees will have empowerment through their community and family connections so it is best to just roll with that empowerment, and learn to enjoy it. Most tribal employees will care deeply about the jobs they do, and the bosses they have, as the success of the business will equate into a stronger tribe, and more money into local projects and “per capitas.” Never underestimate the power of the Per Cap, it is a dollar value paid out to tribal members based on the success of the tribe. These can range from a few hundred a year to thousands a month depending on the tribe. These are not welfare checks, but dividend payments, and their amount and frequency will often be a source of debate within the tribal political structure. What this means for you is those employees enrolled in the tribe will have an invested interest in how you run the business, and they will not be shy about telling you better ways to improve. As Stated at the beginning of the book there are hundreds of other books out there on empowering employees, *Servant Leadership*, and my own first book on *Supervising*, all these books will be a great help in managing the waters of the unique system you will find yourself in once you start supervising in Indian Country.



*ii. Tribal Preference*

A major aspect of hiring in Indian Country will be Tribal Preference, and I will go over some of the laws revolving around this sensitive subject under Federal Law, but for now, it is important to realize the tribe itself will have resolutions regarding how and when to apply it, and it is necessary for all of management to understand how they currently handle it. In a nut shell tribal preference is the tribe's right to hire enrolled members of its own tribe and when they wish. Most tribes have hierarchy of preference, such as, 1. Enrolled member of owning tribe, 2. Spouse of enrolled member, 3. Enrolled member of other tribe, and 4. Non-enrolled. Federally the distinction under preference must be around enrollment, as it is a political distinction rather than racial, but some tribes attempt to bring in descendency. A descendant is one that is descended from an enrolled member, and the legality of this is in question as it creates a racial distinction rather than a political one, but that has not stopped tribes from applying it through tribal resolutions. Fighting those resolutions can be tricky, and I have found it is best to just roll with how ever a specific tribe wishes to apply preference.

Knowing the tribal resolutions surrounding this issue though is important, as a poorly worded or executed preference resolution can be a morale killer within departments, and can greatly impact how you will wish to do business, it may also be a deal breaker on accepting a management roll, as it could limit your ability to hire the best employees, or even self-advancement. That said a well worded and executed preference

policy can be greatly empowering to local people who otherwise would never be able to compete for jobs they need. I have found in many circumstances that I was “forced” to hire a tribal applicant that I had barely considered only to discover diamonds in the rough. The greatest Floor Manager group I ever created for a casino floor was all tribal members, mostly with little to no education that just understood their people, and their customers to a level that nobody else could have. Their commitment to the casino and the tribe shone through the daily work ethic, and it was a thing of beauty to see them grow into the people they became (through the years this group spun off high level executives not only within our own casino, but within other casinos).

Expect tribal preference to be a major topic every time you hire, and have set responses both to the membership and to non-enrolled employees, part of your job will be to guide the process and set the perception to how it is handled. I have known managers whose response was, “your white you’ll never amount to anything” to, “keep trying, just because you did not get it this time doesn’t mean you’ll never get it.” The first one is of course the wrong response in my book, but I have seen it often in Indian Country coming from Management, co-workers and HR. Your goal should be to limit the sting for the non-enrolled, when they are passed up for a promotion because of this.

At the end of the day there will be no real straight line answer to how you will deal with preference or if it will be a positive or negative. I have found that in my time in Indian Country it was hugely positive, but that may also be the mostly liberal interpretation of it I was given to use. The idea behind it is both understandable and commendable. If one day I own my own Casino, you had better believe that when my

son (no good or otherwise) puts in for a coffee server job, he had best get it, I mean he is my son, and I own the company. Tribal members should never feel like they have to be different, it is their business, and it makes sense that those members should be running it and working at it, if they can do the job.

## **b. Tribal Council**

Tribal Council should be the voice of the membership. These individuals are voted in through the tribe's political system, and like any politician, can run the gambit from well educated, hardworking, lazy, blue collar, white collar, poor, well off, to crazy. What you can guarantee is none of these people are slow witted. They earned their spot through votes, and savvy politicking. Do not expect them all to agree or even get along, and expect questions a normal board would never consider important. Those of you that have dealt with politicians in the past, expect meetings to go more like a congressional committee meeting than a true board meeting, they are a government after all. Many of them will be handling council as volunteer, or a small meeting stipend, though more and more tribes are paying their council members, especially the chairman. This group will be voted in annually, (either in whole or in part depending on terms), and you can expect election times to get heated.

This group may be a huge boon to your career or a thorn in your side, but at the end of the day you answer to them, and they answer to the membership, so make sure you learn who they are. I have found that many of the council members I have known over the years to be great people, whom I will have as lifelong friends. I have found elders with little formal education to have been the wisest people I have ever known, and seen to the heart of complex issues in a millisecond. They taught me to be humble in my

knowledge, and respectful in my words. I wish you luck in finding a council that is a benefit and blessing in your attempt to work in Indian Country.

The best advice I can give is to be open honest, and leave the political maneuvering to them, you're a business man and they are the politicians, run their business well and in the manner the tribe sees fit, and you should be fine. My most common response to questions about council members or their decisions is that, "I am not Political, I just do my best in the business I run for them." And when there is a major break down in their ranks, I tell myself my grandmother's old adage, "not my circus, not my monkeys." Meaning it is not my tribe they are running it is theirs, and I need to respect that they were chosen by their people to run it. Getting in the middle of a pissing contest between council members usually ends in someone getting pissed on, and I can almost guarantee it will not be the members, but those that supported or failed to support them. So remember, their tribe, you just work there, respect that, and respect that, and try not to get involved in politics.

That said, as you work your way up within a tribal enterprise expect the need to become more political savvy yourself, the most successful business people within Indian Country have a firm grasp on their tribal politics, and how they work, be sure you take that into account before joining the tribal landscape.

### **c. Tribal Resolutions**

Tribal Resolutions will only partially effect you, but when they do, they are law. Never forget that your owning body is a government, and when they make a resolution they are passing a law, just like congress. These resolutions may deal with how you do business, who you hire, how you fire, how you pay, how you handle drugs, and a full range of other circumstances. You will find some of the laws to be lighter or stricter then if you were following state law, but this is a sovereign nation, and it is best not to forget that. They will decide what taxes are paid and by whom, and whether or not they will be using a state liquor license or tribal. They will often determine gas prices and cigarette prices, and who will be allowed to sell fireworks. Resolutions will be passed, and it is best to learn them along with the other policy and procedures the tribe gives you, to ensure you are following the tribal laws that apply.

## State Law and Politics

The relationship between the Tribe, State, and Local governments will be a major area of impact. If the tribe and state have a working relationship, you may find yourself applying for local liquor licenses, and following local laws and regulations. For those that find themselves working for tribes that have an antagonistic relationship with the state you may find the tribe demanding you to work around or outside the bounds of these local laws when possible. Tribal Sovereignty will be a huge benefit here, but also expect local and state governments to hold some resentment to a community within their borders that pays neither taxes, nor mind to their rules.

Depending on your position you may have no dealing with the state, or you may act as the go-between/negotiator for the two governing agencies, remember that you are the tribe's employee, and your job is to ensure that the tribe gets the best end of the deal on the terms they desire. It is always good to ask, how they would like you to proceed as far as this goes. A tribe with a friendly stance toward the state may take it unkindly if you throw out the "we are a sovereign nation" card too often and upset the state they have had a working relationship with. On the other hand, a tribe that wants to exert its sovereignty will take offense to the idea that they should give in on those areas within their rights. And those areas are within their rights, as sovereign nations they should be holding sway over their own laws and goals.

Regardless of a tribe's relationship with its state, it will also have a relationship with the local governments. Again this relationship can range from mutually supportive

to outright hostility. The areas of concern will be; who policies the reservation, and who they can and cannot arrest/ticket, who benefits from local attractions, how local schools are supported, and where money is spent and by whom. Fights will break out over Timber and hunting right, fishing rights and land access, road ways, and education quality. There really will be a gauntlet to run for anyone that wants to keep them peace between local and tribal governments. Add to this most local governments and tribes have a long history of shared distrust based on discrimination and the fact that 50 years ago local governments had all the power and modern tribes are often more on par with a state. Many local leaders will find it hard to swallow that the people they discounted so few years ago are now powerful agencies that must be dealt with, and backwards thinking is often the rule of the day.

There can be many benefits though to local governments that support a healthy respect and relationship with their tribes. The tribes have access to different grant moneys and taxes that could help improve both communities when pooled together. Cross deputization and training can increase the amount of first responders everyone can utilize and benefit from. Most tribes have Indian Health Services on the reservation that can be opened as cheap health care for many residents of small towns that otherwise have little or no options. The benefits really outweigh the negatives for these two groups to get along and work together. That said, tribes often face stiff opposition from their local governments, and at times full on hostility that does little but hinder both groups ability to fully care for their communities.

Knowing your potential tribe's relationship with the local and state governments is often vital to not only navigate the political landscape, but to know what is expected in the job. Will you be acting as a negotiator between nontribal authorities to find a best for everyone solution, or will you be finding ways to replace state functions with tribal. Be sure you know the answers.

### **3. Federal Law**

Federal law is a wonderful thing.