

## Understanding the Offensive Elements of Federal Indian Programs

By the Fleming Office of Federal Indian Program Oversight

Many citizen organizations are complaining about and fighting the adverse effects of certain federally recognized Indian tribes who are exercising what, to them, is a “legal” right permitted by the federal government or as some Indians and some tribes tell the world.... it’s their “sovereign right”. This has been going on for decades. These complaints can be bunched into a number of categories and include, but are not limited to such as:

1. Shellfish, fish, hunting and gathering,
2. Leasehold interest, fee property interests,
3. Breaking of contracts and trust agreements,
4. Being taxed and regulated by a non-republican in form government,
5. Federal agencies treating tribes like States, and sovereign, etc.
6. Tribes seeking jurisdiction over land use issues, air and water quality, and public Utilities including electricity, water, and dams from lawful state governments.

Another member of the Immediate Complaint Categories, as I call them, occurs when any tribal government action or regulation goes into effect that impacts non-tribal citizens properties or businesses, or is contrary to, not consistent with, or in any way not in the best interest of or wanted by a majority of the citizens as expressed by their laws, rules, or regulations in the surrounding or abutting legal government entities (entities authorized by the Constitution and it’s Amendments). Examples of such activities are:

1. Tribal activities in gambling, sales of fireworks, cigarettes, gasoline,
2. Development of enterprises that will adversely affect the surrounding community,
3. And in general, any action that places the surrounding public in a situation where their safety, health, or economic status could be in danger,
4. Failure to comply with federal, state and local laws and court rulings.

The list could go on and on.

When you start researching into these categories, the federal government’s actions and the U.S. Constitution, one recognizes immediately that the Constitution fails to give the federal government authority to deal with Indians and tribes as they have since the 1924 Indian Citizenship act was made law of the land. Each of the Immediate Complaint Categories (ICC) has as a basic causative factor - **the identical federal government failure-- a lack of authority**. Additionally, when one looks at the Federal Indian Programs that have spawned the ICC’s, and notes the numerous **END RESULTS** of those programs that are unconstitutional, several basic Constitutional violations are most apparent; they are:

1. **Article IV, Sec. 4**, the requirement established that we citizens must live under a Republican form of Government. Tribal governments are not republican in form and yet nation wide they are taxing and regulating State Citizen in and around certain Indian reservations.
2. **The First Amendment**, where the Congress of the United States of America is prohibited from passing any “law respecting an establishment of religion, or

prohibiting the free exercise thereof;”, public law 95-341, does exactly this. In this Public Law it says the Senate and House of Representatives of the U.S.A. in Congress assembled declare “ that henceforth it shall be the policy of the United States to protect and preserve for American Indians their inherent right of freedom to believe, express, and exercise the traditional religions of the American Indian, Eskimo, Aleut, and Native Hawaiians, including but not limited to access to sites, use and possession of sacred objects, and freedom to worship through ceremonials and traditional rites.”? Source-Public Law 95-341, 95th Congress, approved August 11, 1978.

3. **Regarding Indian culture.** Perhaps the most recent and blatant abuse of power by the Federal Government, that our nation is continuing to witness, is the Federal Government support and guidance given a Northwest tribe, the Makah Indian tribe, in their re-inventing the cultural (and they also relate this effort to their religion) need to hunt, kill, and eat whales. The Makah Indians alone are being allowed to violate the federal Marine Mammal Protection Act because the federal government is protecting Indian culture.

As to the federal government giving legal recognition and or assistance to *Indian culture that is in effect a legal recognition of special status for one class of citizens and protecting that cultural identity in the public sphere.* I cannot think of another group of our citizens so protected! Too often, this “special status” for a particular class of persons (also known as special class citizens) directly harms (legislative, legal, economic damage) all other citizens not in that “special class”. *All other races within our citizenship having a specific cultural identity must preserve their cultural identity in and through the private sector.* For the federal government to protect Indian cultural identity as they are; is at least a violation of **the 5<sup>th</sup> Amendment**, U.S. Constitution (due process tends to secure equality of law).

It is not necessary to present other occurrences of Federal support made to Indian tribes concerning their cultural identity: rather, it is most important to quote a portion of the Concurrent Resolution (100<sup>th</sup> Congress 2cd Session, H. Con. Res. 331) pertaining to this subject (preservation of a specific cultural identity through the public sphere), dated October 4, 1988:

“Resolved by the House of Representatives (the Senate concurring), that”\*\*\*\*\*

“(3) \*\*\*\*, “and including the duty to assist tribes in their performance of governmental responsibilities to provide for the social and economic well-being of their members and to preserve tribal cultural identity and heritage,”

4. **Land acquisition** for certain Indian tribes by the U.S. Government is both suspect and can not meet the requirements set out in the Articles of Confederation, the Northwest Ordinance( and the Virginia Deed), and those authorities delegated to it from the Constitution.

So where are we today? What does this mean? **It confirms that we are experiencing another civil war...** one that has virtually replaced large battlefield armed conflict with a new type of battlefield... in the courts and in public opinion. Now most of the fighters are attorneys, administrators elected and appointed officials of various governments and

tribal councils and the weapon of choice for them is the threat of and actual laws suits. The attackers are the members of the Indian Industry supporting tribal wants and the defenders include a lot of citizen trying to retain their Constitutional Rights and property. The U. S. and all State Constitutions are under full attack from Indian tribes (that use federal tax dollars and massive amounts of their casino earnings to fund these actions) and the most serious issue at hand is “tribal sovereignty”. Immediately following this serious issue is the massive violation of OATHS OF OFFICE by the members of the U. S. House and Senate who, over the past three or four Congresses, have initiated and or supported with their votes in session, the Federal Indian Programs with documented unconstitutional end results.

Since the 1960’s, when the American Indian Movement developed, this civil war has continued, expanded and has succeeded in both achieving more federal dollar resources and “governmental “`status for some tribes (indeed not all tribes) then our Constitution provides for. Our federal government, all three branches, has supported this expansion and appears to be the prime mover and backer (it provides the funding and most legal services) for this revolution. The Federal Government is the unit of government that has by rules, regulations, Executive Orders, given state status to tribes and fostered the idea that they, certain tribes, are sovereign in nature. Indian law has developed out of all of this and very little, if any, of it has Constitutional backing.

Where do we stand today in this civil war? **We are not winning.**

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