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Killing the Indian to Save the Tribe: The Effect of Federal Indian Policy on Reservation Economy and the Lives of Individual Members

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Life, faculties, production – in other words, individuality, liberty, property – this is man. And in spite of the cunning of artful political leaders, these three gifts from God precede all human legislation, and are superior to it.

--Frederic Bastiat, *The Law*

Introduction

In 2014, the Office of the President of the United States reported:

> …Native children and youth grapple with a number of extraordinary challenges that stem from severe poverty. Schools that serve them are often not equipped to address these complex needs—mental health, nutrition, wellness, substance abuse, family life issues, exposure to bullying and violence, housing shortages, and other critical needs. (Exec. Office of President 2014, 20)

The Department of Justice agreed, stating, "[t]oday, a vast majority of American Indian and Alaska Native children live in communities with alarmingly high rates of poverty, homelessness, drug abuse, alcoholism, suicide, and victimization" (DOJ 2013).

It is a well-known fact that Indian reservations have long struggled with poverty, and there is a lengthy history of legislation and policies that have attempted to provide relief to those affected by the reservation system. Although some attempts have been made to secure private property protections and civil rights for tribal members through the General Allotment Act of 1887 and the Indian Citizenship Act of 1924, those policies were reversed and communal property restored in the Indian Reorganization Act of 1934, stripping many tribal members of the most widely recognized means for prosperity—private property rights and protections (Sowell 2004, 246). In denying tribal members this essential right and means of wealth creation, federal Indian policy has laid the foundation of poverty and social problems in many communities.

The Marshall Trilogy: Indians as Wards

The foundation for current federal Indian policy began in the decade between 1823 and 1832 through three Supreme Court rulings known as the Marshall Trilogy. The first case in the Marshall Trilogy, *Johnson v. M'Intosh* (1823)[1] ruled that non-Indian citizens could no longer purchase land from tribal members. The second case, *Cherokee v. Georgia*, created Congressional plenary power and the federal trust relationship over tribes (Fletcher 2006, 654), as well as federal wardship over tribal members. The third case, *Worcester v. Georgia* (1832)[2] also ruled that the federal government had jurisdiction over the tribes (J. A. Poore 1998, 54). Economist Shawn Regan notes:

> Chief Justice John Marshall set Native Americans on the path to poverty in 1831 when he characterized the relationship between Tribal members and the government as 'resembling that of a ward to his guardian.' With these words, Marshall established the federal trust doctrine, which assigns the government as the trustee of Indian affairs. Underlying this doctrine is the notion that tribes are not capable of owning or managing their lands. The government is the legal owner of all land and assets in Indian Country and is required to manage them for the benefit of Indians. (Regan 2014)

[1] 21 U.S. (8 Wheat.) 543, 590 (1823)
[2] *Worcester v. Georgia* 6 Pet. 515 (1832)

Various authorities claim that the plenary authority to regulate tribal affairs originates in the U.S. Constitution's commerce clause. However, economist Barry Weingast teaches that rather than a vessel to subjugate tribal members, the commerce clause was a vital instrument for economic growth. He observes "The commerce clause provided one of the Constitution's central pillars…[which has cultivated] one of the largest common markets in the world, one with strong protection of property rights and an absence of economic regulation. The constitutional limits on state and federal governments provided the critical political foundation for the enormous expansion of the economy during the 19th century" (Weingast 1995, 8). The plenary authority within current federal Indian policy, on the other hand, abandons private property rights and supports economic regulation, to the detriment of tribal communities.

Constitutional law professor Rob Natelson contends the original focus of federal Indian policy has been misconstrued. "In *Kagama*, the Supreme Court rejected the Indian Commerce Clause as a source of plenary congressional authority. Since that time, however, that Clause has become 'the most often cited basis for modern legislation regarding Indian tribes.' Modern Supreme Court doctrine is that 'the central function of the Indian Commerce Clause is to provide Congress with plenary power to legislate in the field of Indian affairs'" (Natelson 2007, 210-211). He goes further:

> …in the legal and constitutional context, 'commerce' meant mercantile trade, and that the phrase 'to regulate Commerce' meant to administer the *lex mercatoria* (law merchant) governing purchase and sale of goods, navigation, marine insurance, commercial paper, money, and banking. Thus, 'commerce' did not include manufacturing, agriculture, hunting, fishing, other land use, property ownership, religion, education, or domestic family life. This conclusion can be a surprise to no one who has read the representations of the Constitution's advocates during the ratification debates. They explicitly maintained that all of the latter activities would be outside the sphere of federal control. (Natelson 2007, 214-215)

The concept of "federal trust responsibility," referring to the guardian/ward relationship established between the federal government and American Indian tribes, grew out of these rulings. Under its presumption, the federal government justifies its control over

- Indian trust lands, assets, and resources
- Tribal self-governance, and
- Social, health and educational services to tribal members

Despite their weak basis, the concepts established from the Marshall Trilogy rulings stand to this day.

Reservations or Private Property Ownership?

Almost four decades after the 1851 creation of the reservation system under the *Indian Appropriations Act* and maintaining the wording of many subsequent treaties,[3] the *General Allotment Act of 1887* specified that reservation land would be surveyed, divided into equal parcels, and titled to individual tribal members (United States 1886; Morris 2019, 92, 93). Following this, the Curtis Act of 1898 invalidated many of the treaties that interfered with

[3] Exp: ARTICLE VI of the Laramie Treaty (1868); ARTICLE 8-9 of the Treaty with the Sioux; ARTICLE 6 Treaty with the Omaha (1854):

allotment, paving the way for tribal members to assume ownership of tribal land previously held in common. While some believed the Allotment Act was motivated by greed, others believed it was the only way possible for tribal members and their families to survive, and their communities to prosper (2019, 96). Historian D. S. Otis wrote:

> It was apparent that the Indian system was being smashed by the white economy and culture. Friends of the Indian, therefore, saw his one chance for survival in his adapting himself to the white civilization. He must be taught industry and acquisitiveness to fit him for his 'ultimate absorption into the great body of American citizenship.' Making him a citizen and a voter would guarantee to him the protection of the rules under which the competitive game of life was played (Otis 1973).

Indeed, many tribal members used their properties to generate income for their families. In 1928, the Meriam Report, under the title "The Problem of Indian Administration," detailed how many reservations have the potential to benefit the tribal economy, community, and individual members. However, the report expressed concern that some Indians were leasing their allotted lands to non-Indians for cattle grazing. While this provided a small income for tribal families, government bureaucrats and researchers claimed the practice constituted "unearned income" that permitted "the continuance of idleness" – necessitating increased paternalistic policies over Indians and their resources (IGR 1928, 7). Clearly, government researchers were not satisfied with tribal members using their property to generate income for themselves—the purpose of the allotment policy.

Former Montana State Representative Rick Jore clarifies that Indian treaties were "intended to transition the tribes away from a 'tribal' and 'nomadic' culture into a 'private property, agrarian' culture so as to 'assimilate' them into the dominant culture/law system" and were not intended to create "permanent homelands" for the tribes (Morris 2019, 106). While some tribal members received full rights to their property, later legislation reversed private ownership of land by individual tribal members and instilled a "trust" relationship over tribal members, their lands, and their resources. Jore explains:

> …this effort culminated in the *1924 Indian Citizenship Act* but was then reversed somewhat by the *1934 Indian Reorganization Act*[4] when 'severability' (allotment) was stopped and the 'remaining surplus lands' within reservations was 'restored' to tribal ownership. (Jore 2016)

Dr. William B. Allen contends that "The 1924 blanket grant of citizenship to all American Indians proved to be the gift of an 'Indian giver,' for in 1934 Congress passed the IRA …and …reasserted authority over tribes as wards of the federal government" (Allen 2010, 21; Morris 2019, 107). Despite the claim that the IRA increased tribal self-government, Congress, and tribal leaders re-renewed and re-extended federal "guardianship" control over tribal members (Morris 2019, 107). A 1934 fact sheet stated:

[4] Indian Reorganization Act, 48 Stat. 984 (1934), also known as the Wheeler-Howard Bill

> This bill specifically provides, in section 11 of title 1, that Federal guardianship of Indians and tax exemption of Indian lands shall be continued (Mission Indian Agency 1934).

The Indian Reorganization Act delivered a blow to authentic Indian self-determination and economic mobility. It became the primary policy regret of Senator Burton K. Wheeler (D), original sponsor of the bill, who later admitted that under the persuasion of BIA director John Collier, he pushed the bill through without reading it (Franco 1999, 9). Wheeler asserted that he "disapproved of many provisions, including the separate judicial system for Indians, the replacement of the old tribal council with executive officers, and what he felt was the undue influence of mixed-bloods who exploited the full-bloods" (1999, 9).

Today, federally controlled Indian lands have the potential to improve the conditions of tribal members living in Indian Country. Yet individual tribal members do not have full titles that would enable them to use their homestead and resources – including tillable land, timber, and water – to generate income or create wealth that would not only benefit themselves, but their communities.

Life, Liberty, and Property: Inalienable Rights

> Let me be a free man—free to travel, free to stop, free to work, free to trade where I choose, free to choose my own teachers, free to follow the religion of my fathers, free to talk, think, and act for myself—and I will obey every law or submit to the penalty."
>
> -- Chief Joseph, 1879.

Under the U.S. Constitution, all men are equal and guaranteed certain rights and liberties. The Fifth Amendment states, "No person shall...be deprived of life, liberty, or property, without due process of the law..." and the Fourteenth Amendment, Section 1 states "nor shall any State deprive any person of life, liberty, or property, without due process of law..."

Property ownership is vital to social and economic growth. According to the Property and Environment Research Center (PERC), "a system of secure property rights" is essential for prosperity (Anderson 2013). Renowned economist Thomas Sowell agreed, asserting that property ownership provides "…the ability of people to convert physical assets into financial assets, which in turn enables them to create additional wealth…" (Sowell 2004, 246). Sowell also noted that private property ownership provides strong motivation to plan for the future (Gwartney, et al. 2016, 153) and is integral to a price-coordinated economy, "without which that economy cannot function as efficiently" (2004, 247).

Yet, the Department of Interior currently holds title to the property of millions of individual tribal members and retains control over revenue derived from their properties. They are not allowed to sell it or use it as collateral without government permission. Over the last 80 years, this policy has resulted in "fractionated land ownership." Land, unsellable, is cut up and passed to multiple enrolled heirs. Currently, many parcels have hundreds of owners. Regan notes, "Managing these fractionated lands is nearly impossible, and much of the land remains idle" (Regan 2014).

Economist Shawn Regan mused, "Imagine if the government were responsible for looking after your best interests. All of your assets must be managed by bureaucrats on your

behalf. A special bureau is even set up to oversee your affairs. Every important decision you make requires approval, and every approval comes with a mountain of regulations" (Regan 2014). This is the reality of millions of tribal members and has been for generations.

Vice president to Herbert Hoover, Charles Curtis was a descendant of both Osage and Kaw Indian Chiefs. When he died, the BIA settled his estate, including the land they held in trust for him. Ironically, if during his time as Vice President, the President had been unable to perform his duties, Curtis "would have been in the preposterous position of owning land that he could not have sold, or even rented, without the consent of his Secretary of Interior or the Bureau of Indian Affairs" (Scofield 1992, 7)[5].

Even with Congressional approval, the individual might be denied the right to sell. For example, in 1947, Gideon Peon, a member of the Flathead Reservation, wanted to sell his property but was declared "incompetent" to do so, even though he had been a respected postal worker for twenty years. So, he went to Congress to get permission to take his land out of trust. A bill was passed to free his land, but President Truman vetoed it on the advice of his Secretary of Interior – who had gotten his advice from the BIA (Scofield 1992, 10, 11). A similar request by a tribal member named Joseph J. Pickett was also vetoed that month (Univ of Illinois 1947).

Currently, there are four members of the House of Representatives who are tribal members, with the potential of having land held in trust by the federal government: Tom Cole (R-OK), Markwayne Mullin (R-OK), Sharice Davids (D-KS), and Yvetter Herrell (R-NM). Deb Haaland (D-New Mexico) resigned from the House in March of 2021 to become the U.S. Secretary of Interior.

The notable difference between Indian Country and the rest of the United States is the lack of property rights for tribal members living on reservations. PERC reports, "This means Native Americans cannot manage their own resources or use their land as collateral for loans. The result is what economist Hernando de Soto calls 'dead capital'" (Anderson 2013). PERC also noted, "The amount of dead capital on reservations is enormous. The Council of Energy Resource Tribes recently estimated the total value of these resources at nearly $1.5 trillion" (2013). Yet, according to the PERC, "Per capita incomes on Indian lands are nearly a third of those for all U.S. citizens. Unemployment rates are no better, reaching almost four times higher than the national average" (Anderson 2013). Compared to 18 percent of other children in the U.S., 30.7 percent of American Indian and Alaska Native children (under 18) live in poverty (American Community Survey, 2018). In fact, 1 in 3 Native Americans "are living in poverty, with a median income of $23,000 a year" (Redfern 2020).

Understanding this, many tribal members have spoken up over the years, objecting to the forced wardship of their lands. In 1965, many members of the confederated Colville tribes in Washington State wanted to terminate the reservation. Alfred Aubertin, a Colville member, explained his reasoning at a House hearing that year:

> I am an enrolled member of the Colville Confederated Tribe; I am a log cutter and have been gainfully employed for a number of years. Most of my life I have been

[5] In 1933, while Curtis was still Vice President, the BIA began denying patent requests to remove land from trust. Following that policy change, a tribal member can still get permission to sell his/her land to another tribal member – keeping the land within BIA control – but most requests to sell outside of BIA control are denied. Further – not only is one's land tied up, but also its income. The BIA can, and has, told individual tribal members that they cannot harvest timber off their own land (Scofield 1992, 9,11).

> living on or near the reservation, have been making my own living and have never been on welfare. I do not feel that my home is substandard, and I am for termination of the Colville Indian Reservation. I feel that I know what is best for me and my family and I am competent to handle my own affairs.
>
> Through the years I have seen through personal experience in my own family how the affairs of the Indian have been managed by the Bureau of Indian Affairs. My grandmother, Lenore Banning, owned over a million feet of timber on her trust land, but the county had to bury her. She lived in poverty all her life and was barely existing on an old age pension. Yet it was impossible for her to sell any of her timber, even though she owned it. She could have lived in comfort and had no worries if her property had not been tied up in trust. (Scofield 1992, 9)

Part of the reason resources are not used efficiently could be due to the slow and burdensome government review process for development projects. Regan explains that in 2014, to do business within tribal boundaries, energy companies were required to go through at least four federal agencies and 49 steps to acquire a permit for energy development. Off reservation, it takes only four steps. "This bureaucracy prevents tribes from capitalizing on their resources" (Regan 2014).

Further, obtaining permission from all government regulators doesn't guarantee a business can move forward. According to law firm Greenberg Traurig, federal law mandates that "the lead agency on each project must consult with all affected Indian tribes" and "The project need not be on tribal land for the tribal consultation requirement to apply" (Greenberg Traurig, LLP 2019), even if it is on "public or private land…located hundreds of miles away from the nearest Indian reservation". If federal permission is needed for a project to proceed, then the federal agency "must identify the tribes in the project area and consult with them" (2019).

Locating the boundaries of an Indian reservation is only a first step. The project proponent must also research the boundaries of each tribe's original homeland. Federal agencies have decided that tribal governments "retain ongoing cultural and spiritual connections" to land – including land far away from their current reservation (Greenberg Traurig, LLP 2019).

In January 2016, the North Dakota Public Service Commission, after doing a thorough survey, gave permission to Dakota Access Pipeline (DAPL) to proceed with updating and improving a current pipeline system. On July 25th, the Army Corps of Engineers finished their own survey and issued a final Environmental Assessment giving permission to proceed. Yet, on July 27th, 2016, "the Standing Rock Sioux Tribal Government sued the Corps" to stop the pipeline improvement (Morris 2016).

Six weeks later, after examining all the documents, U.S. District Judge James Boasberg, concluded that having "scrutinized the permitting process here with particular care…the Court must nonetheless conclude that the Tribe has not demonstrated that an injunction is warranted here." Judge Boasberg denied the Plaintiff's motion and ruled for the Corps, noting that "The plotted course almost exclusively tracked privately held lands" and "tracks both the Northern Border Gas Pipeline, which was placed into service in 1982, and an existing overhead utility line. In fact, where it crosses Lake Oahe, DAPL is 100% adjacent to, and within 22 to 300 feet from, the existing pipeline" (Morris 2016). Contrary to what most of the media reported to the public, not only had DAPL identified historic properties through the help of federal, state, and tribal entities, it even gerrymandered the pipeline to stay a safe distance away" (2016).

Just a few minutes after his ruling, despite the Corps' documented good faith, their clear avoidance of tribal land, and the court's ruling, the Obama Administration's Department of Justice, Department of Interior, and Department of the Army released a prepared statement refusing to allow any further construction on Corps land adjacent to Lake Oahe. It wasn't until months later, under the Trump administration, that the rule of law was honored, and the completion of the pipeline was allowed (Morris 2016).

Many rules and regulations coming out of the BIA are requested and supported by a number of tribal leaders, who have a stake in keeping control over natural resources, tribal members, and as much land base as possible. The BIA also receives 10% of the income from communally owned tribal land and has a policy to convert as much individually owned property into communal property as possible (Regan 2014). According to Larry Morandi, Director of State Policy Research for the National Conference of State Legislatures, "Most newly acquired tribal trust lands are located within Indian reservation boundaries or adjacent to them. Under certain conditions there may be off-reservation acquisitions. …Placing land into trust for gaming purposes…[which] has raised concerns in many states…" (Morandi 2004) as this pursuit removes land from the tax base.

Certain off-reservation properties individually owned by tribal members are designated "key tracts" for tribal governments to obtain under federal trust because once it is under 'trust,' the individual tribal member would have great difficulty selling it to anyone other than the tribal government or another tribal member. Unfortunately, the BIA has historically undervalued tribal resources. In 1977, a federal commission found that the leases the BIA had negotiated on behalf of their wards were "among the poorest agreements ever made" (Regan 2014). Nevertheless, for an individual tribal member to sell his land on the open market, he or she requires the consent of the Secretary of the Interior and Congress" (BIA 1967). Greenberg Traurig confirmed this policy continues today, stating in 2019:

> Of the 573 Native American and Alaska Native tribes officially recognized by the federal government today, about 325 retain a land base of some kind, often in federal trust status, meaning the land cannot be sold or transferred to others without Congressional approval (Greenberg Traurig, LLP 2019)

The Fruits of Current Federal Indian Policy

The Department of the Interior (DOI) and the Bureau of Indian Affairs (BIA) have a long history of mismanaging Indian assets. For example, Cobell *v.* Salazar, a lawsuit brought on by tribal members against the federal government alleging mismanagement of trust funds, was perhaps the largest class action lawsuit filed in U.S. history. Filed in 1996 and settled in 2009, the case brought by Blackfeet tribal member Eloise Cobell and other Native American representatives successfully argued that the DOI and the U.S. Treasury had mismanaged over 300,000 Individual American Indian trust accounts (U.S.DOI 2009). The final settlement provided over 3.4 billion dollars for the purchase of land from tribal members, "Historical Accounting and Trust Administration Claims," and a scholarship fund (GCG 2022). The Department of Interior was given about $2 billion of the fund to buy-back fractional land interests from individual tribal members. Only $1.4 billion was to be distributed to the individual class members - after between $50 million and $99.9 million was taken out to pay the attorneys, and another $60 million removed to "incentiviz(e) the sale of fractionated interests."

With the remainder of the $1.4 billion fund, each class member received $1000 for a historical accounting claim and maybe a little more for a trust management claim (DOI 2010).

Today, Federal Indian Policy still treats tribal members as "wards" burdened with heavy restrictions and limited opportunities to convert their assets into capital. In the meantime, tribal governments receive more federal money per capita through a host of federal programs.

While tribal governments and the BIA are benefiting from expanded communal property, abundant studies and copious anecdotal evidence indicate individual tribal members living within reservation boundaries are locked out of the capitalist system responsible for lifting untold numbers across the world from poverty. This point is supported by Gwartney et al, who observe "[W]hen property is owned by the government or owned in common by a large group of people, the incentive for each user to take care of it is weakened" (Gwartney, et al. 2016, 53), and "Economic analysis indicates that extensive use of government planning will lead to both economic inefficiency and cronyism" (2016, 157). This is the "tragedy of the commons, a recognized precept in public policy.

Nineteenth century French economist Frederic Bastiat warned:

> As long as it is admitted that the law may be diverted from its true purpose – that it may violate property instead of protecting it – then everyone will want to participate in making the law, either to protect himself against plunder or to use it for plunder. Political questions will always be prejudicial, dominant, and all absorbing... (Bastiat 1998, 8)

Barry R. Weingast and Ward C. Krebs agreed, noting that not only do political forces have the potential to destroy "fragile, nascent economic systems," but their very existence discourages the economic activity needed for growth. It has been long recognized that without protection of assets and effort, people are afraid to invest (Weingast 1995, 2). Without a system to allow and protect private property, there is no incentive to invest in long-term goals or build trade, which is the lifeblood of an economy. Lastly, where there is no economy, but people are free to move, they will often move to where protected trade exists. This could explain why the vast majority of tribal members do not live within Indian Country.

According to the 2000 and 2010 U.S. census, only 25% of tribal members live in Indian Country (U.S. Census Bureau 2010). Many families have taken their children and left over the years due to high levels of crime, corruption, and lack of jobs (CAICW 2014). Unfortunately, economist Ken S. Ewert explains that when the government destroys private property, it also destroys the family unit and by extension, the local economy (Ewert 1996).

Every time tribal members take their families and leave the reservation system, federal funding, which is frequently distributed to tribal governments on a per-capita basis (U.S. Government 2001) is reduced. Due to this, tribal governments have incentive to maintain and increase tribal membership numbers. Weingast went on to say that remaining in power requires a sovereign maintain a certain amount of support among individual citizens, and retaining that support requires the sovereign to not disregard their rights (Weingast 1995, 11). Gwartney adds, "Unfortunately for government planners, individuals have minds of their own, what [Adam] Smith calls 'a principle of motion'" (Gwartney, et al. 2016, 156). When individuals have incentive to act in "conflict with the central plan, problems arise" (2016, 156).

In the early 1970's, unwilling to retain support through positive incentives and after decades of families leaving the reservation system, several tribal governments insisted on jurisdiction over any child faced with foster care or adoption whom they deem eligible for

membership. This included not only the children, grandchildren, great-grandchildren of tribal members living on the reservation, but of families who left the reservation system decades ago. In fact:

> Some tribal governments insist on jurisdiction no matter how slight the child's heritage or whether the child has ever been involved in Indian Country – and the current federal administration has acquiesced with new rules to that effect. The theoretical implication is that some tribal governments are seeking to increase federal funding by increasing their membership – and are doing this at the expense of constitutional freedoms of children and their families. (CAICW 2014)

Federal funds received per child, rather than a positive economy, have become the "lifeblood" of tribes. With this reality, tribal governments have steadily increased their control over children and families to the point where in 2022, tribal officials talk about providing "wrap-around" care for children from the time of birth forward and are asking the federal government to provide additional funding for that care.

Traditionally, when allowed, families built their assets together. Ewert noted that when the state "fails to protect private property" and instead takes over fundamental functions of the family…"Family bonds are undermined" (Ewert 1996). When governments take on the role of provider, men no longer feel vital to their families. As one father struggling with alcoholism put it, "The government provided the house, food, and medical. My family did not need me" (U.S. Senate Committee on Indian Affairs, 1998).

The 1928 Meriam Report took on the social problems within Indian communities in a report titled "The Problem of Indian Administration," where it described "dope peddlers," "bootleggers," and "gambling" as the "three evils" that contributed to the poverty and bad health of the Indian population (Meriam et al 1928, 7, 110, 111). The report summarized:

> Several past policies adopted by the government in dealing with the Indians have been of a type which if long continued, would tend to pauperize any race. Most notable was the practice of issuing rations to able-bodied Indians…The Indians at the outset had to accept this aid as a matter of necessity, but promptly they came to regard it as a right, as indeed it was at the time and under the conditions of the inauguration of the ration system. They felt, and many of them still feel, that the government owes them a living, having taken their lands from them, and that they are under no obligation to support themselves. (IGR 1928)

Yet, the Meriam Report then went on to recommend increased funding and expanded government programs and agencies to cure the problem in Indian Country. Nearly 100 years later and billions of dollars funneled through government agencies, the problems in Indian Country not only continue to exist, but some argue they are far worse.

Depression, despair, fetal alcohol, and other issues run high on many reservations. "Suicide is the second leading cause of death—2.5 times the national rate—for Native youth in the 15 to 24-year-old age group," wrote Pamela Hyde, administrator of the Substance Abuse and Mental Health Services Administration in 2011 (Exec. Office of President 2014). The report also recounted that from 2003 through 2011, American Indian youth were more likely to need

treatment for alcohol or illicit drugs than persons of any other American group, regardless of "age, gender, poverty level, and rural/urban residence" (2014, 5, 25-26).

> In 2012, almost 69 percent of Native youth ages 15 to 24 who were admitted to a substance abuse treatment facility reported alcohol as a substance of abuse compared to 45 percent for non-AI/AN admissions. Among other issues, underage drinking increases the risk of suicide and homicide, physical and sexual assault, using and misusing other drugs, and is a risk factor for heavy drinking later in life. (Exec. Office of President 2014, 5, 25-26)

On June 30, 2014, U.S. President Barack Obama stated in a letter to Speaker John Boehner that children crossing our southern border are an urgent humanitarian situation and the U.S. has a legal and moral obligation to make sure they are appropriately cared for. But the federal government, which has claimed Native American children and their parents as wards, has an even greater legal and moral obligation to alleviate the humanitarian crisis within our reservation system.

Conclusion

"Thriving markets require not only the appropriate system of property rights and a law of contracts, but a secure political foundation that limits the ability of the state to confiscate wealth." (Weingast 1995, 1).

Federal Indian policy has a long and complex history within United States law. While our Founders understood the sovereignty of Indian nations during the 18th century, the 19th century brought random and, at times, horrific persecution - and by the 20th century, paternalistic governmental policies had eroded the incentives and values of autonomy and self-sufficiency of tribes and tribal members. It has been replaced with a bureaucratic environment of restrictions, dependence, and lack of opportunity.

In attempt to maintain control over members and resources, many tribal governments have insisted on federal rules and regulations that interfere with the liberties and free market potential of individual tribal members. Private property rights are routinely infringed upon as the Department of Interior holds title to the property of millions of individuals - most of whom have never agreed to the arrangement. Control of Indian lands and assets have been put into the hands of bureaucrats that have little incentive to manage them effectively, and they have every incentive to keep possession and control of the assets of tribal members.

While denying individuals their free market potential in the form of private property and natural resources, tribal and federal governments have incentivized using tribal members and children as the means of securing funding. By implication, this system has placed individual tribal members themselves – specifically children – in the status of property for tribal leaders (Morris 2016, 9).

Every American citizen has a God-given natural right to defend his person, his liberty, and his property. As noted by Bastiat, "Life, liberty and property do not exist because men have made laws. On the contrary, it was the fact that life, liberty, and property existed beforehand that caused men to make laws in the first place" (Bastiat 1998, x). This sentiment is the culmination of generations of experience, blood, and treasure; it is the bedrock of our founding principles. It

belongs to every citizen of the United States; it is a universal law that transcends race, color, or creed.

Protecting the lives of tribal members through law enforcement, upholding full constitutional rights and protections for all citizens, and removing the financial incentive for tribal leaders to use children as chattel—property and wealth generators for tribal leaders—would vastly improve the economy and attract more members back to Indian Country. Allowing individuals to use their personal resources as they see fit would preserve to citizens their God-given right to life, liberty, and property. This would be a significant first step to unlocking genuine self-determination, human potential, and prosperity, as well as correct the long-standing policies that have robbed generations of tribal members of the wealth and opportunity that this country has granted countless others.

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