

Talking Points and Notes on Indian Policy and History

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Credits and Disclaimer

This paper was prepared for the purpose of providing in-service training to Cherokee Nation officials as a part of the Self-Governance project. It is intended only as a preamble to the main course of training which focuses specifically on the legal traditions and history of the Cherokee Nation presented by Chad Smith, Director, Cherokee Nation Office of Justice.

The background material, which I used to prepare these notes, may be attributed to my previous mentors and scholars who have devoted disciplined study to this rich subject that is as much of American history as anything typically taught in the classroom.

Unfortunately, American schools and the curricula taught in the classrooms usually, if at all, only footnote the history of the first Americans of the United States. At any rate, I need to credit the following authors for their text and papers.

Deloria, Vine and Clifford Lytle, American Indians, American Justice, University of Texas Press, 1983.

Cohen, Felix, Handbook of Federal Indian Law, University of New Mexico Press, 1942.

American Lawyer Training Program, Inc., Indian Tribal Governments Today, Bureau of Indian Affairs, 1984.

Marigold, Nathan, Opinions by the Solicitor, Powers of Indians Tribes, Vol. I, 55 I.D. 14, October 25, 1934.

Lynch, Louise and Joyce Rhode, Tribal Government, 1979. (A basic handbook to understand tribal government.)

As a final disclaimer, the notes are my own. The intent was to be factual with minimum bias; however, readers are encouraged to form their own opinions. More important, it is hoped that those who are engaged in the administration of Indian affairs will become their own scholars and continue to learn about this ongoing historical endeavor. Lastly, it is hoped the readers will be more aware of why Indian tribes still govern and that they will help carry the message to the rest of the American public.

I. INTRODUCTION

The purpose of these notes is to try and give the reader a long term perspective on Indian policy.

Prior to the Europeans discovering the North American continent, Indian tribes possessed and exercised all the attributes and powers of sovereign nations. The right of a sovereign is to exercise independent governmental powers in behalf of a people which have a common bond of association, territory, and interests. In other words, the sovereign depends on a people's loyalty, support, and compliance for the sovereign to exercise power.

A. Inherent Authority

Indian tribes possessed inherent right to control and govern territory prior to the coming of the Europeans. The natural right of self-government or inherent authority is a right endowed by the Creator and has been passed on since time immemorial.

