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THE FALLACIES WITHIN FEDERAL INDIAN POLICY

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Introduction

The United States is currently and deeply divided on issue of heritage. Are the myths surrounding Indian Country another long-term product of the Critical Race Theory currently dividing communities? There are several points of contention in relation to current federal Indian policy. This paper will address harmful myths concerning Indian Country.

- Most treaty promises have been broken, all the land within the United States was stolen by Europeans; and the federal government needs to hold title to the allotments of tribal members for their own protection.
- Tribal leaders – together in an iron triangle with federal agencies and Senate committees – speak for a united Indian Country.
- Federal government must fund and mandate the education of traditional culture and religion in schools.
- Application of Critical Race Theory is important to research processes regarding Indian Country and "identify protective factors" related to tribal communities.

This paper maintains that:

- Most Treaties did not promise a permanent homeland or permanent benefits and most former tribal land was paid for.
 - Along with the land having been paid for in an amount accepted by tribal leaders (in some cases, more than once). Further, full title to land allotted to tribal members is important for economic advancement (Economist Thomas Sowell having pointed out that personal property provides an individual with leverage for growth) (Sowell 2009, 244-245).

- Neither the BIA nor most tribal leaders represent the interests of most US citizens of tribal heritage.
 - The last two United States censuses have shown that 75% of tribal members do not live in Indian Country. Many parents have taken their children and purposefully left the reservation system.
 - The well-being and constitutional liberty of tribal members is of less importance to the federal government than the protection of tribal sovereignty and the reservation system.
- Tribal members have a constitutional right to freedom of religion and the federal government is constitutionally forbidden from funding religious teaching.
 - Several federal agencies – including the Bureau of Indian Affairs(DOI-BIA); Administration for Children and Families (HHS-ACF); Office for Tribal Justice (DOJ-OTJ); Bureau of Indian Education (DOE-BIE) and others – systematically push for administrative rules that mandate that "traditional culture" be federally funded and taught in schools - justifying this with the assertion that the only way life on the reservations will improve is if everyone reverts to traditional tribal religion. By funding and mandating tribal culture, federal and tribal governments justify tribal sovereignty – which incongruently involves continuing federal control.
 - At a federal hearing in Flagstaff, Arizona on April 22, 2022, an employee of the Indian Health Service testified to the congressional Commission on Native Children that she regularly teaches tribal members that to be a “good Navajo,” they need to adhere to traditional religious practices daily. Yet that same day,

the commission heard testimony that 60 percent of members living on the Navajo reservation are Christians.

- Historian George Marsden once urged that "...Christian perspectives and the perspectives of other religious groups be accepted as legitimate in the mainstream academy" (Marsden 1998, 8). It is equally important that "...Christian perspectives and the perspectives of other religious groups be accepted (by our federal government) as legitimate in Indian Country."
- The philosophical musings of Critical Race Theory should be rejected in favor of measurable physical, emotional, and economic repercussions individuals, families and communities are currently experiencing.

Political scientist Samuel Huntington emphasizes respect for diverse cultures, asserting that "The great divisions among humankind and the dominating source of conflict" are cultural (Huntington 1993). Nevertheless, historian Frances Fukuyama does not believe diverse culture is permanent. He claims that all cultures will eventually meld and "...the end of history" will be evident when the "postwar 'American way of life'" becomes the common and accepted culture for all nations (Fukuyama 1989, 5). But Huntington notes that "...differences among civilizations are not only real; they are basic. Civilizations are differentiated from each other by history, language, culture, tradition and, most important, religion" (Huntington 1993). While true – it is also historical that individuals of every heritage leave communities and choose diverse ways of life. Culture is important, but individuals do not always move as a monolith with the rest of their community.

This paper will first address the myths through examination of evidence. Secondly, this paper will offer a critique and empirical examination of Critical Race Theory with respect to

federal Indian policy and the lives of tribal members. This is the theoretical underpinning for the dissertation. The federal government needs to get out of the business of micro-managing the lives of tribal members. Tribal members need freedom – constitutional right to life, liberty, and property – that all other Americans are afforded. This includes freedom of religion. “Faith-informed” care and counseling needs to be on equal footing with “culturally-informed” and “Trauma-informed” care and counseling.

Treaties Promises, Land, Funding and Economic Development

An audit of treaties made between United States tribes and the federal government, which are available through the Library of Congress and Yale Law School’s Avalon Project, shows that most treaties did not promise a permanent homeland or permanent benefits. Written with the purpose of assimilation, most treaties promised to mete out recompense for land over a set period of years as well as provide temporary tools for assimilation – usually 25 to 40 years.

The vast majority of claimed tribal land had been paid for at least once, if not twice, in amounts accepted by tribal leaders. Anthropologist Nancy Oestreich Lurie documents the land claims settled between federally recognized Native American tribes and the United States of America over the 37-year period (Lurie 1957). The Indian Claims Commission, which operated between 1946 and 1983, made it a point to settle claims with favor for tribes and at full market value plus interest. However, following the Indian Reorganization Act of 1934, the federal government prevented individual tribal members from having full title to their allotted land, mandating they ask permission of Congress before it can be sold. However, Full title to property is necessary for the economic growth of individuals and communities (Sowell 2009, 244-245).

Economist Shawn Regan examines the socialist policies that impede tribal members from attaining financial success (Regan 2014). In this treatise, economist Milton Friedman and his wife provide their statement of economic philosophy - where competitive capitalism is both a vehicle for economic freedom and a necessity for political freedom. Following years of research as a professor of economics, Friedman lays out his theory of liberalism as best attained through the free market and argues that political freedom is inseparable from not only economic freedom but political freedom. Not only does government overreach and control of resources destroy liberty, and government control of the media allow for suppression of free speech - but preserving political freedom in a system where the government controls the economy is impossible. Friedman advocates for policies that allow for genuine liberty - including free trade, free speech, a volunteer military, abolition of professional licenses, school choice and a negative income tax. As both the federal and tribal governments practice extreme over-reach regarding tribal members, the free-market theory of economics is vital to explore when considering political and economic conditions within the reservation system (Friedman and Friedman 2002).

Alston et al assert that institutions involved in property and commerce should provide citizens with policies that protect their investment decisions from shifting political surges. The authors argue that for this to happen, “political autonomy, administrative and enforcement capacity, political constraints, and accessible legal institutions” are necessary (Alston, et al. 2021). The authors argue that this protection has not been historically available to tribal members. Through historical research, the authors compare the progression of property rights for settlers and American Indians. American Indians had property laws before Europeans arrived, but later political and legal forces changed that. Despite the purported purpose of the Indian Commerce clause, the rights and interests of tribal members were not protected or respected by

the federal government from at least the 1830's on. This historical record needs additional examination in order to understand the "chronic underdevelopment of American Indian reservations" and the effect the lack of property rights has on individual tribal members (Alston, et al. 2021).

Tribal communities were not all historically socialist. Anderson et al question whether Native American culture could provide a foundation for tribal economies with far less dependence on the federal government. Examining census and economic data, the authors find that Native Americans are currently among the poorest Americans. The authors credit this to the robbing of personal freedoms including "...property ownership and the freedom to trade" (Anderson and Purnell 2019). Further, the authors recommend that government institutions as well as private businesses build on the rule of law and tribal heritage to "help tribes fully participate in and benefit from the modern, global economy." Vital to this is the securing of property rights. Anderson et al argue that increased federal funding and control will not improve economic conditions within the reservation system. Instead, individuals need the freedom to manage their own assets and make personal decisions related to their financial circumstances, and tribal communities need their local government to have the ability to set relevant policies, free from federal manipulations (Anderson and Purnell 2019).

Economist Jordon K. Lofthouse explores the effects of federal and tribal institutions on the "liberty, governance, and economic well-being" of tribal members. Lofthouse asserts that "Native Americans, more than other demographic groups, have had their personal liberties curtailed by the formal institutions that govern them" (Lofthouse 2019) and examines how "institutional structures" on many reservations restrict personal liberty and obstruct economic wellbeing. The system increases the cost of private enterprise and inhibits access to tribal land.

This is because the current policies “restrict economic freedom, erode the rule of law, facilitate discrimination, and hamper market efficiency” (Lofthouse 2019). Importantly, the constraints on private property ownership, make “mutually beneficial exchange” much more difficult than it is for other Americans. Because entrepreneurship is held back, tribal members will continue to suffer from poverty. The author concludes that private property rights and reduction in bureaucratic red tape can increase “mutually beneficial exchange, entrepreneurship, and innovation.” The continual increases in government funding and interference does not improve the economy (Lofthouse 2019).

Tribal Dissidents: Rejection of the Reservation System

For decades, tribal members have been rejecting the reservation system and its inherent dangers, along with federal and tribal control over private lives. Unfortunately, the manner in which many studies are conducted mask the genuine thoughts, feelings, and motivations of a majority of tribal members. Small, isolated study sampling conducted within the biased mindset of an Iron Triangle does not represent the majority of those with tribal heritage nor support their wishes or well-being.

In their paper, titled "I Want to Leave—Go Far Away—I Don't Want to Get Stuck on the Res[ervation]," Professors Rochelle Dalla and Heather Kennedy used data originally collected from 29 Navajo Reservation teenage mothers in 1992 and 1995 for their study on developmental outcomes of teen mothers in Indian Country. A follow-up study in 2007 included 71% ($n = 21$) of the original sample participants. In 2008, additional data was collected from the children of the original participants, who were all considered to be “at risk” youth. Dalla and Kennedy examine the results of the 2008 collection and describe the developmental outcomes of fourteen

of those who were born to the Navajo Native American adolescent mothers. The primary goal of the researchers was to identify both the risk and the protective factors across all social and physical contexts – including factors within family, peers, schools, and the reservation community. An additional goal was to study the associations among indicators of well-being, including “depression, parental conflict and social support.” Results of the study classified participants “into three distinct groups: well-adapted, overcoming, and struggling.” Some youth expressed desire to disassociate with the reservation system. This study, although severely limited in sample size and number of reservations drawn from, also reveals some of the motivation for dissension among tribal members (Dalla and Kennedy 2015).

In their study concerning the mental and physical health of Native Americans who struggle with substance abuse, Daniel Dickerson et al analyzed substance use, physical and mental health, cognitive functioning, cultural identity, and cognitive functioning among sixty-three self-identified AI/AN adults seeking substance use treatment in one California urban area between 2016-2019. Although over half also identified as Latino, researchers concluded that traditional AI/AN practices are critical for adults seeking substance use treatment within urban areas. Participants received \$25 for completing the base line survey. To be eligible, participants needed to seek outpatient treatment and to meet (DSM)-IV-TR criteria for a substance use. Criteria was later expanded to include those receiving "mental health services, AI/AN traditional practice engagement, or Alcoholics Anonymous (A.A.)/Narcotics Anonymous participation."

Revealing cultural bias before the study began, researchers submitted to the Sacred Path Indigenous Wellness Center (SPIWC) and the DARTNA community advisory board definitions of culturally appropriate engagement. As tribal communities are not identical, making generalized conclusions is not possible. Limitations of the study also include the method used to

select participants. Local organizations that might have had a financial stake in the findings were procured for assistance and a potential for bias was opened when paying self-acknowledged urban addicts to fill out the surveys. This paper is an example of the potential for bias in current AI/AN research. It is important to note that researchers submitted to the limitations of traditional cultural and religious programming and no other religion for comparison, then came to the conclusion that traditional practices were necessary if the participants have any level of Native heritage (Dickerson, et al. 2021).

After holding a handful of hearings arranged by federal agencies in 2013–14, Attorney General Eric Holder's *Committee on American Indian and Alaska Native Children Exposed to Violence* announced in a report written by a department within Arizona State University that "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. Domestic violence, sexual assault, and child abuse are widespread." The Committee noted that continuous exposure to violence can have a shattering impact on a child's "cognitive, emotional, and neurological functions." There is no argument with these statements - as this information had already been available in numerous government reports and academic papers. However, the Committee's recommendations revolve around additional federal money for cultural and traditional language programs, which it claims are "a blueprint for preventing AI/AN children's exposure to violence." This investigation is useful in illustrating the iron triangle evident within federal Indian policy (DOJ 2014).

Jessica Elma, et al examine the prevalence of the ten types of Adverse Childhood Experiences (ACEs) within the subgroup of Native American children with Type 2 diabetes. Participants include Adult NAs with Type 2 diabetes from five reservation communities in the

northern midwest region around the Great Lakes and were patients at the tribal clinic. Latent class analysis was applied to the ten-question version of the ACE-International questionnaire. The most common ACEs reported were (1) residing with someone who abused substances, (2) witnessing household violence, (3) incarceration of a household member, and (4) sexual abuse. The study found that a little less than half the participants experienced significant trauma and had an elevated risk of chronic mental health challenges.

Unfortunately, the University of Minnesota allowed tribal leadership involvement in the shaping of the study's procedures and instruments and the Indian Health Service agreed. This is an example of how an Iron Triangle works within Indian Country. The federal Indian Health Service Clinic staff derived the method of "random probability" samples from the tribal clinic records. Participants, who were paid \$50 dollars and a package of wild rice for their participation, were limited to those who use Indian Health Service. This increases likelihood that the participants had a physical relationship with a reservation. The number of participants included in the study is not noted. The paper consistently used percentages rather than numbers (Elma, et al. 2021).

While attorney Clint Bolick examines the negative effect the Indian Child Welfare Act has on children and families who prefer independence from the reservation system (Bolick 2015), Jennifer Hartman focuses on the Violence Against Women Act (VAWA) in an argument intended to tie individuals and families into the reservation system. The sections of VAWA involving tribal members mandate tribal authority. In support of this, Hartman notes that "AI and AN women experience these crimes at a rate higher than the national average." Claiming this is a result of "denied justice due to...federal and state laws and tribal sovereignty," she further claims that additional protection of human rights and delivery of justice can be accomplished through

apologies for "colonization," the use of digital technologies, and by "creating new mechanisms to analyze data trends." Hartman asserts without citation that there is a direct "correlation between colonization and gendered violence and insists that the federal government "implement policies that address the effects of colonization on tribal communities."

Finally, Hartman claims that AI and AN communities have different concepts of "time, family, child rearing, social relationships, and the natural world" than other heritages. Therefore, everyone involved in law enforcement "must" understand, accept, honor and be skilled in all AI and AN "value orientations." Hartman fails to acknowledge that tribal members are not a homogenous group. Worldviews vary widely amongst tribal communities as well as between tribal members. Further, not all tribal members practice traditional religion. The author also failed to note that many tribal members prefer state courts over tribal courts. Limitations of this study include bias on the part of the author. This study is useful as evidence of the iron triangle within Indian Country (Hartman 2021).

Health Economist Y. Natalia Alfonso, et al state that Native American youth have a suicide rate 50% greater than white youth. Risk factors include mental health problems, "depression, trauma, substance use, impulsivity, self-injury, low self-esteem, and hopelessness." Alfonso, et al surveyed 200 AI youth and young adults from the Fort Apache Indian Reservation and found that the general community has rates in both suicide ideation and depression that are of significant concern compared to other cultures. Nonetheless, Alfonso, et al described their data as skewed because out of the 200, only "18 individuals with suicide ideation and 21 individuals with depression" were interviewed. Despite this low sample, the researchers claim that culturally specific Quality of Life values allow the comparison and identification of the most effective and feasible interventions to reduce the suicide burden among tribal communities.

While a CESDR-10 score was used, limitations include the self-reports of participants. Self-reported data has the potential for bias. Participants were also recruited through a local organization on just one reservation and therefore is not representative of Indian Country as a whole. This study is a useful example of the low sampling used in many Native American studies (Alfonso, et al. 2022).

The People Awakening (PA) Project explored an Alaska Native understanding of the recovery from alcohol abuse. Using thematic analysis, Jordan Lewis and James Adams took the stories of ten Alaskan Native seniors from that study and examined their motivation and maintenance for sobriety. The authors assert that older AN adults are motivated to sobriety through “spirituality, family influence, role socialization... and a desire to engage in indigenous cultural generative activities with their family and community.” While the title of this paper is “Linkages between Indigenous Cultural Generativity and Sobriety” and the authors repeatedly stress indigenous cultural generativity; “sharing of one’s culture knowledge” with family and community; and engaging in indigenous cultural activities, they also admit at one point that many of the participants “reported church and prayer, as well as a personal relationship with God, as important factors in the maintenance of their sobriety.” This begs the question whether Christianity plays an influential role in the sobriety of these elders. Limitations of the study include small sample size, self-reporting, and retrospective accounts of the participants. Further, this was not a cross-ethnic comparison analysis of the motivations of other Alaskans but an exploration of patterns within a small sample. According to the authors, the results of this study “should be viewed as exploratory rather than providing definitive answers.” (Lewis and Allen 2017). Of concern is the emphasis on traditional culture despite the testimony of participants that church plays a significant role.

Critical Race Theory

In one of the rare studies that included more than 100 Native American participants, Catherine McKinley, Hannah Knipp, and Jenn Lilly, used a critical ethnographic study and Framework of Historical Oppression, Resilience, and Transcendence (FHORT) to qualitatively examine the parenting skills and disciplinary practices of ($n = 436$) participants from two southeaster tribes. To recruit participants, researchers used tribal government and agency assistance with flyer distribution and word of mouth – ensuring that their participants were connected to Indian Country. "Individuals received a \$20 gift card to a nearby store, and families received a \$60 gift card." Disciplinary themes identified by McKinley, et al include (a) Establishing Structure and Boundaries; (b) Taking Away Privileges and Rewarding Good Behavior; and (c) Teaching Right from Wrong. Researchers did not explain how these disciplinary themes differed from those of other heritages.

Believing there was a cultural sensitivity component to interviews, researchers allowed participants to choose to be interviewed by one of the researchers or a tribal interviewer. All participants chose one of the researchers. This is one indication of a possible bias in understanding of tribal members before the study began. Using a "Toolkit for Ethical and Culturally-Sensitive Research with Indigenous Peoples" and, claiming that Critical Race Theory "recognizes and attends to power differentials in the research process...", the researchers applied CRT to their methods in order to "identify risk and protective factors related to family resilience within these tribes." McKinley, et al also claim that "despite experiencing historical oppression, NAs still report many disciplinary and other parenting practices" – such as "offering praise and teaching acceptable versus non-acceptable behavior" – contribute to "family resilience that were

present prior to colonization." The assumption that "colonization" and "historical oppression" have an ongoing effect on individuals is a second indication of a possible bias in understanding of tribal members before the study began. This study is an example of the use of Critical Race Theory and bias within Native American studies (McKinley, Knipp and Lilly 2021).

"Critical Theory" is a Western European Marxist tradition devoid of connection to or reflection of Judeo-Christian understanding. Instead, it is critical of and "liberating" from traditional theories. According to James Bohman, it "provides the descriptive and normative basis for social inquiry aimed at decreasing domination and increasing freedom in all their forms." Bohman asserts that "critical theory" includes "feminism, critical race theory, and some forms of post-colonial criticism." Currently there is an emphasis on human beings as the "self-creating producers of their own history" with an aim toward transforming "contemporary capitalism into a consensual form of social life."

According to Bohman, the struggles of "aboriginal peoples" are included in this challenge to "the fundamental frameworks of conceptions of democracy, justice, and their interrelationship" (Bohman 2005 (2021 Edition)). He asserts that "As new forms of critical theory emerge related to racism, sexism, and colonialism, reflective social agents have transformed these same democratic ideals and practices in the interest of emancipation" (Bohman 2005 (2021 Edition)). They therefore entrench "new social facts" to transform classic liberal ideals and "their institutional form" (Bohman 2005 (2021 Edition)).

Morris rejects the philosophical musings of critical theory and instead examines measurable outcomes, including current federal Indian policy and its physical, emotional, and economic repercussions on individuals and communities. Violence, criminal activity, child abuse and trafficking are rampant on many reservations. Largely because of the crime and corruption,

many have left the reservation system. The 1990 and 2020 U.S. censuses' report 75% of tribal members do not live in Indian Country. Research suggests current federal Indian policy and the reservation system are built on philosophies destructive to the physical, emotional, and economic health of individual tribal members – and some of those theories are based in critical race theory and its myths and divisions, including cultural-informed education and trauma-informed care (Morris 2019).

Conclusion

What has been exceptional about the United States of America is that when there has been contention concerning treaties, tribal leaders have been able to bring the issue to court for relief. This has not been true for many people groups throughout history – and is not currently true for many minority groups around the world. Philosophy fads aside, measurable evidence shows that allowing property rights for individual tribal members; enforcing rule of law within reservation systems; supporting law enforcement; and upholding full constitutional rights and protections of all citizens would secure the lives, liberties and properties of affected individuals and families and make the reservation system safer for children (Morris 2019). This includes freedom of religion. “Faith-informed” care and counseling needs to be on equal footing with “culturally-informed” and "Trauma-informed" care and counseling.

Outside of protecting the constitutional rights of tribal members, the federal government needs to get out of the business of micro-managing the lives of citizens.

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