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Indian Tribes are Separate Government Units

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AMERICANS for INDIAN OPPORTUNITY

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AN AIO RED PAPER: FOR SOME OF OUR FRIENDS - AND OTHERS

INDIAN TRIBES ARE SEPARATE GOVERNMENT UNITS

Most Americans have only a single citizenship - that in the United States, from which also flows state and local citizenship. But Indian tribal members have dual citizenship. They have the same United States citizenship that all Americans have, in addition to that in the state where they reside. But they also have separate citizenship in their own tribes.

The United States Constitution gave the federal government exclusive authority to regulate commerce with 1) foreign nations, 2) Indian tribes, and 3) the states. And, both before and after the adoption of the Constitution, more than 350 treaties were entered into with the tribes. These treaties were ratified with all the solemnity and finality of any other treaty. Indians are different from other ethnic groups in that their tribal organizations are units of government.

A rapid succession of modern federal court decisions have upheld the powers of tribes to tax, to set up courts and law enforcement systems, to zone, and to license or refuse to license enterprises or activities within the reservation - and thus to limit the powers of states to do these same things within the reservation. A number of laws passed by Congress have upheld the right of tribes as units of government and have moved to strengthen their functions.

Indian tribes have always been recognized as separate governmental units, distinct from the states in which their reservations may lie. The federal system includes local, state, and federal governments and Indian tribes.

MODERN INDIAN SELF-GOVERNMENT

Modern Supreme court decisions and acts of Congress have followed and extended the treaty and Constitutional rights of Indian tribes and the holdings of the early Supreme Court decisions. States or local governments, it has been held, have no jurisdiction over tribes, except

where states have specifically been delegated such power by Congress - and this has been narrowly construed. Tribes have been held to have retained all governmental powers which they have not given away by Congress. Thus, in a rapid succession of modern Court decisions, have upheld the powers of tribes to tax, to set up courts, and law enforcement systems to zone, and to license, or refuse to license, enterprises or activities within the reservation - for both Indians and non-Indians - and thus to limit the powers of states to do these same things within the reservation have been upheld.

Ending the old concepts of "assimilation" and "termination", the Congress has enacted a series of laws - from the Indian Civil Rights Act (which largely applied the Bill of Rights to Indians and non-Indians dealing with tribal governments on reservations - for example, the right to a lawyer in a tribal court proceeding) - to the Self-Determination Act (which seeks to turn over actual administration of a number of federal programs to tribes - just as with state and local governments) - which make clear that it is national policy that tribal governments are here to stay and are to be encouraged in their development. In addition, a recent publication of the Council of State Governments makes similar recommendations for state action to strengthen tribal governments.

TRIBAL MEMBERS HAVE DUAL CITIZENSHIP AND DUAL ENTITLEMENT

American Indians are entitled, as United States citizens, to all the services of the agencies and the departments of the federal government, not just the Bureau of Indian Affairs. Individual Indians are no longer considered to be "wards" of the government. Individual Indians do not receive some kind of regular payment from the federal treasury.

Indians also have a second dual entitlement to government services. This results from the United States Constitution, treaties, and laws passed by Congress. Indians are entitled to special attention to their health, housing, education, and other needs. These rights, particularly in modern times, have been grounded too, in the fact that American Indians fall so far below average national standards in these and other social economic areas. American Indians are the poorest people in this country - despite the fact that many of their tribes own considerable amounts of land and valuable natural resources. We still have the lowest family income, the highest unemployment, the lowest educational level, the poorest health, and the poorest housing.

In the past, the Bureau of Indian Affairs administered all the federal services for Indians and tribes. Because these programs were poorly funded, the Indian service delivery systems fell far behind. Also, Indians did not receive federal assistance programs available to all citizens. Resources - which are considerable - are exploited by outsiders, for low-level lease payments only.

TRIBES ARE MOVING TOWARD ECONOMIC SELF-DETERMINATION

Indian tribes own the largest units of privately owned land in America. They own large percentages of America's timber, water, coal, uranium, oil, gas, and other minerals. Yet, Indians are some of the poorest people in America. One of the reasons is that the federal government for too long encouraged Indians and tribes to lease their land and natural resources to non-Indians and non-Indian corporations for low-level lease payments (with no right to share in management or the resultant jobs, risks, and profits) and then encouraged the individual Indians to move from the reservations - away from friends, family and reinforcing traditions and customs - to the cities. Indian leadership has brought about a change in this practice. More and more, it is being recognized by the non-Indian community, too, that America was never a "melting pot", where everyone must look alike, speak alike, live alike, worship alike, but it is a place where there should be pride in difference, where the strength of a pluralistic society should be built upon.

There has been a kind of "Indian Renaissance" - a renewal of pride in the old ways. The reservations have proved to be enclaves of cultural preservation from which individual Indians can draw reinforcement. And Indian tribes have begun to move to wrest back control of their own land and natural resources and to build upon this economic base in ways which to them seem culturally, economically and environmentally sound.

INDIANS CONTRIBUTE TO THE OVER-ALL ECONOMY

There is a general misconception that Indians take from the economy and do not contribute. Even in this "enlightened" day, there are many who believe that Indians sit on their reservations drawing checks from the government every month and not paying taxes. The truth is that Indians make an enormous contribution to the communities in which their reservations are located. Indian governments do receive money from various federal agencies just

as cities, counties, and states do. Indians also generate income from their resources, businesses, and from individual employment. All this money goes off the reservation into the surrounding community often without even turning over one time. Indians pay all taxes except property tax on trust property, and state income tax if they reside on a reservation. They buy almost all their food, clothing, gasoline, cars, appliances, etc., in non-Indian communities. Non-Indian contractors get a great majority of the construction monies for Tribal buildings.

Much of the anti-Indian "backlash" we have experienced in recent years could be eliminated if the non-Indian community understood the inter-dependence of the two communities and that a prosperous Indian community is good for everybody.

This is the kind of information AIO provides to both the Indian and non-Indian communities to promote greater understanding and harmony.

SERVING THE INTERESTS OF NON-INDIANS

Most states, have worked hard to get new federal installations - such as a solar research facility, say - located within their borders. State court jurisdiction does not reach to such federal installations, nor can the state tax them. Yet, states and local communities greatly desire them for the federal dollars they bring in and for the jobs they create, directly and indirectly. A great many local communities are quite happy to issue tax exempt revenue bonds to build non-taxable plants for lease to private industries, because these industries mean more local jobs.

It is important to note that in many such states there are already, in the form of local Indian tribes, a number of such installations and industries which bring in millions of outside dollars, that are mostly spent off the reservations, and thousands and thousands of jobs.

"Yes, but they're saying we can't tax Indian reservation enterprises", some say. The Indian answer is: "Well, you're glad to have Andrews Air Force Base, and you can't tax its commissary; you can't levy a tax on the residences in Yellowstone National Park".

"Yes, but I'm subject to the tribal court's jurisdiction if I speed on the reservation at Laguna Pueblo, and I have no right to vote for the election of the tribal officials", some say. The Indian answer is: "Well, a resident of Tucson who speeds in Albuquerque is sub-

ject to Albuquerque jurisdiction, without the right to vote there".

"Yes, but Indians claim all the rights of state citizens, and they don't contribute", some say. The Indian answer is: "Well, first of all, Indians pay federal income taxes on their wages and salaries, and they pay state and local sales, excise, income and ad valorem taxes on off-reservation purchases and on non-trust property and income - and the state governments are called upon to provide only the most minimal services on the Indian reservations. Non-Indians should be happy if Indian tribes are willing to take care of their own court, law enforcement, zoning, licensing, and other governmental services."

COOPERATION IS THE ANSWER

There are a number of complex issues in state-tribal relations - issues of mutual interest, including law enforcement, zoning, planning. In a number of states, tribes have taken the position that these issues ought to be resolved by agreement. This is also the recommendation of the American Indian Policy Review Commission, created by Congress. Each local situation may be different. Americans for Indian Opportunity believes that conflicts can be worked out, so long as state governments recognize that tribes exist, constitutionally and legally - and have a right to exist - as separate units of government. More and more state governments are understanding this. More efforts at cooperation and conciliation can be expected from the states.