

The Canary in the Coalmine— The Tragic History of the U.S. Government’s Policies Toward Native Peoples

By Robert O. Saunooke

In 1939, Felix Cohen became chief of the Indian Law Survey, an effort by the federal government to compile the federal laws and treaties regarding the “American Indians.” The resulting book, published in 1941 as *The Handbook of Federal Indian Law*, became much more than a simple survey. The handbook was the first to show how hundreds of years of diverse treaties, statutes, and decisions formed a comprehensive whole. Today, Cohen is credited with creating the modern field of federal Indian law or, as Roy Cypress, vice chair of the Miccosukee Tribe of Indians of Florida, states, “Federal law as applied to Indians.”

Cohen famously wrote: “Like the Miner’s Canary, the Indian marks the shift from fresh air to poison gas in our political atmosphere and our treatment of the Indians, even more than our treatment of other minorities, reflects the rise and fall of our democratic faith.”

We tend to forget the great debt that we still owe the Native peoples of this continent in so many ways. The broken promises, quick detentions, and systematic ending of their collective cultures should have been a warning to us all.

The late Senator Daniel Inouye (D-HI), who sat on the Indian Affairs Commission,

pointed out in a 2004 interview that there had been a marked rise in debilitating health issues for most Native nations. This included unemployment, diabetes, heart disease, educational stagnancy, high suicide rates, and a lack of criminal prosecutorial protection with more than 4,000 missing and murdered Indian women going unsolved and unpunished.

The history of the federal government’s policies toward Native peoples is a tragic one that is often overlooked. The 1800s involved a policy of genocide and termination against the Native nations, followed by a systematic cultural annihilation all the way until 1925, when the last school/orphanage for Native children was officially closed. By 1890, 98 percent of the entire Native population was gone. Yet, in 1892, President Benjamin Harrison declared Columbus Day as a one-time, national celebration, and since 1968, Columbus Day has been celebrated as a federal holiday.

As we watch with wonder at what is unfolding in our nation’s capital and the polarization of political, economic, and even religious ideals, we need look no further than Native reservations to see the resulting impact that the experiment called democracy has had on this country. The influence of Christian churches in the

management of reservations, failure of governmental accountability, and lack of compliance or honoring treaties and agreements are all rooted in a long, sad history of U.S. policies and interaction with Tribes and Tribal governments.

Beginning in 1972, executive orders required mandatory consultation between governmental agencies and federally recognized Tribes. Yet, consultation with U.S. Department of Justice issues did not occur until 2007. In 1999, President Bill Clinton became the first president in 50 years to visit a reservation when he visited the Pine Ridge Indian Reservation in southwestern South Dakota. Pine Ridge historically has been the poorest community in the United States, with 60 percent of its citizens living below the poverty level. Unemployment is regularly in the 70 percent to 80 percent range. Life expectancy is less than 55 years. Still, it took decades for a president of this country to visit what amounts to colonies within the country.

To put the canary in a coalmine image into real-life perspective in South Dakota, Native people represent 5 percent of the total population while 29 percent are currently in the prison system. Native American men are admitted to prison at
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EDITOR’S NOTE

Planning an issue of *The Judges’ Journal* takes months. Each issue is driven by a volunteer, who enlists volunteer authors, who then works with a volunteer editorial board. With the help of all our fabulous volunteers, we are pleased and honored to provide this edition on Tribal and Native American legal issues.

Obviously, the work for this effort started long before the nightmare that is COVID-19 reared its ugly head. And the articles presented here do not address the virus. That is intentional. Instead, leaving to many other daily (if not more frequent) communications on COVID-19, our volunteer authors have done just what they agreed to do long ago: provide insightful, thoughtful, and thought-provoking articles on Tribal and Native American legal issues. We are delighted and honored to publish these articles. Our hope, in staying true to the focus of this issue, is to provide food for thought for reflection on these important topics. Reflection is a great thing. We hope that these articles provide a different perspective on these topics and cause reflection on these important issues, leaving for others the important updates on COVID-19.



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