

# CENTER FOR PUBLIC CONSCIENCE

P.O. Box 220722  
WEST PALM BEACH, FL 33422-0722

Bromwell Ault, Founder/Editor  
Phone (561) 697-2233  
Fax (561) 242-9264

www.CenterforPublicConscience.org  
Email: moconscience@aol.com

Sandra Beck, Publisher  
Phone (561) 784-9444  
Fax (561) 784-9052

# MATTERS OF CONSCIENCE ©

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## IN THIS ISSUE

Our feature article is concerned with the failure of a key, cabinet-level government agency, the Department of the Interior (DOI) through its Bureau of Indian Affairs (BIA), to provide the protection to the Indian tribes for which it was created under a joint treaty.

Institutional failure on the scale evidenced in our government's actions, and lack thereof, in its dealings with our native Americans does not come easily. It requires effort and purpose. Suffice it to say that for over a century a relatively obscure government bureau, the BIA, has consistently engaged in a form of institutional betrayal that knows few equals in government or the private sector.

We have emphasized institutional failure before and will continue to do so in the future, as it is a key indicator of the health of any society.

In this issue we will refer to our Indian population by a variety of names, all of which hopefully convey the dignity to which they are entitled, but which has been sorely missing in their treatment by our government

## NEXT ISSUE

We will revisit some of the themes from prior issues to provide a summing up of America's position as sole superpower at the commencement of the 21<sup>st</sup> century, and of the ethical and historical demands that position makes on our government and us. Is this position consistent with the thoughts and values that emerged from our Declaration of Independence and Constitutional Convention? This, it seems to us, is the central question for America and Americans at this time and place in our history.

## INTRODUCTION

Just a couple of weeks after our last issue appeared, one of our readers asked what the subject of the next issue would be. We said the primary subject would be the maltreatment and abuse of the Indian tribes by the DOI over many years. The reader then inquired, "Will it be all about them?" We replied, "Not exactly", and switched the subject, leaving the question hanging. You'll find the answer at the end of this article.

Our relations with native Americans go back to the first permanent settlement in 1607 in Jamestown, VA. In the intervening four hundred years the contacts between the white settlers and the Indian tribes occurred at many different times, in many different places and under many different circumstances.

There are conflicting tales of cruelty and kindness, honor and dishonor, bravery and cowardice on both sides of the wars that were fought. We take some snapshots along the way, but they can provide only isolated moments of history.

The Indian wars in the US were both territorial and cultural, and from their earliest beginnings the end was pretty much inevitable. Victory would go to European settlers with their advanced weaponry once they could adapt to the land's vast spaces and survival requirements.

By the late 19<sup>th</sup> century, after 300 years of bloody battles and meaningless treaties, those Indian tribes that remained were forced to capitulate and were assigned to reservations to live in a separate society.

At this time, 1887, the management of all Indian political, economic and social affairs was placed in the BIA. And at this time, also, began the persistent patterns of fraud and deceit and corruption that marked our governmental supervision of the native tribes.

## BACKGROUND

It would be difficult to argue that, since the arrival of the European colonists in America in the early seventeenth century, life for the native inhabitants has not taken a decidedly downward direction which, with the exception of occasional upticks, has continued to our present time.

The colonists saw themselves as representatives of a superior culture and religion whose survival in their new and vast wilderness was an absolute necessity that justified almost any means.

Efforts to forge a practical coexistence were made by both sides, but were largely doomed to failure because of attitudinal and cultural differences between the naturalist natives and the more technologically and economically advanced new arrivals.

Agreements were made and broken and, sometimes, seemingly made to be broken. These failures led to clashes, retaliation and outright, prolonged warfare in the earliest colonies in Virginia and Massachusetts. Sadly, a reading of accounts of the Indian wars in both Virginia and New England reveals the commission of acts of torture and great cruelty by both sides against not only the combatants but also the women, children and elderly bystanders.

For the Indians, it was an inauspicious beginning to an impossible journey played out across the North American continent over several hundred years. For the various native tribes and nations the land provided food, water and shelter. It was not theirs. It was just there, and had been for as long as they could recall. For the settlers from Europe the land also provided a means of subsistence, but it carried with it another function. It could be taken, bought, sold, exploited — in short, owned. This was a concept unknown to the native inhabitants.

Land ownership was the economic base in 17<sup>th</sup> century

England and would remain such until the industrial revolution, and its resultant mercantilism of the 19<sup>th</sup> century, brought forth a new and extended form of capitalism.

In any coming together of populations a variety of exchanges takes place – some conscious and others not. Sometimes they can be seen as gifts; and other times as curses. Eventually, history, or fortune or human error will sort these out and render a final verdict from a perspective that only time permits, and that is far removed from the actual interplay between forces as it occurs.

“Their life was one of being hated, hunted and herded...”

The impact of European colonists in the US over the three hundred year period from 1600 to 1900 on the physical and cultural life of the native tribes was disastrous. Their life was one of being hated, hunted and herded in spite of having entered into numerous treaties that claimed to offer them peace and protection.

Initially this process of destruction and removal was not a seamless one created by a central authority. Rather, it took place in many unrelated events and places. Whether small or large, near or far, the acts of deceit and violence reflected a mindset that was shared by a majority of its citizens.

There were always exceptions to be found, but the engines of land ownership and territorial expansion drove the issue from one battle to the next and ultimately to its sad conclusion. In the process there were points, other than battles, at which the two cultures touched and which did severe damage to the Indian nations' way of life.

The first gift of the English colonist to the resident tribes was that of disease — both venereal and other forms from which, because of their lack of any prior contact, the Indians had no

immunity. The effect of this rush of Western European disease on the native tribes was devastating.

We must recall that tribal healing was a matter for witch doctors and illness was caused by anger of “the spirits” and other non-medical circumstances. In addition to the absence of any immunological resistance, tribal lifestyles and the means of transmission were important factors in the impact of disease.

In the case of venereal disease, for instance, transmission was not achieved by a mass coupling as soon as settlers arrived. The nature of the communities gives every indication that sexual contact between colonists and natives was sporadic and not widespread so that, like other diseases transmitted by less intimate means, the infection occurred without the participants' knowledge and could pass far beyond its place of origin.

For the native Americans, once the English ships put ashore, they were faced with a serious health menace, beyond their experience and comprehension, which could move among them, quietly and quickly, from person to person, settlement to settlement and tribe to tribe!

This would have been bad enough had the two populations existed in a static circumstance, but for three hundred years the dominant force in our country's economic and social development was the expansion of the frontier westward and the settlement of the lands that our exploration allowed us to claim.

As the variety and number of European settlers increased and the push westward accelerated, so did the risk of contamination by non-native diseases.

The next notable culture clash with our native hosts had to do with the highly developed English, and western European, sense of ownership, especially as it pertained to land. The American colonists came from a Europe where monarchies and other titled families ruled and controlled the

land. It was a world of boundaries which were not easily crossed, and bore no connection to the vast, open continent that stretched across North America, all seemingly theirs for the taking.

In the beginning colonists were relatively few in number, their settlements small, sparsely placed and well-contained. Any expansion was at the individual or village level — a house, school or church here; planting fields or, perhaps, a cemetery there. Because of this scale the pressure of expansion upon the resident Indians was both scattered and subtle.

It was not to remain so, for, as population and the need for land to support it increased, so did the pressure upon the native tribes that coexisted with settlers of the Atlantic seaboard region. The calls for their removal now meant relocation to the far side of a river, to beyond the nearby range of local mountains or to the limits of the forests from which they obtained their game.

“Whatever value they derived from treaties or alliances with England and France no longer existed”

Even with this step-up in place and numbers, the overall scale of expansion and appropriation of Indian lands continued at a relatively modest pace until the last quarter of the eighteenth century. In 1776 with the Declaration of Independence the colonists achieved a new freedom to act on their own. For the native tribes it meant that whatever value they derived from treaties or alliances with England and France no longer existed.

But the Declaration of Independence was only a hint at what was to come. In 1789, with the adoption of the Constitution, America was transformed from group of colonies into a single nation. In 1803 the enormous

territory claimed by France that stretched from the Gulf of Mexico to our Canadian border was annexed via the Louisiana Purchase. Shortly afterwards, Lewis and Clarke commenced their three-year journey of mapping and exploration that effectively established our physical and psychological reach to the Pacific.

No longer an individual effort, but rather a national purpose, from then on there were no practical, or other, limits to our attempts to close the frontier and fill in the empty spaces. The frenetic pace of development was further spurred on by events such as the Gold Rush, the Land Act of 1862 and the growth of the railroads.

There was nothing the various Indian nations could do. While in their relations with each other they could contest the right to hunt game or to fish streams in certain areas, they simply never grasped the concept of ownership of land — until, of course, they were forced to, by which time it was too late.

In a brief moment of three centuries they passed from sole occupants of their continent to a remnant population herded onto government reservations that were mostly situated on poor and unproductive land.

The plot thickens and the pace quickens; for at the same time that we, now a nation, were taking tribal lands, we were also killing off the massive buffalo herds that fed the Indians and managed the prairie agriculture of our broad, western flatlands.

Wherever there were buffalo, there were buffalo hunters who made their kill pretty much at point blank range. Carcasses were skinned and the meat, because it was too heavy to transport easily or economically, was often left to rot, as the profit for the hunters was in the hides that were made into robes for the laps, walls, beds and coaches of nineteenth century America and Europe.

“... but the flora and fauna of the American west would never be the same .”

The decimation of the buffalo herds was of such fury and efficiency that in the brief span of half a century these non-predator, grazing animals passed from abundance to scarcity in their natural environment. Extinction was only avoided by human intervention and protective programs, but the flora and fauna of the American west would never be the same.

Throughout our contact with our native hosts they were frequently characterized as “heathens” and “savages”, and attempts were made by the less violent and well-meaning elements in our society to introduce them to the practice and benefits of Christianity. Sometimes these efforts were successful; at other times not.

Two transplants from our culture to theirs, however, were successful. The first was firearms which Indians were able to obtain by capture and by purchase. Firearms enabled the tribes, especially in the west, to kill more buffalo and more whites. The results were less food and greater retribution, both of which hastened the end of the Indian capacity to resist their eventual destruction.

The second transplant was firewater which, of course, was the Indians’ name for that ever-present staple of frontier life — whiskey. There is a distinct difference between some ethnic/cultural/genetic groups as to their tolerance of alcohol.

The ability of the American Indian tribes to use and casually enjoy alcohol would, we suspect, have to be at the lower level of any ranking of its tolerance. For native Americans, whether free or on reservations, use of booze turned out to have long and negative social, economic and health consequences for their communities. Firewater or firearms? Take your pick. Both

were equally destructive.

In the great lottery of life not all things, especially luck, are constant. Fortune's progress, whether favorable or disastrous, can be steep and sudden or gradual and slow, but whatever the overall pace and direction, momentary reversals are bound to occur.

And, the fate of the native American nations was no exception. For a while they could enjoy the illusion that they had suffered enough, had taken the worst that life and justice in nineteenth century America could offer. But, sadly, they were wrong and more of the same was to come.

Over the course of our western expansion the government employed a two stage policy for the removal of Indian tribes from the pioneers' path of settlement.

The first stage was physical force and containment. Originally this force was applied mostly by settlers, but after the Mexican and Civil Wars the nation found itself with a standing army which, in response to settlers' calls for protection, was moved into our western areas to defend our growing presence from attacks by marauding tribes.

Over time, the latter found themselves facing a web of armed forts manned by professional soldiers whose mission was to help establish law, order and safety in the newly settled areas.

Then, in the next stage, dealing with a weakened remnant, treaties were entered into which called for the removal of the tribes to lands ever further west. The land selected for Indian reservations was certainly not the best available, and some of it was of little value for any of the Indians' life supporting activities of hunting, fishing or growing crops.

With reference to the latter a typical example of the kind of thinking and treatment the Indians faced in Washington occurred in 1890 at the Pine Ridge Agency for the Sioux tribe in South Dakota. Rations there had been cut because Washington bureaucrats believed

that such a reduction would force the Sioux to increase their agricultural production. The bureaucrats did not understand that the type of land at Pine Ridge could only be farmed by methods for which the Sioux lacked the necessary equipment.

Gradually, in bits and pieces, the government had set aside some 30 million acres for Indian reservations<sup>1</sup>. These were spread over a mix of western states and among the various native tribes. Thirty million acres under any circumstance is a sizeable amount of land which the native Americans, even though they had been bullied, beaten and deceived over a lengthy period, could contemplate with some degree of security, if not satisfaction, for their future.

But, by the last half of the nineteenth century, the demands of our westward expansion had become increasingly numerous and insistent. The Gold Rush, Pony Express, transcontinental railroads, Homestead Act and growing commercialization along the Western waterways pushed more people into and across the western states with the result that the government began to regret its earlier largesse.

In 1887 via the Dawes Severalty Act, our government greatly reduced the size of the reservations that then existed leaving the Indian tribes with only about ten million acres in plots of about 100 acres each which were assigned to individual Indians. The twenty million acres removed from the reservations mostly ended up under either private or public white ownership. This enormous property transfer not surprisingly resulted in allocation of the more marginal lands to the natives and the better acreage to the government.

Again, the concept of ownership, and the tribe's inability to understand it, becomes an important factor in their treatment by the government. The native population consisted of many different tribes with different

customs and dialects that lacked the comprehension of language, politics and economics necessary to assert and protect the rights they had obtained by treaty or domain.

Under the Dawes Act, the BIA was established to bridge the gap between ownership and management of tribal land by holding it in trust for those to whom it had been ceded and their descendents. And therein lies the origin of our long and continuing problem.

The establishment of the BIA as a trustee was based on the entirely correct assumption that the Indians lacked the necessary education to engage in commercial development of the lands allotted to them. BIA could not sell these lands, but it could lease them to oil and mining interests, monitor and collect royalty payments and then transfer these receipts to the Treasury Dept. which would issue credits to specific landowners and send checks to them.

“...pawns in a game the rules of which were never revealed to them”

The possibility of large scale fraud and abuse beckoned, and the BIA was quick to create a kind of “trust us justice” to take advantage of the opportunity. It was the beginning of a bureaucratic mindset that did away with any obligation to the native American landowners and reduced them to pawns in a game the rules of which were never revealed to them.

## The Ponca Parable

Before leaving the 19<sup>th</sup> century we will tell the story of the Ponca tribe<sup>2</sup> because it is, with variations of one kind or another, representative of the government's dealings with many of the native tribes.

The Poncas were a small tribe that lived a hard life along the Missouri River in the Dakota Territory. They engaged in some agriculture and were frequently preyed upon by their Sioux neighbors. In 1858 their considerable land holdings were reduced by general seizure and what territory they were permitted to keep was ceded to them by treaty.

Ten years later the Treaty of Fort Laramie established a large land reserve for the Sioux tribes in which the Ponca territory was included by mistake. When the error came to light, the federal government did not want to risk angering the Sioux by reducing their lands and, instead, forcibly removed the Poncas to what was then known as the Indian Territory and is now Oklahoma.

The circumstances of this removal were extremely brutal. The soldiers in charge were provided with horses and wagons but the Poncas were largely forced to walk with the result that only about 60% of the 730 Poncas who started the trek survived. Included in those who later succumbed to the hardships of the journey was the only son of Chief Standing Bear who, prior to his death, had asked to be buried in the tribal homelands in the Dakota Territory.

In 1879, in order to honor his son's last request, Standing Bear and a few companions headed north with the son's body and, when they reached Nebraska, found some comfort and refuge with the friendly Omaha tribe. Their sad mission had engaged public attention, however, and they were arrested by US troops who intended to return them to Oklahoma.

“... in a historical decision declared that an Indian was legally a ‘person’ with standing under our legal system”

In addition to public concern, their plight had attracted the attention and help of two important lawyers who filed suit in federal district court to prevent the tribe from being forced to return to Oklahoma. The Poncas and their attorneys prevailed in this matter before Judge Elmer S. Dundy who in a historical decision declared that an Indian was legally a “person” with standing under our legal system.

Litigation continued for another two years in an attempt to have the Poncas' original land returned to them, and eventually a compromise was reached whereby the Department of the Interior paid the Poncas \$165,000 and both the US Congress and the Sioux nation agreed that Standing Bear and his followers could remain on Sioux lands.

So there it is; one small chapter in the history of our relations with those with whom we fought for possession of the emerging USA. It wasn't a pretty chapter. It reveals deceit, brutality, bungling, cynicism, arrogance and violence, but in the end, probably more through good fortune than anything else, there was some measure of justice.

Such a result, however, was far more the exception than the rule in Indian matters. The Poncas had been lucky in enlisting the aid of journalist Thomas Henry Tibbles who provided attorneys for the Poncas and made it possible for their suit to be brought before a decidedly sympathetic Judge Dundy in District Court.

For the general run of tribal grievances, no matter how severe their maltreatment, nor how duplicitous the dealings by the government, they were unlikely to be resolved by access to our court system. But beyond the agreeable effect upon the Poncas' status, their litigation brought enormous benefit to all American tribes.

Thomas Tibbles married Bright Eyes, the daughter of an Omaha chief, and gave up his journalistic career to focus entirely on

improving the lot of his wife's people. The Tibbles moved to Boston where they joined forces with others to publicize and promote the cause of Indian rights. The Tibbles and Standing Bear spoke to greatly interested audiences in Chicago, New York and other cities and, most importantly, formed a center around which those individuals and organizations committed to Indian rights could gather and expand.

In his later years events did not work as well for Tibbles. Bright Eyes died and he resumed his newspaper reporting in Omaha. He suffered a falling out with some tribes over the question of assimilation, but his real work for which all native Americans owe him a debt of gratitude had been done.

## MIDDLE GROUND

In the early part of the last century, as America entered the automobile/petroleum era there was an uptick in the affairs of the Indian tribes, as some of their lands were found to overlie oil bearing strata. The early days of exploring for oil were marked by fierce competition with no controls over where or how many wells could be drilled in any area.

This meant that small land parcels, such as those held, or shared, by many Indians, could accommodate one or more wells. It was not unusual in the '20's and '30's to see photos in the sepia tone, photogravure Sunday newspaper section of an Indian family posed in front of its modest home or tepee dressed in formal white man's clothes with several expensive cars in front of one or more oil wells.

Such displays of wealth only targeted the tribes for instant exploitation by one scam or another with the result that prosperity could be fleeting, as tribe members were cajoled and tricked into parting with their mineral rights.

It would have been comforting

had the oil revenues provided a comfortable living income for the entire native American community, but it was not to be. And, after the brief relief of the early oil plays had passed, and we moved further into the twentieth century, it became apparent that more troubles were in the making.

The twentieth century was a roller-coaster ride for America. We engaged in four major wars and the Cold War, and yet, with the exception of Pearl Harbor which in 1941 was a territory, not a state, our homeland did not come under any sea, air or land attack.

Our economic history shows a very similar profile. We emerged unscathed from WWI and rushed into the jazz age of the 20's. This ended in 1929 and we endured a decade of extreme economic pain during the Great Depression. Again we faced war from a protected position which, at its end, found us economically and militarily stronger than our wartime allies and enemies and more capable of commercially exploiting the technological advances spawned by military needs.

“We didn’t know the words, much less the music, but we faced a full house and had to perform.”

Knowingly or not, whether we liked it or not, we had been shoved onto the stage of superpower. We didn’t know the words, much less the music, but we faced a full house and had to perform.

This twentieth century turbulence stands in sharp contrast to life on the Indian reservations where continuous alcoholism, extreme poverty, poor education and public health created a culture of despair devoid of all but the most minor opportunities. On our Indian reservations there were no ups, but only a long, flat economic and spiritual depression.

There were occasional

moments of guarded encouragement as when, during WWII, a group of our native Americans was selected by military intelligence for highly important cryptographic work because of their unique verbal language patterns.

And, after that war, the GI Bill provided free college educations to all who had served in the armed forces. Relatively few native Americans had the educational background to do college level work and, of those who did, even fewer were able to escape from the culture of the reservations.

In the post war years, sporadic efforts were made by local and/or federal agencies to provide employment for members of the native tribes. These often proved unsuccessful due to the remoteness of the reservations and because government thinking favored programs which could build plants, buy machinery/equipment, hire employees and sell a product.

“...with every failure and return to the reservations their way of life for the tribes was reasserted”

These attempts to fit unemployed Indians to this economic model were, for the most part, so at variance with their background and culture that they not only failed, but also created ill will in both communities. And, of course, with every failure and return to the reservations their way of life for the tribes was reasserted.

For a century that completely transformed America by its technological and marketing advances, and created enormous wealth from them, it could claim little change in life on our reservations.

## FOREGROUND

At this point one could easily be tempted to think that our native tribes had endured enough

misfortune and that their luck and lot in life might take an upward turn. To some extent this became true, when a small group of supposed descendents of the Mashantucket Pequod tribe in CT was granted a license to own and operate a gambling casino. We say “supposed” because there has been speculation that no genuine Pequod heirs exist and that the licensing effort was mounted by other interests.

The first exercise of this freedom by the Pequods was the construction of a large and successful casino at Foxwoods, CT which immediately served notice upon Atlantic City and Las Vegas that there was a new player at the table. Drawing its customers mostly from the wealthy and populous northeastern states, it has proved to be an outstanding success, making multi-millionaires of its small group of Pequod founders.

Once out, this Indian genie had no intention of returning to its bottle, and casino gambling spread to many other states, sometimes on reservations and sometimes not, where tribal descent and ownership could be asserted.

The results have been mixed. There are glossy casinos on the more accessible reservations and on boats/barges on our rivers where the parking lots are filled with limousines, tour buses and sleek, expensive cars.

And there are also the smaller roadside casinos that serve a different clientele and fill their parking lots with older, faded and dented cars and pick-up trucks. One gets the feeling viewing them that the phrase “discretionary spending” has taken a mean turn.

Still and all, make no mistake about it; casino gambling operated by our native tribes amounts to a multi-billion dollar industry in the USA with revenues estimated at \$18.5 billion in 2004, a ten percent increase over 2003’s \$16.6 billion. The latter represents 23% of 2003’s estimated industry total of \$72.8 billion<sup>3</sup>.

## The Tale Of The Tiguas

Enter Jack Abramoff  
& Michael Scanlon

Big money gives off a powerful aroma which is absolutely irresistible to politicians, lobbyists and those it touches, whether at the center or the fringe.

The Tiguas are a Texas tribe with a reservation in El Paso. For many years they suffered the usual problems of low employment/education and high crime/poverty, but forged a way out of these patterns when, about 10 years ago, they built and opened the Speaking Rock casino. It became an immediate success and grew to the point where it employed 1100 people and generated annual revenues of \$60 million<sup>4</sup> which were applied to worthwhile community purposes such as healthcare, housing and education.

OK so far? It would seem so, but in February '02 a federal court ordered the closure of Speaking Rock. The Tiguas knew they had to move fast and that, as their shut-down came from a federal court, their line of response would be best directed to Washington, rather than local TX courts.

With big money at stake and fast action required, it was clear that influence was a must, and that meant a lobbyist of which there are some 30,000 in DC. The name that floated to the top was Jack Abramoff who seemed to have all the requisite credentials — backer of Republican causes, close connections to Tom DeLay and a senior member of a large Washington law firm with top drawer corporate names as his clients.

“The die, in casino or any other language, was cast.”

The contact was made. Abramoff offered his services

without charge, but agreed to do business in the future and spoke sympathetically of the Tiguas' case. The die, in casino or any other language, was cast.

However, Abramoff indicated he would need to have a fee of \$4.2 million paid to Michael Scanlon, a Republican party fundraiser, and another \$300,000 for political contributions. The Tiguas, of course, agreed. Abramoff and Scanlon were known in Washington to be concerned with Indian gaming issues and the former was referred to in some quarters as “Casino Jack”.

But there were many things the Tiguas did not know about Abramoff & Scanlon, and would only learn later, much to their regret.

Abramoff and Scanlon had been employed by another Indian tribe in Louisiana who viewed Speaking Rock as unwanted competition and directed Abramoff and Scanlon to get rid of it.

The two lobbyist partners brought community religious pressure from Ralph Reed (formerly of the Christian Coalition) and James Dobson (of Focus on the Family) to bear on Texas officials by claiming tribal casinos were a violation of Texas law. And both lobbyists had long, strong associations with Tom DeLay at the top of the Texas political structure.

Reed claimed he never represented any casino interest, which may be technically correct, but over \$2 million of fees paid to him were funneled through a little known consulting firm located in Michael Scanlon's house in Rehoboth Beach, DE whose two listed employees were a former lifeguard and yoga instructor. It is difficult to escape the conclusion, from the testimony before the Senate Indian Affairs Committee, that Scanlon's firm was anything more than a letterhead laundromat.

The Tiguas, whom Abramoff had told he would not charge a fee, also were unaware that he was receiving half of the fees paid to

Scanlon. And, perhaps even more outrageous, it was reported that Abramoff and Scanlon had charged some Michigan tribes \$4.5 million for a database of Michigan Republican voters when a list of all voters in the state was available from it for \$75,000.<sup>5</sup>

It should be of little consolation to them, as their casino remains closed, that the Tiguas were not alone in their dealings with Abramoff and Scanlon, as testimony during the Senate inquiry revealed that over three years six tribes paid at least \$66 million to them, and of that amount each personally received \$21 million.

The lesson of tribal gaming is two-fold. It has created great wealth in some areas and not in others. And just when you think that things may be getting better for our native Americans, something worse happens.

“What sets this tale apart, what makes it truly extraordinary, is the extent and degree of the apparent exploitation and deceit.”

Sen. John McCain, R-AZ  
Member, Senate Indian  
Affairs Committee

Lo, the poor Indian!

Ask Your Dealer,  
Not Your Doctor

At this point, the trials and afflictions visited upon our native tribes might seem to be at the top of the Biblical/Job scale, and that fate or divine intervention might offer some relief. Unfortunately, there is only more of the same to come.

Some of our Indian reservations are located near our southern and northern borders where drug trafficking is a constant of life, where poverty, poor health and education and a pervasive ennui are rife, where entertainment is centered mostly around TV and where law enforcement is limited. All of these factors serve as an open invitation to drug dealers.

Even the BIA concedes that “the drug trade’s influence on reservations has accelerated a corrosion of native American culture for communities that have long struggled with unemployment and alcohol abuse.”<sup>6</sup>

On the Tohono O’odham Reservation that lies along our Arizona/Mexico border more than 2,500 vehicles left by smugglers were recovered by tribal police in 2003.<sup>7</sup>

Commenting on the effect of the continuing traffic in drugs and aliens, Vivian Juan-Saunders, Chairwoman of the Tohono O’odham Nation stated “People just don’t feel safe in their own community anymore”.<sup>8</sup>

#### At The Cabinet Level, Collusion, Corruption And Culpability

The President’s cabinet consists of about a dozen officials who represent our military, security, diplomatic, economic and legal interests. They serve at the head of the various departments and bureaus which are our government’s gears and all of which, because of their interrelatedness, have to be put into motion and made to operate simultaneously in order for the government to function.

“... both departments bear, and share, responsibility for their treatment of the tribes”

Because the trustee and payment function is shared by the Depts. of Treasury and Interior, whenever we refer to one, and the context makes it appropriate to do so, we include the other. It is important to recognize that both departments bear, and share, responsibility for their treatment of the tribes.

The DOI is a highly important presence in the cabinet as it

manages and controls our most valuable public assets such as land, mines, oil & gas deposits and national parks and waterways. It engages in ranching, mineral extraction and reserves storage, tourism and commerce on our national waterways.

The BIA was established within the DOI because our native tribes had been resettled on reservations carved out of federal lands. The sole function of the BIA was to manage their property and business affairs for their benefit.

In short, the BIA had a fiduciary responsibility which it has failed with flying colors. This is a phrase we do not use lightly, but rather because we see the BIA/DOI as the poster boy of institutional failure in government. This, too, is a charge we do not make lightly. But make it we must.

The kind of financial abuse practiced by the BIA does not come easily or casually, as you will see from our report on the Cobell litigation below. It has to be purposeful, persistent and single-mindedly pursued so that it completely dispels any qualms of conscience or consideration of the ethical dimensions of the BIA’s and its employees’ actions.

The extensive mismanagement over a prolonged period of time suggests that those responsible were so engaged in their fraud and deception as to enjoy them and, somehow, find them acceptable. Quite simply, they gave it their best.

#### Blackfeet vs. Black Hearts

With the establishment of the BIA in 1887 by the Dawes Act it had the right as trustee to lease tribal lands to coal, timber, oil & gas and mining interests from whom royalties were to be collected and then distributed by the Treasury Dept. to either the tribal or individual owners.

One glaring fault in this system

that has been apparent since its inception was its lack of transparency, as the royalty recipients received only a check from the government with no identification of the lessee.

Also, over the course of its stewardship, BIA payments were routinely issued without any accompanying documentation as to how much had been produced at what price or location during what time period. Mary Fish, a Muskogee from OK, owns land that had been assigned to her grandparents in 1901 that has seven producing oil wells on it. Her royalty checks have ranged from six cents to about \$3,000 with no explanation of the difference.<sup>9</sup>

In over a century of existence, in spite of their innumerable requests for specific information, our native tribes consistently met with frustration from stone-walling, denial or silence.

#### Enter Elouise Cobell

Ms. Cobell is a land owning member of the Blackfeet tribe in Montana and president of the first nationally chartered Indian bank in the country. Like Mrs. Fish, the land she now owns was given to her grandparents at the turn of the last century, and is currently leased out to unidentified ranching and timber interests. She felt she had no means of knowing whether the payments made to her have been fair.

In 1994 the plight of native land owners seemed to take a turn for the better when Congress passed the Indian Trust Reform Management Act which required the BIA/DOI to give a full accounting of the funds it held as trustee.

Ms. Cobell found that passage of this act brought little in the way of change to the reservation. Armed with the new legislation, she went to Washington but was unable to obtain a meeting with either then Secretary of the Interior Bruce Babbitt or Attorney General Janet Reno<sup>10</sup>.

As the culture of avoidance and stone-walling continued to frustrate enforcement of the 1994 law, Ms. Cobell, in 1996, filed a class-action lawsuit on behalf of more than 300,000 native Americans to collect at least \$10 billion<sup>11</sup> that had unfairly and illegally been denied to them for more than a century by the government contrary to its existing law.

For the next eight years the Cobell litigation proceeded through our court system providing, in some ways, a mirror image of native American history with government.

“...they increased the amount of their claim to \$137.2 billion due to BIA theft, loss and mismanagement of funds.”

There were ups and downs for both sides and never a shortage of startling revelations. The tribes provided a detailed filing in US District Court in Washington before Judge Royce Lamberth in which they increased the amount of their claim to \$137.2 billion due to BIA theft, loss and mismanagement of funds.<sup>12</sup>

It was revealed that 50,000 BIA accounts lack names or proper addresses<sup>13</sup> and that BIA, which had already spent \$614 million on trust reform, proposed a \$2.5 billion plan of reconstructive accounting to arrive at a realistic determination of what compensation might be due the tribes.

On the face of it this may have seemed a reasonable request, but this appearance was shattered when BIA/DOI said such an effort would take ten years. The tribes claimed that any damage estimate procedure should be assigned to an independent receiver and that computer models based on parallel production records from private and commercial sources could produce the type of information necessary to make some meaningful progress towards resolution.

This litigation was fraught with

efforts by the BIA to alternately deny or otherwise avoid responsibility. Judge Lamberth's repeated instructions for document production were met with disclaimers that such records were lost, had been destroyed or never existed.

In truth, many of the documents sought by Judge Lamberth did exist, but had been discarded in old warehouses and kept next to leaking water pipes.<sup>14</sup> As far as the BIA was concerned, they were “out of sight; out of mind” and out of bounds for evidence.

This account of chicanery continued over a period of eight years, but perhaps its high (or low) point was reached when the Treasury Dept. revealed that it “had inadvertently destroyed 162 boxes of trust records *during the course of the trial.*”<sup>15</sup>

“The DOI is truly an embarrassment to the Federal Government”

The government's attitude and efforts throughout the trial led Judge Lamberth to state in his opinion, “I've never seen more egregious misconduct by the federal government, . . . (nor) such a concerted effort to subvert the truth-seeking function of the judicial process. The DOI is truly an embarrassment to the Federal Government”.<sup>16</sup>

In 1999 Judge Lamberth ruled in favor of the native tribes and, in doing so, ordered the DOI to account for past payment errors and to reform the trust's management so that it could function fairly in the future. He also cited then Secretaries Babbitt (DOI) and Rubin (Treasury) for contempt of the court for their failures to stop document destruction and fined them \$600,000 which was paid by U.S. taxpayers.<sup>17</sup>

Government attorneys filed appeals to Judge Lamberth's decision and the matter took on a

new life through the appeals process during which time the Secretaries at Treasury and Interior changed. A year ago a three-judge panel of the Court of Appeals for the DC Circuit ruled that Gale Norton, the present Secretary of Interior, could not be held liable for her predecessor's conduct and absolved her of any liability<sup>18</sup>.

The larger, central issue of restitution to the native Americans for over a century of fiduciary failure remains unresolved in spite of Congress' passage of the 1994 act designed to reform management of the Indian Trust and the Cobell litigation.

It seems as if our court system has not been able to bring about any resolution as to how to determine the extent of damage to the Indian Trust and how to establish a basis for it to operate fairly and efficiently in the future.

This is a sorry tale for which both apology and restitution are long overdue. And the longer they are delayed, the more we weaken our system and distance ourselves from what we claim to be.

Without a reasonable success in court, the matter may have to be returned to the Congress for a decisive remedy, but such an outcome is by no means assured, as the following exchange between Mike Wallace and Sen. John McCain<sup>19</sup> suggests:

Wallace: How bollixed up is the Indian Trust system?

Sen. McCain: Worse than anyone could ever image.

Wallace: Well, there have been studies, haven't there? Hearings?

Sen. McCain: Sure, there have been hearings, there have been allegations, and yet the — it just goes on and on and on.

The matter of just compensation is one thing. But quite another, more subtle and perhaps serious, is the damage done to our system of checks and balances by the executive branch's rejection and evasion of judiciary authority expressed by Judge Lamberth.

## THE REAL ANSWER

And this brings us back to the reader's question at the beginning – "Is it all about them?" You've probably guessed the answer by now. No, it's not about them. It's really about us, and that's why we've devoted a full issue to it.

\* \* \*

So what does this mean for America and Americans? We are presented with a century-long form of financial abuse of a specific segment of our society by two cabinet level government agencies whose response to any and all remedial efforts has been denial and evasion.

And the situation is further burdened by a Congress that has not seen fit to enforce it's own legislation. We should not make the mistake of thinking that these two powerful government institutions lack the power to take corrective action. The power lodged in the Cabinet and Congress is awesome and can be applied in a variety of forms. What is missing is the will.

Looking to the future, a problem of institutionalized injustice for over a century does not offer a sense of encouragement. Rather, it can easily be seen as a sign of decline that we might readily identify as causal in the failure of other cultures or civilizations, but not in our own.

Nothing can be more destructive of a political culture than selective law enforcement. We have seen our Congress practice it in our immigration law and again in the Indian Trust matter. The truth is that we can no longer assume that our government institutions share our concerns for fairness and the public good.

The history of our native Americans as it has played out challenges us to do better. The warning is there! And it is clear. The question is – Do we have the will, the courage, and, most importantly, the time to meet it?

Whether the history of our

relations with our native Americans is viewed in its entirety or episodically, it reveals a consistent record of the misapplication of government power. And in an age, in which we profess a heightened awareness and concern for human and political rights, the record we have written is one of failure to meet even basic fiduciary and fairness standards.

Most Americans don't think much about the treatment or status of our native tribes in twenty-first century America. The sound of the spin that comes from our being the sole superpower drowns out most other messages. But the record of over a century of fraud and deception is there for all to see. And, as Sen. McCain said, "... it just goes on and on and on."

And finally, once more, "it's not about them. It's about us."



## End Notes

<sup>1</sup> THE NEWSHOUR with Jim Lehrer. PBS 12/18/02 Lee Hochberg, Oregon Public Broadcasting

<sup>2</sup> cf. Buckskin and Blanket Days by Thomas Henry Tibbles. The Lakeside Press; R.R. Donnelley & Sons Company; Chicago, IL; Dec. 1985

<sup>3</sup> National Indian Gaming Association via Associated Press/Palm Beach Post 2/16/05

<sup>4</sup> NOW WITH BILL MOYERS, PBS 11/19/04. Unless otherwise noted, the information re Abramoff/Scanlon and the Tiguas derives from testimony before the Senate Indian Affairs Committee in the fall of 2004 and reported in the above broadcast.

<sup>5</sup> WXEL Radio News, West Palm Beach, FL 9/30/04

<sup>6</sup> USA Today 8/6/03 via Immigration Watch Oct/Nov 2003

<sup>7</sup> Ibid

<sup>8</sup> Ibid

<sup>9</sup> CBS News, 60 Minutes 4/2/00

<sup>10</sup> Ibid

<sup>11</sup> Ibid

<sup>12</sup> New York Times 1/7/03

<sup>13</sup> CBS News, 60 Minutes 4/2/00

<sup>14</sup> Ibid

<sup>15</sup> Ibid

<sup>16</sup> cf. note 1

<sup>17</sup> CBS News 60 Minutes 4/2/00

<sup>18</sup> New York Times 8/19/04 via Palm Beach Post

<sup>19</sup> CBS News 60 Minutes 4/2/00

## EDITOR'S BIO

Mr. Ault has a background in marketing of consumer products and financial services. He is a graduate of Yale University, a special limited partner of the Venture Capital Fund of America, NYC, NY of which he was a co-founder, and the author of A Retail Food Study (La Roche & Co. NYC, NY 1957) which described the emergence and growing dominance of the supermarket in American food retailing.

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