Volume I: Issue 8

The BEACON *Lite*

A Condensed Curriculum of Constitutional Study

Clause Discussed:

• Article I, Section 2, Clause 3

Concepts Discussed:

• Indians not taxed

Article I, Section 2, Clause 3 of the Constitution excludes *Indians not taxed* from apportionment.

Many people view the Constitution's three major grouping of persons (*free persons, Indians not taxed*, and *slaves)* in a simplified fashion as the *white* man, the *red* man, and the *black* man.

Hunting and gathering for thousands of years, Indians occupied vast stretches of land. Occupation, *absent express concepts of ownership* (a concept foreign to Indian culture), did not give them *ownership* of land, but did create valid legal claims to their continued *use* (until formally ceded by treaty).

Even though minimal population densities and abundant resources allowed the separate Indian tribes to live in relative seclusion, war between them was yet frequent (war between tribes was a common occurrence long before the white man came to America).

Acknowledging that there was no ownership of land in the new world, European governments laid claim to vast stretches of that land by the *right of discovery*.

When the United States won the Revolutionary War, England, as a condition of surrender, relinquished all governmental rights over the 531,200,000 acres of *land* then within the United States.

The numerous Indian nations that fought alongside the British during the Revolutionary War became a *conquered people* with the termination of that war.

Historically, conquering nations assumed authority over all *lands* and *persons* within the conquered area.

Indians have always been dealt with separately because the government was not able to extend jurisdiction over them in a normal manner due to their fiercely independent nature.

Private individuals had no right outside government to purchase land from the Indians. American government would not recognize an Indian *title* given to a private individual — it being a logical and legal impossibility — since Indians had no legal mechanism for *owning* property, they could not *transfer* it.

Indians had no right to sell that which they did not exclusively possess. At best, they could only *transfer* to an individual the privilege of its use. This person would then necessarily look to the *Indian* government for the protection of those rights to the extent allowed by *Indian* laws, while he held himself subject to *Indian* law.

To claim the right of *ownership* under Indian government — the extent of which was to be *created*, *defined*, and *enforced* by the federal and State government — is a legally-flawed and logically-bankrupt proposal.

The Indian nations had to relinquish *occupation* by government *treaty* before possession and occupation could be united in complete ownership under western-style government.

The United States government historically entered into *treaties* with the various Indian tribes, recognizing the degree of sovereignty afforded only to independent *nations* (though Indian nations may be better considered *dependent* nations).

While a number of Indian treaties dealt with cessation of hostilities, the greatest number dealt with the cession of Indian occupation of lands for money.

Raising the topic of Indian treaties invariably raises the argument that the United States government historically broke such treaties. Another common complaint is that the white man drove them from "their" land (without adequate compensation).

One of the first things one notices in reading the many Indian treaties is the sheer number of Indians names adjoined to such treaties. The greater number of Indian signatories corresponds to the lower degree of deputation among the vast number of separate Indian clans. There was a great deal of decentralization, with any one Indian chief having only limited authority.

Representing the federal government, there were usually one-to-three Ministers plenipotentiary. On the Indian's side, there were often 50-to-100 (or even more) "Sachems, Chiefs, Captains, Warriors, and Head Men".

It logically follows from the greater number of less-powerful leaders signing a treaty that this would indicate a greater overall approval-rating of such treaty than would be obvious without these greater numbers. This would directly undercut the moral argument that the Indians generally opposed such treaties that extinguished occupation of their native lands for money.

The various Indian nations — their many chiefs, warriors, and head men — *repeatedly* bargained hard and ultimately signed treaties to accept the monetary compensation offered them. They were able to reject the offer and stay put, but they could not both accept the money and stay put.

One must question the premise that just because property (use) is sold, that the seller of that property is without future economic hope. Many wealthy people actually got that way by (buying and) selling real estate.

The real problem with monetary shortages after a substantial payoff is usually not the absence of *income*, but of *discipline*. Indians are not exempt from the rule that over-spending and/or improperly investing lump-sum funds will later lead to economic challenges.

The Indian nations of centuries ago took a look at their options of occupying large parcels of ground but *without money* or occupying smaller (or even other) parcels *with money* resulted, time after time, with the Indians giving up their claims to land and choosing the money!

However, often it is not alleged that the treaties were unfair, more that they were simply broken (thereby actually implying that the treaties themselves were fair, i.e., that the Indians *did* desire such treaties to relinquish their claims to their lands for payment in money, just that they did not get that for which they bargained).

For example, in 1825, Chief McIntosh and 50 Head Men of the Coweta town of Lower Creek Indians signed the Treaty of Indian Springs (VII, Stat. 237) which swapped 4,000,000 acres in Georgia for an equivalent acreage of arguably more fertile ground West of the Mississippi River, *plus* $400,000 (an equivalent acreage elsewhere, *plus* ten cents per acre).

The upper Creek Indians yet rebelled and killed McIntosh for they claimed he did not act for them. President John Quincy Adams pushed for a new treaty, which was agreed upon by the United States ministers and 13 Upper Creek Chiefs and Head Men on January 24, 1826. The new treaty resulted in the same end as the first (all lands in Georgia were ceded) even if under different terms (a perpetual annuity of $30,000).

The 1825 and 1826 treaties indicate a primary problem associated with Indian treaties — numerous factions do not necessarily agree with one another. The treaties provide a glaring example of the evils of *common* "*ownership*" — unanimity of agreement among the "owners" is rare.

The debate that Indians were unfairly compensated for their land (use) actually disrespects them. There are few claims that England, France, Spain, Mexico, Russia, Georgia, and Texas were unfairly compensated for their land now within the boundaries of the U.S.

In other words, foreign governments are treated with sufficient respect that they were capable of negotiating in a reasonable fashion for their best interests. Those who maintain that Indians were not fairly compensated give Indians insufficient respect while ignoring historical data that shows that many Indians were skilled negotiators who drove hard bargains.

Many of the failed attempts to treat the Indians fairly were actually the government's attempt to care for them benevolently. Many of the failures point to the failures of *socialism*, of the failure of government to competently act as a care-taker of *any* people.

Land Area or Treaty	Year of Cession	Country of Origin	Acreage	Principal Cost	Price per Acre
13 Original States	1776/1783	England	218,721,280	0	0
Unappropriated Lands of the 13 Original States [16]	1776/1783	England	312,478,720	0/ Not Fully Applicable	0/ Not Fully Applicable
Louisiana Purchase	1803	France	529,911,680	$15,000,000	$0.028
Florida	1819	Spain	37,931,520	$5,000,000	$0.132
Guadalupe Hidalgo	1848	Mexico	334,443,520	$15,000,000	$0.045
Purchase from Texas (portions of Kansas, Colorado, New Mexico, Oklahoma, and Wyoming)	1850	Texas	65,130,880	$16,000,000	$0.246
Gadsden Purchase	1853	Mexico	29,142,400	$10,000,000	$0.343
Alaska	1867	Russia	369,529,600	$7,200,000	$0.019

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