Blatant Racism

By Darrel Smith

Federal Indian policy is blatant official racism. The U.S. Code [Title 25, Ch. 38, Sec. 3601.] says, "The Congress finds and declares that – (1) there is a government-to-government relationship between the United States and each Indian tribe; (2) the United States has a trust responsibility to each tribal government that includes the protection of the sovereignty of each tribal government." The definition of the word "sovereignty" confirms the radical nature of these "findings." Black's Law Dictionary (7th Ed.) defines "sovereignty" as "1. Supreme dominion, authority, or rule. 2. The supreme political authority of an independent state. 3. The state itself." In the U.S. Code, the federal government has committed itself to protecting the supremacy of Indian governments. Notice that this commitment is to tribal governments not to Indian people. Black defines an Indian tribe this way:

"A group, band, nation, or other organized group of indigenous American people, including any Alaskan native village, that is recognized as eligible for special programs and services provided by the U.S. government because of Indian status (42 USCA 9601 (36)); esp., any group having a federally recognized governing body that carries out substantial government duties and powers over an area (42 USCA 300f (14); 40 CFR 146.3)….

"The Indian tribe is the fundamental unit of Indian Law; in its absence there is no occasion for the law to operate…." [Emphasis added]

–William C. Canby Jr.,

American Indian Law in a Nutshell 3 – 4 (2d ed. 1988).

The U.S. government provides special programs and services "because of Indian status" The word "Indian" is a racial classification and these tribes must be federally recognized.

These definitions and laws commit the federal government to "protect" racial, specifically Indian, supremacy. They also commit the federal government to "protect" tribal government supremacy. Government supremacy, in contrast to the sovereignty of the people, has always been the definition of government tyranny. In contrast, the supremacy of "The People" has always been the foundation of freedom and democracy. (It's no accident that these "supreme" tribal governments are also not restrained by either state or federal constitutions and protected from being sued by sovereign immunity.) These definitions and codes demonstrate that the federal government has committed itself by law and policy to the dictionary definition of racism.

Nor are these racist policies limited to academic definitions. The U.S. government has a federal Indian policy, a US Senate Committee on Indian Affairs, a Bureau of Indian

Affairs, an Indian Health Service, Indian sections in every major government agency, so-called Indian country, and exclusively Indian tribal governments ruling on Indian reservations. Would anyone have any question about whether we were dealing with racism if the federal government committed itself to protecting White supremacy and we substituted the word "White" for "Indian" in the preceding sentence? Federal Indian policy is racist in both definition and practice.

The government attempts to defend itself from charges of racism by maintaining that tribes are political entities, not racial entities, but it is obvious by definition and reality that tribes are political entities whose membership is based entirely on race and ancestry. This country's legal commitments to equality, including the Fourteenth Amendment, were not designed to make race-based social, cultural, religious or economic entities illegal. They were designed to make government-sanctioned race-based political entities and actions illegal.

Judge Randall calls tribal sovereignty "a pancake makeup coverup of Plessy which allowed 'separate but equal' treatment" by holding that equal but separate accommodations for the white and colored races for railroad passengers was constitutional. The Plessy decision and the "separate but equal" concept have been wholly repudiated since the Brown v. Board of Education decisions of the early 1950's. Current federal Indian policy is even worse than the discredited Plessy concepts, however, because this policy doesn't even make a pretense of equality.

Current federal Indian policy, and the concept of tribal sovereignty, violates both this country's most fundamental values and the vast majority of tribal traditions. Tribal governments are political institutions that are based on race and ancestry. The Supreme Court has stated in Adarand Constuctors v. Pena (1995) that, "[d]istinctions between citizens solely because of their ancestry are by their very nature odious,"… "[A] free people whose institutions are founded upon the doctrine of equality…should tolerate no retreat from the principle that government may treat people differently because of their race only for the most compelling reasons. Accordingly, we hold today that all racial classifications, imposed by whatever federal, state, or local governmental actor, must be… analyzed by a reviewing court under strict scrutiny. In other words, such classifications are constitutional only if they are narrowly tailored measures that further compelling governmental interests….Racial classifications are simply too pernicious to permit any but the most exact connection between justification and classification… the Constitution imposes upon federal, state, and local governmental actors the same obligation to respect the personal right to equal protection of the laws." [Emphasis added] It is evident that federal Indian policy doesn't protect personal rights, is without justification or compelling reasons, and is not narrowly tailored to accomplish any obvious purpose other than the continued cultural, social and economic destruction of reservation areas.

The Supreme Court has also stated in Saenz V. Roe (1999) that, "This Court has consistently held that Congress may not authorize the States to violate the Fourteenth Amendment. Moreover, the protection afforded to a citizen by that Amendment's Citizenship Clause limits the powers of the National Government as well as the States. Congress' Article I powers to legislate are limited not only by the scope of the Framers' affirmative delegation, but also by the principle that the powers may not be exercised in a way that violates other specific provisions of the Constitution."

Whatever "affirmative delegation" the federal government is using to justify its Indian policy, this policy is obviously being "exercised in a way that violates other specific provisions of the Constitution" including the Bill of Rights and the Fourteenth Amendment. Should not the Amendments to the Constitution take precedence over any laws or policies flowing from the original Constitution? Should not the later status of Indian citizenship take precedence over any earlier status as tribal members? Should not tribal members have been granted the full protection of the Constitution including the Bill of Rights and the Fourteenth Amendment when they became citizens in 1924? Tribal members deserve the same equality, including individual and cultural/religious sovereignty, as every other American citizen. They, and every other American impacted by federal Indian policy, deserve the same protection from state and federal constitutions including the Bill of Rights and the Fourteenth Amendment protections as other citizens.