Ronan Pioneer
November 1, 1973
Reservation History, Legal Issues Analyzed

Note: This well researched letter from local attorney Lloyd Ingraham to Senator Lee Metcalf in 1973 asked Senator Metcalf to reconsider his position on Senate Bill 268, introduced in 1973 and entitled the Land Use Planning and Assistance Act. The bill in question passed the senate in an amended version but the House bill, H.R. 2942 was never introduced. In 2014, the untenable situation explained below so eloquently by Mr. Ingraham, has escalated even further into a grab by tribal attorneys for all the land and water within the historical boundaries of the reservation, with a possibility of gaining control of significant amounts of water off reservation, if their currently proposed overreach, called a "Water Compact" is not passed in the 2015 Montana legislature.

Is it coincidental that our now Senator Testor's Forest Jobs and Recreation Act was also introduced as Senate Bill 268? We think absolutely not.

(First in Series)

Editor's Note – Because of the many questions that have arisen in the past couple years in many areas of jurisdiction and rights of citizenship of Indian and non-Indians on the Flathead Reservation, Ronan Attorney Lloyd Ingraham has researched the history of the reservation and has furnished his interpretation of legal matters and issues in a recent letter to Senator Lee Metcalf. Because of the widespread local interest in the topic, this newspaper plans a series of Ingraham's research project and interpretations. Following is the first in the series.

The present federal Indian policy, as a whole, has done exactly what law is usually intended to prevent. It has been the cause of the polarization of the Reservation population. It has arbitrarily created two distinct classes of citizenship with distinct and opposing governments, each competing for dominance, within the same territorial area. It has created friction and abrasion between these classes and their governments where little had previously existed.

The Reservation is scarred with unsolved legal matters. Jurisdiction over persons and property is an impossible tangle. Titles to lands are littered with unanswered questions. American citizens, tribal members and non-tribal members alike, are being flagrantly denied basic constitutional rights. Discrimination, once almost eliminated, is again making its appearance. Claims by some tribal spokesmen that non-tribal members, together with their state and local governments, are alien intruders with no rights within the Reservation will not survive close analysis. Members and non-members occupy the Reservation under the same authority, the United States Congress. The latter's obligations, commitments, and representations made to the one group are no more sacred or solemn than those made to and relied upon by the other.

Therefore, in order to better understand the problem, it is helpful to review the history of the Congressional legislative acts permitting tenancy of the areas within the boundaries of the original Flathead Reservation.

Created by the Treaty of Hellgate of July 16, 1855, the area within the reservation was set aside "for the use and occupancy" of the three treaty signator tribes, and as a general Indian reservation upon which could be placed other friendly tribes and bands of Indians." (Thus the land was set aside for others besides the three tribes.) No other tribes were moved upon this general Reservation under the treaty provisions and in 1904, Congress, relying on other provisions of the treaty, adopted legislation providing for the division of the Reservation.

It is important to note that at this point in time (1904) the Reservation's legal states was expressly defined in the Enabling Act of Montana which permitted Montana admission into the Union. The Enabling Act reads as follows:

> *That the people inhabiting said proposed states do agree and declare that they forever disclaim all right and title… to all lands lying within said limits owned or held by any Indians or Indian tribes, and that until the title thereto shall have been extinguished by the United States… said Indian lands shall remain under the absolute jurisdiction and control of the Congress of the United States:"*

Further provisions of the Enabling Act provided that the State of Montana would be entitled to the 16th and 36th Sections of each Township within the state as indemnity lands for school purposes, except that the state would not be entitled to any of these said indemnity lands which were embraced within Indian reservations until the reservation was extinguished.

The Allotment Act of 1887 which was in effect at that date (1904) provided that when the individual Indian received his trust patent to his allotment he would become subject to the criminal and civil laws of the state within which he resided. Further provisions of this act provided that after allotments were made to all Indians, the U.S. Congress could, with the consent of the Indians, dispose of all surplus lands, and hold the proceeds for the Indians to whom the reservation belonged.

The federal homestead, townsite and mineral laws in effect at that date alluded to the government disposal of unappropriated, unreserved, public domain lands. This latter status of the lands must be deemed totally inconsistent with any continued reservation of the lands by the U.S. government for the use and occupancy of the tribes as an Indian reservation.

In this backdrop of federal laws, Congress adopted its Act of April 23, 1904; the following provisions of which are relevant to this review: (1) survey of all of the Reservation; (2) an allotment to all persons having tribal relations under the allotment laws of the United States; (3) the classification and appraisal of all surplus lands remaining after allotments; (4) the appropriation of $100,000.00 for the purchase of Section 16 and 36 of each township from the tribe by the United States which in turn was granted to the State of Montana for school purposes in accordance with the Enabling Act of Montana; (5) the sale of all surplus agriculture lands at their appraised value to settlers under the provisions of

the Homestead Act, the proceeds of the sale to be paid to the Indians; (6) the sale of all townsite lots and mineral rights at their appraised value to settlers under the provisions of the townsite lots and mineral laws of the United States, the proceeds of the sale to be paid to the Indians; and (7) the sale of all timber lands by the Secretary of Interior under such rules and regulations as he should prescribe.

To further clarify the Congressional intent expressed in this act, together with the source of its authority under the treaty, you are referred to the Committee Report of your predecessors on the Committee of Indian Affairs which was submitted to the full Senate; and reading, in part, as follows:

> *"The Committee on Indian Affairs, to whom was referred the Bill (H.R. 12231) for the survey and allotment of lands embraced within the Flathead Indian Reservation, in the State of Montana, and the sale and disposal of all surplus lands after allotment, having had the same under consideration, submit the following report and recommended the passes of the bill without amendment:*
>
> *By treaty with the Flathead Indians made by Governor Stevens when this Reservation was set aside, it was expressly provided that the President should cause the lands to be surveyed, the necessary lands allotted to the Indians, and all the surplus lands sold for their benefit. The present bill merely provides the necessary means for carrying the agreement with the Indians into effect….*
>
> *These Indians now inhabiting said Flathead Reservation are far advanced in civilization and are anxious for the early carrying into effect of the wise and equitable provisions of this act.*
>
> *It is estimated that less than 100,000 acres of these lands will be more than sufficient to allot all Indians now on the reservation and the 1,350,000 acres of land will be thrown open for settlement."*

The House Committee of Indian Affairs report considering this bill, recommended its passage and included within the body of its report the following words:

> *There are included in this reservation about 1,450,000 acres of land. It is estimated that 100,000 acres will cover the allotments for all Indians on the reservation, leaving 1,350,000 acres for settlement. Some of the most fertile lands in the State of Montana are embraced within this reservation and are now lying idle and unoccupied.*
>
> *… No appropriation is called for, except for the payment of Section 16 And 36 at $1.25 per acre, the same to be ceded to the State of Montana for school purposes, in accordance with the enabling act of Montana, which will require not to exceed $100,000 (Emphasis added)."*

A fair reading of this 1904 Act disposing of the reservation lands, when considered in the backdrop and framework of the then existing federal law, can only lead to one conclusion – Congressional intent to extinguish the reservation: First, all persons having tribal relations,

were, by virtue of receiving their allotment trust patents, would become subject to the criminal and civil laws of the State of Montana, thus removing the Indians from the absolute jurisdiction and control of Congress, which under the Enabling Act was not to occur until the title to the lands were extinguished by the U.S.

Second, Sections 16 and 36 of each Township were granted to the State of Montana "in accordance with the Enabling Act", the provisions of which prohibited the state's entitlement to these lands until such time as the reservation was extinguished.

Third, the surplus lands were considered under the Homestead, Townsite and Mineral Laws to be unappropriated, unreserved, and public domain lands the term "Reservation" and "Unappropriated, unreserved, and public domain" lands are mutually exclusive.

Fourth, all surplus lands were appraised "comparable land sales" method of appraisal. Comparable sales used to establish these values were of lands not having Indian Reservation status (the latter would be considerable less valuable considering the Indians now asserted retained interests in reservation lands). The Indians were thus paid for these lands as though they were no longer included within the reservation.

And, Fifth, even the title of the act".... Now embraced within the Flathead Indian Reservation..." demonstrates intent that, after the provision of the act became operative, the lands would have a different status. Otherwise that word "now" would be mere surplusage.

The Congressional intent that these lands were to be ceded and no longer constituted a part of the remaining Reservation is further evidenced by acts passed subsequent to the passage of the Act of April 23, 1904.

The Act of May 31, 1906, appropriated money *"to meet the expenses of opening to entry and settlement (of) the ceded lands of the Flathead Reservation in the state of Montana."*

Again in the Act of July 17, 1914, Congress authorized the assignment of homesteads in "the Flathead Irrigation Project in the former Flathead Reservation."

As late as February 14, 1920, Congress by statute, authorized the State of Montana *"to select two hundred acres of unappropriated, unreserved and non-mineral lands within the boundaries of the former Flathead Reservation."*

Administrative acknowledgement of the Congressional intent to extinguish the boundaries of the original Flathead Reservation are evidenced by Bureau of Land Management and Bureau of Indian Affairs Maps indicating the boundaries of the "Former" Flathead Indian Reservation.

Representations made by the Department of Interior to induce non-member citizens to purchase these surplus lands were made in sales circulars and letters distributed throughout the country. As an example, the following excerpt is taken from a March 20, 1915 directive from the Department of Interior address to the Commissioner of the General Land Office:

"REGULATIONS FOR THE SALE OF THE VILLA SITE LOTS AROUND FLATHEAD LAKE, IN THE FORMER FLATHEAD INDIAN RESERVATION, MONTANA." Department of the Interior, Washington, March 20, 1915

The Commissioner of the General Land Office

*"Sir: Under the provisions of the act of April 12, 1910 (36 Stat. 296), you are directed to cause the lots surveyed as villa sites around Flathead Lake, in the former Flathead Indian Reservation, Mont., to be offered for sale at Polson, Montana, at public outcry, under the supervision of the superintendent of opening and sale of Indian lands, at not less than $10 per acre, beginning on July 26, 1915, and continuing thereafter from day to day as long as may be necessary, Sundays and holidays excepted, in the manner and under the terms hereinafter prescribed." (*Emphasis added).

Accompanying this directive as the following sales circular which was mailed out in large numbers to citizens all over the United States:

"FLATHEAD LAKE MONTANA," is situated near to and slightly southwest of the Glacier National Park, the region of eternal ice, which may be reached by automobile from the lake in about three hours. The lake is in a valley 15 miles wide and 30 miles long, between ranges of the Rocky Mountains of scenic beauty, whose slopes are covered with fir, larch and pine trees. The lake has an area of approximately 360 square miles. The Flathead National Forest lies north, west, and east of the valley. The lake and streams abound in fish, and hunting is excellent. The lake is utilized for bathing, sailing, boating and yachting, and several steamboats ply between the various towns upon its borders. The shores are well adapted for boat landings and the erection of wharves.

The lands abutting the north have of the lake were disposed of many years ago, and numerous homes and fruit orchards have been established thereon. The south half of the lake is within the former Flathead Indian Reservation.

….. Through the courtesy of the Post office Department, complete sets of the above plats of villa sites may be examined in the post offices at New York, Philadelphia, Boston, Pittsburgh, Atlanta, and New Orleans."

In 1912 The United States Supreme Court in the case of Clairmont v. U.S. held that where the Indian title to lands within the original Flathead Reservation had been extinguished they could no longer be considered part of the Reservation.

Relying on these express and implied representations, the non-member has settled and emigrated to what he thought to be the former Flathead Reservation.

Immediately following settlement, and relying upon these express and implied representations of all branches of the federal government, state and local governments were organized; schools, roads and streets, a county courthouse, municipal city halls, and the multitude of other governmental facilities were constructed and paid for by taxes collected by these governments; law enforcement, fire protection, district, justice and city police

courts were created; all fee simple titles to this former Reservation land were recorded with County Clerks and Recorders.

All these tax supported facilities are utilized without distinction by the tribe, its members, and non-members alike. Settlers engaged in all forms of business and trade without ever being required to secure Indian traders license which are required under federal law before trading on Indian Reservations.

At the present time, the non-member represents some 83% of the total reservation population of and owns some 85% of the habitable lands.

They have added buildings and improvements to the lands to the point their market values were, prior to the present Indian claims of tribal sovereignty, conservatively estimated in excess of one half billion dollars.

They intermarried with members of the tribe to the point that, by B.I.A. estimation, fully 25 percent of the resident tribal membership is not generally recognized as being Indians.

Without distinction as to the racial origin, they elected tribal members to represent them in the public offices in their state and local governments. Currently, the area's only state senate seat, at least on city mayor seat, a district school board chairmanship, and a county justice of the peace judgeship are occupied by tribal members despite the anomaly that, under existing law, they are not responsible or answerable to the civil laws which they are enacting, administrating, or adjudicating.

Presently, tribal members occupy many state and local appointive offices in the school systems, law enforcement, and fire protection and other allied state government departments, again, despite the fact that they are not responsible to the laws of their employer nor to the state income taxes imposed upon non-members for the support of these services.

Ronan Pioneer
November 8, 1973
Reservation History, Legal Issues Analyzed

(Second in Series)

Editor's Note – Because of the many questions that have arisen in the past couple years in many areas of jurisdiction and rights of citizenship of Indian and non-Indians on the Flathead Reservation, Ronan Attorney Lloyd Ingraham has researched the history of the reservation and has furnished his interpretation of legal matters and issues in a recent letter to Senator Lee Metcalf. Because of the widespread local interest in the topic, this newspaper plans a four part series of Ingraham's research project and interpretations. Last week's review shows the Congressional authority and the circumstances of the settlement and emigration of the non-member to the reservation area.

What were the circumstances of the Indian occupancy? Although the treaty had provided that the tribes would remove themselves to the general reservation area within one year after its ratification, a large segment of the Flathead Tribe continued to occupy the Bitterroot Valley. Early documents show Pres. Grant's executive order of 1871 for the removal of the Indians to the general reservation.

Congress, by its Act of 1872, reinforced Pres. Grant's order of the previous year. Yet, it was not until 1892, approximately 12 years prior to the opening act and almost forty years after the treaty, that these Indians under Chief Charlo finally moved to the general reservation.

By this time the old way of life was rapidly drawing to a close. The buffalo, mainstay of the Blackfeet and other tribes east of the mountains, had disappeared. As a result the deer and elk in the common hunting grounds directly east of the reservation were not sufficient to sustain the Indians. The large ranches on the reservation, originally established and then operated either by early white settlers and their Indian spouses, or their acculturated mixed-blood descendants, laid claim to large areas of the reservation, preempting land previously occupied by native game animals.

The individual member, as a whole, faced starvation and privation. Equitable division of the land among the members was not sufficient. Land alone without the tools of agriculture, irrigation systems, seed, and livestock would merely leave the individual member on the agency dole. The federal social programs of the present decade were unheard of at that time; But the dynamic pressures and greed of the nation's westward migration would furnish a ready market to sell the surplus lands. Allotment, with the sale of surplus lands to provide the necessary funds to finance Indian agriculture, was the Congressional solution.

The reservation at the time of the 1904 Act, providing for its division was populated by approximately 2,300 men, women, and children having tribal relations. Among these were many descendants of early white settlers, trappers, traders, and miners who had intermarried with the Indians and had come upon the reservation to live. As indicated before the large ranches which were in existence at that time, were almost exclusively operated by these descendants of the white or non-member settlers and their Indian spouses.

As such, they entered into all those relationships commonly known in a homogenous society- Lesser, lessor; Seller-Buyer; Husband – Wife' and most important fellow American Citizens.

Contrary to current claims the allotment law provided that the member would select the land making up his allotment with the head of the family selecting for all minor children. This provision permitted the tribal member to have first choice in selecting his allotment far in advance of the arrival of the first homesteader. Under this provision, all living tribal members received allotments. Much of the more valuable land was selected by the members as their allotment.

Thus on the arrival of the homesteader and settler in 1910 and the following years, the tribal members occupying the allotments they had selected, and the homesteaders and settlers occupying the surplus lands, which they had purchased, became intermingled as neighbors, friends, relatives, and cotenants of the reservation. Each occupied under the same Congressional Acts and authority.

Because of the continuous intermarriage between the nonmembers and the tribal members, both before and after the opening of the Reservation, the ·overwhelming majority of the present tribal members are direct descendants of non-member settlers.

According to a 1970 BIA census, less than three percent of the resident members are of full Indian blood; over 70 percent were, by blood, more closely related to their non-member ancestors than to their Indian ancestors; upward of 33 percent had more than three-fourths non-member blood; and some as much as 63-64ths non-member blood. At least 25 percent are not generally recognized as tribal members because of their predominantly white ancestry.

The above statistics suggest that if someone must compensate for the now alleged transgressions of ancestors, then all of the reservation population except the scant three percent who are of full blood are to some extent liable.

Shortly after the arrival of the homesteader and settler, and the establishment of state and local government, complete with county seat and courthouse on the then supposedly extinguished reservation, the federal government appears to have abandoned any claims of exclusive federal jurisdiction over the affected area. The federal government concerned itself almost exclusively with selling the surplus lands and managing the funds and trust lands of the member Indians. Except in these latter areas, the state appears to have exercised exclusive jurisdiction, both civil and criminal, over all citizens – emancipated members (i.e. members who had received fee patents to their allotments) trust patent members and non-members alike – for the following half-century. State courthouse records show that as late as the mid-1950's the tribal government was using the state court to enforce its rights against its own members.

To fully understand how this half century of state jurisdiction has been usurped and rendered impotent, it is necessary to review further Congressional Acts and the Federal Courts' interpretation of them.

In 1934 Congress, in trying to help the Indians who, with the rest of the nation, were suffering in "the great depression" adopted the Wheeler Howard Act, now better known as the Indian Reorganization Act, for the express purposes of giving the then almost defunct tribal organization a large voice in its own affairs, - creating tribal credit programs and a tribal community land base.

Essentially, this Act, as far as here relevant, (1) prohibited any further allotment of Indian lands to individual tribal members; (2) restored all unsold surplus lands within the original reservation boundaries to tribal ownership and reservation status under a federal trust

status; (3) extended federal trust periods over Indian lands for an undetermined time; and (4) provided for the creation of a tribal government under a federally issued (and drafted) constitution and corporate charter.

In 1948, Congress, in an attempt to clarify problems of criminal jurisdiction arising on their reservations, pronounced its exclusive jurisdiction over certain crimes committed in "Indian Country". For the purposes of the Act, "Indian Country" was defined as "all lands within the limits of any Indian reservation under the jurisdiction of the United States government, notwithstanding the issuance of any patent, and including rights of way running through the reservation."

In 1953, the 83rd Congress… adopted two important pieces of Indian legislation. The first gave the state the power to solve any ambiguous problems relating to state jurisdiction, and the second, Concurrent Resolution 108, would have made the state's exercise of this power unnecessary.

I refer to the Act of August 1, 1953, better known as P.L. 280 whereby it was provided that any state not then having criminal and or civil jurisdiction over areas of "Indian Country" could assume such by adopting affirmative legislative action binding itself to accept and assume such jurisdiction.

Just two weeks later on August 15, 1953, Congress adopted its Concurrent Resolution 108 wherein (after expressing it to be the policy of Congress "as rapidly as possible to make Indians subject to the same laws… as are applicable to other citizens…) it was "declared to be the 'sense of Congress" that the Flathead Tribe of Montana (among other specified tribes) and all the individual members thereof should be freed from all limitations and the tribe and reservation be terminated. Thereafter, this resolution directed the Secretary of Interior to report to congress no later than January 1, 1954 his recommendations for such legislation "necessary to accomplish the purposes of the resolution."

Thus, if termination was imminent, any affirmative state legislative action required in P.L. 280 would necessarily be an unnecessary and useless act.

The results of the above described Indian Reorganization Act of 1934 did not, at that time, materially affect the status of the legal relationships between the resident citizens and the state.

Surplus unsold lands, which by this time consisted chiefly of uninhabitable mountain lands, were returned to tribal ownership reservation status and federal tribal trust.

A tribal constitution and federal corporate charter were issued and a tribal government was organized. Membership and therefore participation, in the tribal government was, and still is, limited to the then enrolled Indians and their descendants then living within the boundaries of the original reservation.

The tribal government through its governing body, the tribal council, concerned itself almost exclusively with managing tribal lands and resources and distributing pro-rata

payments from the proceeds thereof. It made no effort to challenge the state jurisdiction. It did, however, create tribal ordinances and exerted some limited jurisdiction concurrent with the state over its members.

Though not apparent at that time, this Act can be deemed as the starting point of the constitution for governmental control which has now culminated in the turmoil and strife subtly raging on the reservation.

In the late 1950's, the Montana Supreme Court in Irvine v. District Court was called upon to interpret the Congressional definition of "Indian Country" as used in the above referenced Act of 1948. Its holding concluded that the term "notwithstanding the issuance of any patent" meant that all fee patent lands within the original Flathead Reservation were under the exclusive federal criminal jurisdiction. The court did not appear to place any importance on the fact that these lands had been previously described by Congress as being within a "former reservation." This decision resulted in the worst disruption of the state jurisdiction since it had been established on the reservation.

In an analogous fact situation arising on the Colville Reservation of Washington, the Federal Supreme court held identically with this State Court decision, and additionally held that a reservation, once established, could not be extinguished except by express Congressional action.

These cases, however, related to criminal jurisdiction or that area dealing with crimes and criminal prosecution. Civil jurisdiction is that area and all other areas. The state's exclusion from civil jurisdiction came shortly thereafter as a result of a series of cases. The U.S. Supreme Court in Williams v. Lee held that a federally licensed Indian trader could not sue a tribal member in the state court for a debt incurred within the Navajo Reservation, and further that the proper forum must be the Reservation tribal court.

In the case of Kinnerly v. District Court, the U.S. Supreme Court extended the definition of "Indian Country", as used in the criminal codes, "notwithstanding the issuance of any patent" to be applicable over members on any lands within the reservation so as to exclude state civil jurisdiction.

However, the Kinnerly case did not settle the question as it related to the Flathead Reservation. As a result of the Montana Supreme Court's decision in Irvine, and because the termination of the Flathead tribe as called for in this above cited Concurrent Resolution 108 was not forthcoming, the Montana Legislative Assembly in 1963 had passed legislation binding the state to assume criminal and / or civil jurisdiction on the Flathead Reservation under the here before referenced 1953 P.L. 280 Act.

In the interests of amity and cooperation, the assumption of this jurisdiction was conditioned upon the Tribal Council adopting a consenting resolution. Thereafter, in 1964, the Tribal Council adopted its Ordinance 40A where it did consent to the state jurisdiction so far as such jurisdiction applied to the "Laws of the State of Montana."

The following year, after the required issuance of a proclamation by the Governor declaring that such state criminal and civil jurisdiction was effective on the reservation, the Tribal Council, in an effort to clarify other provisions in its consenting resolution, amended this particular clause to read "the criminal laws of the State of Montana."

In 1971 the Montana Supreme Court in the case of State v. McDonald was called upon to interpret resolution 40A as amended, (and therefore the legislative enactment) and held it to be limited to the assumption of criminal jurisdiction which the state continues to exercise.

After this decision, the Montana Supreme Court in Security State Bank v. Pierre, confronted with the U.S. Supreme Court case of Kinnerly, and the other U.S. cases, held that the state had no civil jurisdiction over tribal members upon the original reservation where the state action would interfere with tribal "self-government."

A review of what now appears to be prevailing Federal law in this area which, by failure of Federal Congress to take affirmative action, is the result of evolving Federal and State Court case law interpreting the few existing subjective Congressional Acts can be stated as follows:

1) Under Congress' constitutional powers to make treaties and to regulate commerce with the Indian tribes, the states are, absent governing acts of Congress, pre-empted from exercising any jurisdiction over tribal members on the reservation if the state action infringes upon the right of reservation Indians to make their own laws and be ruled by them. (Holding in Williams v. Lee).
2) The Internal Affairs (absent governing acts of Congress) of Indians remain exclusively within whatever tribal government exists. (Williams v. Lee).
3) Reservations, as originally created, cannot be extinguished without the express action of Congress. (Federal courts have gone so far as to explain that Congress was "confused" when the reservation was referred to in Acts of Congress as "former" reservations). (Colville Reservation – Seymour v Supt.)
4) Tribal governments do not have jurisdiction over non-members residing within the boundaries of this reservation (U.S. v. McBratney) (Chapter 2 Sect. 1 Tribes) and the tribal court will assume jurisdiction in a civil action between a member and non-member only upon consent of the member.
5) The state can assume jurisdiction in civil actions by or against a member only upon adopting affirmative legislative laws binding itself to assume such jurisdiction. Thus, the member appears to be precluded from access to the state courts, (the assumption of this jurisdiction is now further conditioned under the Indian Civil Rights Acts of 1968) upon the consent to such jurisdiction by a referendum vote approved by the adult members of the tribe (Kinnery v. District Court).
6) The Federal courts do not have civil jurisdiction over the involved areas, except in limited ways which are not herein relevant. (Little v. Nakai).

This prevailing federal law may be most beneficial for those reservations where the tribe still exists as a distinct autonomous ethnic and cultural communal type community; where the

white man is virtually excluded and where the population is made up entirely of tribal members and lands are mostly owned by the tribe or tribal members.

However, their application on this reservation has resulted in absolute legal chaos.

As stated above, the state continues to exercise valid criminal jurisdiction within the area. A perplexing problem arises as to where the criminal law ceases and civil law commences.

For example, crimes by juveniles, neglected and dependent children, paternity suits, and many other areas of the Montana statutes, have overlaps between the civil and criminal areas.

Members accused of crimes, unable themselves to post property bonds of member relatives and friends not being acceptable because of the lack of state civil jurisdiction to enforce the members surety contracts, are remaining in jail for lack of bail.

Members on trial for serious felonies are being tried by juries made up predominantly of non-members, who subconsciously otherwise have a built-in resentment against the accused because of his immunity from other state (civil) laws, cannot expect a fair and impartial trial.

Nor is he, by reason of his class distinction, having his case tried by a jury of his peers as guaranteed by the federal constitution.

As a result of Kinnerly and Pierre, the state courts are precluded from exercising jurisdiction over the civil disputes between members and non-members. The federal courts have consistently denied their jurisdiction.

The limitations of its subpoena powers, both as to person and land area, its limited powers and authority to enforce its orders and decrees inside and outside the boundaries of its jurisdiction, the absolute non-existence of a body of subjective law, all demonstrate its impotency to provide any degree of relief for either tribal member or non-member.

Moreover, the non-member, if permitted access to the tribal court, would find his cause against a member being decided by a possibly prejudicial tribal court. The latter is limited to a jury from which all but members are excluded. The judges, serving at the pleasure of the tribal council and without any requirements of legal background, also are exclusively appointed from the membership. Likewise, all attendants. There are no provisions to make any record of the trial thus frustrating and appeal if such were permitted. At this writing, there does not appear one instance of the tribal court ever having conducted a civil jury trial.

Because of this lack of a reasonable legal forum, most civil disputes between non-members and members are not being judicially solved. The potential for violence, therefore, is smoldering.

The non-member, to minimize the effects of financial loss caused by this vacuum of jurisdiction, has reverted to discriminatory positions which in other areas would be rank violations of the existing federal civil rights act. Here, however, discrimination is not

directly caused by reason of race, color or national origin; but, it is rationalized, indirectly, because of non-jurisdiction by reason of race, color, or national origin. A fine distinction perhaps, but because of the now existing federal law, a most pertinent one.

This discrimination has manifested itself in many ways:

1. Non-member employers are becoming unwilling to employ members in positions of trust, where notwithstanding criminal sanctions, the employer would have to depend upon civil actions to record misappropriated or stolen funds.

2. Non-member lessors are more and more reluctant to turn legal possession of their premises over to member tenants where a civil action would be required to record possession and or unpaid rents.

3. Non-member sellers of real and personal property are turning away from dealing with members where the transaction requires entering into a contractual relationship with a member obligor. Likewise, non-members who might have financed the transactions, e.g., Mortgagees, bank loans, payees of negotiable instruments, assignees as discounters of contract vendors, etc. in not a few cases, bank checks drawn by members are being refused because of the possibility of payment stoppage.

4. Professional and business men members are commencing to be boycotted by non-members by reason of the faced threat of the latter's inability to seek legal redress for breach of warranty, malpractice, or breach of contract.

5. Attorneys for non-member sellers of personal and real property or installment and deferred payment contracts with other non-member buyers, are inserting clauses providing for the absolute voiding of the contract upon the attempt by the buyers to assign or otherwise give over any possessory right in the contract subject matter to a members.

The problem does not end with commercial transaction despite the fact that they are the most obvious and discernable.

Property, custodial, and heirship rights of the countless presently existing mixed families, consisting of non-member and member spouses with member and non-member children who are issue of the same parents, are not possible of solution if brought to dispute.

Tort actions, involving personal injury, encroachments, trespasses, civil assaults, defamation and other non-contractual relationships are particularly vexatious.

State and local government employers, who, under state laws, must enter into a contract relationship with the employee, face the problem, along with the member employee, that there are no contract enforcement rights, and thus there is no valid contract.

As a further complication of the evolving federal law, fee simple land and heirship rights are doubly affected.

Courts held the state could assume civil jurisdiction only upon compliance with the provisions of P.L 280. P.L. 280 permits states not now having jurisdiction to assume such. Thus under the decisions it can only be concluded that the state, in fact, has never had legal jurisdiction.

It is elementary that any orders, decrees or proceedings of a court not having basic jurisdiction are void and of no force or effect.

Thus all decrees and orders of the state courts issued during the preceding 60 years are now questionable. Quiet title actions, tax and mortgage foreclosures, partition suits, probate proceedings, guardianship conveyances and allied actions determining matters of land ownership and heirship rights are all suspect. If any member was involved in the underlying litigation then that decree or order would not be effective as against him for lack of basic jurisdiction. Unfortunately, it is impossible to identify a member by name; hence, all titles having these particular type actions in its chain must be viewed as suspect.

To further compound the already impossible situation, a third class of citizen, "the emancipated Indian", lives upon the reservation.

It must be pointed out that in 1906 Congress modified the allotment laws so as to postpone the time that an allottee became subject to the state laws to the date that he received a trust patent to his allotment lands. Trust patents contained a restriction against alienation or sale while the fee simple patents permitted sale. The latter could be applied for by the allottee, and, if he was deemed competent to manage his own affairs, it was issued forthwith.

As a consequence of the foregoing, a large majority of the tribal members did, in fact, apply for and receive fee patents to their lands and because the federal law is still effective, may still be considered as being subject to state civil and criminal jurisdiction. (In this connection the question of the legal status of the after born children of these "emancipated" members has never been determined. It could be persuasively argued that because the "emancipation" by issuance of the trust patent was co-extensive with granting of citizenship and because children's citizenship generally follows the parents, the children of the "emancipated" members would have the same legal status as the parents).

Although the number of these "emancipated" members has not been determined, their number is considerable. The results are untenable – a citizen who is subject to both the tribal and state government whose civil laws in many instances may be contradictory.

Not Council's Fault

Before going further, the writer wishes to state unequivocally that, if there is fault to be found, it cannot be placed at the door of the Tribe's governing body, the Tribal Council. Each member of that body has taken a sworn oath to support and defend the trial constitution and its bylaws and to cooperate, promote and protect the best interests of the tribe.

Each member of the tribal council must be accorded the recognition that he is acting in accordance with his oath and, that, therefore, any blame or fault for the multitude of problems and inequities presently existing must be placed at the doors of Congress for its failure and inaction in acting laws which would have eliminated such a deplorable legal structure.

The tribe in its role as a governmental agency has secured many Federal grants under present federal social programs. Despite provisions contained in the federal laws setting up these programs and the existing Civil Rights Acts specifically prohibiting discrimination by reason of race or national origin, non-members are being denied in most instances, any direct benefits under these programs. A very graphic example of this is provided in the current Low Income Rental Program for which H.U.D. has granted some $1,300,000.00 in Federal funds. At last reports, of the over one hundred rental units made available under these funds, the tribal housing authority had not even received, much less accepted, one application for tenancy from a non-member. Yet, complaints made to H.U.D. attorneys concerning the above violations have resulted in silence.

Equally odious to non-members is the dispersal of C.A.P. funds for the benefit of raising fish and game to be planted in and upon tribal lands from which non-members are barred without paying a tribal fee.

Additional tribal council action seeks to bar the state and local government from exercising any taxing of the member's real or personal property, despite that fact that the services and facilities furnished by these tax monies are enjoyed without distinction by the tribe, its members, and non-members alike. To date, they have been successful in barring only state income taxes, but, under prevailing case law, it would appear that their efforts in this direction will be successful.

A recent tribal council ordinance, although not yet approved by the Secretary of Interior, seeks to make non-members subject to the tribal criminal offense ordinances.

By Tribal Council Ordinance, all non-members are barred from tribal government lands for purposes of boating, fishing, hunting, hiking, camping or even swimming without purchasing a tribal "permit".

Other announced tribal council goals if successful, would establish the tribal right to levy charges for all surface (and perhaps subsurface) waters not used by the Irrigation project presently serving non-member and member farms and ranches.

Present litigation initiated by the Tribal Council, if successful, would effectively bar non-member owners who purchased lands adjoining the south half of Flathead Lake under the representation previously cited in the Department of Interior's sale circulars, from using docks, boathouses, boat ramps, constructed on these lands; and would further give the tribe the right to make the owners remove some improvements from all lands below the high water mark of the lake.

Moreover, the Tribal Council has been successful in influencing state welfare agencies to continue state tax supported welfare payments to tribal member recipient families who, perhaps on the very same day as they received welfare payment, had received many thousands of tax free dollars in tribal pro-rate payments. Yet, if non-member counterparts received so must as a $100.00 back support payment from an errant father, welfare payments were reduced accordingly.

In pursuit of these and other goals, the Tribal Council, urged on by the bureaucrats of the BIA, flushed by large awards in the Indian Court of Claims, successful challenges to State Civil Jurisdiction, an infusive of unprecedented federal grant monies, and riding a tidal way of sympathy from a conscience-stricken but uninformed America public, issues through it organs, publicity releases which can only be interpreted by non-members as inflammatory and anti-non-member.

To assist them, they have retained ever present tribal attorneys presently invincible in Federal Courts, who hover between Washington, the Federal Courts, and the reservation.

Financial statements of the tribal corporation indicate that over $80,000.00 was spent for attorneys' fees during the last fiscal year. (This did not include the some $2 million dollars paid as attorney's fees for Indian Court of Claims Awards). The present fiscal year tribal budget includes some $85,000.00 for such fees.

This is the inflamed social and political arena, upon which, under the mandates of S.B. 268 you would throw further fuel.

Control of zoning and land use regulation vested in the Tribal government, which represents only some 17 percent of the total affected residents, and in which the other 83 percent resident population is excluded, in sum of the present volatile atmosphere, cannot be anything less than an open invitation to further abuses of the some 15,000 affected residents.

As a life-time resident of the reservation with countless friends and relatives among both classes, together with being a life-long democrat, I respectfully solicit you (Sen. Metcalf), in your influential position, to reconsider your previously announced position.

Yours very truly,

Lloyd Ingraham