FORESTALL FORECLOSURE BY ACQUIRING SUPERIOR LAND TITLE (*USUCAPION*): One Sovereign Broaching And Approaching An Encroaching Sovereign©

By: *Judge Navin-Chandra Naidu,*
Word In Action Ministry Law Offices & Law College©
Native American Law & Justice Center©, Blackfeet Nation, Montana®
Native American Association of Nations (Treaty of Camp Holmes, 1835, 7 Stat. 474)
Website: www.scripturalaw.org email: drjag49@yahoo.com
Tel: 626-428-7669 / 714-714-928-6914 / 310-430-0553

A Texan fact-finding mission (the Teran Commission) in 1828, highly concerned about the influx of frontiersmen and settlers in overwhelming numbers from the United States into Texas (then a territory of Mexico), published and sent this Report to the Mexican Congress about the sinister aim of the American government employing a subtle form of encroachment fraught with ulterior motives:

They commence by introducing themselves into the territory which they covet, upon pretense of commercial negotiations, or of the establishment of colonies, with or without the assent of the Government to which it belongs. These colonies grow, multiply, become the predominant party in the population; and as soon as a support is found in this manner, they begin to set up rights which it is impossible to sustain in a serious discussion . . . These pioneers excite, by degrees, movements which disturb the political state of the country . . . and then follow discontents and dissatisfaction, calculated to fatigue the patience of the legitimate owner, and to diminish the usefulness of the administration and of the exercise of authority. When things have come to this pass, which is precisely the present state of things in Texas, the diplomatic management commences: the inquietude they have excited in the territory . . . the interests of the colonists therein established, the insurrections of the adventurers, and savages instigated by them, and the pertinacity with which the opinion is set up as to their right of possession, become the subjects of notes, full of expressions of justice and moderation, until, with the aid of other incidents, the desired end is attained of concluding an arrangement as onerous for one party as it is advantageous to the other. Sometimes more direct means are resorted to; and taking advantage of the enfeebled state, or domestic difficulties, of the possessor of the soil, they proceed, upon the most extraordinary pretexts, to make themselves masters of the country, as was the case in the Floridas; leaving

the question to be decided afterwards as to the legality of the possession, which force alone could take from them. (*House Exec. Docs*., 25 Cong., 2 Sess. (Serial 332), No. 351, pp. 313-14). (emphasis added)

This Report is a classic study of the mechanics and machinations of acquiring territory belonging to another through diplomacy and demography all made nice and legal through legislation. Texas, New Mexico, Arizona and California fell prey to the same modus operandi.

James Madison pontificated thus: *The diversity in the faculties of men, from which the rights of property originate, is not less an insuperable obstacle to a uniformity of interests. The protection of these faculties is the first object of government."*(*The Federalist #10*)
Madison advanced the proposition that one of the most important functions of government is to protect individuals' (unequal) ability to acquire (private) property. In the American context, there is clear and convincing evidence that land acquisition was accomplished by conquest, cession, purchase, annexation, or simply settling or squatting on someone's land. Madison conveniently avoided mentioning the irreparable harm unleashed upon Aboriginal Americans (Native Americans/American Indians, etc.), the original inhabitants of the Americas for over thousands of years who owned, possessed, and occupied their ancestral lands without the need of an alien European's idea of a land title whether on parchment, papyrus, paper or perpetual parliamentary procedures, processes, protocols and promises. We were never consulted, neither were our opinions and ideas sought or discussed when the colonists made their own laws according to their selfish needs. Till today, we have never been paid any rents for our land and soil.

John Winthrop wrote in 1787, Letter No. 12, "Letters to Agrippa," reprinted in Ford, *Essays on the Constitution*: "*It is universally agreed that the object of every just government is to render the people happy, by securing their persons and possessions <u>from wrong</u>. To this end it is necessary that there should be local laws and institutions; for a people inhabiting various climates will unavoidably have <u>local habits</u> and different modes of life, and <u>these must be consulted in making the laws</u>. It is much easier to adapt the laws to the manners of the people, than to make manners conform to laws*." (emphasis added). Was Winthrop thinking about Aboriginal Americans when he wrote this, or was he contemplating an Englishman's rights? Either way, his thoughts apply to both.

If legislation as a government function is the only available avenue to justifying stealing, then its time to invoke the Jeffersonian plaintive call to "*alter or abolish it, and to institute a new Government . . .* Today, we are witnessing a clear and present danger perpetrated by a government of men controlled by the wealthy elite while their minions (lobbyists) scurry about congressional halls, doorways and corridors currying favors in exchange for big money (campaign contributions).

FIRMLY AND FEARLESSLY FIGHTING THE "TAKINGS CLAUSE"

*"Perhaps the most basic principle of all Indian law, supported by a host of decisions . . . is the principle tha*t *those powers which are lawfully vested in an Indian tribe are **not**, in general, delegated powers granted by express acts of Congress, but rather inherent powers of a limited sovereignty which has never been extinguished.* (Felix S Cohen, 1942 edition, **Handbook of Federal Indian Law**, at 122-23 (emphasis in original). No interpretation required.

1. A homeowner or landowning Plaintiff may initiate a lawsuit in the Ecclesiastical/Tribal Court (hereinafter ETC) of the Native American Association of Nations© to invoke and evoke two jurisdictions (religious and tribal). *The land shall not be sold for ever; for the land is mine; for ye are strangers and sojourners with me:* **Leviticus 25:23** (HOLY BIBLE, King James Version). The Truth needs no interpretation. It would be an affront attempting to analyze and examine this mandate from God. And, if you one of those "enlightened" types who entertains the belief that "Church and State are separate," I strongly recommend you leave this website.

2. The Holy Bible was quoted in *Reasor-Hill Corporation v. Harrison*, Supreme Court of Arkansas, 1952, 220 Ark. 521, 249 S.W. 2d 994, wherein dissents by Justice McFaddin and Justice Ward cited **Proverbs 22:28**; with cross-references in the Holy Bible to **Proverbs 23:10-11; Deuteronomy 19:14; 27:17; Job 24:2; Hosea 5:10;** - "in matters affecting real property, we should leave undisturbed the ancient landmarks." The Law of God forbade the moving of boundaries. This is directly and proportionately applicable to the appropriating of Indian tribal lands by legislative imperatives as if a law could cure a mischief. Laws are made to remedy mischief, fraud

and deception, but not to create, condone, comfort, or cure them temporarily. What the federal government did to Aboriginal tribal lands is inconceivable, unconscionable, unjust, fraudulent, deceptive, illegal and unconstitutional. Pure theft.

The Plaintiff who believes in God and His Word, files an Originating Motion (OM) in the ETC, and sends a copy to the mortgagor/lender/holder in due course and their attorneys.

The OM will stipulate and specify how the mortgagor/lender/holder in due course has defiled God's Word, Ancient Tribal Law, violated a federal law (96 Stat.1211, Public Law 97-280 of 1982) that declared the Bible as the Word of God, and several other federal Indian laws, including the fifteen or so landmark cases adjudicated by the United States Supreme Court, that acknowledged and endorsed the fact and truism of inherent sovereignty of Aboriginals that predates the U.S. Constitution.
In fact, the U.S. Bill of Rights makes no mention of Aboriginals in the original intent of the **1789 r**atified Constitution. Within a span of less than 200 years, in **1968,** Congress enacted and promulgated the Indian Civil Rights Act which gives us a springboard if nothing else. We don't need legislation to find a niche for our rights. Federal Indian law is an exercise in "blaming the victim" as if we Aboriginals were so savage and uncivilized that laws, rules and regulations were necessary to keep us in check.

3. The findings of the ETC will meet local, regional, national and international muster because we will be applying God's Law, Ancient Tribal Law, federal Indian law, and international law regarding *usucapion* - true, perfect and only superior title compared to allodium, land patents, statutory warranty deeds, grants, life estates, and titles in fee simple; and Leviticus 25:23 (read: PL 97-280) of the Holy Bible. With this powerful combination, even the novice in law will see the trees for the forest provided there are no scales (no pun intended) in his/her eyes cast therein by state bar associations.

4. A large pool of landowners and homeowners armed with *usucapion* are needed, maybe in the thousands, to make this real and measurable to get the attention of state and federal governments.

5. The money judgment issued by an ETC can be sold overseas for 35 – 45 cents on the dollar as a negotiable instrument. That means money in your pockets and wallets. The statute that makes this possible is the

REFJA (Reciprocal Enforcement of Foreign Judgments Act). The overseas purchaser of money judgments calls on the Federal Deposit Insurance Corporation, or Lloyds of London, England, to collect on valid money judgments issued by an ETC. This happens everyday in the secretive world of finance and banking.

We are living under a juggernaut government running amok with the unconstitutional power of eminent domain, easements, rights of way, and adverse possession when it comes to real property purchased by millions of Americans. If the rule of law is still the currency of a civilized nation, we may prevail with an ETC money judgment.

6. Modus Operandi:

But first, let's get to the core of the problem regarding land titles and how you could take advantage of the laws of the land to your benefit and advantage.

A. The primary *issue* that has been identified is whether the municipal, county, state or federal government has any power, residual or otherwise, to grant, convey, issue, alienate, extinguish, or transfer *original* land titles to a potential buyer. To accomplish this, the State uses the power of "eminent domain" never mentioned in any state constitution, or the U.S. Constitution. Yet, it is invoked when the government has determined that a taking is necessary. Necessary because more taxes could be collected. "Your home is your castle" was a sound and practical doctrine, a meaningful mantra where it suited the government, not the Englishman's rights, since the *Magna Carta* signaled and symbolized the beginning of the concept of government being thrust into peoples' lives.

The Fifth Amendment provision of "*just compensation*" seems to soothe, justify, interpret, and comfort its Takings Clause counterpart when it says, inter alia, " . . . nor shall private property be taken for public use, without *just compensation*." So, who decides what is "*just*"? There is a real problem here that needs to be addressed, discussed, debated, and remedied exhaustively and conclusively. Law is to be used as a lever for liberation, not a sledgehammer to crush your rights and privileges.

B. But just when you thought the Fifth was a great refuge and haven for constitutional protection, please be wary of **Article IV, Section 3, Clause 2,**

U.S. Constitution which subtly, cleverly and cunningly states that "The Congress shall have the Power to dispose of and make all needful *Rules* and *Regulations* respecting the Territory or other Property *belonging* to the United States; and nothing in this Constitution shall be so construed as to Prejudice any Claims of the United States, or of any particular State" (emphasis mine).

This Article is devious. It circumscribes and circumvents Article V which prescribes the manner and mode of effectuating constitutional amendments. But, that takes time, effort, compromises galore, lobbyists, lots of money and manuovering. Now, when the government articulates Article IV for their benefit, gain, profit and advantage, they are emboldened and empowered by *rules and regulations*, *not legislation*, to take and sell Aboriginal lands at will, and lo and behold all "Territory or other Property" ends up belonging to the usurping United States!!

Justice Thomas R. Berger wrote in 1982: "[t]he issue of aboriginal rights is the oldest question of human rights in North America. At the same time it is also the most recent, for it is only in the last decade that it has entered our consciousness and our political bloodstream." (T. Berger, *Fragile Freedoms: Human Rights and Dissent in Canada* 219 (Rev. ed. 1982).

C. Definition of title: **1**. The union of all elements (as ownership, possession, and custody) constituting the *legal* right to control and dispose of property; the *legal* link between a person who owns property and the property itself. **2**. *Legal* evidence of a person's ownership rights in property; an instrument (such as a deed) that constitutes such evidence. (Note: the word "occupancy" is not used, instead the word "custody" is used. Looking at this definition, Aboriginal Americans, had *original* title to their lands prior to the arrival of the Europeans, also called the pre-contact period.).

Definition of land patent: An instrument by which the *government* conveys a grant of public land to a private person. (Note: The government takes it upon itself to take whatever land it wants. Subsequently, the government gives it away for a fee or a price. The *government* made its own version of "just laws" to own the land in this country by displacing/removing Indians to "reservations" farther west. Bootstrapping doctrine all the way)

Definition of lapse patent: A land patent substituting for an ***earlier*** patent to the same land that lapsed because the previous patentee did not claim it.

(Note: what do you think is the ***earlier*** patent if it is not *usucapion* – claimed, convoked, invoked and evoked by Aboriginal Americans. (Communal property, not private property, is the Aboriginal way. There is no question of a "claim.")

Definition of Indian title: A ***right*** of occupancy that the federal government ***grants*** to an American Indian tribe based on the tribe's ***immemorial possession*** of the area. (Note: no mention of "ownership." So, if I was here from time immemorial I still have no rights, as an Indian enjoying *usucapion* which is defined by the Dictionary of Maxims. See below. The outrage is obvious – the alien who occupied our lands ***grants*** us a "right of occupancy." What would have happened if we had superior weapons, and landed a thousand ships into Normandy and invaded/discovered/conquered Europe as an "Aboriginal Manifest Destiny", and thereafter inflicted Europeans with our laws? Would we be labeled uncivilized barbarians?)

Definition of Indian land: Land ***owned*** by the United States but held in ***trust*** for and used by American Indians. (Note: The Indians never gave permission or asked the federal government to hold their lands "in trust." "Holding in trust" was a nice way of saying, " we took your land without your permission, but let us take care of it so that others will not come and steal it from us who stole it first. You should not steal from a thief, you know." Another unresolved outrage.)

Above definitions were extracted from *Black's Law Dictionary,* 7th edition. The (Note) section contains my observations.

Definition of "Indian country" under 18 United States Code § 1511:

i) all land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of *any patent*, and including the rights of way through the reservation, (b) all dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the *limits of a state*, and (c) all Indian allotments, the titles to which *have not been extinguished,* including rights of way running through the same. (emphasis added).

NOTE: Rights of way create an easement only, not to what's beneath the surface (oil, gas, and minerals) *See* MARVIN M.

BRANDT REVOCABLE TRUST v. UNITED STATES, United States Supreme Court, No. 12–1173. Argued January 14, 2014—Decided March 10, **2014.**

The U.S. Supreme Court pointedly declared in Mitchel v. United States, 34 U.S. (9 Pet.) 711,746 (**1835**): *The merits of this case do not make it necessary to inquire whether the Indians within the United States had any other rights of soil or jurisdiction; it is enough to consider it as a* ***settled principle, that their right of occupancy is considered as sacred as the fee simple of the whites****. (5 Peters 48.) The principles which had been established in the colonies were adopted by the King in the (Royal) Proclamation of October 1763, and applied to the provinces acquired by the treaty of peace . . .*' (emphasis added). This was the same year that the Treaty of Camp Holmes was concluded. This decision survived overruling.

Charles Miller, a historian, has written in his book. *The Supreme Court and the Uses of History* 24 (Cambridge: Mass. 1969)*:*

History may be defined as that which, in the opinion of the Supreme Court, is believed to be true about the past – about past facts and past thoughts . . . For purposes of analysis it may again be divided into two categories: history internal to the law and history external to the law. This distinction like many distinctions, is blurred at the boundaries but clear at the center. History internal to the law consists of precedents . . . and legal history. Legal history pertains to the history of legal terms and doctrines . . . ***Somewhere on the borderline between legal history, which is internal to the law, and general political history, which is external to the law, lies the history used in . . . litigation involving Indian tribes.*** *In no other fields of public law does history play so decisive a role, a role and a decisiveness accepted by all parties to the litigation as well as the court.*

7. WHAT YOU HAVE TO DO IF YOU ARE, OR WERE A HOMEOWNER:

"*Property should have the power of referendum over hostile legislation*." (John C. Calhoun, 1782-1850, US Senator from South Carolina, 10th US Secretary of War). In other words, the voice of the People must be heard and deferred to instead of allowing the legislature to enact laws for

indiscriminately passing laws under the guise of safeguarding private and corporate interests.

The passage of the Johnson-O'Malley Act of 1934, 48 Stat. 596 (1934) (codified as amended at 25 U.S.C. §§ 452-454) after the Meriam Report of 1928 (*the goal of Indian policy is the development of all that is good in Indian culture "**rather than to crush out all that is Indian**.") authorized the Secretary of the Interior to contract with a state or territory "for the education, medical attention, agricultural assistance, and social welfare, **including relief of distress of Indians** in such State or Territory, through the qualified agencies of such State or Territory (Act of June 4, 1936, 49 Stat. 1458). (emphasis added)

A. Almost all the fifty states in this country have written laws concerning surrender and withdrawal of a certificate of title. They must be inserted there for a specific reason. *Can you guess why?* **Indian country** !! Make sure you find them, read them, download them and keep them readily available for reference. Keep in mind that States have NO power or authority over Aboriginals ("**American Indians, Native Americans")**. Also remember that under the doctrine of judicial review, innovated and invented by the constitutional sorcerer Chief Justice John Marshall (*Marbury v. Madison*), any law can be subjected to examination, analysis, and declared unconstitutional - if repugnant to the U.S. Constitution - if indeed these laws do not sit squarely with the supreme law of the land, Article VI, section 2, U.S. Constitution.

B. A federal, state, or municipal law cannot be deemed to be written in stone because it can be invalidated, and declared unconstitutional under the *Marbury v. Madison* ruling using the power of judicial review. From 1789 to 2010 some 1,215 laws have been declared unconstitutional (158 federal laws, 935 state laws, 122 ordinances). 224 state and local laws have been preempted by federal laws. 220 decisions of the U.S. Supreme Court have been overruled by subsequent decisions of the same Court. Imagine the staggering array of victims, especially Aboriginals!

8. JURISDICTION OF A TRIBAL COURT:

The United States Supreme Court recognized the jurisdiction of tribal courts over lawsuits that involved non- tribal members. In *National Farmers Ins. Cos. v. Crow Tribe,* 471 U.S. 845 (1985), the Supreme Court ruled that any challenge to the jurisdiction of a tribal court had to first be presented to the

tribal court; and, in 1997, in *Basil Cook Enterprises Inc. v. St. Regis Mohawk Tribe*, 117 F. 3rd 61 (2d Cir. 1997), the US Court of Appeals for the Second Circuit applied this doctrine to uphold a challenge against the St. Regis Mohawk Tribal Court.

Tribal courts deserve full faith and credit since they are the court of an independent sovereign (Wis. Stat. § 806.245) ; in order to end confusion, cases filed in state or tribal courts require mutual consultation. *Teague v. Bad River Band,* 236 Wis.2d384 (2000). According to the Restatement (Second) of Conflicts § 86, when courts of separate sovereigns both have jurisdiction over the same matter, the court *first* rendering judgment is commonly entitled to have its judgment receive full faith and credit by the other jurisdiction.

THIS IS NOT ABOUT FORUM-SHOPPING.

D. When you are ready to surrender and withdraw the certificate of title, employ the doctrine of *usucapion* (you will not find it in Black's Law Dictionary) and approach an Indian Tribe, Nation, Clan or Band, here in the USA within your locality, and tell them that you wish to bequeath back to them "your" land upon which your house, farm, ranch, factory, school, shop, golf course, hospital, freeway, highway, byway, or orchard sits, as they are the **original** land/soil owners, occupiers and possessors who actually own the right, title, and interest to **ALL** land in North America.

The American Indians ought to, necessarily, if they are unafraid or unfazed by any backlash from the federal government, issue you an ENACT (**E**nduring **N**ative **A**boriginal **C**ustomary **T**itle based on *usucapion* (see below for a detailed description of *usucapion*). They should not even consider Congress's power to extinguish customary native title. Congress does not have that power as enumerated in the Constitution. If Congress takes it upon itself to extinguish customary native title, it is nothing but theft. And it takes great effort to pass a law aimed at extinguishing customary land title. A groundswell support for this Cause has been missing for over three hundred years.

The only right that municipal, county, state and federal governments possess is the right to enjoy the use and advantages of another's property short of the destruction or waste of its substance (**usufruct**). "Another's property" here distinctly and specifically refers to Aboriginal lands taken for

a song through purchase, treaty, cession, and annexation (read: Texas, New Mexico. Arizona, California)

Next, you pay a nominal fee. This is consideration, one of the five elements of a contract. Multiply this effort nationwide. Make it become a habit. **ALL** land in the North American continent once belonged, and still belongs, to American Indians. We are all sojourners of the land. We can never be land owners. The land owns us.

E. You would have now fulfilled one of the first principles of law expressed in Latin as *mutatis mutandis* – things being changed which are to be changed.

(*Note*: First principles of law are the benchmarks, wellsprings and roots of both the common law and the written law (statutory law). Great wisdom emanated from these efforts, experiments, experiences and endeavors).

F. You would have also fulfilled a second prong of one of the first principles of law expressed in the Latin maxim ***ne domina rerum sint incerta neve lites sint perpetuae* – lest the ownership of things should remain uncertain, or lawsuits never come to an end.** These two Latin maxims – as first principles of law used in our jurisprudence - strongly support ENACT.

G. State and federal courts solely and exclusively rely on statutes and past decisions (precedents, the doctrines of *stare decisis* and *res judicata*) without giving due regard to other tools of judicial inquiry such as first principles of law based on doctrines and maxims from antiquity, rule of law based on sound jurisprudence springing from custom, tradition and mores. Untold grief and injustice will be unleashed if a previous decision was wrong, and wrongly handed down. The African Americans had their *Dred Scott* nightmare, and we Aboriginals have *Lone Wolf v. Hitchcock*. Erroneous judgments and decisions can be grievous enough when someone has lost his life, freedom or property. It would take a great amount of time, effort and resources to rectify bad decisions either through legislative imperatives or judicial wisdom without judicial activism as the impeller.

Judicial activism is the imprimatur of judge-made law. Judges should not make law. That is the job of the legislature. Judges ought to only be concerned with ironing out the creases in the cloth of the law. They are not

to make new cloth. Yet they have done so. One of the many disasters of judicial activism is the 1857 *Dred Scott* case which triggered the Civil War; the other was *Plessy v. Ferguson* (1869) which declared that segregation was constitutional (separate but equal) which was ultimately overruled in the 1954 case known as *Brown v. Board of Education*.

H. The next order of business is for you to write to the Congress of the United States and tell ***them*** that you have ***perfected title*** by stipulating the legal description of the land in question. Article 1, section 8, clause 3 of the U.S. Constitution stipulates that Congress shall have the "power to regulate commerce with foreign nations, among the several states, and *with Indian nations."* You have also perfected this constitutional mandate. Legal scholars say that usage of the preposition "with" in Article 1, section 8, clause 3 suggests that Indian nations are to be treated as foreign nations.

I. Next, you send a certified copy of the ENACT to the President of the United State because of the President's power to enter into treaties pursuant to Article 2, section 2, clause 2 of the U.S. Constitution. His predecessors and he are responsible for theft of Indian lands (a crime) that has no statute of limitations. The President can and should issue his findings through his constitutional mandate at Article 2, section 3, where he "shall recommend to Congress such measures as he shall judge necessary and expedient. . ."Or, the President could, and should, issue an Executive Order.

J. Send a copy of this letter to the County Land Office or to the Recorder's Office, and to the piranhas, barracudas, and sharks who sold you the mortgage (death-grip). When these denizens of deception sold you your home they made you sign a confession of judgment, a security instrument, and a mortgage note together with a deed of trust literally conveying and granting your real property to a trustee even before you defaulted. This is unconscionable, unjust, unfair, uncivilized, unconstitutional and illegal.

K. Now, these lenders/mortgagors/holders in due course and recorders of "land titles" have to prove they ***own*** title to the land, the underlying document that evidences the ownership of the land. Usually, they cannot when asked to provide the Pooling and Servicing Agreement (PSA) and the Multiple Loan Schedule (MLS). These two documents will evidence the sale of the mortgage and seldom evidences the **transfer of title** from one to another subsequent mortgage note buyer. The PSA will also evidence the fact that your real property, for which you have been faithfully making the

monthly mortgage payments, has been securitized to at least **six hundred million dollars** with no benefit, advantage or relief for the homeowner. NONE of these issues are ever *disclosed* when the homeowner first signs the Purchase & Sale Agreement as required and mandated under the Truth in Lending Act, Title 15 United States Code.

L. The mortgagor/lender/holder in due course who sues you to foreclose on your real property usually has no desire or wish to evidence these two documents because you **can** prove they do **NOT** own the TITLE to your land, and therefore cannot qualify to foreclose !

M. Your ENACT can assume the persona of a land patent capable of protection under Article 1, section, clause 8 (safeguarding your inventions and discoveries); and Article 1, section 10, clause 1 of the U.S. Constitution (no State shall impair the obligation of a contract – the one between you, the homeowner, and the American Indian Tribe, Nation, Band or Clan). The Constitution is the supreme law of the land that trumps all state and federal laws. **The land patent from an Indian Tribal Court has Full Faith & Credit implications – Article IV, section 1 – this must be recognized and acknowledged by state and federal courts if the supreme law of the land means anything.**

N. The 565 Aboriginal Tribes, Clans, Nations and Bands of North America seem hapless and helpless to alter and amend the status quo. What is impeding us from uniting and unifying our voice and effort to yield meaningful, lawful, legal, legitimate and constitutional effect nationally and internationally? If at all there was such an effort in the past, why did it fizzle away like a neglected bowl of ice-cream on a patio in hot August? What will it take to take and make this effort real and beneficial again?

O. For those who insist on the misguided and misconstrued belief that "Church and State are separate," the Law of God is recognized by **Public Law 97-280 of 1982, Legislative History at S.J. Res. 165, Congressional Record, Vol.128 (1982), 96 Stat. 1211,** which declared the Holy Bible as the Word of God. The government has not repealed this federal law although it insists on breaking it anytime it is convenient for its insidious and often invidious purposes.

9. HISTORY

A. The methodology mentioned above is better to implement and enforce in a sovereign Ecclesiastical/Tribal Court than the intention of the treaty-seeker of antiquity whose sole aim was to buy millions of acres for a few pennies, or just grab lands and pass a congressionally approved law to justify land grabbing such as the Homestead Act of 1862. ***Eleven States had left the Union*** when this Bill was passed by Congress during Lincoln's watch. You would think it passed muster. Do you think it was ratified with eleven States missing in representation?

B. By 1934, 1.6 million homestead applications were processed and more than 2.7 million acres exchanged hands from the government to individuals. The Homestead Act was **repealed** in 1976 after the passage of the Federal Land Policy and Management Act, but the irreparable harm and injury upon Native Americans was already inflicted.

C. If we claim to be a Christian nation, we have to live by Christian mores, obligations, and scriptural or biblical laws. We have to listen to God's Covenant with His people – The Holy Bible – and set standards with which we could and should live by if we are to restore His Kingdom on earth now invaded by the satanic forces of guile, evil, deception, deceit, and wanton destruction.

God's Word says it clearly in **Leviticus 25:23**. We, The People, are just passing by in this earthly journey occupying some space, and some time, here and there until it is time to check out, as it were, and land belonging to God cannot and should not be sold forever.

The burning question is whether **Leviticus 25:23** still binding in 21st century America? If so, how shall it be applied, and if not, does any significance remain in the law?

International law stipulates that the modern Vatican State, owned by the Vatican entirely, is not for sale, ever. This Holy Land was God's Throne area, and hence NOT FOR SALE. What is the difference in America, and elsewhere, where all land relates to God's creation, occupancy, ownership and possession with the attendant divine right to allocate stewardship according to His Holy Will as codified in **Leviticus 25:23**, now a federal law.

The Vatican is a recognized ecclesiastical government with its Ambassador (Apostolic Nuncio) stationed permanently in Washington D.C. So is Israel, recognized as a sovereign state because of prophecies in the Holy Bible. If such recognition is convenient for political gain, what harm can a legal claim begat while relying on God's Law?

D. Property and land taxes is absent in God's Law which very definitely protects enduring ownership (read: *usucapion*). Modern tax laws destroy ownership. Taxation of property is a means of destroying property and, thus, is a form of robbery. Taxation implies a speculative use of land, and destroys the stability of communities. The government uses the concept of "eminent domain" to exercise a compulsory taking. Eminent domain is never mentioned in the U.S. Constitution, and is against the teachings of the Holy Bible. If anything, eminent domain is a divine right. This earth, as we know it, did not suddenly explode and materialize into a tangible entity by government edict, rules, regulations, laws, or command by an earthly sovereign.

The other ugly usurper is the doctrine of "adverse possession," which allows a squatter to claim good title to land that was not claimed within a certain period of time. The Aboriginal moved his tepee and wigwam, and moved on in search of buffalo, and retuned to the original spot a year or two later only to find the "eurosettler squatter" had built a house on that land and claimed it as his. The Army helped him keep his homestead from the "savage." More gunshots and arrows were unleashed, another treaty was signed, more whiskey poured down the throat of the "savage," and now the Indian needs God and education to be civilized. That was the credo of the U.S. government acting upon the advice of their Indian Commissioners.

E. Eminent domain gained utterance, then a foothold, later a stronghold, and subsequently a stranglehold, in the American colonies because the principles of *natural law* pervaded Christian thinking from the early days. Natural law locates the ultimate law within Nature, and therefore locates the sovereign power within Nature. William M. Kinney and Burdett A Rich, in *Ruling Case Law* (1915), give an excellent summary of the concept of eminent domain as it developed in the 19th century United States:

10. "Eminent Domain as Exercise of Sovereignty – It was the theory of Hugo Grotius (1583-1645, Dutch jurist and philosopher) that the power of eminent domain was based on the principle that the *State had an original*

and absolute ownership of the whole property possessed by the individual members of it, antecedent to their possession, and that their possession and enjoyment of it being subsequently derived from a grant by the sovereign, it was held subject to a tacit agreement or implied reservation that it might be resumed and all individual rights to it extinguished by a rightful exertion of this ultimate ownership by the State. A latecomer assumes so many rights because of superior weaponry. That's all there is to it. In the clash of arms, the law falls silent!

This explanation of the basis of the power of eminent domain was adopted by several of the state courts in their earlier decisions. Grotius' theory however, was not adopted by all of the other political philosophers, Heineccius (1674-1722, German theologian) quoting Seneca (4 B.C. – AD 65, Roman philosopher), to the effect that to kings belong the *control* of things, to individuals the *ownership* of them. It was objected to by some of the judges of this country, imbued with the spirit of individual liberty, that such a doctrine is bringing the principles of the social system back to the slavish theory of Thomas Hobbes (1588-1678, British philosopher), which, however plausible it may be in regard to land once held in absolute ownership by the sovereign, and directly granted by it to individuals, is inconsistent with the fact that the securing of pre-existing rights to their own property is the great motive and object of individuals for associating into governments. Besides, it will not apply at all to personal property, which in many cases is entirely the creation of individual owners; and yet the principle of appropriating private property to public use is fully as extensive in regard to personal as to real property. Accordingly it is now generally considered that the power of eminent domain is ***not*** a property right or an exercise by the State of an ultimate ownership in the soil, but that it is based on the sovereignty of the State. As that sovereignty includes the right to enact and enforce as law anything not physically impossible and not forbidden by some clause of the constitution, and the taking of property within the jurisdiction of the State for public use on payment of compensation is neither impossible nor prohibited by the constitution, a statute authorizing the exercise of eminent domain needs no further justification. The question is largely academic, but is of some practical importance in deciding whether the United States may exercise the right of eminent domain within the District of Columbia, notwithstanding a provision in the act of cession that the property rights of the inhabitants should remain unaffected. It was held that as eminent domain was a right of sovereignty and not of property, the provision had no application."

F. An analysis of these interesting concepts by the authors of *Ruling Case Law* reveal that the natural right of the State to eminent domain, takings and adverse possession have been assumed in favor of a sovereign with a simultaneous overruling of the Tenth Amendment to the U.S. Constitution. If the right of eminent domain on the part of the State, or the federal government, is derived from the right of sovereignty, you can settle this issue with finality because both the terms "eminent domain" and "adverse possession" are never used in the U.S. Constitution. In fact these words were artfully and willfully avoided by the founders and framers. The outrage is obvious when Aboriginal Americans were left out of the equation. The founders, framers and ratifiers deliberately, mischieviously,and invidiously avoided mentioning aboriginal rights to land and soil.

G. In 1641 the Massachusetts Body of Liberties deplored the taking of a person's property without due process and by the law of *equity*. They borrowed the British version of the 1628 Petition of Right. The Virginia Declaration of 1776 expressly mandated that "*That no part of a man's property can be taken from him, or applied to public uses, without his own consent, or that of his legal representatives*." The Fifth Amendment presupposes the power of private property because the takings clause is careful about payment (just compensation) for a public purpose taking. The fact that it mentions private property for which a compensation is necessary casts serious doubts on the State's right to an inherent sovereignty. The State is simply an entity that has governing powers bestowed upon it, and granted to it by the consent of the governed - the people. Aboriginals are not "people'?

H. The thoughts, ideologies and persuasive writings of Grotius, Burlamaqui, Locke, Hobbes, Rousseau, Bentham and Mill - that place the State on a pedestal - is anathema to Peoples Rights without suggesting a recourse to herd or mob mentality. For Mikhail Bakunin (1814-1876, Russian philosopher), the State was a sham god (Moloch) to be destroyed. Bakunin trusted natural law. "Man can never be altogether free in relation to natural and social laws. Political and juridical laws, imposed by men upon men, whether by force, deceit, or universal suffrage, are to be disobeyed if they *infringe* on man's sovereign rights." Undoubtedly, Bakunin believed in unalienable rights. He is seldom mentioned in law books currently used in Harvard, Yale, Columbia, Princeton, etc. Even the word "*usucapion*" is totally absent in law textbooks unless you find a copy of Henry Maine's *Ancient Law*.

I. Taxation of God's property is a means of destroying property and is a form of robbery. The State has a constitutional duty to protect man and his property, not to tax or to confiscate it. The destruction of the Boston West End Italian community by urban redevelopment and "slum clearance" has been ably described by Herbert J. Gans in his *The Urban Villagers* (New York: The Free Press of Glencoe, 1962)

J. The Holy Bible, now a federal law, mandates a tax law in relationship to the ownership of land. The basic tax was the poll or head tax (**Exodus 30: 11-16**), which had to be the same for all men to be paid by men only, all men of age twenty and over. This tax was collected by the civil authority for the maintenance of civil order, to provide all men with a covering or atonement of civil justice. There was thus no land tax or property tax. Since the "Earth is the Lord's and the fullness thereof ," (**Exodus 9:29**, etc.), a land tax usurps God's rights, and is thus unlawful. A property tax of any kind by the civil government is a denial of this God-ordained security. The civil government has ordained Public Law 97-280, 96 Stat. 1211 which says the Bible is the Word of God. So, we choose not to disobey or violate a federal law. Or, what is the punishment for disobeying an unjust law?

J.W. Ehrlich's *The Holy Bible and the Law*, at page 92, states that "Biblical law is the Word of God (read: Public Law 97-280); it therefore represents an ultimate order which is written into the texture of all creation and into the heart of man. Hence, a jury system is valid in terms of Biblical law, since the decision is in terms of a fundamental law which all men know, whether they acknowledge it or not. Civil statutes represent only the will of the State, not an objective and absolute moral order. Statutory law creates lawlessness, because society is then no longer governed by an absolute standard of justice but rather by the fiat will of the State. Like fiat money, fiat law lacks substance, and it quickly destroys itself, and all who rely on it. It is a form of fraud, and a major form." Very thought-provoking words of wisdom.

K. Technological advances that justify eminent domain to build more industrial complexes, manufactories, etc., does not mean theological surrender. Neither does it mean surrender of man's sovereignty of his unalienable rights. When the State finds a balance between the need to execute a compulsory taking for technological benefits and advantages that will benefit mankind, then it is up to the People to decide by suffrage. The

State must thus be always limited in its powers of execution for the sake of the People.

PERSUASIVE WRITINGS

L. *Ego primam tollo, nominor quia leo.*
Secundam quia sum fortis tribuetis mihi.
Tum quia plus valeo, me sequetur teria.
Malo adficietur, si quis quartam tetigerit.

(Phaedrus)

"I am the contractor, I take the first share.
I am the laborer, I take the second.
I am the capitalist, I take the third.
I am the proprietor, I take the whole."

Phaedrus (370 B.C., one of Socrates's protagonists), has summed up all the fig leaves, forms and masks of property where, like the lion in the fable, the same tyrant gets paid in each of his capacities. The government in our midst is the lion in the fable that wants to be paid in each of its multifaceted capacities. Right of conquest and cession, manifest destiny, taxation, eminent domain, regulatory takings, issuing inferior land titles, statutory warranty deeds, taking with or without compensation for the sake of a public policy, national interest, national security, etc., are all the manifestations, manipulations and machinations of land grabbing with unparalleled ease, force and coercion impelled by the ubiquitous motive of profit. The Yazoo Land Fraud cases of the early 1800's is a case in point.

When man was at home in and with Nature, there was no government or private property contemplated, required or necessary. There was no need for protection by a government. Everyone in a community depended on each other and themselves to self-govern and self-contain the needs of their community. Land belonged to everyone. They planted, sowed, harvested, hunted, farmed and fished. They were happy and content. Those halcyon days were soon to explode into orderly chaos when Locke, Rousseau, Marx, Hobbes, Descartes, Hume, Bentham, Mills and others started thinking of innovating "government."

M. The *concept* of property is innovative at best. Neither labor, nor occupation, nor law can ***create*** property; that it is an ***effect*** without a *cause*. **Psalm 24:3** – "The earth is the Lord's, and the fullness thereof; the world, and they that dwelleth therein."

Reason submits only to fact and to evidence. The living earth is fact that is full of truth, proof and evidence that God intended to allow dominion to those who qualified as stewards of His bounty. "Distrust all innovations," said Titus Livius – *nihil motum ex antiquo probabile est*. Innovations challenge the original intent of God. He manifested Himself through his handiwork. Man taints, tarnishes, twists and turns God's Word to satisfy his bewildered ego and insatiable greed.

N. **P. .J Proudhon** in his seminal work "*What is Property: An Inquiry into the Principle of Right and of Government,* introduction by George Woodcock, translated from the French by Benjamin R Tucker (Dover Publications, Inc. New York)" encapsulates the concept of property brilliantly. He talks about *jus in re* – the right ***in*** a thing – and *jus ad rem* – the right ***to*** a thing. In Nature, the *jus in re* operates bereft of human intercession. The thing exists as of right. It has a right unto itself to exist. Enter human intercession. The *jus in re* now escalates into a *jus ad rem.* A whole new concept of ownership and possession erupts into utterance, expression and existence. A wholly new set of rules begin artificial rule and reign in a realm where right to occupation, possession and ownership was never in question. I agree with P J Proudhon who said that "if slavery is murder, property is theft."

O. **John Locke**, who was one of the chief architects, although tacitly, of the Glorious Revolution of 1688, introduced the concept of government with all its trappings, tricks, tests, tribulations, ramifications, accoutrements, and potential for making mischief because power is of an encroaching nature. America never looked back since. Government never looked back since. It has all the innovations in place to reinforce its reason to exist. "Limited government" is an arrogant and evil joke. It does not say what it means, and does not mean what it says. That was the intent of the founders and framers. To institute and constitute limited government so that the several States, or the People, will not lose their sovereignty. Hence the Tenth Amendment and the Ninth Amendment, respectively. But, in reality, how much power do the People have vis-à-vis a greedy and power-hungry government?

P. Almost every textbook on property law starts off with the usual history of feudal England with an ample sampling of how William the Conqueror imposed regal sovereign status and rights upon himself, the people and their lands. The reader will become accustomed to words like "*imperium*" (which means "ownership of the territory itself as a result of proclaiming sovereignty"; "*dominium*" (which means the **radical or ultimate** title to all lands, which translates to might is right). But *imperium* and *dominium* are newer concepts. They are not part of the *ancien regime* where the law, as we know it, was being conceptualized, developed, analyzed, refined, purified and codified. In America, they discovered "manifest destiny."

Q. As the centuries passed and England's naval prowess increased, the Crown, England's new call-sign, vested itself with the right of discovery, conquest and cession. A sort of a self-appointed right enforceable *ipso facto*. This belief in a self-proclaimed sovereign is supposed to displace a local ruler completely while the Crown assumes complete and total control of the people and their lands. To add insult to injury, the Crown then assumes unlimited powers of legislation and government (See Sir Henry Jenkyns, *British Rule and Jurisdiction Beyond the Seas* [Oxford, 1902], p. 166n; W.E. Hall, *A Treatise on International Law* [Oxford, 1924, p.50]).

L. This is outright theft of lands belonging to another with the intent of permanently depriving the owner of it – pure and simple. The British used legal niceties and terms like "Orders in Council," "Letters Patent," "Act of State" and "Protectorate status" to justify imposing its sovereignty and jurisdiction on foreign soil. Native land rights were held sacrosanct by the natives and their chiefs wherever the British set foot. But the cunning British devised a clever way to **lease** these lands with legal fictions called land titles. Only the Maoris of New Zealand exacted a four-cornered ironclad treaty with the British explorers and navigators which stipulated and mandated absolute land rights. The Maoris' brothers in Australia were not that lucky until the *Mabo* decision 1982 which recognized superior land titles under *usucapio* and customary native title.

M. Again, first principles of law governs the principal issue.

Aliud est celare, aliud tacere - it is one thing to conceal, another thing to be silent. After all, when the Foreign Jurisdiction Act was passed in England, Parliament, not the courts, could make or un-make any laws thus discouraging and preventing judicial review on such hot colonial land

grabbing issues which occasioned a lawsuit here and there. And the supreme British Parliament did finance pirates and buccaneers and other entrepreneurs in the name of conquest, cession and seizure – legally, lawfully and legitimately. *Falsum in uno falsum in omnibus* – false in one thing, false in all.

Ex terus non habet terras – a foreigner or alien holds no lands. Wonder if William the Conqueror heeded this when he brought his Norman laws into good ol' England.

Extra territorium jus dicenti impune non paretur – the law of a certain territory may be safely disregarded outside that (Norman) territory. There was no Justininan, Fleta, Bracton, Puffendorf, Barbeyrac, Blackstone, Bacon or Glanvill to advise William the Conqueror.

These legal Latin maxims were imported into the early American colonies and found sustenance in American jurisprudence together with William Blackstone's *Commentaries of the Laws of England*. But, no judge or jury or lawyer anywhere in the Commonwealth ever heeded them ! They are nice and cute to quote, but acute in its breach. Our judges are no better. They continue the deception of government using black robes and white lies.

10. POLITICAL FOOTBALL

A. First principles of law, a holistic view of law and justice which gives scholars, students, judges and lawyers a rare glimpse of the past when legal maxims and doctrines became established principles of law for perpetuity, make mention of the Latin word "*usucapion*" which means the acquisition of property by lengthened *possession* from an aboriginal customary native title point of view.

B. Then, there is the Greek word "*emphyteusis*" which means a lease in perpetuity under which the tenant (emphyteuta) had all the rights of property except *ownership*. He rented or leased from the actual owner and possessor and occupier of the land. Think "eurosettler" who "columbussed" his way into the New World.

C. Another arrow in the peoples' quiver is the word "*usufructuary*" which means the right to enjoy the use and advantages of another's property short of the destruction or waste of its substance. An *usufruct* is a tenant. This fits

the legal duties, not rights, enjoyed by the Pilgrims upon landing at Plymouth Rock. There is no evidence that the American Indians were consulted about land usage by the new settlers.

D. **One of the leading legal Latin maxims concerning superior title to land is *usucapio constituta est ut aliquis litium finist esset*, a legal maxim means *usucapio* was instituted that there might be an end to lawsuits; the right of property conferred by lengthened possession was introduced, or made law, in order that after a certain term no question should be possible concerning the *ownership* of property. This squares with *boni judicis est lites dirimere* – the duty of a good judge is to prevent litigation (4 Coke 15).**

So *usucapio* sets the stage for unnecessary and frivolous lawsuits concerning land disputes. If there is an undisputed owner of land who was there from the very beginning, an alien may be permitted to buy, lease or enter into some deal with the owner. The American Indian had no recourse to any law or justice forum. The government defeated him at every twist and turn with no remorse or conscience as a civilized Christian developing a Christian nation.

E. Sir William Blackstone, whose legendary *Commentaries of the Laws of England* were the original source of law in the American colonies, added : ". . . so great is the regard of the law for private property, that it will not authorize the least violation of it; no, *not even* for the general good of the whole community." This could have impelled the decision in *Holden v. James*, 11 Mass. 396 (1814), where the Massachusetts Judicial Court held that an act passed by the Georgia legislature to be unconstitutional, on the ground that it violated the US Constitution. That statute was overturned because it affected *one* person. Also cited in *Derby v. Blake*, 226 Mass. 618 (1917). So Blackstone holds good for the proposition that although the entire community might benefit, one person's rights cannot be extinguished.

F. William the Conqueror, however, found refuge in *ex vi aut metu* – on the ground of force or fear – to impose his will and ill-will with the Magna Carta, subsequently, to stamp the approval of might is right. Today, government does it gleefully because it has the Necessary and Proper Clause power to do so (Article 1, section 8, clause 18, U.S. Constitution) – which means "I am the legislature. I can do whatever I like to pass any law. If the Supreme Court overrules me, I can always pass another law to overrule the

Supreme Court.

G. Another Latin legal maxim is *Qui prior est tempore potior est jure* – he has better title who was **first in point of time**. Yet another first principle that advances the solid argument that UNLESS and UNTIL customary native title is properly, adequately, efficiently, legally, lawfully and legitimately conveyed, any other form of possession or ownership is total theft by total terrorism and tyranny. "Theft is theft even when the government approves of the thievery," declared Judge Janice Rogers Brown during her tenure at the California Supreme Court.

H. The General Allotment Act of 1887, at section 5, declares that lands on Indian reservations allotted to individual Indians and *held in trust* for them by the government shall ultimately be conveyed to them in fee simple discharged of the trust and "free from all charge or incumbrance whatsoever," which could mean that such lands are exempted from taxation. In short, the thief is embarrassed he was caught in the act, so he passes a law and arrogates to himself the right to steal and hand it over to the rightful owner, and as an added favor, find grounds to exempt such theft from taxation. This is civilized behavior? It became so with the passing of the Indian Reorganization Act in **1934**. There was widespread opposition to this Act which sought to return aboriginal lands to the Aboriginals.

It is interesting to note that 1933 marked the birth of Christian conscience in the American psyche because many thought that the curses of God after the Great Crash of 1929 sparked the Great Depression. The 1934 Indian Reorganization Act may have been an act of repentance. It is federal law now based on God's Law.

I. Adversus extraneous vitiosa possessio prodesse solet – prior possession is a good title of ownership against all who cannot show a better one. Another first principle galvanizing the evidence and proof of customary native title.

J. "*In alode*" is another maxim referring to allodial subjects; which were lands held independent of any superior and burdened with no feudal homage or service. Aboriginal Americans have always owned these lands. They were sovereigns and not subjects to anyone.

K. Usucapion has played a leading role in the drama that unfolded in America after we disbanded our political association with England. English

common law and American law came to grudgingly endorse *usucapion* with subtle, angry, arrogant, stupid, meaningless and insane decisions by the legislature, the judiciary and the executive branches of government. They were all in it together to steal, and steal everything west of the Appalachians. John Jacob Astor financed the Oregon taking (theft). The city of Astoria bears his name.

L. The Royal Proclamation of **1763** promised equity and fairness to the *taking* of aboriginal lands in America. Consent of the Indians was mandated as a necessity prior to purchasing or acquiring their customary lands for public purposes.

M. The **1787** Northwest Territory Ordinance, a law prior to the adoption and ratification of the United States Constitution, mandated that the land and property of the Indians "shall *never* be taken from them without their consent . . . and that their property, rights, and liberty, . . . *never* shall be invaded or disturbed, unless in just and lawful wars authorized by Congress . . ." 1 Stat. 50, 52. The hands that rocks the cradle pinches the baby as well to justify the rocking, and pinching, exercise.

When the British lost the war with the American colonists, nobody did anything about the Aboriginal land title issue. The Jay Treaty failed to address the issue. The Ghnet Treaty, too, and the Treaty of Versailles. Ignorance of the law is no excuse.

N. There is a popular Native American saying: "When the Europeans first came to Plymouth Rock, they fell on their knees and *prayed*. Thereafter, they fell on the Indians and *preyed*."

Our nation began as a *timocracy* – an aristocracy of property; government by propertied, relatively rich people. Check out the backgrounds of our framers and founders, a.k.a Founding Fathers. They were property (read: slave) owners bar none.

Justice Patterson spoke about the "preservation of property as a primary object of the social compact from an otherwise despotic power that exists in every government," in the 1795 case of *Van Horne's Lessee.* What this means, in plain language, is that people who originally owned lands (appropriated from the Aboriginals/Native American Indians, by cession, by purchase of a few cents per acre by courtesy of treaties) agreed to give the

government the power to protect their lands if they paid a tithe or some other form of compensation as an agreement between the people and the government. But then, judges started interpreting and applying the "received wisdom of legal thought," and started messing with the concept of eminent domain. The chief culprit was the "easement" or "right of way" element which when expanded could mean any thing, especially to those in power and authority – the plenary power of Congress.

O. The fourth chief justice of the U.S. Supreme Court, John Marshall, who had *six weeks* of training and studying as a lawyer under the legendary George Wyeth, denied the power of the power of an Indian tribe to pass their right of occupancy to another in *Johnson c. M'Intosh*, 21 U.S. (8 Wheat.) 543 (1823). The reason and justification: "Discovery of the continent gave an exclusive right to extinguish the Indian title of occupancy, either by purchase or conquest. The discovery of the American continent by Columbus or Amergio Vespucci has been aptly described as the discovery of the family refrigerator in the family kitchen by the family's five-year old.

In *United States v. Percheman*, 32 U.S. (7 Pet.) 51, (1833), Chief Justice Marshall sustained the grant of the sovereign king of Spain in Florida.

The only difference between *Johnson* and *Percheman* is that the grant of a sovereign Indian tribe found no (racial) favor to that of a Spanish sovereign grant. The supremacy clause of the U.S. Constitution says: "The Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all ***Treaties*** made, or which shall be made, under the Authority of the United States, shall be the supreme law of the land . . . Article VI, § 2.

P. The Fifth Amendment to the United States Constitution says: "No person shall be . . . deprived of life, liberty, or property without due process of law." Neither provision is cited in *Percheman,* nor is the occupation theory of property mentioned; yet all three lie behind the opinion. The Court's conclusion is not compelled by the language of the treaty or the statutes. The Court believed the Constitution is what they say it is and means. Nine unelected people decide the fate of millions of Indians because the President who nominated them and the Senate which approved their nominations and appointed them expected them to bend their judicial beliefs, preferences, decisions and philosophy to their warped sense of loyalty to the man and men who confirmed their nominations.

Q. In 1941, the unanimous U.S. Supreme Court, concerning Indian title, wrote that "Extinguishment of Indian title based on aboriginal possession is of course a different matter. The power of Congress in that regard is supreme. The manner, method and time of such extinguishment raise *political*, not justiciable, issues. *United States v. Santa Fe Pacific Railroad Company*, 314 U.S. 339, 347. So why in God's name did the U.S. Supreme Court grant certiorari to hear it, and thereafter say it is a *political* decision especially if it is a congressional and executive decision? What if the Indians had a code regarding extinguishment which was contrary to the federal government's laws, and what if the Indians had a far more superior armed forces than the federal government? Congress fell asleep at the wheel, or did they care at all ?

R. In *Tee-Hit-Ton v. United States*, 348 U.S. 272 (1955), Alaskan Indians claimed compensation, under the Fifth Amendment of the U.S. Constitution, on the ground that the government had sold timber on land "belonging" to the tribe. The Supreme Court reasoned that their claim must be denied because "mere possession of customary (native) land is not specifically recognized by Congress." *Usucapion* was never mentioned. It was, instead, ignored. The Court tacitly relied on the English ***right*** to sovereign occupancy, title, right, ownership and possession because of Letters Patent and Orders in Council buttressed by "manifest destiny" of discovery, conquest and cession. See Newton, *At the Whim of the Sovereign: Aboriginal Title Reconsidered*, 31 Hastings L.J. 1215 (1980), for a review of the notion that Indians have some sort of legal claim to their land as opposed to a claim simply based on Congress' conscience.

Surprisingly, a 1946 decision held that compensation for a taking under the Fifth Amendment is available for *unrecognized* Indian title. *United States v. Tillamooks*, 329 U.S. 40. But the 1981 decision in *USA & Samish, Snohomish, Snoqualmie & Steilacoom Indian Tribes & Duwamish Indian Tribes v. State of Washington,* 641 F. 2d 1368, firmly and unequivocally declared that "federal recognition of an Indian tribe as a political body is **not** required for tribe to establish and exercise treaty rights." In other words, the treaty language in the Supremacy Clause (Article VI, section 2) is sufficient. (emphasis mine)

"Federal recognition" is an unnecessary political and administrative millstone around the Aboriginals necks.

But American Aboriginals are so disorganized that they cannot rally together to fight the chief thief. The Anglo-Saxon American has succeeded in disengaging the American Aboriginal solidarity as a Nation. Even the United Nations, based on American Aboriginal soil, is impotent. They still pay no usufruct to the American Aboriginal.

Congress has recognized injustice where it has occurred, returning to the problem with later jurisdictional acts that allowed Aboriginals to sue for the fair value of their lands – most notably, by the Indian Claims Commission Act of 1946, 60 Stat. 1049, 25 U.S.C. § 70 *et seq*. Is this great news for aboriginal title? The standard applied in judicially-supervised settlements has always been that Natives shall receive the fair market value – at the time of taking – of the lands they have historically used and occupied. *Crow Tribe of Indians v. United States*, 284 F. 2d 361 (Ct. Cl. 1960). This value includes all rights to the land, surface and subsurface, not merely the value of the lands to the Natives for historic purposes. *United States v. Shoshone Tribe of Indians,* 304 U.S. 111 (1938); *Otoe and Missouria Tribe of Indians v. United States*, 131 F. Supp. 265 (Ct. Cl. 1955).

This is still doubtful law; an unsettled point – *dubii juris*. We cannot function in a jurisprudence of doubt as a civilized people and nation. The Alaska Native title issue has never been put to rest except for continuous tests, at best. A lot of doublespeak and fork-tongued reasons were proffered and explained away. Meanwhile the Natives sit back and wonder and ponder what to do next. WE THE PEOPLE are the answer to this dilemma.

THE ALIANZA

S. The Spanish conquistadors, led by Coronado, were mandated by the Pope to issue land grants to local natives if and when they decided to set up a fort or a station to do business, The first such land grants were recorded in **1540** in Santa Fe, the oldest European settlement in this continent where the Pueblo Indians lived since antiquity. Under the **1680** code, *Recopilacion de leyes los Reynos de los Indias,* "not only were the Indians to have full possession of all the area they used or occupied, but they were also to be given more territory if for any reason their lands were insufficient for their needs." See "*The Baltasar Baca Grant: History of an Encroachment*," *El Palacio* 68, nos. 1 and 2 (Spring and Summer 1961): 49. Myra Ellen Jenkins, New Mexico archivist has a complete record of these transactions.

Imagine a foreigner stepping on Aboriginal America and issuing a land grant.

There was a scam artist called James Addison Reavis ("Baron of Arizona") who evidenced fake Spanish land grants and almost claimed Arizona. They made a movie based on this character played by the British actor Vincent Price as the Baron.

Mexico, which gained independence from Spain in 1821, ruled the region that is now New Mexico until 1848, when the United States government defeated the fledgling nation and took – under the Treaty of Guadalupe Hidalgo – the Southwest as new American territory. The Treaty of Cordoba, granted Indians citizenship and land rights were continued, but nothing was done to implement this provision by specific legislation or orders to the chief executives.

According to 11 Statutes at Large, 374, of November 1, 1864, Congress confirmed the Pueblo land grants. ***This is significant***. By the 1960s, *thirty-five million acres* of New Mexico was owned by the federal government using legislative measures to take whatever lands they could under the pretext of creating national parks and national forest lands.

T. The people were infuriated by the federal government's actions in taking lands originally belonging to the Indians. On June 5, 1967, a band of armed men swept into a remote northern New Mexico courthouse in search of a hated district attorney. The DA was not present, but two officers were wounded, the courthouse shot up and a newsman and a deputy were seized (kidnapped). The "courthouse raid" was led by the fiery land-grant leader **Reies Lopez Tijerina** of the land-seeking Alianza Federal de Mercedes ("Federal Alliance of Land Grants). The Alianza was a thorn in the flesh of the federal government because they challenged the legality of land grabbing.

Tijerina defended himself during the trial for kidnapping by persuading the Judge Larrazolo and jury that he was making a **citizen's arrest**. The judge instructed the jury thus: "The Court instructs the jury that citizens of New Mexico have the right to make a **citizen's arrest** under the following circumstances:

(1) If the arresting person reasonably believes that the person arrested, or attempted to be arrested, was the person who committed, either as a principal or as an aider and abettor, a felony; or
(2) If persons who are private citizens reasonably believe that a felony has been committed and that the person who is arrested, or attempted to be arrested, was the person committing, or aiding and abetting, said felony.
(3) The Court instructs the jury that a citizen's arrest can be made even though distant in time and place from the acts constituting or reasonably appearing to constitute the commission of the felony. The Court further instructs the jury that a citizen's arrest may be made whether or not law enforcement officers are present and, further, may be made in spite of the presence of said law enforcement officers.
(4) The Court instructs the jury that anyone, including ***a state police officer, who intentionally interferes with a lawful attempt to make a citizen's arrest does so at his own peril, since the arresting citizens are entitled under the law to use whatever force is reasonably necessary to defend themselves in the process of making said arrests***.
(Quoted in full, *The New Mexico Review and Legislative Journal,* January 30, 1969, page. 3).

The surprise verdict: **NOT GUILTY ON ALL THREE COUNTS….** Tijerina conducted his own defense although unversed in law. Observers say he did a spectacular job as an attorney. A true autodidact.

The Alianza motto that stood its ground: *Tierra o Muerte – Land or Death.*

Although the press, the judge, the prosecutors, the jury and Tijerina himself did not mention or imply it, the twenty-seven words, three commas and one period in the Second Amendment won the day for Tijerina and his "act of kidnapping." After all, a militia is defined as an armed citizenry whose main function is to ensure that foreign and domestic enemies are contained.

Perfectly legal, under common law, to effectuate a citizens arrest against the County Tax Assessor for fraud, deception and theft – felonies; and the Sheriffs and their deputies for illegally evicting you from your homes because you were duped into signing away your rights when your purchased

your house. Perfectly legal, too, to arrest those barracudas, and piranhas and sharks that made you sign all those fraudulent documents.

CONCLUSION

A major groundswell of support from homeowners must be impelled to take and hold **absolute title** to their homes and land upon which they are built. Millions of homeowners must step up and make this a sustaining reality. God will reward your act of faith and loyalty when you ask the original steward of this land – the American Aboriginal/Native American/American Indian - to issue you the real, legitimate, lawful, legal, and lasting title to the land upon which your house was built so that your home is your castle.

Our government continues to poke its nose and pour billions of dollars where it is not required or wanted in the Far East and the Middle East. What if these people and these governments poked their noses in our business? Our government is unable to reconcile itself with the wanton theft of Aboriginal lands and the ongoing home foreclosure nightmares, and yet it continues to want to be the world's policeman.

As recent as June 2014, we became the laughing-stock of the world when we exchanged Sgt. Bowe Bergdahl for ***five*** topnotch Taliban prisoners in Guantanamo. We reportedly did not deal with the Afghan government, but the Taliban, a terrorist organization. The prisoner exchange is purely an illustration of consorting with the enemy while aiding and abetting it. Bergdahl, according to military sources simply wandered away to be conveniently captured by the Taliban, who after five years, asked for five of their comrades. Obama sold us down the river. We, Aboriginals, need to protect our land and soil from further terrorist overtures and putative attacks. Obama has endangered our homeland because of political chicanery. Barack Hussein Obama could very well be a Manchurian Candidate.

Nemo ex proprio dolo consequitur actionem – no one can pursue an action based upon his own wrong-doing, or no one acquires a right of action through his own fraud - should be the our country's motto instead of *e pluribus unum*.

Identifiable and cognizable American legal history illuminates four core values that will save this country as a nation-state:

(1) there ought to be some restraints on arbitrary power, and, accordingly, that power should only be exercised pursuant to the rule of law although the federal government is a limited one with enumerated powers;

(2) that the ultimate political principle ought to be popular sovereignty – that the ***people*** themselves should be responsible for the content of the rules of law, and that the legal system ought to inure to the benefit of all the ***people***;

(3) that a primary purpose of the law should be the furtherance of economic progress and social mobility while political theories, acts and omissions bring the rearguard;

(4) that the law ought to construct and maintain a large area for the functioning of private enterprise relatively immune from the incursions of public power while the titans of industry in Wall Street and the commoner in Main Street share equal opportunities.

Numbers (1) to (4) above span some 250 years of doubtful jurisprudence and represents our somewhat cacophonic values laced covertly and overtly with hypocritical sophistry. These core values also showcase the undeniable fact that the supreme law of the land – the U.S. Constitution - is best used as a book-end in some dusty shelf, or as a solid vermin crusher. Avoiding the Constitution for enlightenment on the vagaries of a legislative enactment when a statute is in doubt is a canon of construction especially when *five* justices of the U.S. Supreme Court opine that the troublesome statute can be interpreted plainly and literally without need for semantics and style of prose.

The fact that we have a limited government with enumerated powers originally intended is a boring cliche. The people are not sovereign but subjects to the royal proclamation of the Congress, the White House and the Judiciary. The *rule of law* has been replaced by the *law of rules*. We are adrift in the ocean of doubt, uncertainty, confusion and inconsistency. There are different rules for different fools set in stone by administrative mules. A significant number of laws are flaws of the legal conscience and consciousness.

Until and unless this government steers the ship of sovereignty back on course, or everything it does, or does not do, will be tantamount to rearranging the deck chairs of the Titanic.

TO GOD BE THE GLORY

Judge Navin-Chandra Naidu
Member, National American Indian Court Judges Association
Member # 01798766, American Bar Association
Member # 1040751, International Bar Association

> (***Note***: I maintain the "bar" credentials in case I need to get some deserving tribal member, or a true believer in God out of a secular court. Without these credentials, those U.S. politicians in black robes will rattle my cage for "unauthorized practice of law".)