

College of Law - University of Oklahoma

Addressing the Root Cause for Failures of Sustained Positive Societal Growth in Indigenous Populations

Master of Legal Studies in Indigenous People's Law

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Abstract

One of the demands of our nation, in its role as a sovereign, is that only sovereigns hold the monopoly on the legitimate use of physical force, but a question also to be answered is what legitimate limits are also extended to uses of the alternative psychological means of force? Where is the boundary between the person's physical and cognitive sovereignty? When people are kept in such a continual and unacceptable range of uncertainty that enough stress causes enough detrimental physical or social-economic outcomes that a line has been crossed back into the realm of physical force, should the responsible sovereigns be held accountable... and how?

The United States Constitution was created with the express purpose of providing both the certainties of individual rights, and the certainty of redress should these rights fail to be clearly maintained. When the country first applied a plenary authority doctrine it also applied the first extra-constitutional authority- the first mechanism for uncertainty with few elements for redress...and this authority was applied squarely at the Native indigenous population. Should the uses of plenary power that have been shown to have caused damages be subject to stricter review, how, and by whom?

To be Native in the United States of America means living a shorter life fraught with the mental and physical dysfunctions keenly associated with worry, anxiety, and stress. Science, philosophy, and basic common sense suggest that whatever is happening is exactly what is supposed to be happening with things in their current condition, and that every condition has a cause...for that matter, until reaching a root cause, each of these superior causes has an even more overlying cause as well. A common metaphor suggests that alligator fighting becomes unnecessary when there are no alligators, that draining the swamp removes an alligator's habitat, that without a habitat the alligators will be forced to live elsewhere – that the swamp is the root cause of having to fight the alligators.

This paper looks to the root causes for failures in our country's ability to adequately provide our indigenous population some essential tools needed to accomplish healthy, productive, and worthy pursuits for improvement. There is enough statistical and other evidence to support a theory that forcing decade-over-decade of plenary power's ultimate uncertain outcomes on the country's indigenous population is the root cause for their unacceptable current condition. Presenting the physical outcomes will show conditions thoroughly consistent with both post-traumatic stress and chronic stress disorders; the psychological pathology will indicate the cognitive challenges associated with chronic stress; presenting the political history will demonstrate some motive or intent - that the root cause is truly an inflicted 'unacceptable level of *uncertainty*' and is productive of such stress.

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Introduction

Human internal chemical releases caused by stress are for fighting, running, or freezing and experiencing internal body damage when fights or flights cannot extend beyond a reservation – beyond a place reserved for this form of doom. Excessive *stress*, regardless of necessity, shortens lives and reduces the quality of life, if for no other reason than by damaging the body's DNA - as brought out Danna Noreck on a Natural News webpage ("Research proves stress," 2012). The OMHARMONICS webpage ("6 Ways to Restore Mental Clarity," 2012) cites being "buried under mountains of trivia or worries" as a good reason for not being able to gather thoughts, supporting that *worry* slows the clarity of thought and is associated with gradually shutting down the reasoning area of the brain, leading to anxieties inside a then under-supervised limbic system's emotional, imaginative, and perhaps irrational responses. Jamaal Bell's Huffpost article ("Mass Incarceration: A Destroyer of People of Color and Their Communities," 2010) adequately notes one extent of Native people's cognitive dysfunctions by demonstrating the disproportionality of mass indigenous incarcerations. States with significant Native populations are hosting criminal justice systems that over represent Native Americans:

"In South Dakota, for example, Native Americans make up 9 percent of the total population, but 29 percent of the prison population. In Alaska, Native people account for 15 percent of the total population and 38 percent of the prison population. And Native Hawaiians are only 10 percent of the state's population, but 39 percent of the incarcerated population."

It is not unreasonable to connect the dots where less than full cognitive function can produce the forms of behavior worthy of interaction with justice systems, as well as helping to explain high rates of indigenous poverty and unemployment.

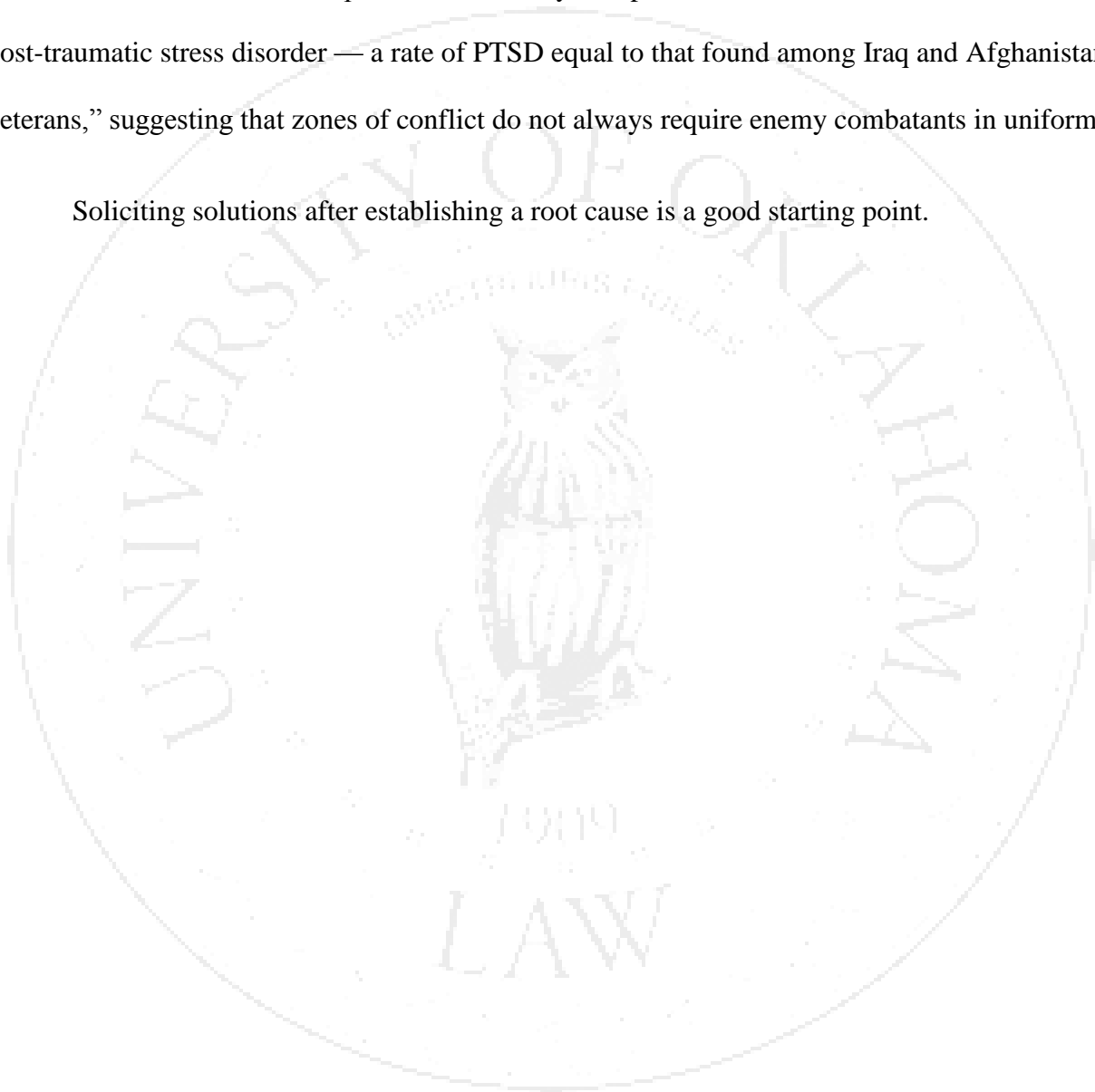
Gaslighting is a way of distracting from finding root causes by confusing issues, such as framing legal processes as always being processes in justice, or incorrectly redirecting that discrimination is always a personal choice above being the illegal process of exclusion. Clearing the distractions to see things in their true current condition provides a degree of certainty and is as essential to root cause recognition, as root cause recognition is to determining how 90-plus-years after the Rockefeller Foundation's funded Meriam report was first published, a reasonably identical report could still be as likely disheartening if released tomorrow. Have the country's best efforts not been good enough, or should something less than our best efforts be allowed to become acceptable behavior?

Bell (id.) parrots that the U.S. Census Bureau statement that 17 percent of Native Hawaiians and Pacific Islanders (and 27 percent of all self-identified Native Americans and Alaska Natives) live in poverty, and Bell also brings out that:

“the national figure distorts the prevalence of poverty on Indian reservations and in Alaska Native communities, where 22 percent of Native people live. In 2012, three of the five poorest counties in the U.S., and five of the top 10, encompassed Sioux reservations in North and South Dakota... Last year, President Barack Obama visited the Standing Rock Sioux on the border of North and South Dakota, where the poverty rate is 43.2 percent — almost three times the national average. The unemployment rate on the Standing Rock Reservation was over 60 percent as of 2014.”

Other concerning behaviors are seen in trying to reconcile the prevalence of violence against women and children in Native communities, as Native women are 350 percent more likely to be raped or sexually assaulted in their (shortened) lifetime, when compared to women of other cultures. The Post also reports that: “Twenty-two percent of Native children suffer from post-traumatic stress disorder — a rate of PTSD equal to that found among Iraq and Afghanistan veterans,” suggesting that zones of conflict do not always require enemy combatants in uniforms.

Soliciting solutions after establishing a root cause is a good starting point.



Demonstrating the Causes for Failures in Sustaining Positive Societal Growth in Indigenous Populations.

Studies of the human brain show that three sections can be isolated when looking into the effects of worry (neocortex), anxiety (limbic system), and stress (reptilian or primal), regarding chronically unsuccessful behavioral outcomes. Optimum societal outcomes require that the majority of its membership use all three brain areas for (1) correctly analyzing and predicting; (2) correctly prioritizing, and (3) correctly acting or responding to the inputs the brain receives from one's five known senses. Understanding how outcomes relate to cognitive predispositions allows for behaviors to be examined, and then these understandings can be used to devise more desirable solutions. This paper will demonstrate how the Indigenous cognitive collective may be environmentally predisposed to needlessly using much less mental problem-solving ability than is potentially available, and suggests strategies to stimulate social growth in so doing.

A Little about the Brain

Although sometimes used interchangeably, worry, anxiety, and stress operate very differently as seen below.



As described by Copthorne Macdonald on his Role of Values in Wisdom Webpage (ND), “The limbic system arrived with the first mammals. It helped mammals to survive because it allowed them to remember experiences, and it linked those experiences to pleasant and unpleasant emotions. In humans, the limbic system continues to be involved with memory and emotion.” Additionally, the limbic system is a pathway, negotiator, and interpreter using neural connections between the ancient primal regions of the brain, and the newest region (called the neocortex), which can be trained to use critical thinking to override primal behaviors – so long as a habit has been developed to resist acting on instantaneous impulses.

An Analogy Considering a Designed Brain

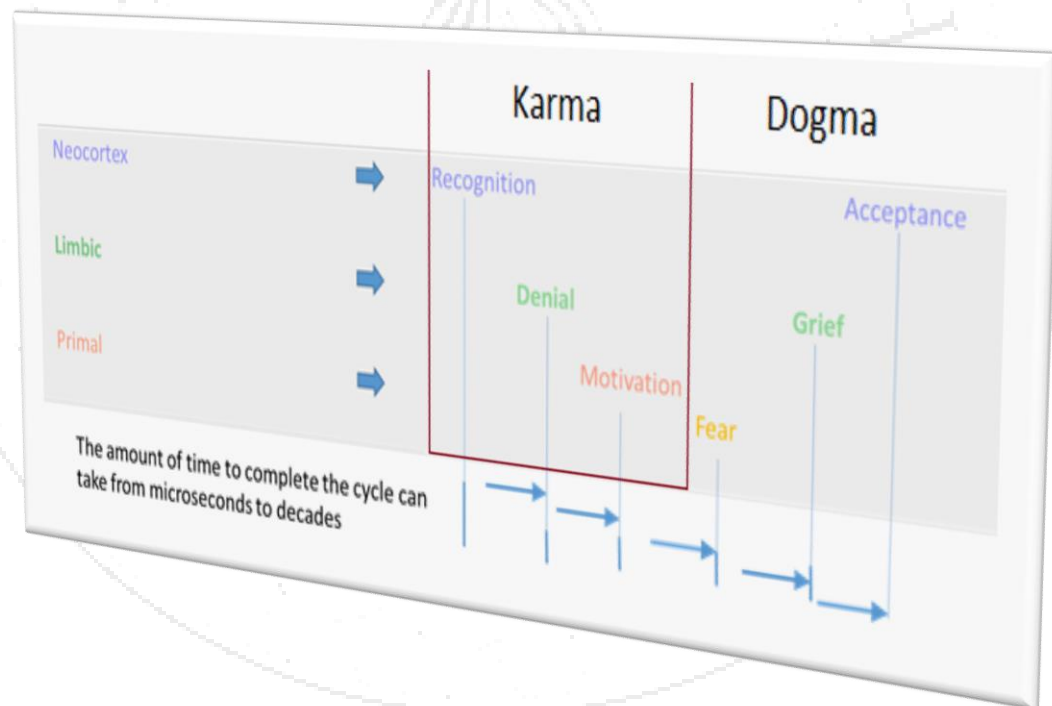
The human brain is designed to protect itself by protecting its owner. The neocortex uses critical thinking to accurately predict the meanings of any changes noted by sensory inputs, as well as reexamining preexisting problems it has yet to adequately resolve for the likelihood of changes. Jeff Hawkins (2004) writes in his book *On Intelligence*, “Prediction is not just one of the things your brain does, it is the primary function of the neo-cortex, and the foundation of intelligence.”

It is the author’s theory that the human brain lacks the capacity to provide unique solutions for each of the billions of combinations of scenarios that sensory inputs can provide to the brain (Stein, 2011), so instead the brain initially processes all thoughts through what is regarded as a traditional six-step grieving cycle; that the grieving cycle may last anywhere from a micro-second to decades before fully resolving any new or particular problem; that the brain may ‘bounce back-and-forth’ between any of the steps tens to millions of times before

reasonably reconciling and advancing toward or past the next step, and that the grieving cycle is used for all problems recognized as change (be they interpreted as good news or bad news).

One homogenized definition of a grieving cycle's attributes is shown below:

1. Change Recognition (conscious or not) / Worry
2. Denial / Disbelief / Anxiety
3. Motivation / Anger / Stress
4. Fear / Detachment / Depression / Stress
5. Grief / Struggle / Dialog / Testing / Anxiety / Worry
6. Acceptance / Meaning / Incorporation / Empowerment



The first three of these six attributes are classified as karma when described as those things that a person can do to limit or expand the choices they have in life. The last three attributes are more closely associated with dogma by having to come to terms and find an

understanding for the impact of those things that life shows itself to do to limit or expand one's choices. It is the combination (or subtraction) of both karma and dogma that create the perception of any person's or group's pool of immediate options.

The Indigenous have historically been exposed to limited karma in that the dogma that society has shown them has restricted the Native's pool of major choices to mainly irrational, unnatural, or cognitively irreconcilable options. Below is a small sample of only limiting legislation over the years:

- The various flavors of the Nonintercourse Act (1790, 1793, 1796, 1799, 1802, and 1834)
- The Meriam Report (1828)
- The Indian Removal Act (1830)
- The (smallpox induced) Indian Vaccination Act (1832)
- The Major Crimes Act (1885)
- The Dawes Act (1887), the Curtis Act (1898), and the Burke Act (1906)
- Public Law 280 (1953)

Gaslighting

Gaslighting is a form of mental manipulation that need not be deliberate, but that functions to implant enough doubt for a victim to question their own memory, actions, perception, and/or sanity. The term gaslight gains its origin from *Gas Light*, a 1938 play adapted to a 1944 film, yet gaslighting is well grounded in clinical research as confirmed in Juli Breines' 2012 work. Although legally a federal felony of conspiracy against rights when conducted on U.S. soil (as defined in 18 U.S.C. 241 and 242), by persistently causing distress, alarm, or annoyance exploiting such techniques as denial, indecision, withholding, humiliation,

contradiction, overcrowding, stalking, isolation, sensory overload, and blatant lying, victims tend to destabilize, the healthy areas of a victim's mind preoccupy – in a sense the brain starts a recursive shutting-down process, resulting in its ceasing to provide the natural and useful help for solving issues.

One of the most relevant forms of gaslighting is expressed by script-writers or authors when the antics of a character, who has misinterpreted some communication, is exhibiting bizarre behaviors in the view of other characters with a more accurate perception, and to the entertainment of the audience or reader. When tribes, however, face the wide-ranging staging of inexplicable events (such as being involuntary subjected to the requirements of the above listed laws or each law's consequences), it is not unreasonable to believe that the tribes actually tend to become disoriented. During the early times, perhaps narcissistically, one ultimate goal of the United States is shown to make Native peoples dependent (already federally recognized as domestic dependents), and there are few better ways to accomplish that end than to make the tribes second guess every choice, which in turn is shown to cause questioning one's types of sovereign sanity.

Without interference (such as gaslighting), the grieving process is free to use the entire realm of cognitive ability for rational problem solving, but an overriding question asks if a deliberately inflicted cognitive disability can go on for so long that classical conditioning now chronically prevents the grieving cycle from fully completing; the neocortex and limbic system from fully engaging; and the associated outcomes from being fully rational. The statistics (supported by such work as Lyndsey Gilpin, 2016) corroborate that more unsuccessful cognitive-based outcomes are occurring in native lands than in most other places in the United States.

Relating Worry, Anxiety, and Stress to a Legal Perspective

One hypothesis of this paper is that adequate mental health depends both on certain predictability and on completing a grieving cycle for every change that the human mind recognizes, perhaps lasting only for a microsecond if dropping a penny (or finding a penny on the street), perhaps lasting for decades after losing a loved one, leaving ancestral lands, or being routinely subjected to other intentional or unintentional difficult outcomes.

A different analogy can help explain when a person might experience worry in some situations, anxiety in other situations, or stress in yet another. Suppose a person is on the third floor of a courthouse where three verdicts are about to be read in the three different courtrooms.

In courtroom 3A the verdict will be against a defendant being sued for up to \$5,000.

In courtroom 3B the verdict will be against a defendant facing up to three-years in prison.

In courtroom 3C the verdict will completely terminate the parental rights of a couple with three children.

The question is: “Which verdict will likely produce immediate worry, which verdict is likely to produce immediate anxiety, and which verdict is likely to produce immediate stress?”

Losing money is not the same change as facing not being able to have what the money is for. Life generally provides substitutes and alternative choices so if one does not have enough money to buy the desired shiny new car then the grieving cycle becomes more about driving a potentially unreliable used-car than about not having the money for a new one; maybe worrisome but probably not stressful for healthy minded souls.

Stress on the other hand essentially involves internal chemical releases to physically resolve more primal questions like:

- Can I eat it or drink it – safely?
- Can I mate with it?
- Is it a threat to my offspring?
- Can it eat me or cause me great harm?
- Will I have enough of the vital ‘it’ in times of shortage?

Some of society’s greatest stressors are caused by overcompensating for a lack of certainty in those questions. In hindsight, were the Flint drinking water crisis, the Zika virus, or major threats to our perceived way of life, seen as using only the most rational and reasonable solutions at hand to provide future predictability? There are plenty who eat or drink too much, procreate beyond their needs or means, overprotect their children, project unrealistic fear to the point of paranoia, or are just too greedy to allow certain resources to remain future birthrights. The stress based on a misperceived uncertainty that these personal or group questions may pose, has a significant effect on one’s actions and other’s reactions. Hewstone’s (1996) observations of Sigmund Freud’s work standup more than two-decades later: that outcomes led by crowds will reflect much more primal (than moral) results due to having to address the ‘least common denominators’ i.e. the weakest reasoning ability within the mob.

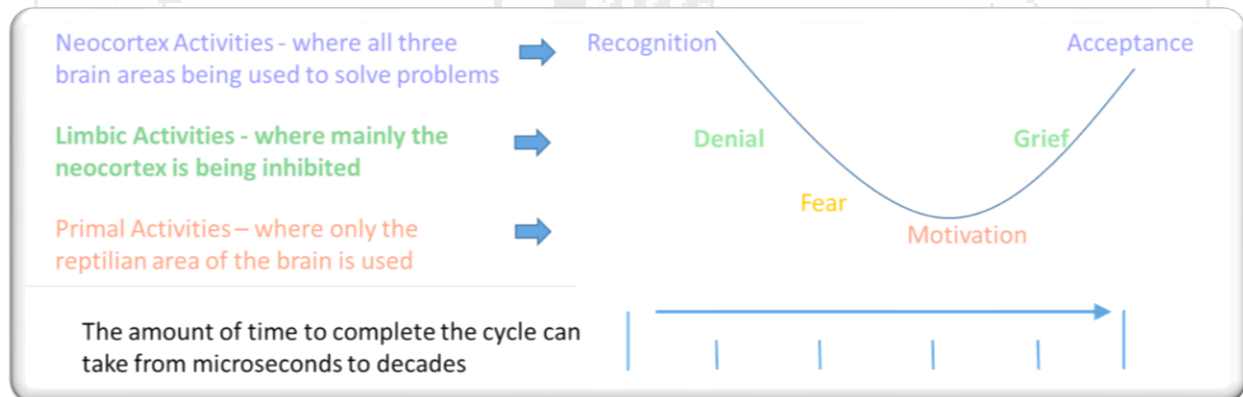
Regarding the legal questions:

In courtroom 3A, a \$5,000 verdict may cause some immediate worry (perhaps larger consequences when the \$5,000 is not available for other things). The neocortex may be temporarily mildly to moderately distracted, but it is unlikely that the limbic system will

produce a marked irrational outburst and even less likely that a pronounced physical reaction will occur from a primal reaction.

The courtroom 3B verdict of time in prison will likely cause some anxiety due to an extended loss of personal freedom and the amount of time for denial – to overcome reconciling who someone is to what they have been recognized as doing. The neocortex will likely be frozen for some amount of time and waiting for some predictability to return, and for a view of the immediate future to come into focus; the limbic system will probably venture to imagining some dreadful fates, but it is unlikely that the primal brain will exercise a significant fight or flight response under just this circumstance.

The courtroom 3C verdict can induce enough fear and anger that the primal brain section may significantly inhibit the other sections of the brain from being of immediate assistance because protection of one's young is an ingrained maternal primal instinct.



The chart above helps demonstrate which parts of the brain are being used in each phase of the grieving process. The \$5,000 may have an almost immediate acceptance while the jailee

may need some time to get through denial, overcome fear, eventually experience enough anger or motivation to climb to a grief stage, and finally (hopefully) accept the karma of self-choice and the dogma of society's response...there is already a change. The termination of parental rights is clear acknowledgement of a devastating failure that can put people on tilt for years if not decades; examples of the family-centric culture are everywhere one looks, so frequent reminders come from both what one sees, as well as what is, or will be missing.

The active efforts required by the Indian Child Welfare Act (ICWA) provide many opportunities for change here – for going through the change cycle many times before the children are taken for adoptive or pre-adoptive placement. A good question to start looking at is whether the ICWA process is an accurate portrayal of a psychological crumple zone that helps stagger and extend the grieving process for those who are obviously not supposed to continue to be raising children – for those about to suffer a substantial involuntary outcome. Not only does ICWA provide for an extended amount of psychological impact time, ICWA helps spread or minimize the impact shock when these laws require expert witnesses on tribal culture to be involved in the process – (the importance of which is demonstrated in later reading).

Recognized Impacts in Tribal Communities

This comes back around to the Huffington Post report that: “Twenty-two percent of Native children suffer from post-traumatic stress disorder — a rate of PTSD equal to that found among Iraq and Afghanistan veterans.” Stated differently, even as children, a hugely unacceptable amount of tribal populations spend a hugely unacceptable amount of time operating in the reptilian area of the brain, and the outcomes are bad enough to cause epidemic levels of

PTSD...from few other sources than simply the current conditions that support living and surviving.

For each internal chemical release, the adrenal cortex produces cortisol while the adrenal medulla produces epinephrine, both which will later be combined in the process the body needs to provide the energy to freeze, fight, or run from dangers. When combining some information from the minutes of a Senate Commission on Indian Affairs session (July 2, 2002) with the American Psychological Association's webpage called *Stress effects on the body*, the following dynamics stand out:

Native Indian populations ("NIP") are 19.5% more likely to suffer arthritis than the general population, perhaps because chronically stressing musculoskeletal system can cause muscles to remain taut and / or tense for extended periods.

NIPs are 44.3% more likely to have asthma; asthma attacks are caused when the airway between the nose and the lungs constricts. Rapid breathing (including hyperventilation) can also onset panic attacks for those with a predisposition.

Regarding the cardiovascular system:

NIPs are 17.7% more likely to report high blood pressure, which easily reconciles to the increased heart rate plus more forceful contractions of the heart muscle during situations that are known to trigger the fight, flight, or freeze response.

NIPs are 17.5% more likely to experience a stroke which can be explained when chronic (over prolonged periods) stress is shown to lead to heart attacks or

strokes where elevated levels of stress hormones and elevated blood pressure are the key predictors.

NIPs are 48.7% more likely to experience congestive heart failure as recurrent acute stress and chronic stress contribute to inflammation in the coronary arteries.

Native American's are essentially predisposed to diabetes – in fact they are 173% more likely to have diabetes than the general population. Highly stressful times cause the release of enough glucose-based energy for 'fight, flight or freeze' in emergencies. Most bodily systems can reabsorb the blood sugar and recover the energy that is not needed for the stressful event, but those people subject to Type 2 diabetes aggravate this condition when reabsorbing the extra blood sugar is problematic.

The indigenous youth (15 – 24 years-old) suicide rate is 250% higher than the national average and is also the second most common cause of death in that age group according the Center for Native American Youth at the Aspen Institute. The act of suicide is recognized as the most severe and dysfunctional cognitive outcome possible.

MISO and PSYOP

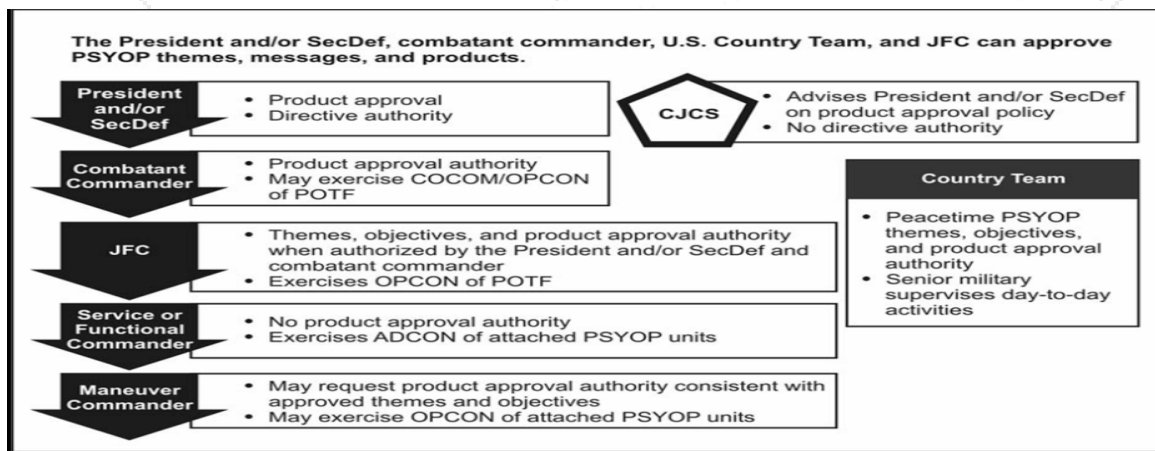
Delivering blankets removed from the smallpox wards of hospitals and deliberately offered as gifts to tribal elders at treaty signing ceremonies is a different form of policy that exploits the reaction from the previous mishaps of the deceased prior blanket owners. As a clear gaslighting example, this shows an effective deception that people are respected enough to exchange tokens while the reality is that an actual disrespect that lies far below accepted levels of human rights and dignity. The underlying cause in *this* case may appear to be access to the

useful tool to perform effective cultural genocide, but the root cause shows itself to be, in *all* cases, there are no rules where there is no accountability; still, much of the world (including pre-Nazi Germany) is able to take note and create horrific policies to reach their own reprehensible goals merely by creating false perceptions and misdirecting accountability as well.

PSYOPS (Psychological Operations), later renamed MISO (Military Information Support Operations) was developed by the United States using lessons learned from performing psychological warfare actions that disrupt the naturally evolved balance between social laws and biological laws, and that as McGrath (2016) reports:

“is defined as actions against the political will of an adversary, his commanders, and his troops, and includes inform and influence operations directed at any third party capable of providing sympathy or support to both the adversary or friendly forces. This mission area directly targets the cognitive dimension of our adversaries’ operations in the IE [information environment] and ultimately attacks their will to resist.”

The chart below indicates that the level of PSYOPS intention rises to the top of our executive branch.



Psychological operations, at any level, must be consistent with the policies of higher levels of command

A recent job posting for government MISO subcontractor known as the MacB company, looks for “a PhD or PsyD in Clinical or Counseling Psychology with military operational, psychological, and medical unit experience as a military psychologist.” The desired qualifications section specifically calls-out that:

“This individual must have the ability to perform behavioral analyses, diagnostic evaluations, and personality profiling to be able of assess and recommend behavioral and communication actions that might influence another person or group to develop new behaviors that facilitates U. S. interests.”

Alcoholism and suicide are historically viewed behaviors that diminish tribes and reduce the quality of tribal life; promoting either represents a flagrant disrespect for the healthiest human condition yet the guardian stakes a claim to control these types of thoughts in an individual’s cognitive domain; the same above recruiting ad continues and includes the request that *“a thorough understanding of behavioral reinforcement conditioning would also be of value for mass influence operations or individual behavior change.”*

Circumventing Indigenous Cultural Boundaries Using Politics

The matter of whether the indigenous needed their *political* or *cultural* wills broken is well settled in 1974 in the hiring-preference matter of Morton v. Mancari, 417 U.S. 535. After a modified rational basis review, the U.S. Supreme Court held that classifications that single out American Indians for things “particular and special” refer to a political category rather than ethnic or racial categories. In short and in the eyes of the laws, being Native American is a political and not a cultural classification.

As political sovereigns with any amount of will to resist, tribal nations become worthy targets of the guises like those used to pronounce the silent biological warfare that numerous infectious blankets represent, and other actions from the precursors that produce PSYOPS and its derivatives – including invasions and attacks on cognitive dimensions. Keeping people worried, anxious, and under stress has been shown to be most readily accomplished by placing as much uncertainty (and other stressors) in a person's life as possible. The point is to demonstrate the validity of asking the question: 'Has the United States performed enough unscrupulous acts against their indigenous populations, that there has been a reasonable amount of uncertainty to preclude the indigenous from making clear cognitive decisions?' With this question in mind, another reasonable question would be to ask if whether the current socio-economic plight of the indigenous is what is supposed to be happening with all things being in their current condition?

Acknowledging the U.N. Declaration of Indigenous Rights

When the United Nations Declaration on the Rights of Indigenous Peoples was introduced for a General Assembly vote in 2007, 143 countries voted to approve it, the U.S. and three other countries voted to oppose it, and 11 countries abstained from voting. As the years passed the three other opposing countries changed their position and left the United States the lone hold-out, until president Obama finally reversed the U.S. position and signed-on in December of 2010.

The United States spent years demonstrating to the rest of the planet that the U.S. position on indigenous rights is to oppose them; the obvious question to ask is whether the rest of the civilized world is seeing things more clearly than the United States. The closest and most recent event that to draw a reference from this type and amount of contrasting opinion would be

when Nazi Germany saw things differently from most of the rest of the civilized world.

Unanimous opinions tend to have increased value in political situations, and Nazi Germany's opinions were demonstrated to be entirely inappropriate. It is clear that the United States historical perspective on indigenous rights will be soundly judged as inappropriate as well as ripe for redress.

Understanding Exploiting Psychological Crumple Zones as a Path to Solutions

There are three abstract questions about change that the human mind manipulates negatively or positively via individual and collective perceptions (without any requirement for being related to reality):

1. How long until a change arrives?
2. How much impact will a change have (will it really matter)?
3. How long is the impact time - after a change starts, how long will that change keep occurring before the new 'normal reliable reference point' is established in the face of both the old-normal and the new-normal are no longer well-established, or worse yet, the new-normal is a continually unreliable reference because external interference persists?

One concrete example illustrating the characteristics of change is found in analyzing electrical arc flashes (other parallel concrete examples can be found by performing additional physics research on the inelastic behaviors of energy transfers):

Arc flash energy is measured in calories; it is the energy normally used for work, being abnormally released when bypassing that work (short circuiting).

Personnel and physical damage from an arc flash event is proportional to:

1. (the amount of energy that can be released)
2. (the physical distance to the arc flash point)
3. (the duration of the arc flash event).



Electrical engineers minimize arc flash damage by decreasing any or all of the above factors. The arc flash problem predicts damage by asking questions similar to the grief problem of: ‘How much energy is involved?’, ‘How close, attached, or detached is one?’ and ‘How long will this energy release go on?’ Governments protect people from this type of damage by requiring that certain safety equipment be worn within certain distances to the potentially offensive equipment, and that electrical tripping systems activate within certain fractions-of-a-second after the energy release rises to unsafe levels. There seems no good reason why the decisions regarding the indigenous futures can’t consider the amount of psychological distance (detachment) to apply to laws as well as tripping points where the laws would temper.

Another concrete example illustrating the energies involved in change as shown in how automotive engineering works to mitigate personal damages in car crashes by incorporating crumple zones:

Car crash crumple zones are designed to reduce total damage to a car’s occupants by extending the time of the crash’s impact by several milliseconds, and also by spreading the energy out to as many places as possible.

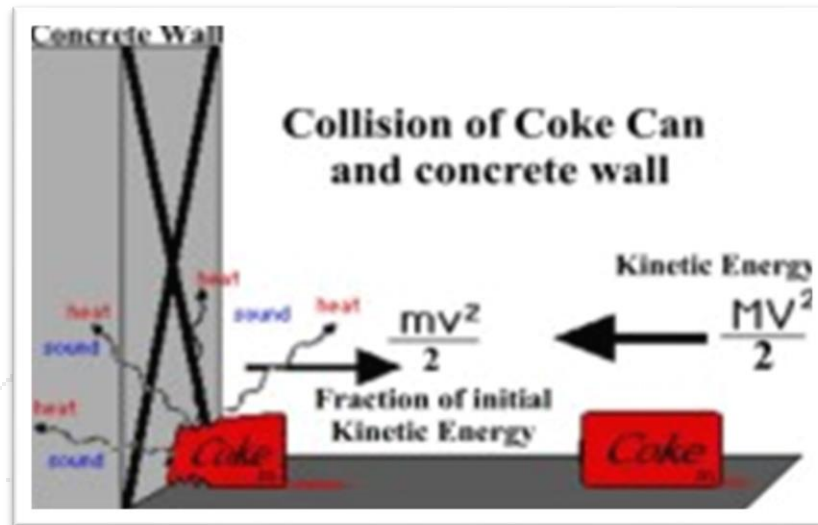


Image gratefully borrowed from an undisclosed NASCAR race-team website

As shown in the picture above, when an aluminum Coke can hits a wall it decelerates at a much slower rate while it crumples. Because the Coke can completely decelerate over a much longer period of time, the Coke can experiences very low 'G' forces so it also rebounds with much less energy. Like both the arc flash and grieving problems, the similar questions are pertinent: 'How much energy is involved?', 'How close, attached, or detached is one to the un-diverted energies?' and 'What happens after the initial impact?' The Congress, here again can try to estimate if the psychological energy required of the indigenous for rebounding from their federal guardian's decisions might be excessively damaging; if the decisions could be tempered by staggering the implementations, or by reevaluating the prospective consequences (and on the advice of expert cultural witnesses).

The one presumptive constant factor in all three of these cases is that the amount of energy involved in the impact of a change is perceived to be nearly predictably fixed (if the

impact energy is thought to be significantly different later than the current problem is discarded by the brain and is replaced by a fresh-starting problem noting the new predicted impact), and that by spreading that energy out over longer periods of time, or spreading the energy out among the widest resources available, the lowest possible instantaneous impact occurs. In essence, impactful psychological damage comes down to the amount of energy not diverted by either healthy coping skills, or the access to the widest available and most helpful audience.

Recent, Split, and Profound Cultural Indifference Demonstrated by the Supreme Court

In June of 2013, a five-four split United States Supreme Court decided the ICWA based matter of Adoptive Couple v. Baby Girl, (No. 12–399. 398 S. C. 625, 731 S. E. 2d 550, reversed and remanded) issued an opinion that caused the majority of the regulations supporting ICWA to be re-written to preclude that level of misinterpretation from being applied again by any federal court. The new regulations addressed Justice Sonia Sotomayor’s concern that the majority’s opinion is “a result that was both contrary to Congress’ intent and potentially devastating to Baby Girl.” Another of the lady justice’s observations recognizes that the majority “completely ignores Congress’ policy reasons for passing the ICWA and distorts the clear provisions in the act.”

Justice Thomas’ majority input includes acknowledging that the reason ICWA was incorporated into law is that states “have often failed to recognize the essential tribal relations of Indian people and the cultural and social standards prevailing in Indian communities and families,” but then goes on while failing to cite expert cultural witnesses at any point in his opinion. This male Supreme Court justice seems to ignore the Trust Doctrine and gaslight the guardian – ward relationship (between Congress and its indigenous wards) by reframing the pertinent question in terms on the Indian Commerce Clause – which is a *constitutional* issue out

of place with the *extra-constitutional* plenary authority at the heart of the matter before the court at the time. Thomas therefore ignores that Lone Wolf v. Hitchcock, 187 U.S. 553 (1903) galvanized the plenary power authority issue - that future litigation on plenary items involved primarily the United States congress as a party to a suit, and not so much their indigenous wards...that for all intents and purposes, the proper suit could essentially have been restated as "Adoptive Couple v. United States Congress;" in this light the matter would have clearly fallen to a summary judgement and would have been neither reversed or remanded.

Although the subordinate level fixes addressed the unpredictability of the SCOTUS opinion's consequences by rewriting regulations so people of varying cultural and other types of ignorance and aptitude levels could understand them, another level of review would very likely have made that unnecessary and provided precedent for future adaptations.

Solutions for Failures in Sustaining Positive Societal Growth in Indigenous Populations

"There are different kinds of justice. Retributive justice is largely Western. The African understanding is far more restorative - not so much to punish as to redress or restore a balance that has been knocked askew,"

Desmond Tutu quoted from "Recovering from Apartheid," The New Yorker, November 1996

The United States Congress has explicit and implicit obligations to our country's indigenous population based on the Trust Doctrine that defines their role as guardian in the guardian-ward relationship with our recognized indigenous nations. The United States Supreme

Court has consistently upheld Congress' use of extra-constitutional plenary power, which power can *now* be used to more readily help their wards more fully help themselves.

The Root Cause

Past optimism based policies have not been found to be the highest and best tool for problem solving – looking at the glass as half-full isn't useful when the glass is full of something toxic or evil; another thoughtful but potentially misleading track lies in believing in improvement for improvement's sake policies, but this guarantees no positives in all situations because a more improved evil can only been shown to provide a nastier evil than the original derivation. Our best efforts have been shown to be an incredible waste of resources, as demonstrated by the outcomes of all indigenous things being in their current condition...that to get better results we need to try different things that should include the mandatory tapping of the widest possible audience and the best and brightest cognitive resources available, with clear and substantial consequences (teeth) for failing to do so.

Regarding the failure of sustained positive societal growth in the United States indigenous populations, this paper finds:

Cause-three to be chronic stress caused by prolonged and excessive uncertainty;

Cause-two (based on the inferior cause of uncertainty) to be a demonstrated lack of predictability and consistency in the litigation of disputed Indigenous laws, policies, and regulations;

Cause-one, *the root cause*, then appears to be a lack of informed input during adjudications, coupled with a lack of external oversight or review beyond SCOTUS – to insure that the applied perceptions were as closely based in reality as practical.

Using Plenary Powers to Appeal Indigenous Matters

The first suggested improvement is to recognize that it is within the United States Congress's extra-constitutional plenary power to create legislation that allows the extra-constitutional appeals of Indigenous People's Supreme Court decisions to the United Nation's International Court of Justice (ICJ) - when the Supreme Court conducts hearings on Indigenous People's matters *without meeting a new requirement of the court having expert cultural witnesses testify* as well. For this solution to work effectively, the opinions of the ICJ must be legislated to be binding. To be clear, this is not suggesting a precedent that ICJ review become an option in every indigenous SCOTUS matter...just those matters where SCOTUS felt comfortable enough with their own indigenous cultural knowledge level that requiring expert cultural witnesses would provide no benefit to them in reaching right, fair, and just decisions regarding Congressional intentions towards their indigenous wards.

The Congress requires the use of expert cultural witnesses in ICWA judicial matters because the Congress required the expert witnesses to understand the ICWA laws they were creating. It is clear in the Crowdog matter (See Appendix 'B') that it is as essential that those adjudicating matters in our nation's highest court provide proof of certainty in their ability to understand the problem in their hands, which is evidently shown to be in doubt when dealing with those adapting to our laws and customs.

In all likelihood after just one SCOTUS incident is appealed to the ICJ, it is possible that extra-constitutional plenary power would quickly be adjudicated away, that fewer indigenous matters would be accepted by SCOTUS, that expert Native cultural witnesses would start appearing in SCOTUS hearings, or more likely...that fewer indigenous matters would be appealed to SCOTUS because new and more accurate precedents might drop the odds of the appellant's success below most other economically attractive alternatives.

Delegated Tribal Adjudications

An additional possibility is allowing a policy of 'delegate tribes.' Not every tribal nation can afford to maintain a legal staff or a reasonable tribal court system; in this event the usual consequence for tribal adjudication, is to place most legal matters outside of Indian Country and into a state or federal jurisdiction. Extending the 'Duro Fix' (the power of tribes to exercise criminal jurisdiction within their reservations over all Indians, regardless of root tribal membership) could allow tribes to delegate other tribes the legal authority to adjudicate on their behalf. Roughly equivalent to a change of venue, this provides for the opportunity to retain a sense of Native sovereignty and cultural/political certainty in more Native matters, both criminal and civil. The idea also keeps with the spirit of ICWA children placement consequence priorities being: family, extended family, family's tribe, any tribe, any family.

Elements of a New and Bankable Philosophy

The end-game is to create a current condition that proves that the new norms will be bankable, while helping to progress to the goal that **misery is always to be seen as optional in our indigenous places, because the appropriate options have become available to our indigenous people.**

Appendix A

Loosely Related Points and Suggestions (2017)

Licensing of Practical Jurists (LPJs) – Sovereign nations set the rules and qualifications for membership in their bar associations. Fully educating a tribal member to the level of a juris doctor is an unavailable option for many tribal nations because it is expensive and time consuming, while a great many tribal legal tasks that currently require a lawyer could probably be competently accomplished by someone trained with a specialized middle education – that is a specific technical degree in the spirit that an LPN can perform some functions of a doctor. This is not suggested as a cure-all but a step to keep more certainty within the tribal setting more of the time by being able to address more things rather than be forced to have outsiders do so. The analogy is that there is no reason to have to go rent a foreign Porsche when there is a capable domestic Chevy handy that can competently reach the desired destination within a reasonable time.

Promotion and Attraction – The Fellowship is an IRS 501(c)3 charitable organization headquartered in Arlington Virginia, and is frequently cited as the most politically well-connected ministries in the world. Renowned for practicing private diplomacy they would be an incredible ally by turning some of their assets inward and gain access to more than 500 sovereign good-deeds incubators in so doing.

First in Time, First in Line -

When the missionaries came to Africa they had the Bible and we had the land. They said "Let us pray." We closed our eyes. When we opened them, we had the Bible and they had the land. - Rolf Hochhuth, *The Deputy, a Christian tragedy* (1964), Grove Press, p. 144.

It's tragic that the country can recognize an appropriate water strategy that protects those who use water constructively first, yet refuses to protect the aboriginal natives because they were not viewed as using all of the land constructively and at once. Today we are finding out that saving green space, federal reserves, and other lands for use tomorrow is that land's highest and best constructive purpose; how is it that so much could have been taken away from the people who were first in time and first in line for understanding that land is being used constructively when it is reserved to be used wisely for the future?

Steps Towards Indigenous Roles as Sources of National Solutions – The phrase 'Indian Boarding School' can remain stigmatized or it can be redefined positively for the future; prior to requesting the creation of a Veteran's Healing Act, a trial project can be funded for some of our veterans (another political designation) and our indigenous to work together in tribal campuses with purpose of providing a safe environment to reconcile what has happened – to who those people are inside. Both political groups have unacceptably high suicide rates, both have high rates of PTSD, but self-help initiatives have historically better outcomes due to the 'been-there-done-that' bonds that develop and help in the essential grieving process. There are times to be able to tolerate the demands of a civilized world and there are times when the benefits of trying are not ready to outweigh the costs.

Given the Indigenous circumstance as First-in-Time, First-in-Line in resource conservation, placing the National Park Service under the direction of the BIA could allow for closer examination of the future roles for reuniting lands with tribes and more closely uniting cultures.

The Dangers of Secret and Unknown Codes – If this paper demonstrates the amount of uncertainty that plenary (extra-constitutional) powers project, and as well demonstrates the nature and quality of unacceptable physical and psychological consequences that are sure to follow, then it is up to us to examine extensions beyond native environments. The Patriot Act and its derivatives, no doubt, have extra constitutional authority (uncertainty) incorporated to protect the country from one form of terror - one unknown form of unpredictability, and at the expense of other considerably detrimental forms. It would be interesting to see if diabetes, heart failure, PTSD, depression, and other forms of stress related dysfunctions have increased since the country has allowed fear to legislate-away other certainties. While the Congress is practicing tempering their solutions in indigenous matters going forward, it may be wise to keep an eye that all other forms of extra-constitutional authority have adequate review mechanisms and crumple zones as well. Terrorism doesn't have to change what we do to win – merely changing how much cultures *can* think is obviously enough to place them in unacceptable current conditions.

The Need to See the Need to Do - Long ago a friend who told me a story about a relative who thought he was getting an expensive VCR at a steep discount from the back of a truck; when the relative got home and opened the box he found bricks inside instead of a VCR. My reply at the time was to buy a hammer, a chisel, and some smaller boxes and to use the bricks to manufacture some similar quality expensive watches to sell back to the truck owner. One of Tutu's 1984 quotes hints at an even more overlying root-cause than this paper examines: "If you are neutral in situations of injustice, you have chosen the side of the oppressor." The point is that injustice is not solved by doing nothing or creating more injustice (see the '[Crazy Ones](#)').

Appendix B**An Expounded Interpretation Taken from Ex Parte Crow Dog, 109 U.S. 556 (1883)**

‘The nature and circumstances of the majority’s rules of interpretation are being applied to disenfranchised peoples. This is held over the members of a community separated only by difference or by exercising other instincts of free though unwelcomed lives, from the authority and power which seeks to impose upon them the restraints of a *normal* people’s external and unknown code.

It subjects them to the responsibilities of civil conduct, according to rules and penalties of which each could have no previous warning; in being judged by a standard made by more powerful forces, and can never be a standard for these others; a standard which makes no accounting for the conditions which should except these others from its exactions, and makes no allowance for their inability to understand it.

It tries them not by their peers, nor by the customs of those like them, nor any law any land would commit to written words, but by those self-appointed superiors of a different type of race who can hold only imperfect conceptions, oppose acknowledging most unknown forms of a different life’s celebrations - much less resist holding only the strongest prejudices of the imperfect nature of their victims.

It is a case of deciding between living-a-life or living-much-less; it is a case presented behind a facade that is expressed as exceptions in the laws of social acceptance, which laws (created by argument and inference only) are sought to be extended over those now judged aliens or strangers because they are unlike the mob...they are Native.’

Explanatory Internet References of Cited Laws

The Nonintercourse Act (1790) <https://www.quora.com/How-did-the-Trade-and-Intercourse-Act-of-1790-impact-the-American-Indians-and-their-trading-system-they-used-prior-to-this-policy>

The Indian Removal Act (1830) <https://www.loc.gov/rr/program/bib/ourdocs/Indian.html>

The smallpox induced need for the Indian Vaccination Act (1832)
<https://ais.arizona.edu/thesis/politics-disease-indian-vaccination-act-1832>

The Meriam Report (1828) <http://www.narf.org/nill/resources/meriam.html>

The Major Crimes Act (1885) <https://www.justice.gov/usam/criminal-resource-manual-679-major-crimes-act-18-usc-1153>

The Dawes Act (1887) <https://www.khanacademy.org/humanities/ap-us-history/period-6/apush-american-west/a/the-dawes-act>

The Curtis Act (1898) <http://www.okhistory.org/publications/enc/entry.php?entry=CU006>

Burke Act (1906) <http://www.worldhistory.biz/modern-history/81133-burke-act-1906.html>

Public Law 280 (1953) <http://www.tribal-institute.org/lists/pl280.htm>

United Nations Declaration on the Rights of Indigenous Peoples.
http://www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf

[http://www.washingtontimes.com/news/2010/dec/16/obama-adopts-un-manifesto-on-rights-of-indigenous-/](http://www.washingtontimes.com/news/2010/dec/16/obama-adopts-un-manifesto-on-rights-of-indigenous/)

Other References

6 Ways To Restore Mental Clarity. (2012, October 30). Retrieved from OMHARMONICS website <http://www.omharmonics.com/blog/mental-clarity/>

Adoptive Couple V. Baby Girl. 133 S.Ct. 2552 (2013). Retrieved from <https://www.oyez.org/cases/2012/12-399>

Capstone Research Project Handbook. (2013, August). Retrieved from Maryville University, St. Louis website <https://www.maryville.edu/ed/files/2012/05/HE-Overall-capstone-guide.pdf>

[The] Crazy Ones. Retrieved from <https://www.youtube.com/embed/8rwsuXHA7RA?rel=0>

Bell, J. Mass Incarceration: A Destroyer of People of Color and Their Communities. (2011, May 25). Retrieved from the HUFFPOST website http://www.huffingtonpost.com/jamaal-bell/mass-incarceration-a-dest_b_578854.html

Breines, J. Call me crazy: The subtle power of gaslighting. (2012, April 16). Retrieved from Berkley science review website <http://berkeleysciencereview.com/call-me-crazy-the-subtle-power-of-gaslighting/>

The Duro Fix. Upheld by the Supreme Court in United States v. Lara, 541 U.S. 193 (2004).

Fast Facts on Native American Youth and Indian Country. (N.D.). Retrieved from Center for Native American Youth at the Aspen Institute website

<https://assets.aspeninstitute.org/content/uploads/files/content/images/Fast%20Facts.pdf>

The Final 2016 Regulations for ICWA. (2016, June 17). Retrieved from BIA website, <http://www.indianaffairs.gov/WhoWeAre/BIA/OIS/HumanServices/IndianChildWelfareAct/index.htm>

Gilpin, L. Why Native American women still have the highest rates of rape and assault. (2016, June 7). Retrieved from High Country News website <http://www.hcn.org/articles/why-native-american-women-still-have-the-highest-rates-of-rape-and-assault>

Hawkins, J. (2004). *On Intelligence* (1st ed.). Times Books. ISBN 0805074562.

Hewstone, M. (1996). *Blackwell Encyclopedia of Social Psychology*. Oxford, UK: Blackwell. pp. 152–156. ISBN 978-0-631-20289-9.

MacAulay-Brown, Inc. (MacB), 13728: Behavioral Scientist / MISO Officer (Clinical Psychologist) / PSYOP job posting. (2017, May 30). Retrieved from <https://careers.macb.com/Careers.aspx?adata=EB6VC1pVVhbc64fKpl1K95H2DWZKm%2bZmD28LiEwzIHh24E0DZbd%2b8L7QpJaBkrX9kkKzv%2bnXMg9thZKGvunlgIPd4xfM%2f7Fcqgva%2bnQSxdM4NS26chZziWiXh%2fSY1CAQui2S42rIkrvfk1%2begsjWpXKkBcgFuYAn758TZroJs1V5kOgvY2bEXWrwlqsL%2b9YbKg%3d%3d&rf=INDEED>

MacDonald, C. (N.D.). *The Role of Values in Wisdom*. Retrieved from <http://www.wisdompage.com/roleofvalues.html>

MILITARY INFORMATION SUPPORT OPERATIONS (MISO) Memo. (2015, Nov 20). Retrieved from <http://www.marines.mil/Portals/59/MCO%203110.5.pdf>

McGrath, J. Twenty-First Century Information Warfare and the Third Offset Strategy. (2016, July 1). , Joint Force Quarterly 82. Retrieved from National Defense University Press website <http://ndupress.ndu.edu/JFQ/Joint-Force-Quarterly-82/Article/793229/twenty-first-century-information-warfare-and-the-third-offset-strategy/>

Norek, D. Research proves stress really does shorten your life span by damaging DNA. (2012, August 08). Retrieved from Natural News website http://www.naturalnews.com/036730_stress_DNA_damage_life_span.html#

Senate Commission on Indian Affairs session (July 2, 2002)

Stein B, Rowland B. (2011). "Organization and plasticity in multisensory integration: early and late experience affects its governing principles". *Prog. Brain Res.* 191: 145–63.

Stress effects on the body. (N.D.), Retrieved from the American Psychological Association's website <http://www.apa.org/helpcenter/stress-body.aspx>