The PROTECT Act: Giving Away the Sovereignty and Constitutional Rights of American Citizens

The PROTECT Act treats American citizenship and our right to personal sovereignty like a zero-sum game. To appease both the desires, wants, and the endless appeals to victimhood of the tribes, the Federal government apparently believes it must degenerate and degrade the sovereignty of its non-tribal citizens in order to grant Indian tribes greater sovereignty over their own affairs. However, the tribes do not fundamentally seek greater sovereignty over their *own* affairs as was granted by the Indian Reorganization Act of 1934, but control over *all* the affairs of non-tribal people as well. This stems from an intentional warping and willful misreading of history in order to obtain a specific outcome. It appears the outcome sought by the tribes today is '***nation-state status***.'

There are numerous ways in which this makes non-tribal America citizens *lessers* to the tribes and our federal and state governments. This is an approach our government ***rejected*** when applied by foreign courts such as the International Criminal Court (ICC), but those well-founded objections are apparently cast aside when it comes to Indian tribes. In this case, there appears to be true ***disdain*** for the sovereignty of our own US citizens living within the boundaries of reservations.

Unconstitutional and Un-American

The Constitution guarantees to every American a "***Republican Form of Government***". This means:

- Power resides with ***we the people***;
- Government ***must be representative***–that is elected by we the people;
- Rule of law and our constitution ***limit governmental power***–they do not grant it; therefore, that government cannot disseminate power to others on whims or in accordance with likes, dislikes, or grievance politics;
- As a ***representative democracy***, we the people ***elect*** officials to make laws and govern on our behalf, and ***that is our assurance against arbitrary and unelected powers*** or self-proclaimed local sovereigns ruling over US citizens.

To be an American citizen living within our own borders means that we enjoy popular sovereignty, and governance—*Executive*, *Legislative*, ***and Judicial***—derives whatever authority it is ***granted from we the people***. We exercise that grant through the ballot box. We abide by the rule of law because government actions are governed by our popular sovereignty as exercised through the vote. As noted in Federalist 39, *"We may define a republic to be…a government which derives all its powers directly or indirectly from the great body of the people…."*

Passage of this bill would violate both the ***due process*** and ***equal protection clauses*** of the US Constitution**:**

- The 5th and 14th Amendments protect the individual from being deprived of life, liberty, or property without due process of law. Those protections come from a document sustained and supported by 'we the people':
    - Here we are surrendering a defendant to a system ***unguided***, ***limited***, or ***controlled*** by '***we the people***'.
- The 14th Amendment states that our country must treat ***all*** people equally; that when it comes to legal matters, we cannot "*...deny to any person within its jurisdiction the equal protection of the laws.*"
    - Here again we are surrendering a defendant to a court subject to the control of a ***tribal council*** that can determine who can and cannot be on the jury;
    - A council that can determine whether a lawyer can practice in its court system;
    - 'We the people' do ***not*** vote on tribal council office holders, but tribal members vote in all county, state, and federal elections…where is the "***equal protection***"?
    - It stretches reality beyond the breaking point to believe this in any way constitutes "equal protection" from one person to the next—tribal person versus non-tribal.
- Section 1 of the 14th Amendment has been used to strike down laws that discriminate based on race, gender, or nationality;
    - Here, however, we are surrendering a defendant to a court that has the authority to deny ***non-tribal*** members from being on the jury–a race-based decision!

Whenever this promise of representation and a Republican Form of Government is broken, it is the right of the people to revolt—some will say it is a duty. When your vote no longer controls the exercise of authority over you, you live under tyranny and are well within your right to refuse cooperation (to put it mildly). This includes the judiciary. This bill surrenders defendants to a court system that ***comes under tribal councils*** beyond the reach of the non-tribal vote. This is clearly a violation of the promise of a Republican Form of Government and gives authority to a body 'we the people' do not support, approve, vote for, or fall under. This is a formula for duty-bound revolt; not justice.

Stating that we have to do this "*for the children*" or "*we have to provide tools to Indian tribes to fight the drug epidemic*" ***can never be accepted as an excuse for casting the Constitution, our founding, and the Bill of Rights aside.***

Previous Court Rulings

The Supreme Court of the United States (SCOTUS) has already ruled that tribes have no authority over non-tribal people (Montana v. United States - 1981). Yet the tribes have sought to use the courts to *chip away* at these rulings.

The errant Violence Against Women Act (VAWA), originally enacted in 2013, puts the US government (USG) in league with the search for *vengeance*, not justice. Perhaps the USG does so out of a lack of funding or laziness, but we are abandoning a US citizen to a system that lacks the centuries of experience upon which our judiciary is founded. If a tribal system wants to pursue another tribal member, fine. Allowing the prosecution of a non-tribal member by a tribal system is not.

In 2022, the VAWA was expanded. The message is clear: you may have served this nation faithfully and consider yourself an American Patriot, but if you find yourself as a defendant in this case, we will *throw you overboard* in a heart beat. *Your country is abandoning you*. So much for SCOTUS decisions.

The PROTECT Act is written with wide enough loop holes that anything can be driven through them. The Tribes say they must release drug runners they catch because they lack jurisdiction, but the Heurto-Castro decision made it clear that this is not the case. The State was determined to have jurisdiction throughout 'Indian Country' ('Indian Country'—a ridiculous concept in its own right today) if necessary to protect the citizenry of the State as a whole. In fact, even the McGirt decision moved forward along these same lines. That is, the non-tribal member apprehended in the McGirt decision was apprehended because the tribal officer believed he was a threat to the tribal community, and this was upheld. Thus the reverse is true as well; a county Sheriff can hold a tribal member because of the risk he may pose to the general public for which the Sheriff is responsible.

It is not the apprehension that is in question; it is the *adjudication* of the offense. If the tribe wishes to adjudicate on Indian-on-Indian criminal activity, they may do so. Now they seek to expand their system to cover non-tribal people, as has been done with VAWA, but this is done with no regard whatsoever to the fact the governance of these courts lies with the Tribal Councils and non-tribal members ***cannot vote for tribal council*** members—organizations that continuously (and erroneously) state that they are a "***sovereign nation***." Actually, they are '***domestic dependent sovereigns***'. It is known they don't like that designation, which is why they are seeking instead to become a 'nation-state' with all the authorities that go along with that status. However, that would also be a violation of the Constitution since that would establish a nation within our nation, and since all tribal members are citizens, it would constitute ***secession***. Also, Article IV, Section 3 makes it clear that no new "State shall be formed or erected within the Jurisdiction of any other State;"

The notion of secession never comes up because the tribes enjoy playing on both sides of the net. They are one day a 'sovereign nation' and the next a 'domestic dependent sovereign' in need of more funding from the state and federal governments. The federal government boasts about

giving more sovereignty to the tribes, but to what end? And why does it have to come out of the hide of the rest of the non-tribal American citizenry? To those of us who live out here and deal with these issues regularly, it seems our elected leadership in Washington DC has abandoned us and ***cares not one whit*** about these compromises of our citizenship. It appears to be all about favor the DC leadership can curry with Indian Tribes—and the rest of us be damned.

What the Indian Reorganization Act Did and Did Not Do

The Indian Reorganization Act (IRA) of 1934 ended the allotments act and the assimilation policy put in place by the General Allotment Act of 1887, known as Dawes Severalty Act. The Allotment acts of the time were instituted to liberate Indians from the antiquated, backward tribalism. Tribalism is pre-civilization; all of mankind passed through that period at one time or the other.

The Western world went through tribalism thousands of years ago. The resulting progress gave the world; *the longest life span in history, ocean sailing vessels, the wheel, the Gutenberg printing press, modern medicine, disease eradication, Magna Carta, the Declaration of Independence, the US Constitution, human rights, nuclear power, aircraft, space craft, submarines, the moon landings, space flight vehicles that have gone beyond our own solar system, supersonic flight, radio, television, flatscreens, digitalization, mobile phones, electricity, computers, robots, artificial intelligence, automobiles, paved roads coast-to-coast, hovercraft, trains, subway systems, modern sewage treatment, heart and other organ transplants,* and on and on and on. Many saw ending tribalism as a step towards modernity and the advancement of the Indian out of a communal system that ensured they owned nothing and had no individualism.

The sentiment of assimilation had its counter opinion that the effort was a facade erected to justify taking treaty lands from Indians. That position is not without some merit, but cannot fairly be considered to be the entire story.

Be that as it may, in 1934 the IRA was passed which ended further allotments and, in its own words, was "authorized to ***restore*** to tribal ownership the remaining surplus lands…." [Emphasis is mine.] Also, Section 3 of the Wheeler-Howard Act known as the IRA states, "That valid rights or claims of any persons to any lands ***so withdrawn*** existing on the date of the withdrawal shall not be affected by this Act:" [My emphasis again.]

The facts here are often simply ignored, and they are:

- The Allotments Act ***removed tribal ownership*** of the lands in question; otherwise there would be no need to initiate a *Congressional action* to ***restore*** tribal ownership of remaining and yet unclaimed surplus lands;

- The lands either homesteaded or purchased at the *invitation of the Federal governmen*t by non-tribal members and still held were ***not restored*** to tribal ownership by the IRA; they remain in statute and reality lands *removed from tribal ownership*. That is the law.

The IRA was intended to foster self-determination of the tribes ***and*** to ***protect non-indian citizens who had settled the area***—again, at the invitation of the United States Government (USG). Important safeguards for homesteaders and settlers that legally settled within the boundaries of the reservation on their own lands—lands for which they hold the federal patent of ownership—are embodied in both Sections 3 and 5 of the IRA. This is only fair given that the people who risked it all to come out to Montana to homestead ***were certainly not instructed*** that once they had fulfilled their homestead obligation ***they would not own or have authority over their lands regardless!*** No, these homesteaders and settlers own and hold lands removed from tribal control. That's a fact.

Politically there has long been an effort to ignore, hide, and obscure the reality of the above facts. Non-tribal owners of their lands have had to endure withering assaults from a nation unaware of the realities of what occurred here. Far too many people from elsewhere in the United States and in particular in Washington DC are mired in the ***Zeitgeist of victimology*** trending today. The politics of ***'oppressor vs the oppressed' propaganda*** works against the truth and is poisoning relations between the tribes and American citizens who live, not "on" the reservation, but on their ***own land*** that happens to be within the boundaries of the original reservation.

Conclusion

With the ***Water Confiscation Ac***t (Montana Water Rights Protection Act), the people of Northwest Montana saw their legitimate concerns ignored and brushed aside in favor of the desires, wishes, impulses, and wants of the Confederated Salish and Kootenai Tribes (CSKT) and the Federal government. Now they see our Federal government seeking to place American citizens under a court working for a tribal government new to the entire system of common law and justice developed by western civilization over hundreds of years. This, like the WCA, is just another step of ***encroachmen***t; another effort towards tribes becoming '***nation-states***' with power over those helpless to affect their governance with the ballot. It is hard to imagine anything more un-American. Only totalitarian dictatorships are comparable.

We must be alert to the ***propaganda*** the tribes put out that the answer to every question even before they hear it is that they must have greater sovereignty. In fact, these problems would be better addressed if they had ***less*** sovereignty. They could pay more into the local taxation systems, thus pay for better policing, and have greater participation in the local community. That, however, would stand in the way of their drive to become independent 'nation-states' within the borders of the United States. It would block their drive towards secession.

We arrive where we are today because of our Federal government and the actions of people and politicians long gone. The buffalo are gone; the short-lived nomadic days of wandering tribes made possible by the introduction of European horses are gone—as are the endless inter-tribal wars, the abuses of the Indian agencies, and so forth. We need a 21st Century relationship with today's tribes—not a 19th Century one. There will be no going back.

The bottom line is that the non-tribal people living here on their ***own*** land are not illegal invaders or squatters in a foreign land; ***this is our home and we own it***, and we will not be subject to a quasi-foreign power claiming 'sovereign nation' status within the borders of our own country. The further encroachment embodied by the PROTECT Act will not be accepted and, if passed in its current form, will likely engender a response of some kind—the least of which being reflected at the ballot box in 2026.