



KEEPING PROMISES

Fulfilling Treaty Obligations to Native America

BY CHRIS KELLERMAN, S.J.

Just a few hundred years ago, before European powers began their colonization efforts in North America, dozens of Indigenous tribes were settled across the Gulf South region—thousands of human beings with developed cultures, faiths, and communities.¹ As the United States began its westward expansion, it often pushed these tribes off their land by forcing them into treaties with the U.S. government. In return for these tribes ceding millions of acres of land and moving to reservations, the U.S. pledged to support these nations, protect their resources, and provide for their general wellbeing. This obligation of the federal government is called the trust relationship, and sadly, it is one that the U.S. government has consistently failed to fulfill.

There are currently 574 federally-recognized tribal nations within the United States, including 11 in the Gulf South, and many more tribes that have not yet completed the long and arduous process of achieving federal recognition.² President Joe Biden and Vice President Kamala Harris have expressed their commitment to supporting Native Americans.³ Here are just a few of the

issues that their administration and the new U.S. Congress will need to address in order to fulfill the United States' trust obligations to Indian country.⁴

Health Care

Despite the fact that providing health care to Native Americans is part of the trust obligations of the federal government, health care for Native peoples in the United States is badly underfunded.⁵ The 2018 *Broken Promises* report by the U.S. Commission on Civil Rights noted that the budget of the Indian Health Service (IHS) "meets just over half of the health care needs of Native Americans."⁶ Rates of diabetes, liver disease, mental health problems, infant mortality, suicide, and other health problems are disproportionately high among Native Americans.⁷ The lack of funding for adequate health care no doubt contributes to these problems.

During the COVID-19 pandemic, that underfunding has been felt acutely. The Mississippi Band of Choctaw Indians got hit hard by the virus in May and June. By November, 85 tribal members had been killed by the virus and over

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1200 members—about 12 percent of the tribe—had tested positive for it.⁸ Choctaws faced harassment on social media and in public as other residents of Mississippi blamed the tribe for the state’s high numbers.⁹ No doubt these other residents did not consider that it was their own elected U.S. officials that had chosen not to fully fund Native health care despite the federal government’s treaty obligations and that this underfunding is precisely what caused the strain in resources. A racist “blame the victim” mentality is alive and well among Americans today.

Environmental Justice

Environmental protection and climate change are also critical issues for Native Americans. For many tribes, especially coastal ones, environmental problems pose an existential threat.

In Louisiana, the effects of the petrochemical industry and climate change have already been felt by some Indigenous communities. The Isle de Jean Charles band of Biloxi-Chitimacha-Choctaw Tribe is being forced to relocate due to rising sea levels caused both by climate change and by the oil industry’s excessive canal-digging.¹⁰ Other Louisiana tribes such as Pointe-au-Chien and the United Houma Nation are also alarmed as their lands are disappearing. All three of these are state-recognized tribes and are seeking federal recognition in hopes that it will provide them with better opportunities to preserve their lands. They first applied in 1979 but received a response of “no” from the federal government—fifteen years later in 1994.¹¹

The Seminole Tribe of Florida and the Miccosukee Tribe of Indians of Florida, whose heritage is deeply connected to the rapidly-disappearing Everglades, are also concerned about rising sea levels threatening their lands and livelihood. One 17-year-old Seminole activist, Valholly Frank, made headlines recently when she joined with other young people in Florida to sue Gov. Ron DeSantis and other officials for inaction on climate change.¹² Tribes such as these are working hard at developing climate change adaptation and resilience plans as well as lobbying for federal and state governments to take action against climate change.

Criminal Jurisdiction

Tribal lands held in trust by the federal government have a unique set of challenges when it comes to criminal justice. The complex web of criminal jurisdiction laws for federal tribes can make it harder for victims of crime to receive adequate justice. Whether tribes, the state, or the federal government have jurisdiction over a particular criminal case occurring on tribal lands depends upon the type of crime and whether or not the perpetrator and victim are Indians. This complexity can make it more difficult to achieve justice for victims and easier for perpetrators to continue committing violence.

For example, violence against Indigenous women by non-Indigenous perpetrators is extremely high. A U.S. Department of Justice study in 2016 showed that over 84 percent of Native women reported having been victims of violence at some

point in their lifetimes. Of these women, 97 percent reported having been victimized by a non-Indigenous perpetrator, compared to 35 percent reporting having been victimized by an Indigenous perpetrator.¹³

But before the Violence Against Women Act (VAWA) was re-authorized in 2013, tribes could not arrest, much less prosecute, non-Indian perpetrators who assaulted Indian victims on tribal lands. Because of the Supreme Court’s 1978 decision *Oliphant v. Suquamish*, tribes could only try cases in which both parties were Indian and could only arrest Indian perpetrators. Any case involving a non-Indian party automatically was under federal jurisdiction. The 2013 VAWA gave tribal jurisdiction to domestic violence crimes involving non-Indian perpetrators, but it did not give tribes jurisdiction for cases involving non-Indian perpetrators of rape, stalking, trafficking, and child and elder abuse.¹⁴ A 2018 re-authorization of VAWA that gave tribes jurisdiction in those cases has been passed by the House of Representatives but has been held up by Republicans in the Senate who are concerned that tribes are being given too much power.¹⁵

Conclusion

Tribal nations in the Gulf South and across the United States are exercising resilience, creativity, and strength as they continue to contribute to their communities and help bring about justice in the world. Their non-Indigenous neighbors can help by urging elected U.S. officials to fulfill the United States’ trust obligations, take climate change seriously, and protect tribal sovereignty and victims of crime by re-authorizing a stronger version of the Violence Against Women Act. Native communities did not disappear after the massacre at Wounded Knee. In many ways they are surviving and thriving, but they need the United States to keep its promises.

ENDNOTES

- 1 The terminology employed throughout this article (Indian, Native American, Indigenous, tribe, etc.) is in accordance with the language used by the National Congress of American Indians and the individual tribes to whom this article refers.
- 2 National Congress of American Indians. (February, 2020). *Tribal Nations and the United States: An introduction*. https://www.ncai.org/tribalnations/introduction/Indian_Country_101_Updated_February_2019.pdf.
- 3 *Biden-Harris plan for tribal nations*. (n.d.). Retrieved November 12, 2020, from <https://joebiden.com/tribalnations/>.
- 4 “Indian country” is a legal term referring to lands over which tribal nations and the U.S. government exercise primary jurisdiction. Cf. National Congress of American Indians. *Tribal Nations and the United States: An Introduction*.
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The *JustSouth Quarterly* is published 4 times a year by the Jesuit Social Research Institute, College of Arts and Sciences, Loyola University New Orleans, 6363 St. Charles Avenue, Box 94, New Orleans, LA 70118

The *JustSouth Monthly* is published 12 times a year and is available upon request without charge at jsri@loyno.edu. Copyright 2014 © Jesuit Social Research Institute. ISSN 2161-315X

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