

Coulter: A real apology means you won't do it again

Posted: March 07, 2008

by: [Robert Coulter](#)

Congress is considering an apology to American Indians for the wrongs done by this country - forced relocation, takings of lands, violating treaties, destroying sacred sites, and outlawing Native religions and languages, to name a few. But a real apology means you won't do it again - and there is the problem.

The federal government still takes Indian land without paying for it, still fails to account for the Indian money it holds, still violates treaties with Indian nations without making amends, and still maintains a body of law and policy that is so discriminatory and racist that it should have been discarded generations ago. To make a genuine apology, Congress needs to stop doing the things for which it is apologizing.

It is astonishing to most Americans that Congress and the administration are still taking Indian land and resources - without due process of law and without fair market compensation - sometimes with no compensation at all. The Constitution says that Congress may not take anyone's property except for a public purpose, with due process of law, and with fair market compensation. But these rules are not applied to most land and resources owned by Indian tribes, and the government takes the land and resources at will. Obviously, this is wrong.

A few years ago, Congress confiscated part of the Yurok Nation's reservation in California and turned it over to another tribe. At the time, Congress gloated that it could do this without paying compensation because of "plenary power," a concept that gives Congress complete power over Indian affairs. This power has almost no constitutional limitations that protect basic rights, and Indians are the only people in the United States subjected to it.

A good example of ongoing wrongs is how the government is trying to drive Western Shoshone Indians off their homelands in Nevada without due process and for a payment of about 15 cents per acre. This is gold-mining land (much of it turned over for only \$2.50 per acre to Canadian-owned companies) but Indians derive no royalties from it, while being left virtually landless with no means for economic development to improve their impoverished conditions.

In 2004, Congress passed a law that confiscates more than \$145 million belonging to nine Western Shoshone tribal governments and orders the Interior Department to hand out the money to individual tribal members. The bill was passed despite the objections of most Western Shoshone tribes, because it violates their inherent right to self-governance and control over their resources.

Another glaring abuse of federal power is how the Interior Department still does not account for billions in Indian funds that it holds. This national shame is reported regularly in the press. The department is defying the law, as it has done for years. The United States still insists that Indian tribes, and in some respects Indian individuals, are in a state of permanent, involuntary trusteeship, with the federal government as trustee. No one else in the United States is subject to such unaccountable "trusteeship."

Congress today insists it can put Indian nations and tribes out of existence at any time by

terminating their rights. Indian nations and tribes still have no real right to exist in U.S. law. The threat of termination is very real. Some small Native tribes in Alaska have heard this threat from congressional sources in recent years.

Congress also insists that it may freely violate treaties made with Indian nations. Sadly, this is not a thing of the past. Congress does this today - regularly. Treaties are contracts, and the government cannot freely violate its contracts with others, but it often does so in the case of Indian treaties.

The Inter-American Commission on Human Rights of the OAS, an international legal body that is officially recognized and supported by the United States, in 2002 concluded that U.S. policies regarding Indian lands are discriminatory and constitute a violation of human rights. But the administration is defying the commission and refusing to change the discriminatory laws it applies to Indian tribes.

This embarrassing state of affairs, this ongoing pattern of lawless and arbitrary congressional power over Indians, has resulted in a negative, risky, unpredictable business climate on Indian reservations that inhibits needed economic development.

Many of the things Congress is considering apologizing for are still being done to Indians, Alaska Natives and to Native Hawaiians as well. Sadly, the United States, especially Congress, has never given up its insistence on treating Indian and Alaska Native nations with injustice and discrimination. This is not only wrong, but very bad public policy and wholly out of keeping with American values.

So what should Congress do? In addition to an apology, Congress should conduct hearings on these issues and adopt a resolution never again to take Indian or tribal property without due process of law and fair market compensation. The resolution should promise that Congress will never again terminate any American Indian tribe or its government and never again violate or abrogate a treaty with a Native nation without making full compensation and correcting all resulting harm to that nation. Congress must examine and change all federal laws, regulations and court-made law that deprive Indian nations and tribes of constitutional rights. Congress must pass legislation to assure that the government accounts fully for the Indian money and property it holds.

Indian nations have particular rights based on their existence as nations since before the United States was created. But this does not mean that these Native societies and governments should be punished by being deprived of the fundamental constitutional rights that protect everyone in this country from arbitrary government action. Indian nations should have at least the same constitutional rights that all others in this country are accorded.

Until Congress corrects the grievous legal framework that applies to Indian nations, tribal governments must work at a terrible disadvantage to battle the deplorable poverty and social problems that afflict most Indian communities. Government program funds and casinos cannot ever overcome the fundamental legal injustice that Congress continues to inflict on Indian and Alaska Native nations.

Without such commitments from Congress, an apology will not be in good faith and will have to be made over again. Until the government changes its ways, things cannot be expected to improve much in Indian country. It is time to make the changes.

Robert Tim Coulter, founder and executive director of the Indian Law Resource Center in Helena, Mont., and Washington, D.C., has practiced Indian and human rights law for more than 30 years.