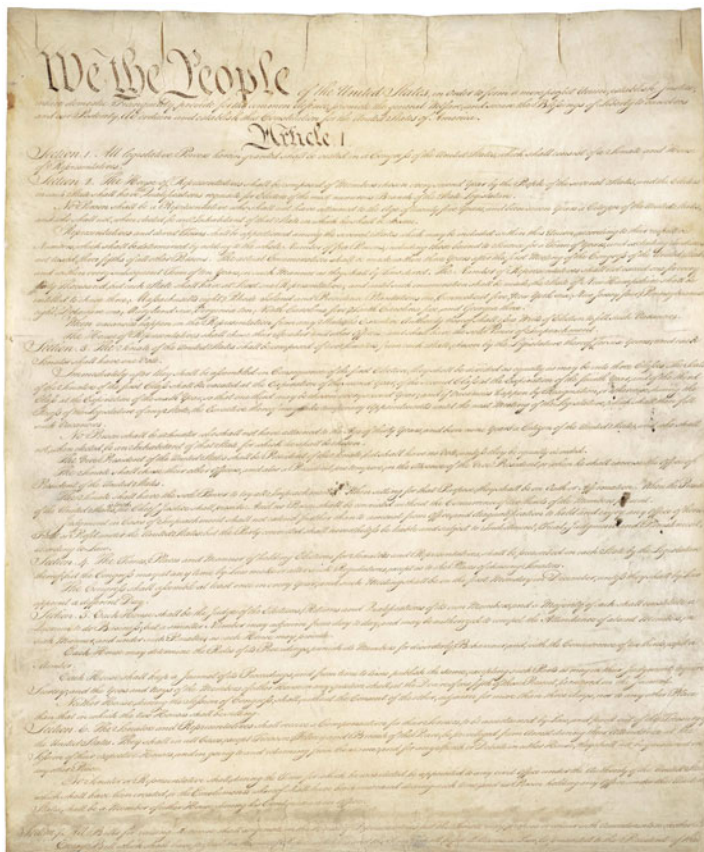


Indian rights: based on treaties, not racial issues

By Morris Thompson
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Editor's note: This article, which originally appeared in The Columbian of Vancouver, Wash., was written by former BIA Commissioner Morris Thompson. It is significant not only in its explanation of the fishing rights issue in the northwest, but also in its definition of the special relationship between Indians and the federal government.

One of the most controversial issues in the Northwest the past two years has been Indian fishing rights on the Columbia River and in the Puget Sound and Northwestern Washington.



Many struggle to understand why U.S.-Indian treaties continue to shape contemporary life. Weren't those documents written a long time ago? The Constitution of the United States is a founding document of our nation, written centuries ago. It continues to frame the way citizens relate to each other, to their government, and to other nations. The Constitution specifically discusses Indian tribes and treaties, calling the latter "the supreme law of the land."

From statements I have read in the press and conversations I have had with people in the Northwest, it has become apparent to me that a majority of people do not understand the unique relationship Indian tribes have with the federal government and the reason for that relationship.

Because the Belloni and Boldt decisions are the law of the land and must be implemented, it is very important that all people affected by them understand the treaty-making process with Indians tribes and what responsibilities the federal government has in insuring that the rights under these treaties are upheld.

I mention the "unique relationship" Indian tribes have with the federal government. That "unique relationship" is based on the treaties the United States signed with the tribes as sovereign nations, and as co-equal governments.

That is important to remember, because the relationship of the federal government to the Indian tribes is a political one, not a racial one.

Political isn't meant in any partisan sense of the word, but in terms of the relationship of one political entity to another. The relationship is not based on the fact that the Indians tribes now are a minority in our society, or that they are ethnically

different from the dominant society, or that they are poor, or that they are red. And the relationship is not with individual Indians, but with tribes as governments.

The federal government stopped making treaties with Indian tribes in 1871. No treaties have been signed since that date.

When our founding fathers met to draft the Constitution 200 years ago, they recognized the need for the federal government to deal with Indian tribes and to perform necessary functions on behalf of Indians.

This was set down in the commerce clause of the Constitution which said Congress was given the specific charge “. . .to regulate commerce with foreign nations, and among the several states, and with the Indian tribes.”

To seal the arrangement whereby the central government was made capable of performing these functions on behalf of the Indians, the framers provided that the Constitution, and all treaties (including treaties with Indian tribes) “. . .shall be the supreme law of the land, anything in the Constitution or laws of any state to the contrary notwithstanding.”

Article VI. This 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; and the judges in every state shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding.

That is why the relationship of Indian tribes to the federal government is unique.

Now some background on the Boldt decision. While the particulars may be a bit different from the Belloni decision, the treaty rights involved are the same.

Gov. Stevens was sent to Washington Territory to secure the land for settlement. He was told to make treaties with the tribes he found there and

try to get them to move to reservations. He was successful. The treaties were made, and the Indian tribes moved to reservations. The land was available for the incoming rush of settlers.

Remember, the Constitution said a treaty is “. . .the supreme law of the land, anything in the Constitution or laws of any state to the contrary notwithstanding.” Those treaties signed by the Indian tribes and Governor Stevens on behalf of the United States government are still in effect today.

When the tribes signed the treaties, they reserved their right to fish in their “usual and accustomed places,” and that meant to them both on and off the reservations.

There is another point to consider here. When Indian tribes signed treaties with the United States, in most cases they relinquished title to lands wanted by the federal government and which the Indians formerly occupied. But it was not a question of the tribes “getting” something from the federal government. They “gave up” something, and what they did not specifically give up, they reserved. They reserved their right to fish in their usual and accustomed places, both on and off the reservations.

Indian tribes, therefore, are not just another “user group” when it comes to fishing if they have retained that right in the treaty they signed as a co-equal government with the United States.

The United States has a treaty with Canada concerning the salmon which come into the Fraser River of British Columbia. The catch is divided between the countries according to the treaty. No one argues the validity of the treaty or the right of Canada or the United States to catch the fish.

That is exactly the situation which exists between the Indian tribes on the Columbia River and the western Washington and the federal government. Those treaty rights were upheld in two federal district courts and the Ninth Circuit Court of Appeals. The Hon. James M. Burns wrote the following words when he was sitting on the Ninth Circuit Court to hear the Boldt appeal:

“I concur, but I want to add a brief comment from the viewpoint of the district judge, as a ‘perpetual fishmaster’, although I recognize that district judges cannot escape their Constitutional responsibilities, and continuing duties imposed upon them, I deplore situations that make it necessary for us to become enduring manager of the fisheries, forest, and highways to say nothing of school districts, police departments, and so on. The record in this case, and the history set forth in the Puyallup and Antoine cases, among others, make it crystal clear that it has been the recalcitrance of Washington state officials (and their vocal non-Indian commercial and sports fishing allies) which produce the denial of Indian rights requiring intervention by the District court. This responsibility should neither escape notice nor be forgotten.”

An Indian does not have a right to fish because of any racial differences. He has a right to fish because his tribe has a valid treaty with the United States giving him that right.