

## **e020-trust**

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Welcome to the Domination Chronicles podcast. I'm your co-host, Peter P. d'Errico.

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And I'm your co-host, Steven Newcomb. Together, Peter and I have 90 years of experience researching,

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discussing, and writing about indigenous people's issues.

Here, we explore themes such as the

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original free existence of Native nations and peoples, colonization as a claim of a right of

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domination, and civilization as a process and system of domination. Be sure to like and subscribe to our

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Now let's get into it.

[Speaker 1] (0:02 - 0:07)

Good morning, Steve. Good morning, Peter. Wonderful to see you face-to-face again.

[Speaker 2] (0:08 - 0:10)

Well, it always is.

[Speaker 1] (0:11 - 6:00)

Now, we've got a good conversation. Yes, likewise. You know, we've talked about the trust doctrine in passing many times, actually in some detail, but today we agreed we'd just focus on it, the so-called federal Indian law trust doctrine.

And I'm thinking that there's easy things that we're going to say and hard things. The easy thing is that the law is very clear, as we're going to explain about what this word trust really means and how untrustworthy it is. The hard thing is going to be because so many people think that it really means something significant.

They take the word trust to mean, yes, trust is a basic relationship in which you can count on something happening that you can trust. You can trust the trust, let's say, put it that way. But anyway, let's just dive into it and see where we go.

And what triggered it off, as you remember, a few weeks ago, we were looking at a document that was filed. I just want to refer to it specifically. And we'll put a note in the show notes here about it.

There was a document filed in January by the Standing Rock Tribal Council, and it was sent to the U.S. Army Corps of Engineers. It was on January 20th of this year, sent to the U.S. Army Corps of Engineers. And it was their comment in opposition to the final environmental impact statement for the Dakota Access Pipeline.

And so believe it or not, this is the battle over the pipeline is still going on. And the challenge that they decided to make at the time they started all this litigation was to work within the United States environmental laws, rather than taking the route of standing on the ground of their treaty rights and land rights in accordance with the treaty. Rather than doing that, they decided to wade into the thickets of U.S. environmental law. And I remember you and I both cautioning them that that was not going to be very productive. Well, that is still all going on. And in this January 20th document, one of the things that jumped out was that they're relying on what they call the federal trust responsibility.

And just read a couple of statements. It says, the United States has a well-established trust responsibility to federally recognized tribal nations. This trust responsibility, and then they go through a laundry list here, grounded in treaty statutes, the Constitution, federal common law, requires federal agencies to protect tribal lands, natural resources, etc.

And to act with heightened care when federal actions threaten those interests. So that all sounds very strong, very powerful, if trust actually meant anything. And here's where I think is the hard part is that so many native peoples in litigation and otherwise and commentators and just sort of popular opinion says, yeah, that really means something.

The federal government has a trust responsibility, they're supposed to watch out for us. And so that's the first dot, is that this is a live argument that's still being made in various

forums, including the ongoing Standing Rock situation. And the two other dots that I think we should connect, one of the dots is the origin of the so-called trust doctrine, which was way back in the so-called Marshall Trilogy, this right after Johnson versus McIntosh was the case of Cherokee Nation v.

Georgia. That's where Chief Justice Marshall said that the Cherokee Nation is not a real nation, that it's, quote, dependent domestic nation. And he said that it's really kind of like a relationship between a guardian and a ward.

And the United States is a guardian, and the Cherokee Nation and all other native nations are the wards of that government. So guardian ward is the language, echoes the notion of trust, of trust relationship, trustee, guardian, we can talk about the details of those things later. But that's, it originated, this doctrine originated, in a Supreme Court case, in which it was used to say that Indian nations are not really nations.

So you'd think from the outset, this is not a doctrine that said, oh, yes, you have a very important position, and we will maintain our support for your position, it was just the opposite. And the third dot will come later, it's a 2011 case, the Hickory Nation case. And there, the Supreme Court was very explicit about the trust doctrine does not really mean trust in the ordinary sense.

And that what it really means is just a power of the United States to decide what it wants to do. So we'll, we need to unpack all of that. But just at the outset, what are your

thoughts as we open up thinking about the so called trust doctrine?

[Speaker 2] (6:02 - 9:18)

Well, there are so many things to be said about this, the usual nature of a trust, as I understand it, would involve a trust instrument, a document that would lay out the terms of the trust and make it very crystal clear as to what's going on in the relationship between parties within that trust structure. And I remember in 1996, we were at Harvard for that listening session regarding the draft UN Declaration on the Rights of Indigenous Peoples. And I had the opportunity to ask, I believe was the representative of the Interior Department for the copy, would he be able to provide us with a copy of the trust instrument, or document that established the trust between Native Nations and the United States.

And there was laughter in the audience. And he said, well, you got me there. So it's very vague, and you have some terms being used, either trust responsibility, trust relationship.

I mean, they do say, the advocates will say obligations on the part of the United States. But really, the courts have, I think, been crystal clear to say, it's only in terms of what's in the written explanation on the part of the United States government as to what they have obligated the United States to do in a given setting or situation. Yeah, so he has to be very specifically specified.

And I remember calling a solicitor of the Bureau of Indian Affairs in Portland, Oregon many years ago. And I asked him that same question about the trust instrument or document. And he said, you have to understand that the trust, the word trust is not being used in the ordinary sense of a private law trust.

It really goes back to three important Supreme Court rulings in the 1800s. And he began with the Johnson versus McIntosh ruling, and laid that out, and so forth. And as one of those, what's called the Marshall Trilogy of cases, Johnson v.

McIntosh, Cherokee Nation versus Georgia in 1831, and Worcester v. Georgia in 1832. In any case, I said, well, what about the reference to or the distinction made in the Johnson ruling between Christian people and natives who are heathens?

And he got very irritated and said, hey, you already know a lot about this. And the cat was out of the bag at that point. But I just say these things to explain that we've been at this for quite a long time to delve into these matters and try to sort all this stuff out.

And I don't think it's much clearer today than it was decades ago for most people. It operates in a weird realm of ambiguities. And so what do you do with all those ambiguities to create clarification?

[Speaker 1] (9:19 - 13:32)

Yeah, first thing is that that solicitor was at least honest with you. Yeah, he was. He said there isn't any, it's not really a common law trust, which means that in law, it's not a trust.

Well, what is it? Well, this is where, let's just jump to that third data I was going to talk about, the Hickory case. Let me just quote you.

This is from the Supreme Court in 2011. And it was a clarifying that the reason the Hickory were not going to win this case, they said that the US had a trust relationship that it had to provide documents and so on and so forth. And the Supreme Court said, no, they don't have that.

It said that actually, what he emphasized is that it's not based on a real trust relationship, but it's based on a claim of plenary power. And here's a direct quote from the case. Throughout the history of the Indian trust relationship, this is what's so bizarre, as you were just suggesting a minute ago, why use these words?

Why say the history of the Indian trust relationship if it's not a trust relationship? Well, that goes to, is it intentional confusion? Or is it just willingness to participate in confusion that January 2026 statement from Standing Rock is participating in this confusion, but doesn't seem to think that there's anything confusing about it.

So anyway, here's the quote, throughout the history of the Indian trust relationship, we have recognized, we being the Supreme Court, of course, we have recognized that the

organization and management of the trust is a sovereign function subject to the plenary authority of Congress. And he emphasized that plenary authority includes being able to divest the tribes of any attributes of sovereignty, plenary authority to legislate for the tribes in all matters, including their form of government, and plenary authority over the Indians and all their tribal relations, and full power to legislate concerning their tribal property. That's a direct quote out of the Hickory case.

And so he says that while trust administration relates to the welfare of the Indians, well, now we got more words in here, welfare of the Indians, what is that supposed to mean? In any case, while trust administration relates to the welfare of the Indians, the maintenance of the limitations which Congress has prescribed is distinctly an interest of the United States. Now, this is diametrically opposed to an ordinary common law trust.

When you said there has to be a trust instrument, and it specifies the relations between the parties, okay, well, one of the parties is the trustee, another party is the beneficiary of the trust. And that relationship is subject to oversight by court so that the beneficiary can challenge the trustee if the trustee does something that's not in the interest of the beneficiary. So when they get to the so-called Indian trust, it turns out it's inside out that it's the trustee's interest that the Indian trust, quote unquote, relates to.

And so then a final quote from the case, Congress has structured the trust relationship to reflect its considered judgment. In other words, Congress has considered

judgment about how the Indians ought to be governed. All right.

And he says that the doctrine authorizes the adoption on the part of the United States of such policy as their own public interest may dictate. The trust relationship has been administered as an instrument of federal policy. Well, you can't get any further away from a real trust relationship than that, where all the power and interest and benefits go to the trustee and not to the beneficiary.

And in fact, the trustee claims the power to say, well, I'm actually just going to eradicate the beneficiary. I extinguish your existence. So that's a current state of the law stated as clearly as it ever has been.

[Speaker 2] (13:33 - 13:44)

And who authored that opinion? Alito. So, I mean, this is very fascinating because the beneficiary is the United States.

[Speaker 1] (13:44 - 13:50)

Yeah, that's what it turns out to be. The beneficiary benefit, the trustee benefits itself.

[Speaker 2] (13:51 - 14:01)

Yes. So the thing is, it's the domination relationship called a trust relationship. There you go.

Precisely.

[Speaker 1] (14:01 - 14:34)

And again, it just, as I said, you know, at least your public solicitor was honest. Alito is at least being honest. He said the trust relationship is just part of the claim comes from.

He would have to go back into Johnson v. McIntosh and the claim of ownership of land and the original domination doctrines and so on and so forth. But taking all that as given, he says, when we get to the trust relationship, it's just wrapped up in all of that claim of a right of domination.

Right.

[Speaker 2] (14:34 - 15:21)

But disguised as something else through the use of euphemistic terminology. Yep. Yep.

So, the thing that's fascinating, well, among many other things, is that it's as if a lot of quote unquote advocates for Native peoples, federal Indian law attorneys, don't really, they can't handle the truth by agreeing to this perspective that's told just blatantly outright, here's what it is. They're not going to go into court and use that because there's nothing to use. So, then they have to live in a kind of weird state of denial and figure out what to do with any of that.

[Speaker 1] (15:22 - 16:59)

Yes. Now, exactly. And to back up what you're just saying, let me look one more time at this Standing Rock document from January, because you say, well, how come he put this in here about trust responsibility?

Well, he has a footnote. So, if you look at the footnote, he cites, well, there are two cases that I want to point out. He cites Cherokee Nation v.

Georgia. All right. And you say, well, wait a minute.

He's citing the case that said that Indians are not, they don't have, they're not actually foreign nations. They're not nations independent of the United States. They're dependent on the United States.

That's what Cherokee Nation said. And Cherokee Nation went further and said, let me just get that quote for, so we have it exact. Cherokee Nation said that the, what does he call them then?

The Indians. The Indians are in a state of pupillage, like they're the students. Their relations to the United States resemble that of a ward to his guardian.

They look to our government for protection, rely upon its kindness and its power, appeal to it for relief to their wants, and address the president as their great father. So, is that what's going on in Standing Rock? Is dear great father, would you help us with our wants?

It doesn't say the great father has to do anything about it. It just says that they appeal to the great father for their wants. But so, he cites that.

That's he or whoever wrote this.

[Speaker 2] (17:00 - 18:37)

So, right. And the thing is that Standing Rock has put this forward evidently as a document submitted to the federal government, to the United States government. And the underlying confusion is endemic to the way in which the document has been put together.

Because it hasn't been sorted out in advance to say, okay, what is this that we're even talking about? Kind of a conversation along the lines of what we're having right now. What is it that we're really needing to say here?

But before we say it, let's get clear on what we're even talking about in terms of the origin of this and so forth. The particulars such as you're doing with the tracing it back to Cherokee Nation and probably go to all of it, Johnson McIntosh and so forth, to figure out what is the argument that can be put together that's most powerful in the interest of Standing Rock. Okay.

Yeah. But short of that, short of doing that, then you run the risk of a whole bunch of words being put forward without clarity on the part of the authors or certainly without clarity in terms of what the document is actually putting forward in terms of the actual state of US law, such as has specified. Yeah.

[Speaker 1] (18:37 - 19:23)

And so put yourself then in the position of the federal lawyers who receive this document, they're like your public solicitor. They read this and they say, oh, geez, these people, I don't know whether they laugh or smirk or what

do they do. These people don't understand that we have no, there's nothing we have to do other than what we want to do.

And so then to jump back into the Standing Rock document, they refer to Cherokee Nation, but the only actual quote is, there's a footnote that says Cherokee Nation recognizes tribes as quote, domestic dependent nations, unquote. And then it says under the protection of the United States, but the Cherokee Nation doesn't say they're under the protection. It says that the tribes look for protection.

[Speaker 2] (19:24 - 19:24)  
Yeah.

[Speaker 1] (19:25 - 19:56)  
It doesn't say the United States is obligated to provide it. In fact, that's precisely what Cherokee Nation, the decision was. The Cherokee Nation said, we have a treaty.

You agreed to protect our land. And the court says, no, we're not going to do that. You don't even have a right to ask us to do that.

So it's disingenuous to have a document filed that says that Cherokee Nation says that there's an obligation of trust incumbent upon the federal government. That's just wrong. It's not in Cherokee Nation.

[Speaker 2] (19:57 - 20:14)  
What is the Navajo Nation case where the court was very specific about the, it's only what the United States has

specifically obligated for itself in terms of agreeing to any form of obligation. Yeah.

[Speaker 1] (20:14 - 23:05)

And that, so what that, the Navajo Nation case, actually, it gets worse, Steve, because the other case that's cited in the Standing Rock document that we're talking about filed in January is United States versus Mitchell, which was 1983. And the Navajo case you're talking about relies on this. So here's what Mitchell said.

So they have a, the footnote says, United States versus Mitchell. This is now within the Standing Rock document. And it quotes the undisputed existence of a general trust relationship between the United States and Indian people.

Okay. You say the general trust relationship. Well, I thought we just figured out if you look closely, the general trust relationship is not a real trust relationship.

So the undisputed existence of something that's not a real trust relationship, the court said that, but then what else did the Mitchell case say? This is what, this is what the question comes down to in this case, which is what you were just referring to with Navajo. Here's, this is a quote from the case that has just been cited as a footnote.

It says that the, in contrast to this general notion of a trust, there are statutes and regulations in this particular case, in the U.S. v. Mitchell case, where the federal government took on specific responsibility to manage Indian resources. Okay.

So it says that because the statutes and regulations at issue in this case clearly established fiduciary obligations in the management of operation of Indian lands and resources. That means that there was a statute in the case in Mitchell, which specifically set out obligations. It was not the so-called general trust obligation.

It was a, and that's the only case that I'm aware of, where there's been a so-called success on relying on the so-called trust doctrine, but it doesn't really rely on the trust doctrine. It relies on a specific statute. And in the Navajo case, which was about water, the Navajo said, you have an obligation, you, the U.S., under the trust responsible to make sure we have water to irrigate the lands that were specified in our treaty. And the court said, no, there isn't any statute that says that. And water was not specifically mentioned. There's no statute where the U.S. obligated itself. So we don't have anything. It's just words. The words of the trust relationship don't really apply because there's no specific, the U.S. didn't come in and say, we specifically hereby take on responsibility for this particular project or this particular piece of property or this particular fill in the blank.

[Speaker 2] (23:06 - 23:56)

So isn't it interesting to look at the understanding of treaty interpretation or the construction, as they call it, of a treaty document where it's supposedly to be interpreted as the native people understood it at the time it was created or made. All right. And certainly they would have the understanding that they would have adequate water for their lives.

And yet here comes the court ignoring that implication. I mean, it's not specified, but the implication is clearly there. And then just toss that aside.

Cavalierly, there's no obligation on the part of the court to acknowledge the very principle of treaty interpretation that the Supreme Court has said is there. Yeah. How do you deal with that contradiction?

[Speaker 1] (23:57 - 24:53)

Well, I think it's a contradiction on one level, but in terms of how the law has been specified, it's not a contradiction because the implication, as you said, how would they have read it? OK, that involves some treaty interpretation, quote unquote. That means it's not an explicit obligation.

If you have to interpret how somebody else would have thought this, then that might be part of a real trust relationship, but it's not part of what has been called the trust relationship in federal lending law because that trust relationship, the court has actually used the word bare, B-A-R-E, bare, a bare trust. I don't even know what a bare trust is. It just means blah.

That's what it means, OK? The specific trust requires a specific statute. So you look at the Navajo Treaty and the word water doesn't appear.

Oh, we washed our hands. I don't know what we washed them because we have no water here, but we don't have to deal with that.

[Speaker 2] (24:53 - 25:43)

Well, and it goes to the point that no document, treaty or otherwise, is self-interpreting. It is only going to be interpreted in the interaction of human beings with that particular text. So the orientation, the biases, whatever of those people looking at that treaty, there's not one specific way in which that's going to be interpreted, especially if you have two opposing sides that are vying and competing.

But we already specified that according to the United States Supreme Court, the beneficiary is the United States. So it's going to always be interpreted to the benefit of the United States, regardless of what is said in *U.S. v. Winans* and *Worcester v.*

Georgia about treaty interpretation.

[Speaker 1] (25:43 - 27:59)

Yeah, yeah, exactly. So it's like you're, if you imagine, because behind all of this environmental impact statement is the claim that the Environmental Administration Agency has to consult with Standing Rock and they didn't sufficiently consult. That's what all this battle is about.

Did they sufficiently consult? Did they gather enough information? Did they interview enough people?

All of that kind of stuff. That's what they're arguing about. But when you say, well, we're bringing all that argument to the table, and who's on the other side of the table?

Well, the U.S. Well, who's the one who's judging who's right here? Oh, that's the U.S. also. You mean, so the U.S. is on the side wearing the hat of the trustee? Well, who's wearing the hat of the entity that overlooks the trustee? Oh, the U.S. is wearing that hat too. And this is why it's not surprising, really, that when Obama agreed to sign the U.N. Declaration on Indigenous Peoples' Rights, that he wanted to specify that where the U.N. Declaration says that nothing of this sort, like working on land projects and so on, nothing of this can happen without the consent of the indigenous peoples. The State Department, under Obama's direction, issued a statement saying, well, you have to understand that consent does not mean agreement. Consent just means consultation. So here we have the Standing Rock saying, well, you didn't adequately consult with us.

Well, who's going to decide whether it's adequate or not? Who's going to decide that? Well, that's already been set out in the nature of what's called the trust doctrine and what's been set out in the definition of consent that's not agreement.

It's a rat's nest of contradictions and confusions that somehow seems to attract people's attention, even though rather than saying that's a losing argument, there's no point in doing that, why are we wasting our time doing that? They just keep going through the same motion. So what do you call that when people go through the same motions, running into the same wall and decide to get up and run into the same wall again, rather than stepping back from the wall and saying, what else can we do here?

[Speaker 2] (28:00 - 28:43)

I think Einstein defined that as sanity. It is interesting to think of the implications of coming to the realization that what's really being discussed here is a domination relationship hidden behind the term trust. And the full magnitude of that is so overwhelming.

What do you do with that? If you come to that realization and everything you've checked bears that out to arrive at that conclusion, where do you go from there at that point?

[Speaker 1] (28:44 - 30:08)

Well, you remember, we were suggesting there's another thing to do back when Standing Rock, when the whole thing first started before the first litigation even started, you and I and a few other people were involved in some discussions about what course to take. And we were saying, this environmental law and consultation is a loser. It's a waste of time.

It's a distraction. It's a quagmire. And we were saying, there is another path here.

Well, what is that other path that we suggested? The path is to stand on treaty rights, land rights. If you want to call it sovereignty, we don't need to use that word because of the complexities of how that's actually part of the domination system.

But we put forward, actually, we got quite detailed, we provided potential brief drafts that said, you can deal with this pipeline incursion by relying on the treaties that you

have, which specify your territories. And you can say, if there's an environmental law here, it's Lakota environmental law. And under our environmental law, there's no oil pipeline allowed here.

That would be the way forward that does not rely on any so-called trust protection, appealing to the Great Father.

[Speaker 2] (30:10 - 30:48)

Well, it also goes back to the original free existence of the people before an invasion of their lands and territories. And so, it's sorting out what is what before you even get into the basis of the argumentation. Yes.

We've specified that there is something called domination in the historical record, in the legal record, in the entirety of the record of the history. And we're calling that out. And we're challenging that.

Precisely. And that's what the Yakama Nation did with their amicus brief.

[Speaker 1] (30:49 - 30:49)

Yes.

[Speaker 2] (30:49 - 30:59)

It's so extraordinary because it was the first time that that course of action had been taken by any native nation in relationship to the United States.

[Speaker 1] (31:00 - 31:38)

Yes, exactly. And so, it would have put everything on a completely different foundation. Imagine, ask yourself, what if Standing Rock had taken the other course and had said, we're standing on our treaty, we're standing on our ancestral lands, we're standing on our existence, we're standing on our environmental laws, we're standing on our laws about who's trespassing and who's not trespassing.

What if that had been the starting point of that litigation? It's a completely different world would have opened up and people would be talking about Standing Rock in a very different way than when they're talking about U.S. environmental law.

[Speaker 2] (31:40 - 33:07)

I think there's a very interesting dimension of this dynamic, which goes to the word habit. People are in the habit of doing. One of the most interesting definitions of law regarding U.S. law that I came across in my research was the habit of obedience. And there's a habitual way in which people have been conditioned early in their lives as they went into law school, came through law school, got their degree, where they were conditioned to a particular type of use of language. And that you could call that primary socialization. The first introduction that someone has to any field of knowledge is going to be very lasting, because it's the very first kind of impression, the first kind of formation of mental habits, patterns of speech, ways of writing that people get accustomed to.

And it's very hard to break those habits once they're ingrained. I think there's a way in which there's almost an

unconscious manner in which these things perpetuate in terms of the patterns that we're talking about. How do you break the pattern?

What is the pattern interrupt that can result in a different kind of insight and understanding that isn't there right now?

[Speaker 1] (33:08 - 34:43)

Yep. I think that what we're doing is efforts at pattern interrupts. And I think that if Standing Rock had filed the lawsuit that we were recommending, that would have been a major pattern interrupt.

And that those that's why there are opportunities to interrupt the pattern, whether to what extent this interruption has to be repeated, how forceful it has to be made. Those are open questions. But what you're making me think about what I was fortunate enough not to have had, which is a class in law school about all this, because if I'd had a class in law school about this, my, as you put it, my introduction to thinking about this would have been already tainted.

I would have learned, oh, you're supposed to use the word trust when you start talking about these issues. And so I would have learned, oh, yes. Now, if I'm going to go in to this field of law, I have to learn about how to speak about trust.

I would have been completely confused, of course. But luckily, I bounced into this from the outside. And I bounce into it.

And I say, trust, what do you mean? Where's the trust? As you said, where's the trust instrument?

Who's the beneficiary here? Who's the trustee? What's the form in which we go if the beneficiary wants to challenge the trustee?

Those are the questions. But I would not have been primed to ask those questions if I'd been taught in a conventional way in a conventional law school course, which says, now, here's the language to use when you go into this place.

[Speaker 2] (34:44 - 35:53)

Well, I think that when I said unconscious, there is also an unthinking manner, an uncritical manner, in which people are even interacting with all these ideas. Yep. And if you, as any person that practices in this area of law, what they call law, is not sufficiently grounded in a lot of additional information outside of that legal world of language, because they're going to be thinking they have to be very narrowly focused on the law and the specifics of that.

So, why would they get into domination? Why would they get into papal bulls? Why would they get into any of the claim of a right of domination?

That has nothing to do with anything. And so, there's a way in which the manner in which we speak and the way we

approach these things is automatically thought of as irrelevant to the conversation.

[Speaker 1] (35:53 - 36:45)

Yes. Yes. Right.

From their point of view, we don't know what we're talking about. The advantage we have is that it's all right there in the cases. Yeah.

I mean, it's very clear what we're talking about. It's just that when you said critical thinking, what flashed in my mind is, there's that phrase, critical thinking, but I'm thinking, well, is there anything that's thinking that's not critical? I mean, what is thinking, actually?

Is anybody encouraged to think? If you're thinking, you're moving into a kind of critical space in which you're asking questions. That's part of it.

So, basically, what you're saying is that people are not encouraged to think about this. They're told how to think, but that's not thinking. It's not.

[Speaker 2] (36:45 - 36:58)

You know, Vine Deloria, sorry to interject, but Vine Deloria likened the Cohen handbook to learning a catechism.

[Speaker 1] (36:59 - 37:19)

There you go. Exactly. That's exactly it.

Sometimes, we need to look at the Cohen handbook because not very many people are even aware of what that is. The lawyers practicing certainly know what it is, and the law students have to learn from it, but there we go. How many words have been put together?

[Speaker 2] (37:20 - 37:24)

When they talk about somebody, oh, that guy's really thick.

[Speaker 1] (37:27 - 40:38)

Yeah. So, actually, let's talk about Cohen at some point, the so-called handbook, because if you get the handbook, it's like the Boy Scout handbook, how to start a fire. You presume that at the end of this, you're going to get the fire, but you look at the other handbook, it's like, no, you're actually just going to be wandering for a long time.

The other piece I want to say when you were talking about learning how to behave, really, learning how to think is also learning how to behave, and maybe we got to talk about behavior sometime, but I was thinking, for some reason, this is maybe off the wall, I thought about how people are taught how to behave around majesty, which is to say how they're taught to behave around the sovereign, and there's etiquette, court etiquette. Etiquette is another thing.

Students are actually being taught etiquette. This is how you're supposed to talk. Now, don't talk in a different way because that's not polite, and the word polite goes back to the word police.

That's wrong talking. You have to learn to talk this way. So, you learn, here's how you behave when you walk into the presence, it's called, the presence of the sovereign, all right, and you have to make certain formal moves, and when you walk out, you certainly don't turn your back and walk away from the sun.

You back up. All these arcane things that go back into centuries past when people actually believed in things called kings and queens and empowered by God and so on and so forth, all of that power that was around the sovereign was supported by this court. It was actually called a court, then the courtiers, and they behaved in the appropriate way.

So, there was never a king or a queen who was just by themselves. They were surrounded by the people who performed. So, it was a performative act being a sovereign, all right, and if you didn't behave that way, you were excluded, and in some days, if you didn't behave and you said the wrong words, you could be burned alive at the stake because you had said something heretical like the king was not ordained by God or whatever it might be, or it was also treason, high treason for which you could be hanged if you said something to the effect that the king is a human being who's going to die.

You're not allowed to talk about the mortality. So, all of those words and behaviors that went around supporting some kind of a phantasm of sovereignty, of the sovereign, I think the same thing is going on in every ordinary law situation where there's, as you put it, the so-called law, or

you put the law in quotes, what does that mean? That's words that have been spoken by high authorities.

What does high authorities mean? People with robes on, and certain behaviors are required. This is just the way in which the domination, but when we explore it this way, we realize that it is a system of domination internally to itself, a system which is based on the concept and the practice of domination.

So, it didn't just become dominating when it got brought across the ocean. It was already dominating in its own lands where it originated. It was that system.

[Speaker 2] (40:39 - 42:42)

Well, you're always being judged in court. There you go. That's one association.

And then you also, talking about critical thought or all thought is critical, but not all thought is critical. If you're thinking about how do I make sure I don't step out of line here so that I end up at the stake, or in the tower, or in prison, or in the dungeon, or wherever the hell I might end up, or just ostracized, out instead of on the inside. And so, then it's the fear factor.

Yes, absolutely. Which is, what is the habit of obedience? What holds you in check?

It's fear. So, the fear prevents you from being able to engage in this type of a free-flowing conversation where it can go in any direction. We don't have any fear, right, in

terms of what we're possibly going to say, or we might offend, or what have you.

So, there are so many factors involved. And I think that, unfortunately, there's a way in which all of these things that we're being critical of, critiquing, don't seem to be existing within the ordinary parameters of the federal Indian law world, or community, or whatever it is, that results in people going into court, supposedly in advocacy for some native nation or people, and immediately agreeing right out of the gate that the United States has plenty of power over Indian tribes, or Indian affairs, or whatever it is. So, you're going to argue on behalf of the beneficiary, i.e., the federal government, supposedly in advocacy of your own client, you know, as attorney. It's weird.

The whole thing is so bizarre when you think of it that way.

[Speaker 1] (42:43 - 46:37)

Yeah, exactly. The fact that it's when we, as we unpack it, sort of layer by layer, it becomes more and more bizarre, that just makes it more obvious how bizarre it is to go along with it without peeling these layers back. You see this bizarre behavior and ask, why are you doing that?

It's like, why are you walking backwards out of the room? That's pretty bizarre, isn't it? Don't you want to see where you're going?

Oh, I don't want to offend majesty. It's like, what? That makes it, now we're even more, we're layers of bizarreness.

What do you mean by majesty? And it also, I think you really hit on something about fear. Two things it makes me think of.

One is that the power of domination is exerted, it relies on instilling fear, pain and fear. And it boggles my mind to think about how many centuries, how many thousands of people were burned alive at the stake for having said something that was disapproved of by the so-called sovereign, all right? So, that means we have centuries of inflection of incredible, horrible pain, instilling fear in everybody, saying, don't do that to me, I'll say the right words.

And so, that means it becomes a kind of a spiritual question. If we're not fearful, it's like we're not fearful having this conversation. If we're not fearful, perhaps we become immune to the domination.

We may be still burned alive at the stake, but we're going into it, it's like it's a good day to die kind of view. We're defending our existence, we're defending our free existence. And so, that seems to me something worth exploring.

So, in addition to pointing out the domination, we need to point out what it is that allows a domination to get its hold on people. And when we see that that hold has to do with fear, then is there an antidote to that? And I think that there are, and I think it's not just the warrior who's defending his people and says it's a good day to die.

I mean, the samurai did something similar, the Taoist, you know, the Zen master. There's great spiritual traditions, probably even within Christianity. Some of the people who went to the stake were reported that they didn't, they were not screaming in terror, because they were so confident in the rightness of their understanding of the cosmos or whatever.

But that's another conversation. Just what is that fear? Can I add one more thing here, which is what's the fear on the side of the sovereign, so-called, that requires them to persecute and prosecute and dominate people who don't follow the right protocol?

What's the fear of the sovereign? If somebody turns around and walks away from me, that threatens me. I might lose my power.

I need people all around me who bow and fawn and go down on the knee to me, because otherwise my power will disappear. It's a phantom. And there's a movie, *The Sun*, I think it was just called.

Anyway, it's about the emperor, Japanese emperor. And it opens up with the emperor. He's basically in an existential moment thinking about, who am I really?

And his closest attendants who put his clothes on, he starts talking to them about, you know, I'm just a man, right? They're terrified. They have no idea what's happening.

They refuse to acknowledge him as a human, which of course traps him further into the insanity of the thing. So I'm bouncing off in too many different directions, but it all stems back to this fear factor. And to what extent fear is involved both in the production of domination and the manifestation of domination and the obedience to domination, where there's fear in all directions here, it seems to me.

[Speaker 2] (46:38 - 49:03)

When my mother took me to Sunday school when I was about six years old, I've told this story before, but I remember them teaching me that I might go to hell, or I would go to hell if I didn't pray. And I remember this fear that I had just below my solar plexus, the sensation of real fear. And that stayed with me.

I always likened it to a fishhook, and stuck that fishhook in there. So I had that until I started going to ceremony, and eventually that went away. I was cured of that.

And there were other things too that happened. But because of my spiritual path, and because of the things that I had to go through psychologically to heal from a lot of things, as we all do, eventually I got to a whole different kind of place, including the need to deal with the fear of death. Yes, exactly.

A particular teaching that I had received from a Cherokee medicine person. I won't get into all the specifics, but it was something that basically, it was almost like a premonition of

me passing away at a fairly young age. I mean, this is how it was kind of presented.

And then I had that, I had to deal with that. I had to address that in my life, because this had been presented to me in a certain manner. So I had to go through a pretty deep reckoning with that fear of death.

And as I moved past that age that I had been given, well, I had done so much because I was so freaked out by it. I had done so much that I was able to overcome that. I had a whole different understanding of death and so forth.

I think those are the kinds of experiences that if we're fortunate enough to have them, that we are able to go into a different kind of place spiritually, in terms of our overall sense of being and purpose and what's life all about. And I think that's a huge factor in this type of work.

[Speaker 1] (49:04 - 50:10)

Absolutely. And we, I think we need to touch base with the so-called COVID lockdown, because we saw this fear process working on a global level. And at a simple level, I shouldn't call it simple, but it was the censorship.

If we were dependent on this conversation we're having for our livelihood, and we were having this conversation, and we were sensitive, and we no longer were allowed to have this conversation on this platform, we'd say, well, how are we supposed to live? I can't pay for my groceries. Not that we're making money on this one, but I'm talking, the

example was the number of people, or the number of people who were simply cancelled, so to speak.

Like, you'd become a non-person. And the fear was amalgamated by the so-called experts with their white coats and degrees as, oh, but if you don't do this, then you might die. So here we're back to fear of death again.

So either fear of ostracism, fear of losing your income, your job, or fear of actually fear of death made everybody that was willing to live in fear compliant.

[Speaker 2] (50:12 - 51:42)

Yeah, yeah. Well, and you also see people even today, I don't know what the latest is on the perception, public perception of diseases and so forth, and viruses and such, doesn't seem to be in the media much anymore. But there is a tendency on the part of people that I see, some people that are still wearing the masks and this sort of thing, and I think there must be a fear factor there.

As I said on one podcast I was invited on, when you see people with a mask on driving in their car with the windows rolled down, you have to wonder what in the world is going on. I mean, so again, back to the business of critical thinking or just thinking period, is it possible to get a virus, to get a cold or anything in a car with the windows rolled down? I mean, maybe if you're exposed to a cold or something, but just on a nice day, it doesn't, to me, it doesn't make sense.

So there must be a fear factor that has this person believing that I need to have this on for my protection. And so, I don't know, it's just interesting how people do get conditioned into all kinds of patterns of thought and behavior in a particular way, based upon the types of things that you're talking about on a mass scale.

[Speaker 1] (51:43 - 53:21)

Yes, and the priests in the days when the burnings were happening, they were the experts. They were the ones who said, this is what has to happen, because God said this and so on and so forth. Today, they wear white coats, and they have other kinds of degrees, and they occupy the same position.

And just as a little teaser, one of the things that we're going to get into at some point is talking about the way in which Indian administration, so-called the apparatus to govern Indians, has been looked at over the last 200 years, over and over again. How can we improve the Bureau of Indian Affairs? And it becomes increasingly aligned with who are the experts here?

So we have expert administration, we just have to find the experts in sociological control and development, and the experts in education, and the experts in assimilation, and so on and so forth. So expertism is threaded through all this stuff that we're talking about, but it all still is itself surrounded by this phenomenon of fear, that I am so afraid I better obey. And it comes all the way down to the individual judge and the individual lawyer.

If you walk into the courtroom, what if you say something like, Your Honor, we're relying on our treaty here, and the judge doesn't want to hear that. The judge expects you to come in and talk about environmental rules. So are you going to speak what you have to say?

What happened to the briefcase warriors supposed to go in and defend the native peoples? Well, they all got brainwashed, so to speak.

[Speaker 2] (53:22 - 56:14)

You know, coming back to the term majesty that you used earlier, and the relationship of the idea of majesty with magi, magis, and magic, the root of magic. The article that I came across at the League of Nations Library in Geneva, Switzerland, by Ernest Nise, published in the early 1900s, about international law. And you get into the article, and you see he's looking at the relationship between international law and magic.

Wow. Yeah. And I have a book on my shelf where the CIA has a whole book on magic, and the use of magic, techniques to deceive, sleight of hand, all these.

But there's sleight of language, too. There's a way in which all of these interests create techniques through threat, duress, coercion, pleasure, gratification, you name it. Whatever kind of things are going to influence us, well, that goes to persuasion.

And I was told, in rhetoric and communication, when I was studying that as my major, that persuasion could go all the

way from sweets and candy to torture. Yes. That spectrum, everything in between.

Yeah. And they use anything by all means necessary, right? Any means necessary, any and all means necessary.

So, I think that there are so many aspects to all of this, and then the last thing I want to mention is the idea we've talked about before, curiosity. Having that deep curiosity to want to know, how did the things get to be the way that they are? If your fear factor shuts down your curiosity, never mind that you're not really thinking a lot about anything, but you're not even curious to know.

In fact, you want to shut down the curiosity, path of curiosity. You just want to put the kibosh on that. And, yeah, I don't bother me with that.

I don't really know, want to know where the COVID shots came from. I don't want to know anything about that. That's just beyond what I can handle.

So, there's also that factor where if people are, for whatever reason, uncomfortable, and we all get like that, I think on certain topics, where we push things away rather than looking into them and going toward that information, we recoil and pull back.

[Speaker 1] (56:14 - 57:25)

Yeah. Well, we could obviously keep going. We've had about an hour here, and I think just to bring it back to the beginning with the trust thing, where's the element of

curiosity in the law student and the lawyer who says, let me look at that a little more closely.

What was that case, Cherokee Nation? Oh, and it relies on Johnson v. McIntosh.

Let me look more closely at these cases. I'm really curious where this comes from. And if you start following that path, pretty soon the whole thing unravels.

Where is that factor? Because anybody who's actually been curious enough about this will know it's a waste of paper. What did Vine say?

A waste of trees, if you're going to publish this, it's a waste of time to write a document that says the trust responsibility, because already you should know if you've been curious and you've followed your curiosity, and you haven't been afraid of doing that, that's a losing argument. So why make it? It's a confusing losing argument.

And you may say, I don't know what are the argument to make. The antidote there is be more curious, look a little closer.

[Speaker 2] (57:26 - 58:30)

Yeah, well, I think the last thing I'll state is that there is a tendency on the part of some folks, I've seen it, where they don't dare admit to the truth of what is even stated in the record, such as what you read from Justice Alito, specifying the nature of that so-called trust relationship, which is a domination relationship called trust in my view. Because if

you agree to that, you are actually supporting the United States simply by acknowledging what Alito wrote. So just by you acknowledging the real nature, the correct nature of the interpretation of those words that he wrote, you're somehow supporting the United States.

That to me seems very odd as an approach to take, because it means you're living in a form of denial. Yeah. You're not going to go down a path.

[Speaker 1] (58:30 - 58:44)

And what makes it even more bizarre in a way is that Alito is being forthright. He's saying when you talk about this, this is what you're saying. Oh, well, thank you for clarifying that for me.

I won't talk about it anymore.

[Speaker 2] (58:45 - 59:01)

Well, you know, the other thing is that as far as I can tell, the only other path is to specify the nature of the domination relationship and the whole history of the claim of a right of domination and bring that out into the open and speak the truth.

[Speaker 1] (59:01 - 59:01)

Yeah.

[Speaker 2] (59:02 - 59:14)

Speak the truth about those things and say this is what you've been up to for more than 200, 200, two centuries,

you know, 200 years. So anyway, I guess we could leave it there.

[Speaker 1] (59:14 - 59:26)

But well, but you could say speak the truth. But so when they talk about plenary power, that's speaking the truth, isn't it? Except for the fact that you have so many people who think that somehow that's a good thing.

[Speaker 2] (59:27 - 59:27)

Yeah.

[Speaker 1] (59:27 - 59:38)

Well, we have plenary power because they're it's they're our trustee. We would like to have them play. It was like, are you kidding?

Do you really know what you're talking about? Anyway, let's. Well, we have more to come.

[Speaker 2] (59:39 - 59:41)

Beautiful. Thanks so much. Wonderful.

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