Op-Ed: Six things you did not know about the federal acknowledgment of Indian tribes

By: RUTH GARBY TORRES | June 3, 2014

OK, I admit it…you caught me. I used that headline because I am deluged with this type of attention grabber when I am reading online news and using social media. And I just can't help myself; I have to find out what the ten tricks are to keeping the airline from losing my luggage, the five magic foods I should be eating and 300 things that successful people don't do. But don't click away from this opinion piece just yet. You may actually read something that you hadn't considered before.

#1 – Yes, Virginia (and Connecticut and California), there really are tribes east of the Mississippi and further west than Arizona and they continue to exist today.

(http://ctmirror.org/about-us/#submitoped) Because you don't know their histories, never learned about them in school and never saw a movie about them starring Kevin Costner does not prove that these tribes disappeared. Tribes in these states and others have distinct histories but many share the challenges presented by the existing administrative process to determine if a tribe will be acknowledged by the federal government.

How exactly does a petitioning tribe produce documents that show evidence of their political and social activities during times when government policies were determined to annihilate and assimilate indigenous peoples?

#2 – Contrary to what you may hear from public officials in Connecticut, there will still be many obstacles for tribes petitioning under the proposed changes to the acknowledgment process and beyond that process.

Back in 2005 when many of these same public officials were running around with their hair on fire because the Schaghticokes and Eastern Pequots were federally recognized, the U.S. Supreme Court decided the City of Sherrill vs. Oneida Indian Tribe case.

To be clear, I am not a lawyer, legal scholar or expert but anyone can find explanations of this case in plain English. In short, the Oneidas legally purchased private properties in New York, which the City of Sherrill wanted to tax. The court held that, "Given the longstanding, distinctly non-Indian character of central New York and its inhabitants, the regulatory authority over the area constantly exercised by the State and its counties and towns for 200 years, and the Oneidas' long delay in seeking judicial relief against parties other than the United States, standards of federal Indian law and federal equity practice preclude the Tribe from unilaterally reviving its ancient sovereignty, in whole or in part, over the parcels at issue."

Yes, that was plain English. Plainer still are my words – Connecticut land owners can relax now. You can thank Justice Ruth Bader Ginsburg. Even if tribes here have legitimate claims to dispossessed land that you now call home or if tribes purchase land in the future, tribal sovereignty will not automatically be restored on those lands.

With the reform of the recognition process, tribes still retain the burden of satisfying rigorous criteria demonstrating that they have survived against the many pressures of annihilation and assimilation. And even upon recognition, there is no guarantee of land, of tribal governmental authority over land, and certainly no guarantee that gaming development would be either permissible or economically practical.

A long and deep recession stands between the glory days of Indian gaming expansion and the present economic realities. And if that weren't enough to make folks relax, there's that pesky 2009 Carcieri vs. Salazar decision that limits the federal government from acquiring new trust land for tribes. Relax already, put the hair fires out and/or get better legal advice!

#3 – Tribal sovereignty and federal acknowledgement are not gifts, prizes or awards. Tribes cannot win [ding, ding, ding] recognition.

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When a tribe is on the U.S. government's list of recognized tribes, it means that the U.S. government has *acknowledged* a relationship that is mandated by the Constitution. A successful petition for federal acknowledgement is a finding that a tribe has been improperly overlooked and that the federal relationship was previously neglected.

The federal government cannot grant, bestow or award tribal identity. It acknowledges that which already exists. The use of language in media outlets and coming from government officials is like the proverbial bouncing ball. Follow the bouncing ball in Connecticut.

"Tribe" is the word you first heard the state's various elected officials use when referring to Connecticut's tribes (Eastern Pequot, Golden Hill Paugussett, Mashantucket Pequot, Mohegan and Schaghticoke). Based on the political strategies deployed against the tribes, the words evolved in an effort to use language to change reality.

Our tribes were spoken of as "tribal groups," "Indian groups" and the whispered message, "not Indian." A new name emerged in the Connecticut governor's February 24, 2014 letter to President Obama, verbal calisthenics meant to minimize, perhaps even dismiss, the state's relationship with the tribes. He refers to them as, "living descendants of the groups for which the reservations were first established." Huh?

#4 – This is not the first time that Connecticut public officials demanded changes to the federal acknowledgement regulations.

Inflammatory cries like, "fundamentally flawed," "not transparent enough," and "impose a moratorium on recognition decisions until we can fix this system," were aimed at the federal acknowledgement process and hurled at the Bureau of Indian Affairs (BIA) starting in 2000 when the BIA determined that the Eastern Pequot petition had passed muster and would continue toward a final federal acknowledgement determination.

This same year, the New York Times reported that a BIA researcher told Connecticut's former attorney general, "You may not like hearing this, but the best evidence supporting the Eastern Pequots' federal recognition comes from the state's own record, comes from the fact that the state has maintained and documented a continuous government to government relationship."

There was actually a shortage of soapboxes until 2005 when political pressure succeeded in having both the Eastern Pequot and Schaghticoke federal recognition decisions overturned. Until then, the soapboxes were set out regularly. "We have to fix this broken process," was a common theme but the deployed strategies and public record indicate that the officials did not care about the broken process.

They cared (and still do) about controlling gaming expansion. And they act as if the only way to prevent another casino from cropping up in the state is to cut off petitioners at the pass. Fourteen years ago, the marriage of gaming and federal recognition was celebrated in Hartford, Kent, North Stonington and Washington, DC. Well played and professionally executed.

#5 – Changing the regulations that acknowledge tribes is a remedy to address a social justice issue. Does it make it easier for tribes?

The Obama administration is accused of making it "easy" for tribes to petition for acknowledgement. Easier, perhaps, but not easy.

Hmmm…did the abolition of Jim Crow laws make it "easier" for blacks to vote? Did the reformation of child labor laws make it "easier" for children working under oppressive and unsafe conditions? Does the 2009 Lilly Ledbetter Fair Pay Act make it "easier" for women to earn equal pay?

Yup. And changing the acknowledgement regulations will make this process more transparent and amenable to evaluation and oversight; however, even with reform, acknowledgment will not be easy.

Rebuilding a tribal nation's infrastructure after nearly four hundred years of purposeful demolition is difficult, and over the last decade, has been further complicated by U.S. Supreme Court rulings. And, by the way, this is a national issue – affecting the future of Indian peoples across the country – and none of the local media outlets are reporting on that.

#6 – Federal acknowledgment/recognition of Connecticut tribes is the small picture.

In 2010 the Obama Administration announced its support for the United Nations Declaration on the Rights of Indigenous Peoples. One of the last few colonial hold-outs, we finally endorsed a non-binding statement on how the world's nation states must understand, negotiate with and live among the world's indigenous populations. Engaged groups with diverse stakeholders spent more than 25 years to produce the Declaration,

which was finalized in 2007.

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The Declaration "solemnly proclaims the following [in part] as a standard of achievement to be pursued in a spirit of partnership and mutual respect: Article 8 [of 46], section 2b: [nation] states shall provide effective mechanisms for prevention of, and redress for any action which has the aim or effect of dispossessing them of their lands, territories or resources.."

Five of the six reservations in Connecticut were established long before the State of Connecticut was established. The Connecticut colonial government set aside land for the exclusive use of the tribes and these long standing reservations are substantially important evidence of continuous tribal existence. The proposed regulations acknowledge this while the State is trying to deny it.

So, when the next news story you read is that Connecticut is trying to abolish the remaining state reservations so that the state can evade the impact of potential changes to the federal acknowledgment regulations, would you kindly think of these six things you did not know about the federal acknowledgment of Indian tribes?

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