

Nation Building for Native Nations:
NNI EdVenture Curriculum

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“Walking the Walk: Intergovernmental Relations as True Sovereigns (Part III)”

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Now I want to tell you about a case and sort of a case study in some detail. This is the case of the Nez Perce tribe and something called the North Central Idaho Jurisdictional Alliance, otherwise known as *the alliance*, sounds like star wars or something. The alliance, is masked against tribal sovereignty and this is the Nez Perce version of the alliance, true story, quick version of it. The alliance consists of more than twenty, it still exists, more than twenty city and county governmental jurisdictions surrounding the Nez Perce reservation in north central Idaho. The Nez Perce reservation is a heavily checker-boarded reservation. The Nez Perce citizens are only 10% of the population on the Nez Perce reservation. More than twenty city and county governmental units, by that I mean, local school districts, local highway districts, county commissioners, mayors and their staff, all of these parties, end up in conflict with the tribe. Among the conflicts, the tribe is trying to buy back land and put it into trust. Why does the county oppose that? Anybody know? The tribe goes in, heavily checker-boarded reservation, it was actually the experimental case for allotment; this was where it started. The tribe goes and buys land and puts it back in trust, meaning puts it back under federal jurisdiction, if you will and tribal ownership. Why do counties object to that? Property tax, exactly right. Counties say you're taking away my tax rolls. Turns out these are pretty poor areas of Idaho and the county doesn't have much money and they're watching their tax base erode. Next conflict, county and school district in the region wants to build a school. There are federal laws that provide for what are called TEROS, Tribal Employment Rights Ordinances and put in place, these allow a tribe when there's a construction project, for example, on the reservation or near the reservation, you as a tribe can go in and demand that a certain share of the jobs go to tribal members. In a nutshell, county starts to build a school, no conversation with the tribe. The morning they break ground, here come the construction crews. Tribal official shows up with their TERO ordinance, “You will hire... Wait a minute, the county already has set its budget in place and now you're me telling I have to hire a bunch of ... I don't have the money.” Big fight, big fight.

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Next fights. County attorney, county prosecutor, driving across the Nez Perce reservation gets arrested for speeding by a tribal cop. “May I see your drivers license please?” Looks up at the tribal cop and it says, Nez Perce tribal police. County prosecutor, a great visual, the county prosecutor looks up and it says, Nez Perce tribal police on the badge, “I don't recognize your jurisdiction” and guns it and takes off. And they have a high-speed chase eventually involving the county sheriff and the tribe. The county prosecutor is on the phone to the local television station racing around making sure he gets a camera crew to the steps of the county court house where he sets up his car and does a... and slides in and they arrest him on camera. He provoked this, obviously provoked this intentionally. Pretty tense situation. Public services, there's a trash dump, a garbage dump on the rez

[reservation] and the tribe's going to set the fees, the price. "Well we don't recognize your jurisdiction," says the cities and counties, "We're not going to pay you." Constant fights, road paving, who's going to pave the road? All kinds of public services are breaking down. So, the Alliance, as it's known, forms and this group of more than twenty city and county governmental units pass an ordinance among themselves and they formed themselves for one purpose and one purpose only. To oppose the jurisdiction of the Nez Perce tribe and they bind themselves, these governments bind themselves and agree they will not speak individually to the Nez Perce tribe; they'll only negotiate as a group. Now, you're on tribal council of the Nez Perce, what do you do? You have all these governments around you and they've just voted to oppose your jurisdiction, in fact, they filed a bunch of lawsuits to try to terminate you, literally have your recognition removed. And they're fighting you on everything from law enforcement to taxation and they've just said they won't negotiate with you except as a group. You on tribal council, what do you do? Hold your ground. Do you know what you do? You pass an ordinance with tribal council, you will only negotiate individually with the cities and counties. This is exactly what happened. So now, you have two sets of governments, both essentially bound by their own laws not to talk to each other. And then there are some incidents. There is a stabbing in this little town and the tribal cop and the county sheriff, "He looks Indian but I can't tell. He's your jurisdiction." "No, he's your jurisdiction." Neither one of them wants jurisdiction now because they don't want to get caught in the middle of this political fight. "He's yours, he's yours." They file a bunch of lawsuits, they agree not to negotiate. The governor of Idaho tries to intervene. This is up in the part of Idaho where these crazy right wing groups have been. Weaver ridge, this Randy Weaver guy and there was a shootout and everything. Governor of Idaho is trying to improve the image of the state of Idaho and now he's got this fight going on where these governments won't enforce the laws, they won't protect the kid who's lying there on the sidewalk, who's been stabbed. All these things are going on. The governor holds a summit and because both governments have bound themselves not to talk, they all come to the meeting but won't talk. Because say, I'm the tribal leader and you're the county leader, my tribe has passed a law, says I can't talk to you. We end up with fifty state police at this hotel in Lewiston, Idaho because it comes this close to turning into a true Malay between a bunch of these ol' county commissioners and tribal council members are going to duke it out in the hotel lobby of the Lewiston. And then you end up with this case of the county prosecutor open defiance of jurisdiction. And lastly, a city council member in one of the towns, a city manager in one of the towns gets interviewed. Turns out to be a perfectly nice guy, but he says, quotes and its in one of the newspapers, "I'm afraid there's going to be violence." This is getting really tense.

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So, what do you do in this situation? You're tribal leaders, so what do you do? Here's what happens and you guys are onto it a little bit here. A friend of mine, a professor at Harvard, who's from Idaho and up there working on this right wing problem, gets wind of this and he starts talking to both sides and he's a professional mediator. And he finds out the story that I've just told you and he comes to me because I work with tribes all over the country and we propose to the tribe, the following. To the tribes and to the cities and counties, you guys can't talk to each other because you both bound yourself not to. I

tell you what, you don't have to, we'll just take you to school; we'll just have class. We had to come up with a gimmick; for real it was this gimmicky. What we'll do in this class is actually in a sense, what Jeanine said, we'll get help from other tribes in a certain way, what we'll do is we'll show you cases like yours around the United States of successes and failures in these situations where it turned out that people did get into riots with each other, were fighting each other or they were spending a zillion dollars both sides on lawyers, which neither one of you want. We'll tell you how we've seen these things solved and how haven't seen them solved and you don't have to talk to each other, you just go to school. And so that was the breaking of the ice, they're in a stalemate; they're worried about the lawsuits, there's a lack of legal resolution. They're worried, both sides keep spending money, they think they win a battle in court, but then it just, these tribal jurisdiction fights never seem to go away, they just keep spending money, both sides, on attorney's. They both have a strong commitment to education, they're some courageous individuals, they say ok let's go to school. So, let's go to school.

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What goals do they share? They go to school and we have them introduce themselves, it's a fascinating story. First, we have this big ballroom at this a hotel in Lewiston, Idaho. People start to file in and remember now, by a matter of law in their own communities; they said they won't talk to each other. So, they start to filter in and of course all the Indians sit over here and the white guys sit over there, but then the room gets too crowded and they're having to cross over a little bit. Like school, like I started here today, we go around the room and we ask you to introduce yourself and the guys start introducing themselves. And it's very interesting, it starts out very tense. "My name is Joe Kalt and I am the mayor of the town, thank you." Next, some Nez Perce guy stands up, "My name is so and so and I am the tribal council member." This one woman gets up and she says, I don't know her name, it's on the tip of my tongue. My name is Mary Jones, Nez Perce woman, she gets up and she says, "My name is Mary Jones, we all hug our kids when they cry. I love this place." And sits down. Next guy stands up, he's a white farmer, county commissioner, "Well, I love this place too." Everyone's getting a little choked up now. "I love this place too and my family's been here for four generations, I just want to live in peace." Next guy, Nez Perce guy gets up, "You've only been here four generations, I've been here forever and I love this place too." And you start to see these people commit to something, they actually love where they live. And then by the end of it, just in the first hour, it's, "Yeah, and my son wrestles your son in high school, wait a minute, I wrestled you in high school." And it's this kind of thing, but it's just school, they're not talking about anything illegal. These are their common interests. Now, this is interesting, out of the mouths of one of the Nez Perce leaders, they start to have this class and we're asking like a good professor, "What do you think of this? What do you think of that?" Just like I'm doing to you guys. So do you have any other reasons why you'd like to solve your conflicts?" Well, both the counties worried that the federal civil rights authorities were going to intervene and the tribe is worried about the same thing. Neither one of them wants outside state or federal jurisdiction to come in and take away their sovereignty. Out of the mouths, "We want to get along." And then this punch line that really broke the ice with everybody; one of the Nez Perce tribal leaders says, "We want to quit looking like irresponsible jerks." And then you start

having a real interesting conversation, “Our citizens elected or appointed us to just do things like run good schools, pave the road, open a school.” Not very complicated things, in the grander scheme of things. And they start to share this notion of, buried in that is a kind of notion of mutual respect for sovereignty. Maybe its not that you’re a racist, maybe you’re just upholding what you think is your job and I’m upholding what I think is mine. Maybe you’re just trying to serve your citizens and you’re just trying to serve your citizens. And these guys start to adopt a view of each other as, “We’re just trying to do our jobs.” I’m elected by the country to protect the county, oh and you’re elected by the tribe.” An interested side light emerges here, the tribe starts talking about, “Well you don’t understand us. You don’t understand. We the Nez Perce tribe, we operate under a constitution, we have elected officials, we have budgets, we have rules.” The county, the non-Indians didn’t even understand this, “You have a constitution? You have like officials and you have a court system?” It was striking because it’s representative of a problem tribes face. The Indian voice is so small, 1% of the U.S. population. All the Indian kids go to high school civic class, they know all about the state of Idaho. The non-Indians don’t know about tribal jurisdiction, tribal government, tribal functions. So it was a big process where you could feel these county commissioners, sort of well meaning old farts, these sort of well meaning old guys, “Really? You mean like you have to run for office just like me?” It’s this kind of thing. So, you start to see people see each other not through the Indian- white lens but just, “You work for one government, I work for a different government. We’re both trying to do the same thing. We were elected to support our people.”

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And then the punch line to the story, they finally get together, I’ll jump ahead. In December, 2002 they sign a memorandum of understanding and I’ll show you the key pieces of this memorandum of understanding. This is actually the title page of it. It does have the UofA stuff on the left side but that’s the font and the colors. Like all good memorandums of understandings, lots of “whereas’,” but if you notice these “whereas” it’s very interesting. Remember this alliance was created for the sole purpose of opposing Nez Perce jurisdiction. The first line of the memorandum of understanding agreed to by all the parties is “whereas the governments” and these are all governments signing this including the Nez Perce tribal government, “are committed to the future of north central Idaho.” Did you just give up sovereignty or gain it? You gained it. Because they suddenly through this process, are looking at you as a real government. A real government. Whereas as representative governments, “Oh, you’re elected too.” We are people obligated to serve and protect. Notice there’s a statement in there which says, the reason we are fighting each other is we’re both trying to do our jobs. That’s actually a mutually respectful thing to say. Instead of me just thinking you’re just mad at me because you hate white guys and I hate Indians, no you’re doing your job and I’m doing my job. And that’s what that second thing says. And then they go on to enumerate. Look basically you can see this thing I mention where they have certain common and intertwined interests; family, healthy cultures and communities, economic well-being, a clean environment. They go down and they eventually say, “What we’re trying to do is serve the people’s interest and they enumerate where they had been fighting.” And they say, “We wish to continue building government –to-government relationships.”

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The breakthrough comes in the case with the last, with the principles of the MOU. And they basically say that it is the government's intention and every time it says governments that non-Indian governments are recognizing tribal governments as legitimate governments, that's what that means, every time it's said in here. Conflicts of jurisdiction may arise. Mutually agreed upon cooperative agreements, memoranda of understanding, and similar instruments of cooperation are appropriate means of establishing respective roles and responsibilities in intergovernmental relations. And then, in other words, they're saying, we'll try not to go to court.

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And then here's the final punch line, that's critical in this kind of case. This is actually, essentially the last line of the memorandum of understanding. What does that say? There's all these nice words. "Whereas we want to get along, to better, whereas we want to cooperate, whereas we're not going to go to court." This last line says, "Well, I'll still take your ass to court if I have to." In other words what they've done in this particular case, this line, this essentially says, I'm signing this, says the counties, the city and the tribe, but nothing in this memorandum of understanding shall wave my authority or jurisdiction. Basically, the key to the successful case was neither side gave an inch on sovereignty. They all went into it, we can't negotiate because we'll have to each cooperate and give up a little. We don't want to give up any sovereignty. What they got themselves to was, you're not going to give up any claims to sovereignty, I'm not either. That's our problem, let's just manage it. We still gotta get the kids schooled, gotta get the trash collected, gotta get the speeding county prosecutor off the highways and put him in jail. So, this is like a key we think to these successful cases of intergovernmental relations, whereas in the old days it was always this attitude of, if I give an inch to you I've given up sovereignty. No, no, no. What real governments do, when Canada and the United States, when South Africa and Nigeria, or whoever's in a conflict sign an agreement, they're not giving up sovereignty. They're acting as sovereigns and saying let's manage the fact that you don't think I have jurisdiction and I don't think you have jurisdiction, let's just manage. And that's what I mean by this walk the walk of a mature tribal government. You're holding your own just like the counties.

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The punch line to this all is related to what I said earlier about the Flathead case and I'll end here. After this is all over one of the county commissioners, the average age of the tribal officials is probably 35. All the council members are young, they're great on the computer. All the county commissioners, the average age has got to be in their 70's. This old guy from the county comes up, "Joe, we were really afraid of the tribe. They've got much better people than we do." And it's because the tribe had all this capacity built up inside itself to stand there and fight its fights.