

# The New Trail of Tears: Naomi Schaefer Riley's Review of U.S. Policy Towards Native Americans

by Becca Peach

In *The New Trail of Tears*, Naomi Schaefer Riley delivers a scathing review of the U.S. government's paternalistic policies towards Native American populations residing on reservations. Her criticisms are leveled at three main policy failures affecting Native Americans: 1.) disallowance of any true property rights 2.) creation of loophole economies and 3.) lack of educational rigor. She recommends that Washington correct their past failures by granting full property rights to American Indians, encouraging establishment of private school options for American Indians, and generally decreasing bureaucratic oversight of American Indians.

## **Disallowance of Property Rights**

The disallowance of property rights for Native Americans is perhaps Schaefer Riley's biggest bone of contention with current policies. She lists a variety of policies that inhibit land ownership, including:

- A Supreme Court ruling in 1903 that allows the government to modify or terminate treaties with tribes without tribal consent.
- The misapplication of the Dawes Act in disregard for the original intentions of the act's namesake.
- The refusal of HUD to continue construction of homes because delinquent payments on homes originally constructed in the 1990s.
- BIA oversight of all land transactions and the resulting over-valuing of Native American land in BIA-directed appraisals. (This prevents Native Americans from selling or buying land at low/reasonable prices)
- Excessive oversight of the use of Native American resources, even by Native Americans.
- Disallowance of home mortgages, which precludes use of home equity loans to start businesses

She says these policies result in a tragedy of the commons in which Native Americans are both passively disincentivized, as well as actively prevented from using land as a catalyst for personal financial gain.

## **Creation of Loophole Economies**

Schaefer Riley defines the creation of a Loophole Economy as "the allowance to engage in enterprises that [Americans] can't or won't have in other neighborhoods." Such enterprises include tax-free sale of cigarettes, liquor, gasoline, and even marijuana. She also includes casinos in her evaluation of loophole economies. She states that the allowance of these enterprises has a corrosive effect on the community. She is especially concerned by the fact that, on reservations,

the prevalence of cheap drugs and alcohol, as well as the opportunity for gambling, are combined with regular and generous government checks.

### **Lack of Educational Rigor**

Schaefer Riley portrays Native American schools as somewhat of a microcosm of everything that has gone wrong on reservations. These schools are the recipients of generous government assistance, and yet, they have abysmal standards and outcomes. Both teachers and students often lack motivation to succeed, and any outside assistance besides government grants and subsidies is viewed with skepticism. It is this reticence to accept outside help in the area of education that Schaefer Riley is most concerned with.

### **Recommendations**

The overarching criticisms that Schaefer Riley applies to all of the aforementioned policy areas is excessive bureaucracy and an overemphasis of the tribe at the expense of the individual. She believes the failures of U.S. policy have resulted in discouragement of private enterprise, family disintegration, brain drain, and an overall sense of hopelessness.

She recommends that Native Americans “let go of the idea that their problems can be solved from the top down,” and begin seeking private-enterprise solutions to their situation. Specifically, she recommends that reservations invest in business incubators and create partnerships with private schools (whether charter or parochial or both). She endorses private schools because of their ability to produce better educational outcomes, expose children to life off of the reservation, emphasize the benefits of attending college, and provide the structure that they are sorely lacking at home.

These recommendations are put forth with the caveat that implementation will be hindered so long as this group is not granted property rights.

In short, Schaefer Riley recommends two things: 1.) that Washington treat Native American children as children by giving them structure and guidance through education and 2.) that Washington treat Native American adults as adults by giving them autonomy and responsibility through property rights.