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[00:00:00] **Speaker 1** Little trick sometimes that helps is if you try and sit on your couch.

[00:00:03] **Speaker 2** Yeah, I watch, you know, newsroom and those shows, but.

[00:00:09] **Speaker 1** Oh.

[00:00:10] **Speaker 2** Too old to worry about something. If it's hiked up on my back, it must be comfortable.

[00:00:15] **Speaker 1** Yeah.

[00:00:18] **Speaker 2** All right, we're good to go.

[00:00:19] **Speaker 1** Okay.

[00:00:20] **Speaker 2** Okay.

[00:00:22] **Speaker 1** All right. Well, thank you very much for doing this.

[00:00:25] **Speaker 2** You're welcome.

[00:00:27] **Speaker 1** So I want to start with generally what did indigenous lands look like before the Dawes General Allotment Act came into place?

[00:00:39] **Speaker 2** They almost didn't look like anything to the untrained eye. And that's part of the problem with European Americans coming over, Europeans coming over and not seeing territory and not seeing property, maybe territory defined a little differently. You know, different nations, shared territory, maybe seasonally, etc., didn't quite get that. It certainly was property, you know, different tribes, different families, clans had fishing sites, had sugar bushes, you know, had places where they did their ceremonies. They didn't see all that so long. And short of it is there actually was territory and there actually was property at the time of contact. And but otherwise it looked used. Maybe it looked unused to the untrained eye again. But those lakes were very well maintained for wild rice. They were very well maintained for gathering roots of cattails. They were very well maintained for helping the deer, etc., make beds in the reeds and have small trees and then bigger trees, etc.. You know, people didn't just go around, you know, on their hands and knees, you know, nibbling berries off of the of the bushes. What seems like people say, great, this was thousands of years of, you know, roads, common ways, trails, paths to these places, to water, to food. So it looked a lot more like we would understand if our eyes were trained to understand that.

[00:02:17] **Speaker 1** There weren't these, like, hard, rigid boundaries like we see when we see maps today.

[00:02:23] **Speaker 2** Almost never for territory or property. On the other hand, a lot of European land was the same way, which was leading to a lot of wars about that time. So it's it's still even in that sense, not that different from what had gone on. And, you know, we find in this country that there are pockets of immigrants that came to America and just, you know, three or four generations ago, and they have not always comported with the American property system as we know it either. So you can find a pocket in northern Wisconsin or northern Minnesota where, you know, you think, well, you see land being exchanged and they're having arguments about probate and trust and things. And it's because they were not very technical about it, very formal about it, the way we kind of understand it today. So, you know, the what's clear is that the tribes had territory, they had property. It didn't exactly look like ours. But, you know, the property from Texas to Wisconsin doesn't look the same. Guess which one has more rigid boundaries between their territories and properties? They have very hard right that Texas does. And Wisconsin's is a little more loose because we have a rather robust public trust. We really value people being able to get to the lakes and the rivers, etc.. So property varies from polity to polity, from jurisdiction to jurisdiction everywhere, and you just have to be trained to see it. And so it's easy not to, but it's important to start to see that sort of thing.

[00:03:56] **Speaker 1** And the does general allotment act in the 1800s. What did that do?

[00:04:05] **Speaker 2** In 1887, the Dawes Act, named after the senator who was sponsoring it, otherwise known as the General Allotment Act, did what was actually in a few treaties before that, by the way, and there may have even been an act or two before that attempted to take what was the then legally recognized territory. Usually because of a treaty of a tribe and divided up into property, divided into several to generally from 40 acres to 160 acres, sometimes a little less, sometimes a little more, depending on the numbers, reservation size, etc.. But it was with the intent to purportedly to make farmers out of natives, make private property owners out of them. And one statement that was attributed to Teddy Roosevelt is to as a to act as a great pulverizing engine to destroy the tribal mess. That's what he said. So it did that. It, you know, on many reservations like like the farm bill, the federal government came in and drew lines in disregard of all those prior sugar bushes and fishing holes and other places where families had relatively recognized, quote unquote, ownership. They came in with a with a ruler and a pen and divided up the reservations. Often not always, but often along. You know, the American, you know, system of metes and bounds and township lines, section lines, etc., and individual Indians and families ended up with private property in the American sense of the word.

[00:05:44] **Speaker 1** And they did this tribe by tribe one at a time. Right. Did tribes or individual people have any choice in the matter.

[00:05:54] **Speaker 2** That was depending on tribe by tribe to sometimes the strength of the tribe, more often having to do with, you know, the value of the land or their relationship with perhaps their federal congressional delegation who may or may not have been supportive. Interestingly enough, the Wisconsin legislature was rather supportive of the Chippewa tribes right about at that time in the history in the late 1880s, when there were attempts by the federal government to remove them to Oklahoma. That was the people of the state of Wisconsin, including a significant part of the Wisconsin legislature that convinced everybody to let the status quo be and leave the Chippewa here. So it's a fascinating story, but it did go from reservation to reservation. Many of them, not all of them. Some of them were able to fend it off entirely. And nonetheless, on those reservations, people have homes and things. So in other words, the tribe is sort of maintaining a property system the way they did pre contact, keeping care of their people, their families, their clans, who holds what, you know, who works what just like they always did. But a lot of reservations and including a few in Wisconsin, they were subjected to the allotment act the sort of the key things about the act are really two main ones, let's say. One is that the act imposed a trust held, said the land would be held in trust for 25 years or it couldn't be sold. And that was good and bad. It was good and that it couldn't be sold, it was bad, and that it made the Bureau of Indian Affairs and the Secretary of the Interior, the trustee. And so they started acting on behalf of the tribes and the tribal members, as trustees do, oftentimes unilaterally. And thus we find rights of ways and easements and or the Bureau of Indian Affairs leasing their lands for gas and oil, for timber, for grazing and for roads. Right. So that's how we sort of fast forward to get to this. And then it's important to along that historical line to recognize that, well, that 25 year period expired and then they lost the tribes lost significant amounts of land through a variety of means foreclosures by banks, by creditors, sheriff's sales, forced fee, patent exercises by the federal government, and, of course, intermarriage and the. And offspring or grand offspring not meeting the tribe's requirements for membership. So people are sometimes surprised. They see the big square on the map and they say, well, well, that's the reservation. How did they get to be so many non-Indians in there? This is largely how that occurred was the allotment process. One little point, maybe not so relevant here, but a lot of tribes had more than enough land to be divided up by families. And then they had a lot left over. And then those tribes cases that land was surplus returned, as they would say to the public domain and open for homesteading to any American. So we ended up with significant populations of non-natives in reservations. And that's leads to sort of the issues with like the farm bill. Now, the number two, though, is that 25 year period was interrupted a couple of times. But one meantime, Congress passed what was called the Birth Act in 1906 authorizing the secretary of interior to decide, determine if an Indian a lot he was competent to deal with that allotment as a private citizen, and they would remove the trust and hand the allotment over. And that just so happened to occur in some places more than others. Usually where the land was valuable. It just so happened to occur like at a place that like the flambeau, where there's some beautiful land along the lake. And lo and behold, that Indian was deemed competent to sell it. Right. And so a lot of those lands can be traced back to that exercise as well. You know, another one of the uglier things that happened in American history that, you know, leads natives to say that it's they're hard pressed to find anything that America did that didn't have as its objective to separate them from their land and their wealth. And this was another one. So we you can then quickly fast forward to all these easements and all the people living on some of the best land in the reservations, including it like the Flambeau. And that's how we got here.

[00:10:48] **Speaker 1** What was the cultural consequences of this on tribes and what was the impact on tribal sovereignty?

[00:10:57] **Speaker 2** The impact has been huge. I mean, we can write a book, books on the consequences of this. But when you're not in control of how land is used in a territory, your sovereignty is greatly undermined. I mean, in the world plane, we recognize sovereignty is territory of peoples and recognition. And in that territory is a subordinate, you know, sort of that's where the peoples are and also divided into component property. And this was an outsider dividing the territory into property and then continuing to exercise it and work it. And so I said earlier about Texas and Wisconsin having different sort of lines in the sand between territory and property from each other. Well, that's because the the the the state of Texas, the collective people in Texas view their relationship with Texas citizens and their property differently than Wisconsin does. And so and why that's important is you then can take a step back and say, well, maybe that is a facet of sovereignty to determine the relationship between Texas, the state and the people. Wisconsin, the state and the people like to Flambeau, the state, the tribe and the people. And that may be, in fact, one of the most discerning identity points of culture is the relationship they establish between the whole the tribe and the parts, the members of any state, any tribe. And so when an outside entity comes in, do does that sort of thing. In one of the most central tenets of sovereignty territory. It's obviously going to have a huge effect. And it has. So we can fast forward today and ask specifically, for example, does lack de Flambeau set the balance between the collective and the individuals there? And it it's finally getting back to that point where it's doing it. It has not done it enough that, you know, it had it stepped away under force of the United States of America for a good deal of that time, the most powerful nation on the planet. And so they step back. And then there's also the relationship between like the Flambeau and the members and those who are not members. Right. Generally, again, not the tribes fault, but there are some nuances in there that make it difficult. So it's had a very devastating, almost incomprehensible, frankly, impact on the tribes.

[00:13:31] **Speaker 1** Now, eventually the does act did come to an end and the Indian Reorganization Act came into effect. What happened there?

[00:13:43] **Speaker 2** Well, the Indian Reorganization Act said that land that was still in trust would have that trust extended, perhaps permanently. So to the extent that there was a lot of trust land left, maybe it started out at almost 150 million acres. And when the does act was passed, when the IRA was passed, maybe it was down to about 50 million acres, losing about two thirds of it. Nonetheless, a significant amount for it to stay in trust and no longer be allotted and not be lost through sheriff sales and not seeing the owners becoming a citizen and not saying their property has to be recorded downtown in the county courthouse. That was that was a huge turn of events. So but still and continued to be lost through family means and through intermarriage and blood quantum and all that. So it still was a very difficult. But one of the things that we miss is the IRA. The Indian Reorganization Act, was intended to facilitate a rebirth of tribal sovereignty and governance rights of self-determination. And to get to the specific point here, while they in fact resurrected their self-determination in a lot of arenas when it came to governing property, they largely have not. And so you can get at their codes like the like the Flambeau tribe and you peruse the code and you might see a sentence here about devising a house, you know, a tribally owned or built home or a tribal member home even perhaps. Or a sentence over here about something about roads and all a lot of these things, if they were put together, would start to build a comprehensive code for governing private property. They've just not turned that corner yet. So that plays huge in what's happening here on the reservation.

[00:15:50] **Speaker 1** So we look at this history and an understanding of of what is happening. There's a lot of frustration from the non tribal members that live on the reservation and you know that the tribe is in a little bit of a defensive position. They're trying to make this negotiation and it won't go through. What do you think is going to happen next?

[00:16:23] **Speaker 2** Well, let's fill in those blanks real quick from from that history part. First, let's make sure we're saying there's enough blame to go around. And the Bureau of Indian Affairs, the state of Wisconsin, the Town of Black, the Flambeau abstract title companies, the tribe. There's all kinds of blame to go around from that historical perspective. You know, we the Bureau of Indian Affairs, was probably the font of these leases in the first instance, and largely to blame for them. They probably issued some of those leases, rights of ways, etc., without any consultation or consent from the tribe. You know, you fast forward 50 or 60 years and we supposedly get this policy of self-determination, self-governance. And now the Bureau of Indian Affairs says we can't do that without the tribe anymore. It's not surprising, I suppose. I some of us perhaps don't have a lot of sympathy for it, but it's not surprising that Americans kind of go, well, one, we wanted it. We just our government just took it. And now all of a sudden our own government is telling us they have to go consult with these natives. That to do this, they're a little flummoxed, too. Again, it's hard to feel sorry for that particular mindset, but it is what it is across this entire country. So that's an interesting one. And then you fast forward in these leases that the bureau had entered into started to run their course. The Bureau of Indian Affairs then maybe tells the tribe. Interesting point, maybe not. Nonetheless tells the landowners that, you know, the lease for the access to your property is running out. And so those landowners talk to each other. A few of them maybe called the Bureau of Indian Affairs, maybe one or two called the tribe. Most of them call their own town and county and state. Right. That's who represents them. And when they did that, interesting. You probably heard the history up there, but the town took the position. Don't worry, we'll deal with it. They sent them a letter saying so, and our attorney will deal with it. So the landowners kind of stepped back. And I think it's fair to say more than assumed, because I think it's fair to say some discussions have happened early on. But if they assumed anything, they assumed those discussions continued and they did not now with any sort of of substance at all. And so the Bureau of Indian Affairs probably should have pushed it harder. At the time, the town probably just thought, well, we'll just let it lie and it'll go away. And, you know, just like those leases from 25 or 50 or even 99 year leases which are common, they'll run out and the Indians will be gone. Right. Well, they ran out and they weren't gone. And instead there's a policy toward self-determination. So the bureau, in fact, at that point goes to the tribe, and the tribe is at the table. Who's more to blame? Probably the Bureau of Indian Affairs and the whole history of the United States of America. But being a democracy. Americans are largely to blame for that. Right. In general? Well, as far as the separate sort of component, institutions like a county or a town of like the Flambeau. Yeah. They had things they could have done or things they didn't need to do, like send a letter like that saying they were going to take care of matters and then not do it. That was not helpful for anybody. People want to blame the title companies, which I'm not a real estate expert. I'm guessing, though, that title companies at least are charged with some sort of constructive obligation. To ensure that the property they are selling has ingress and egress, has access. Right. So are they partly to blame? Yes, they are. And so I see fingers pointing at them, too. And the town and the buying, all of that. Probably the trickiest one is the tribe. And they will probably be upset with me for saying what I'm about to say. So I'll apologize upfront. If the tribe wants to be a sovereign, they should act like it with this too. As if the tribe had established a recording office, passed the recording law for property interest in their territory. That's what sovereigns do. The title companies would know where to look. In fact, it would become incumbent on the title companies to look their or commit their own malpractice for not looking there. And in the meantime, the tribe could be charging a fee to do that. I mean, they can have a privately owned title or abstract company or the tribe could own it however they want it to do it. But that's what sovereigns do. And that would have been such an easy thing to do here. And I've had to say this to multitudes of tribes in the last five years or so when this kind of issue is happening at other places around the country, increasingly, somebody is going to govern all of these territorially and property based, you know, events. Somebody is going to go and if you want the Bureau of Indian Affairs to do it, have at it. That's what they've been doing for a hundred years. That's why you're here. If you want the state to have it and it subsumed your territory and your property being a prong of sovereignty, it's clear what you'll be losing. And if they start to subsume your people to you, you're losing it all. So this is an easy decision. If you want this to be governed appropriately, you have to do it. And, you know, we hear some of them say, well, we don't really believe in private property the same way. And my answer is, well, you don't get to reach that conclusion unless you govern it. We don't think that businesses should own land the same way. Well, you don't get to reach that conclusion unless you gov. The answer is govern right. Bring your culture to bear to the governance. Make title companies come there and do a search on your reservation without saying, Oh, we have to go to the CIA and we all know how that works right there. Just multi-billion dollar lawsuit because the CIA couldn't keep track of these records, these exact kinds of records. Right. So we all know how that works. We're in 2023. There's no reason for the tribes not to step forward and to fix this today. But that'll be hard. So when we finally get to your question, so here's what I think will happen and maybe should happen. We are all collectively to blame Americans, in particular Americans collective. And so it shouldn't be surprising if the American government steps in or even has to step in. We've had these instances before where 99 year leases came up when the city of Salamanca and New York Congress had to step in with a hundreds of millions of dollars worth of settlement to take care of that. One of the more interesting ones was leases in Palm Springs, California, with a you know, some of the people who lived in Palm Springs, you know, Bob Hope, Walter Annenberg, you know, wealthy, well-known people in our country. I'm not sure if their land was right on that land, but actually, I think it was or in part. So, you know, the 99 years, these Indians aren't going to be here. Well, 99 years later, they were there knocking on the door. By the way, your leases up. Right. Congress had to step in again. This one isn't as big as either one of those because of a city. But as I said in North Dakota, this happened along like Chicago. Here, non-natives owning homes along the lake, inside the reservation. Congress slept in there, too. I think that settlement was kept a little more quiet, but the Congress had to step in. It's appropriate for Congress to do that here. Everybody who's to blame shouldn't be let off the hook in one way or another. And I frankly, we are getting to the stage in 2023 where the Bureau of Indian Affairs might say Congress might say, we will settle this out, the trespassing for ten years now. Future cost. We'll pay a few millions to do that. But we will do that under a couple of conditions. Tribe You will establish a recording office so that these kinds of interests can be registered somewhere so that title companies can find it. And Bureau of Indian Affairs. You will provide all the technical assistance they need to do that. And that's what should happen and could happen here if this is done correctly. And then and then this kind of thing won't happen again. And if it does, we we we know where the finger points.

[00:25:00] **Speaker 1** Is that what's leading to the discrepancy between how much money the tribe is asking for and how much money the title company is willing to offer?

[00:25:13] **Speaker 2** Yeah, I'm sure. I mean, there are trespass charges that title companies probably feel less responsible for. There would be some arguments for that. There would also be some arguments for them to be still part responsible. So, absolutely. And those are past damages. There will be, you know, present and future what you might call damages or costs that somebody has to bear. The tribe knows that it has to bear some of those. Not to mention the long term costs and perpetuity of this is another sort of glitch in their sovereignty that we're just going to tell them all you have to live with now. So unless we recognize that they will govern this whole system, you know, they they are losing a lot. And normally a sovereign will tax. But we've made it very difficult, if not impossible, for them to tax. So far, anything sales, land, property, income, anything, although they're getting to the point where they're starting to figure it out. They might have a tax base, an economy, they might have enough people working. They've got now private property ownership. They may be turning that corner so that they can raise revenue, gain revenue through taxation, which would be normally the way we would see this. So now it's all those costs have to be couched in the terms of a lease. And so really, in a lot of ways leases the wrong term. All right. I don't know what the right term is, but that is what leases, not it, because lease has a meaning in our lexicon. And this is not it. This this lease is representing far more costs than leasing of a private property parcel or private property interest. And so that's why we get the different values and really at loggerheads trying to understand them.

[00:27:05] **Speaker 1** What do you think is most important, especially for a non-Indigenous audience, to understand about this situation, especially if they feel like already most of the finger pointing goes to the tribe?

[00:27:23] **Speaker 2** Well, I think they have to understand all this, the difficult, the terribly difficult history that people say, you know, well, I wasn't there, didn't have anything to do with it. Okay, but you're here now. And it very clearly derives from that. And we have to be honestly assess that and take some some ownership of that. I think that's one of the more difficult things. And then understanding sovereignty, which people don't. Why do these Indians want to be different? Well, how would we like it if Iowa came and took over Wisconsin? Right. Well, why do we want to be different? Right. That's their answers. Whatever we can come up with, they can come up with the same ones and maybe even then some. Right. So we just have to be honest about that history and that projected future into perpetuity and what it means for them. Some of them have to be honest with themselves. You know, the turning point in the law is always knowledge. We expect people to act reasonably, but we don't expect people to reason about something they don't know. We ask what people know all the time before we hold them responsible. Well, here's the thing, right? Very few of those people can argue that they didn't know that was an Indian reservation or that they didn't know that there was an access road and a lease and or some sort of right of way. Very few of them can honestly argue that. And as far as I can tell, and there's not just the no. The subjective question of whether they knew the reasonableness turns on the objective question, whether they should have known. And that's where we get to the title company. But just as much to Americans, I imagine the feeling of irony if you're a tribal member with this whole history of, you know, imposed American property ization, and then you're looking at a bunch of non-natives telling you that they didn't quite understand the property stuff at play here. Right. It's hard for them to buy. So there are a lot of difficult dynamics. We just have to take some ownership of of what we what we've done in this country. Now, as far as the tribe, you know, well, equities are equities and they understand the relationship. They teach this between the collective and the individual. They teach people to assess those things separately so you can see how they're properly related and properly balanced. Well, these individual Americans, sure, they're Americans and they're part of that whole ugly history, but they're also individual people and they've have some equity at stake. And the tribe and its people will need to recognize that, too. And I wish they would do it before it gets imposed on them. And then after the fact, they say, well, we recognized that because we had to. Because. Because they will. Either way. And so that kind of conversation can happen in the right way.

[00:30:19] **Speaker 1** All right, Professor, thank you very, very much.

[00:30:22] **Speaker 2** You're welcome. Very much.

[00:30:25] **Speaker 1** All right. That was amazing.

[00:30:28] **Speaker 2** Was it?

[00:30:28] **Speaker 1** Yeah.

[00:30:29] **Speaker 2** Oh, good.

[00:30:30] **Speaker 1** Lots of really amazing information.

[00:30:32] **Speaker 2** Oh, good.

[00:30:32] **Speaker 1** Things I absolutely did not know. And a really important context.

[00:30:38] **Speaker 2** Okay, good, good, good.

[00:30:39] **Speaker 1** So, yeah.

[00:30:41] **Speaker 2** I wish I did. I do. Okay. I start moving my hands. How many you could kick? And still I was like, Oh, that was good. Clearing the air. Like I go like this.

[00:30:50] **Speaker 1** There's a fly. Yeah. I wish I could pick your brain all day. Absolutely.

[00:30:58] **Speaker 2** Well, you know, I. I probably have to say at least 15 to 20 calls.

[00:31:05] **Speaker 1** Okay.

[00:31:07] **Speaker 2** And I saw my name in one thing only, which I don't know if I gave them this or to do that. Oh, I won't say Maybe I forgot to say you don't have it. Normally, I'll get calls from reporters and I'll just say you want to just sit and learn for a while? Yeah, let's just sit and talk for a while and get you started. Right. Get your theory of the of the story right. And so I've done that a lot. So if you want to feel free and and anybody, you're coming across it, you know, the most common talk of.

[00:31:34] **Speaker 1** The film.

[00:31:36] **Speaker 2** Gives you a list background.

[00:31:37] **Speaker 1** Which.

[00:31:37] **Speaker 2** Helps you think about it. Yeah, I'm happy to do that. That's why they pay me.

[00:31:42] **Speaker 1** Well, you're busy going, too, so we really appreciate your time.

[00:31:44] **Speaker 2** Yeah. Yeah, well, I appreciate it. I hope this comes off.