
Introduction

There are three sovereigns in the government-to-government relationship: tribes, states, and the U.S. Government. Those three sovereigns need to work together to solve problems with three principles—honesty, open-mindedness and willingness.

—Chief William Burke
Confederated Tribes of the Umatilla Reservation
Washington, D.C.—Opening Ceremony
USDA National American Indian Heritage Month—1994

The Forest Service's success in establishing and maintaining the government-to-government relationship will be based on an appreciation of and about Indian Country and those attributes unique to respective national forests and grasslands and local tribes. This concept is fundamental and critical to relationships and interactions. Effective relations with tribal governments are not a single event—they are a continuous process.

The laws that affect the management of National Forest System lands and the rights and programs affecting American Indians are evolving on many fronts—in court decisions, in statutes passed by Congress, and in executive orders and other actions of the President and the executive branch. Forest Service leaders and managers need to be aware of these evolving legal requirements.

Court decisions may be referenced in this resource book. Remember that a court decision is a determination of the law as it is applied to a given set of facts and circumstances. References to court decisions may include the general direction of the law, but those decisions may not apply to a different set of facts. This guide is not meant to be the sole guide in dealing with legal issues or interpreting court decisions. Consult the Office of General Counsel (OGC) on legal issues or interpretation of court decisions or treaty rights or claims related to Indian tribes.

The challenge facing the Forest Service today is to reconcile many requirements of law so that National Forest System lands can be administered in a way that meets public needs while recognizing the rights of Indian tribes.

The focus of this book is to help Forest Service employees gain a clearer understanding of how to implement the U.S. Government's and the Forest Service's American Indian and Alaska Native policy. It should foster an appreciation of tribal governments and help the Forest Service further develop effective relationships with American Indian and Alaska Native Tribes.

The sections of this book correspond to the tenets of the Forest Service's four-point American Indian/Alaska Native policy (FSM 1563). A complete statement of this policy is in Appendix A.

1. *Maintain a governmental relationship with Federally Recognized tribal governments.* Section One of this book is "The Governmental Relationship."
2. *Implement Forest Service programs and activities honoring Indian treaty rights, and fulfill legally mandated trust responsibilities to the extent that they are determined applicable to National Forest System lands.* Section Two of this book is "Treaty Rights and Forest Service Responsibilities."
3. *Administer programs and activities to address and be sensitive to traditional Native religious beliefs and practices.* Section Three of this book is "Addressing Traditional Beliefs and Practices."
4. *Provide research, transfer of technology, and technical assistance to Indian governments.* Section Four of this book is "Opportunities for Research, Transfer of Technology, and Technical Assistance."

Through use of this resource book, leaders, managers, and staff who interact with American Indian and Alaska Native governments should be able to carry out their duties in a knowledgeable, responsive, and respectful manner.

Definitions of Indian Tribe, Indian, Indian Country, and Indian Homeland

Indian Tribe. Although the term “Indian tribe” can be used in both an ethnological and legal-political sense, this book focuses on the definition of an Indian tribe as a political entity. Historically, the Federal Government has determined that it will recognize particular groups or Indian tribes under the *Indian Commerce Clause of the U.S. Constitution*. Thus, tribes which are “Federally Recognized or acknowledged” are considered Indian tribes or tribal governments for legal purposes. Indian groups not recognized under Federal law may seek recognition through litigation,¹ Bureau of Indian Affairs (BIA) administrative procedures,² or congressional statute.³ A list of the Federally Recognized Tribes is in Appendix C.

Indian. An Indian is a person recognized as an Indian by that person’s tribe or community. Tribal membership requirements can be established by usage, written law, treaty, or intertribal agreement.⁴ Today, membership is typically defined by a tribal constitution, tribal law, or a tribal roll—varying degrees of blood quantum are required by different tribes. While membership in a Federally Recognized Tribe is the general criteria used by the BIA for participation in most Federal programs,⁵ a blood standard is also used alternatively for eligibility for some programs.⁶ In recent years, Congress has not allowed the BIA to rely solely on a blood standard for a few of its Federal programs.⁷

It is important to understand the difference between the ethnological term “Indian” and the political/legal term “Indian.” The protections and services the United States provides tribal members do not flow from an individual’s status as an American Indian in an ethnological sense, but because that person is a member of a Federally Recognized Tribe with which the United States has a special trust relationship. This trust relationship entails certain legally enforceable obligations, duties, and responsibilities.

Indian Country. Indian Country is described as the territorial boundaries of Indian tribal governments. While the term “Indian Reservation” is popularly used to identify geographical limits of tribal power or jurisdiction, the relevant legal term is “Indian Country.” *Indian Country* is defined specifically by Federal statute (18 U.S.C. §1151) and includes all land, regardless of ownership, within the exterior boundaries of Federally Recognized Indian reservations (USDI, Office of American Indian Trust).

Indian Homelands. Land ownership patterns within the exterior boundaries of Indian reservations vary. In some cases, such as the North Carolina Cherokee and the White Mountain Apache in Arizona, all lands within the reservation boundaries are held in trust by the United States.

¹ See *Joint Tribal Council of Passamaquoddy Tribe v. Morton*, 528 F.2d 370 (1st Cir. 1975).

² 25 CFR 83.

³ *Pascua Yaqui Recognition Act*, September 18, 1978, Pub. L. No. 95-375, 95 Stat. 712 (codified at 25 U.S.C.A. §1300f to 1300f-2).

⁴ *Delaware Indians v. Cherokee Nation*, 193 U.S. 127 (1904).

⁵ See *Zarr v. Barlow*, 800 F.2d 1484, 1485, n.1 (9th Cir. 1986).

⁶ *Zarr v. Barlow*, 800 F.2d 1484 (9th Cir. 1986); see also 25 CFR §20.1 (n) (1986).

⁷ See *Zarr v. Barlow*, 800 F.2d at 1489-93.

On other reservations, all land within the boundaries is Indian-owned, but some is tribal trust land, and some is held in trust for individuals, with the United States acting as trustee for the individual allottee (or his or her heirs).

Some lands are owned through purchase by non-Indians.

In the lower 48 states, there are 46.2 million acres of Indian trust land and 8.9 million acres of individual trust allotments.

The majority of reservations include within their boundaries not only tribal trust land and individual trust allotments but a third category—land owned in unrestricted title, usually by non-Indians. This third category was the result of the government acquiring and then opening tribal land for homesteading to non-Indians in the late 19th century with the *General Allotment, or Dawes, Act* or the expiration of trust periods on some allotments—allowing non-Indians the right to purchase land directly from the allottees or heirs. In very few cases, non-Indian land predominates a reservation. For example, 46 percent of the land within the boundaries of the Swinomish Reservation in Skagit County, Washington, is owned by non-Indians, and 20 percent of the Indian trust land is leased to non-Indians.

Tribes usually have jurisdiction over “Indian Country” (see Appendix B). Tribal regulatory jurisdiction may, therefore, extend to an area significantly larger than the lands actually in Indian ownership. Many reservations are a tiny fraction of the tribe’s aboriginal territory.

Tribes own 6.3 million acres of commercial timber land or about 1 percent of the Nation’s total commercial forest land. More than 43 million acres, or 77 percent of all Indian land (excluding Alaska), are classified as grassland.

The original source for this text is *Federal Indian Law: Cases and Materials*, 3rd Edition, by David H. Getches, Charles F. Wilkinson, and Robert A. Williams, Jr. Some of the material has been directly quoted with the permission of the publisher; some has been paraphrased.

Indian Nation Demographics

Most reservations are west of the 100th meridian, a north-south line running through the center of Nebraska. There are—

- 557 Federally Recognized American Indian and Alaska Native Tribes (as of 1996)
- 314 reservations, 278 of which are administered as Federal Indian reservations

American Indians and Alaska Natives have a land base of approximately 615,210 square miles. The landholdings of the tribes vary widely. The Navajo reservation consists of more than 15 million acres of land in Arizona, New Mexico, and Utah—an area larger than West Virginia and eight other states. In North and South Dakota, Sioux reservations account for about 5 million acres. There are Federally Recognized Tribes that have no land. A table of the thirty largest landholding tribes is located in Appendix D. The latest list of Federally Recognized Tribes can be found in Appendix C along with a map of where they are located.

Many Indian reservations are adjacent to National Forest System lands. At present, there are 56.6 million acres of Indian lands in the United States. After the Alaska Native land selections are completed, almost 5 percent of all land in the United States will be in American Indian/Alaska Native ownership.

Indian Population

The size of the tribe does not necessarily correlate with the size of tribal landholdings. During the 1990 census, more American Indians identified themselves as Cherokee than any other tribal affiliation. The Cherokee Tribe lost most of its ancestral land in the Southeast when the tribe was “removed” to Oklahoma in the 1830’s. The Navajo Nation, the second largest in population, has the largest reservation.

One-hundred and sixteen (116) tribes have more than 1,000 members. At least 1,000 Indians, in 35 different states, reported themselves as Cherokee; Sioux in 15 states; Chippewa in 9 states; and Iroquois in 8 states. The four largest groups of American Indians as classified by the census (including both on- and off-Indian-land residents) are the Cherokee, the Navajo, the Chippewa, and the Sioux. The states with the highest American Indian and Alaska Native populations are Oklahoma, California, Arizona, New Mexico, and Alaska.

The American Indian population increased from 357,499 in 1950 to 523,591 in 1960, to 792,730 in 1970, and to 1,418,195 in 1980. At the 1990 census, 1,959,000 persons, or eight-tenths of one percent of the Nation’s population, reported themselves as American Indians (Figure 1.). This enormous increase is based, in part, on improved census methods and increasing birth rates. More than 1,878,000 people are ethnically American Indians, and approximately 54,453 are Yupiks, Inuits, and Aleuts.

Today, approximately half of the Indian population lives on or adjacent to reservations or Indian communities. Due in part to the Federal termination and relocation programs of the 1950’s and 1960’s, the other half lives in urban areas. Almost three-fourths of that urban Indian population live in metropolitan areas with populations of more than one million.

Indian Land and Resources

Indian tribes and Indian individuals own approximately 56.6 million acres of land (in the lower 48 states)—an increase of more than 4 million acres since 1980. American Indian and Alaska Native landholdings are growing as tribes are reacquiring territories lost. Tribes are buying acreage, and several court settlements, such as the eastern land claims, have resulted in land transfers and purchases. As the result of the Alaska Native Claims Settlement Act (ANCSA), Alaska Natives hold another 44 million acres not included in the above figures. In all, American Indian and Alaska Native groups hold about 4.2 percent of the land area of the United States. The states containing the most Indian land are Alaska, Arizona, New Mexico, Montana, Oklahoma, and South Dakota (see Appendix D for a complete listing).

American Indian Population, 1990 Census

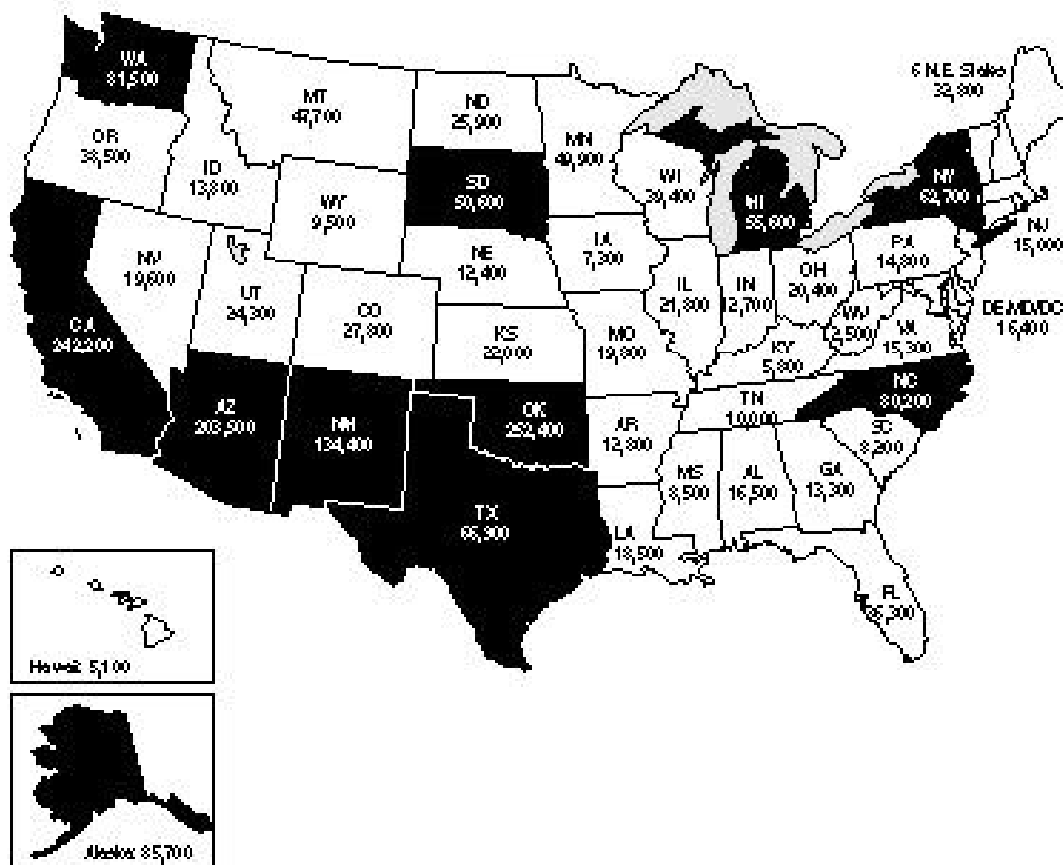


Figure 1.—American Indian Population, 1990 Census (Shaded states have the largest American Indian populations.)

American Indian/Alaska Native Policy

THE WHITE HOUSE
Office of the Press Secretary

For Immediate Release

April 29, 1994

MEMORANDUM FOR THE HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES

SUBJECT: Government-to-Government Relations with Native American Tribal Governments

The United States Government has a unique legal relationship with Native American Tribal governments as set forth in the Constitution of the United States, treaties, statutes and court decisions. As executive departments and agencies undertake activities affecting Native American Tribal rights or trust resources, such activities should be implemented in a knowledgeable, sensitive manner respecting of Tribal sovereignty. Today, as part of an historic meeting, I am outlining principles that executive departments and agencies, including every component bureau and office, are to follow in their interactions with Native American Tribal governments. The purpose of these principles is to clarify our responsibility to ensure that the Federal Government operates within a government-to-government relationship with Federally Recognized Native American Tribes. I am strongly committed to building a more effective day-to-day working relationship reflecting respect for the rights of self-government due the sovereign Tribal governments.

In order to ensure that the rights of sovereign Tribal governments are fully respected, executive branch activities shall be guided by the following:

- (a) The head of each executive department and agency shall be responsible for ensuring that the department or agency operates within a government-to-government relationship with Federally Recognized Tribal governments.
- (b) Each executive department and agency shall consult, to the greatest extent practicable and to the extent permitted by law with Tribal governments prior to taking actions that affect Federally Recognized Tribal governments. All such consultations are to be open and candid so that all interested parties may evaluate for themselves the potential impact of relevant proposals.
- (c) Each executive department and agency shall assess the impact of Federal Government plans, projects, programs, and activities on Tribal trust resources and assure that Tribal government rights and concerns are considered during the development of such plans, projects, programs and activities.
- (d) Each executive department and agency shall take appropriate steps to remove any procedural impediments to working directly and effectively with Tribal governments on activities that affect the trust property and/or governmental rights of the Tribes.
- (e) Each executive department and agency shall work cooperatively with other Federal departments and agencies to enlist their interest and support on cooperative efforts, where appropriate, to accomplish the goals of this memorandum.
- (f) Each executive department and agency shall apply the requirements of the Executive Orders Nos. 12875 ("Enhancing the Intergovernmental Partnership") and 866 ("Regulatory Planning and Review") to design solutions and tailor Federal programs, in appropriate circumstances, to address specific or unique needs of Tribal communities.

The head of each executive department and agency shall ensure that the department or agency's bureaus and components are fully aware of this memorandum, through publication or other means, and that they are in compliance with its requirements.

This memorandum is intended only to improve the internal management of the executive branch and is not intended to, and does not, create any right to administrative or judicial review, or any other right or benefit or trust responsibility, substantive or procedural, enforceable by a party against the United States, its agencies or instrumentalities, its officers or employees, or any other person.

The Director of the Office of Management and Budget is authorized and directed to publish this memorandum in the Federal Register.

William J. Clinton

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American Indian/Alaska Native Policy Statement USDA Forest Service, Washington Office

It is the Forest Service's responsibility to implement Federal and Forest Service policy (FSM 1563) regarding relationships with Federally Recognized American Indian Tribes.

The Policy

For a complete statement of the policy, see Forest Service Manual 1563; a copy is also provided in Appendix A.

1. Maintain a governmental relationship with Federally Recognized Tribal governments.

- Take the time to meet with tribal governments on a regular basis.
- Build and enhance a mutual partnership.
- Gain an understanding of each other to develop an effective governmental relationship.
- Pursue initiatives and efforts similar to those conducted with State governments.

2. Implement Forest Service programs and activities honoring Indian treaty rights and fulfill legally mandated trust responsibilities to the extent that they are determined applicable to National Forest System lands.

- Visit our tribal neighbors.
- Learn about their treaties and rights.
- Talk with them about areas of mutual interest.
- [Seek to] reconcile Indian needs and claims with the principles of good management, multiple use, and national forest laws and policies.
- Attempt reasonable accommodation without compromising the legal positions of either the Indians or the Federal Government.
- Work together to develop ways to accomplish the goals of this policy.

3. Administer programs and activities to address and be sensitive to traditional native religious beliefs and practices.

- Walk the land with American Indians to gain an understanding and appreciation of their culture, religion, beliefs, and practices.
- Identify and acknowledge these cultural needs in Forest Service activities. We consider these values an important part of management of the national forests.

4. Provide research, transfer of technology, and technical assistance to Indian governments.

- Together, develop research and environmental programs to meet American Indians' objectives.
- Extend National Forest System, State and Private Forestry, and Forest Service Research programs to tribal governments.
- Exchange and share technical staffs and skills.

Development of U.S. American Indian Policy

In order to understand the present Indian policy, it is helpful to understand its history. The Forest Service's understanding and implementation of these policies starts on page 33 of this document.

History provides an understanding of American Indian law and policy. Many statutes—enacted in 1790, 1817, 1885 and 1887—still control major Indian issues today. Numerous Indian treaties more than 100 years old, and even one enacted in the 1780's, provide an understanding of the history of Federal Indian policy.

[O]ur Indian law originated, and can still be most closely grasped, as a branch of international law, and...in the field of international law the basic concepts of modern doctrine were all hammered out by the Spanish theological jurists of the 16th and 17th centuries...

—Felix S. Cohen (1942)⁸

Pre-Constitutional Policy (1532–1789)

Between 1492 and the adoption of the U.S. Constitution in 1789, there had been nearly 300 years of legal contracts of various descriptions with American Indians (Cohen 1942). Early European explorers recognized that Indians had occupancy status on lands similar to the well-established European concept of land ownership. As the expeditions and colonists were greatly outnumbered, they also recognized that such lands could only be taken by conquest. In 1630, the Dutch West India Company required that their officials negotiate and purchase land from the Indian leaders of the New Netherlands, thereby recognizing an Indian land ownership status commonly understood by other sovereign nations throughout Europe.

American Indian Tribal Sovereignty—Nations Within a Nation. By 1750, Indian tribes were recognized as sovereigns. In 1754, Benjamin Franklin proposed the formation of a union of colonies following the King of England's suggestion. One of this union's main purposes was an attempt to centralize control over Indians—as the tribes were rapidly forming an allegiance with French settlements and were viewed as a potential threat to the colonies' landholdings (Sheldon 1896). The British Crown rejected such a proposal because they thought it would give the colonies too much independent power. Shortly thereafter, during the French and Indian War, rather than give the colonies the authority that Franklin originally proposed, the English Crown took the sole responsibility for conducting legal and governmental business with Indians. In 1763, the King of England proclaimed the lands west of the Appalachians as Indian Territory—reserved for Indians.

On July 12, 1775, one of the first acts of the Continental Congress was to declare its jurisdiction over Indian tribes by creating three departments of Indian Affairs: Northern, Southern, and Middle Departments. A Commissioner was named for each: Benjamin Franklin, Patrick Henry, and James Wilson, respectively—the quality of the selections is an indication of the importance of these positions.

⁸ "The Spanish Origin of Indian Rights in the Law of the United States," 31 *Geo. L.J.* 1, 17 (1942).

After the Revolutionary War, the newly independent United States was without financial resources to adequately pay men who had served in the military. The primary asset now in the hands of the new country was land. Therefore, for their service during the Revolutionary War, former soldiers were allowed to select lands. George Washington knew that through prior use and occupancy, Indian peoples had demonstrated ownership in the eyes of the former colonies and other countries. For this new settlement to succeed, a new government land policy needed to be developed.

The Northwest Ordinance, passed by the Continental Congress in 1787, established the governing principles for this new policy. The ordinance included the following provision (Article the Third) to recognize Indian land status, because settlers would surely be in contact with Indian Nations as they moved West:

The utmost good faith shall always be observed towards the Indians; their lands and property shall never be taken from them without their consent; and in their property, rights, and liberty, they never shall be invaded or disturbed, unless in just and lawful wars authorized by Congress; but laws founded in justice and humanity shall from time to time be made, for preventing wrongs being done to them; and for preserving peace and friendship with them.

With this ordinance, the “territory of the United States, North-West of the River Ohio” was opened for settlement.

The Northwest Ordinance is the first formal acknowledgment of Indian people having an ownership status in the land. *Land ownership* along with the Indians’ *superior numbers and habitation* were the basic principles defining the sovereign (independent) status of Indian people. Not all citizens recognized this status, which led to continuous conflict with those living along the frontier.

The adoption of the U.S. Constitution and treaties up to 1871, in combination with other acts of Congress and Supreme Court cases after 1810, contribute to the current well-established *existence of Indian tribes as sovereign (independent) nations*. In 1871, Congress ended the formal treaty-making process with Indian tribes. From thence forward, Indian reservations were established by statute (until 1919) or by executive order of the President. Table 1 (page 11) describes the major laws that defined United States jurisdiction over American Indian affairs and resource management that set the stage for future relations with the American Indians.

An 1831 Supreme Court decision confirmed that Indian Nations were distinct, self-governing political entities that were nonetheless dependent upon the United States as their guardian. This case also described the tribes as “domestic dependent nations”—coining the expression “Nations within a Nation.”

Table 1.—Major Statutes of Indian Affairs and Natural Resources


Date	American Indian Acts	Resource Management Acts
1790's	<p>Non-Intercourse Act of July 22, 1790 (1 Stat. 131; 18 U.S.C. 1511 et seq.) extended in 1793, 1796, 1802, and Act of June 30, 1834 (4 Stat. 729; 25 U.S.C. 177) gave the Federal Government authority over American Indian matters and provided a base for United States American Indian policy.</p> <p>Trade and Intercourse Act of March 1, 1793 (ch 19, 1 Stat. 3.29) provided for the settling lands belonging to a tribe and forbade the purchase of any horse in Indian territory, without a license; and contained an appropriation to defray the cost of employing agents and to furnish tribes with goods, money, domestic animals, or implements of husbandry for the purpose of promoting Indian assimilation and securing their continued friendship.</p> <p>Trade and Intercourse Act of May 19, 1796 (ch. 30, section 1, 1 Stat. 469) defined the boundaries of then existing Indian Country but allowed them to be modified by treaty. It included a mechanism to compensate citizens for Indian deprivations or crimes committed outside Indian Country.</p> <p>Trade and Intercourse Act of March 3, 1799 (ch. 46, 1 Stat 661 et seq.) was comparably worded to the 1796 Trade and Intercourse Act.</p>	<p>Act of May 18, 1796 (ch. 29, 1 Stat. 464; 464–469) provided instructions for establishing the rectangular public land survey system for the sale of public lands so surveyed in the territory northwest of the Ohio River and north of the mouth of the Kentucky River for a public land records system.</p> 
Early 1800's	<p>Trade and Intercourse Act of March 30, 1802 (ch. 13, 2 Stat. 139) had several minor amendments or supplementations to the Trade and Intercourse Act of 1799.</p> <p>Indian Removal Act of May 28, 1830 (4 Stat. 411; 25 U.S.C. 174) enabled the President to negotiate in exchange for lands to relocate tribes east of the Mississippi to lands with Indians residing in the territories west of the Mississippi River.</p>	

Table 1.—Major Statutes of Indian Affairs and Natural Resources (continued)


Date	American Indian Acts	Resource Management Acts
<p>Late 1800's</p>	<p>Trade and Intercourse Act of June 30, 1834 (ch. 161, 4 Stat 729) was the single most important measure of Indian-related legislation during the Trade and Intercourse Acts period. It defined the contemporary scope of Indian Country; prohibited alienation of lands by tribes unless the same be made by treaty or convention entered into pursuant to the constitution; provided remedies for the theft or destruction of property; and made liquor or distilleries in Indian Country illegal; provided for the punishment of crimes committed in Indian Country but excluded from such application crimes committed by one Indian against the person or property of another Indian.</p> <p>Indian Appropriations Act of March 3, 1871 (ch. 120, 16 Stat. 566; 25 U.S.C. 71) had a rider attached that effectively ended the President's treaty making by providing that no Indian Nation or tribe shall be acknowledged as an independent nation, tribe, or power with whom the United States may contract by treaty. The Federal Government continued to provide similar contractual relations with the Indian tribes after 1871 by agreements, statutes, and executive orders.</p> <p>Major Crimes Act of March 3, 1885 (23 Stat. 362; 18 U.S.C. 1153) created Federal jurisdiction over seven crimes committed by Indians in Indian Country. It was the first systematic intrusion by the Federal Government into the internal affairs of the tribes.</p> <p>Dawes Act of Feb. 8, 1887 (ch. 119, 24 Stat. 388; 25 U.S.C. 331) provided for the allotment of lands to Indians on various reservations and public domain and extended the protection of United States laws to Indians. Upon receiving an allotment, the allottee became a U.S. citizen. Cessation of Indian tribal holdings and division of lands among them was an attempt at assimilation. It was hoped that they would establish homes, develop lands, and become a part of American society. One of the results was the transfer of more than 80 million acres of Indian lands into private ownership.</p>	<div data-bbox="1070 491 1344 1020" style="border: 1px solid gray; background-color: #cccccc; padding: 5px;"> <p>%%CreationDate: Mon Mar 2 CorelDRAW 7</p> </div> <div data-bbox="1015 1507 1390 1885" style="text-align: center;">  </div>

Table 1.—Major Statutes of Indian Affairs and Natural Resources (continued)


Date	American Indian Acts	Resource Management Acts
	<p>Act of March 3, 1891 (ch. 543, 26 Stat. 1035; 16 U.S.C. 471 et seq.) established a court of private land claims. It stated that the court had jurisdiction over Spanish and Mexican land grant claims in Colorado, Nevada, and Wyoming; and all claims in Arizona, New Mexico, and Utah. Once a reservation was fully allotted, Congress usually enacted legislation opening the remaining surplus reservation lands to nonmember settlement: some acts carried out agreements negotiated with tribes for the cession of surplus lands, while other acts unilaterally opened surplus lands to nonmember settlement without tribal consent. This act was for confirming cession agreement.</p>	<p>Organic Administration Act of June 4, 1897 (30 Stat. 18; 16 U.S.C. 473 et seq.) established the National Forest System to improve and protect the forests, secure favorable water flow conditions, and furnish a continuous supply of timber. This act also provided the Secretary of Agriculture with the authority to regulate occupancy and use, and preserve the forest from destruction.</p>
1910's	<p>Allotment Act of June 25, 1910 (P.L. 313, ch. 431, 36 Stat. 855; 25 U.S.C. 331 et seq.) amended the Dawes Act of 1887 and provided for the allotment of land to American Indians occupying, living on, or improving national forest land.</p>	<p>Weeks Law of March 1, 1911 (P.L. 435, 36 Stat. 961; 16 U.S.C. 480 et seq.) authorized and directed the Secretary of Agriculture to acquire forested, cutover, and denuded lands within watersheds of navigable streams necessary to the regulation of the flow of navigable streams or for timber production. Under the act, the lands were permanently reserved, held, and administered as national forests.</p>
1920's	<p>The Indian Citizenship Act of June 2, 1924 (P.L. 175, 43 Stat. 253; 8 U.S.C. 1401b) granted Federal and state citizenship to American Indians, regardless of their land tenure or place of residence.</p> <p>Act of June 7, 1924 (P.L. 254, ch. 331, 43 Stat. 636–642; 28 U.S.C. 111) established the Pueblo Lands Board. This act provided that non-Indians could validate title to previously acquired Pueblo lands.</p>	
1930's	<p>Indian Reorganization Act of 1934 (P.L. 383, 48 Stat 984; 25 U.S.C. 461–62) allowed American Indian tribes to reorganize and adopt bylaws under the Secretary of the Interior; ended allotments in severalty; and gave the Secretary of the Interior the authority to acquire lands inside or outside of reservations for American Indians.</p>	<p>The Bankhead-Jones Farm Tenant Act of July 22, 1937 (P.L. 210, 50 Stat. 522; 7 U.S.C. 1010–1012) authorized and directed the Secretary of Agriculture to develop a program of land conservation and use, to correct poor land use, control soil erosion, monitor reforestation, preserve natural resources, protect fish and wildlife, develop and protect recreation facilities, mitigate floods, conserve surface and subsurface moisture, protect watersheds of navigable streams, and protect the public lands, public health, and welfare.</p>

Table 1.—Major Statutes of Indian Affairs and Natural Resources (continued)




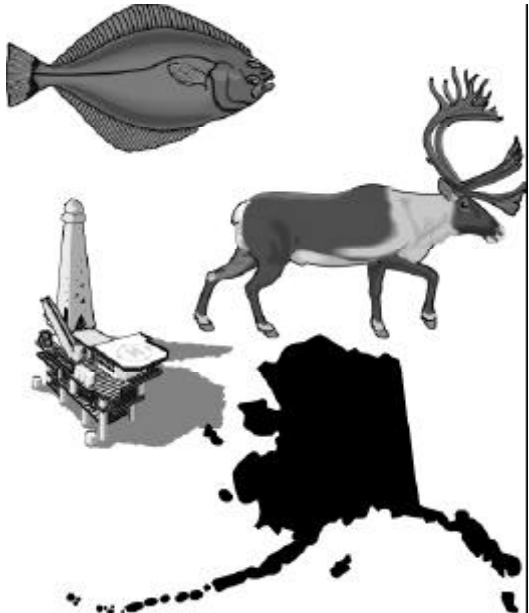
Date	American Indian Acts	Resource Management Acts
1940's	<p>Sustained Yield Forest Management Act of Mar. 29, 1944 (P.L. 273, ch. 146, 58 Stat. 132; 16 U.S.C. 583a-i) section seven of this act requires the consent of American Indians concerning the control or disposition of timber and other forest products on tribal or allocated lands.</p> <p>Indian Claims Commission Act of Aug. 13, 1946 (P.L. 725, 60 Stat. 1049; 25 U.S.C. 70–70v) established the Indian Claims Commission to determine claims in law or equity arising under the Constitution, laws, treaties of the United States, and all other claims in law or equity, and claims based upon dishonorable dealings not recognized by any existing rule of law or equity.</p>	<p>Sustained Yield Forest Management Act of March 29, 1944 (P.L. 273, 58 Stat. 132; 16 U.S.C. 583a-i) provided authority to the Secretary of Agriculture and the Secretary of the Interior to establish cooperative sustained units with private and other Federal agencies to provide for a continuous and ample supply of forest products and to secure the benefits of forest in maintenance of water supply, regulation of stream flow, prevention of soil erosion, improvement of climate, and preservation of wildlife.</p> 
1950's	<p>Public Law 280; Act of Aug. 15, 1953 (P.L. 90–280, 67 Stat. 588; 18 U.S.C. 1360) gave jurisdiction to California, Minnesota, Nebraska, Oregon, and Wisconsin, and some other states, with respect to criminal offenses and civil causes of action committed or arising on Indian reservations within such states and for other purposes.</p>	
1960's	<p>Indian Civil Rights Act of April 11, 1968 (P.L. 90–284, 82 Stat. 77; 25 U.S.C. 1301 et seq.) extended most of the protections of the Bill of Rights to tribal members in tribal governments since the U.S. Constitution does not limit tribal self-government. This act also allowed states with assumed jurisdiction under Public Law 280 to “retrocede” or transfer back jurisdiction to the tribes and the Federal Government.</p> 	<p>Multiple-Use Sustained-Yield Act of June 12, 1960 (P.L. 86–517, 74 Stat. 215; 16 U.S.C. 528, 528–531) confirmed that national forests are established and administered for outdoor recreation, range, timber, watershed, and wildlife and fish purposes; authorized and directed the Secretary of Agriculture to develop and administer the renewable resources for multiple-use and sustained-yield of services and products; and authorized the Secretary of Agriculture to cooperate with interested agencies in the development and management of the national forests.</p> <p>Sikes Act of September 15, 1960 (P.L. 86–797, 74 Stat. 1052; 16 U.S.C. 670g-1,o) provided for Interior/Agriculture coordination with states to develop, plan, and maintain programs for the conservation and rehabilitation of wildlife, fish, and game including, but not limited to, specific habitat improvement projects and threatened or endangered species protection.</p>

Table 1.—Major Statutes of Indian Affairs and Natural Resources (continued)

Date	American Indian Acts	Resource Management Acts
1970's	<p data-bbox="337 275 865 506">Alaska Native Claims Settlement Act of Dec. 18, 1971 (P.L. 92–203, 85 Stat. 688; 43 U.S.C. 1601 et seq.), also known as ANCSA, extinguished aboriginal title to lands in Alaska, as well as all aboriginal hunting and fishing rights in the state; and transferred 44 million acres of lands to Alaska Native-owned and -controlled state-chartered corporations.</p> <p data-bbox="337 627 865 915">Menominee Restoration Act of Dec. 22, 1973 (P.L. 93–197, 87 Stat. 770; 25 U.S.C. 899) provided that after Federal supervision ended, the laws of the several states apply to the tribe and its members in the same manner as they apply to other citizens within their jurisdiction. The tribal hunting and fishing rights survived termination, and Wisconsin could not apply its game and fish laws to the Menominees exercising such rights.</p> <p data-bbox="337 953 865 1209">Indian Self-Determination and Education Assistance Act of Jan. 4, 1975 (P.L. 93–638, 88 Stat. 2203; 25 U.S.C. 450 et seq.) encouraged tribes, through grants and contracts, to assume program responsibility for Federally funded programs designed for their benefit and previously administered by employees of the Bureau of Indian Affairs and the United States Indian Health Service.</p> <p data-bbox="337 1360 865 1562">American Indian Religious Freedom Act of Aug. 11, 1978 (P.L. 95–341, 92 Stat. 469, 42 U.S.C. 1996), also known as AIRFA, explicitly recognized the importance of traditional Indian spiritual practices and directed all Federal agencies to ensure that their policies will not abridge the free exercise of Indian religions.</p> <p data-bbox="337 1625 865 1913">Indian Child Welfare Act of Nov. 8, 1978 (P.L. 95–608, 92 Stat. 3969–3084; 25 U.S.C. 1901–1961) addressed the transfer of large numbers of Indian children to non-Indian parents in state adoption and guardianship proceedings. The act required many adoptions and guardianship cases be held in tribal court; and established statutory preferences for Indian guardians over non-Indian guardians for those cases heard in state court.</p>	<p data-bbox="906 275 1476 621">National Environmental Policy Act of 1969; Act of Jan. 1, 1970 (P.L. 91–190; 83 Stat. 852; 42 U.S.C. 4321 et seq.), also known as NEPA, established national policy to: fulfill environmental trust responsibilities for succeeding generations; assure safe, healthful, productive, and pleasant surroundings; attain a range of beneficial uses without degradation; preserve national heritage and, if possible, maintain a diverse environment; achieve balanced use between people and resources that will permit high quality of life and enhance quality of natural resources.</p> <div data-bbox="1068 600 1352 905" style="border: 1px solid black; padding: 2px;"> <small>CreationDate: Mon Mar 24 17:17:00 1997 CorelDRAW 7</small> </div> <p data-bbox="906 953 1476 1325">Forest and Rangeland Renewable Resources Planning Act of Aug. 17, 1974 (P.L. 93–378; 88 Stat. 476; 16 U.S.C. 1600; 1600–1614), also known as RPA, directed and authorized the Secretary of Agriculture to assess renewable resources and determine ways and means to balance demand and supply, as well as benefits and uses for the people of the United States. This act also assured national forest plans provide for multiple use, harvest levels and availability, and resource management. In addition, this act specified procedures to ensure plans are in accordance with NEPA (1969) requirements.</p> <p data-bbox="906 1360 1476 1591">Federal Land Policy Management Act of Oct. 21, 1976 (P.L. 94–579, 90 Stat. 2744, 43 U.S.C. 1701 et seq.), also known as FLPMA, directed the Secretary of Agriculture to coordinate National Forest System land use plans with the land use planning and management programs of and for Indian tribes by considering the policies of approved tribal land resource management programs.</p> <p data-bbox="906 1625 1476 1913">National Forest Management Act of Oct. 22, 1976 (P.L. 94–588, 90 Stat. 2949; 16 U.S.C. 472 et seq.), also known as NFMA, reaffirmed Forest Service statutory responsibility to provide multiple-use and sustained-yield management of products and services, including coordination of outdoor recreation, range, timber, watershed, wildlife and fish, and wilderness; and to determine forest management systems, harvesting levels, and procedures for all the above uses.</p>

Table 1.—Major Statutes of Indian Affairs and Natural Resources (continued)

Date	American Indian Acts	Resource Management Acts
1980's		<p>Alaska National Interest Lands Conservation Act of Dec. 2, 1980 (P.L. 96-487, 94 Stat. 2371; 43 U.S.C. 1636), also known as ANILCA, allocated 110 million acres to several Federal conservation systems to protect undeveloped Native fee lands from property taxation and from certain types of foreclosure and involuntary transfer. The settling of the boundaries for the national interest lands clarified the areas available for final selections by the state and by Alaska Natives.</p>
1990's	<p>Native American Graves Protection and Repatriation Act of Nov. 16, 1990 (P.L. 101-601, 104 Stat. 3048; 25 U.S.C. 3001, 3001-3013), also known as NAGPRA, addressed the rights of lineal descendants and members of Indian tribes, Alaskan Natives and native Hawaiian organizations to certain human remains and to certain precisely defined cultural items with which they are related. These items include human remains from graves associated with a particular tribal group or individual offerings or artifacts associated with burials, and important religious items of cultural and spiritual importance to a tribal group.</p> <p>Indian Health Care Improvement Act of Oct. 29, 1992 (P.L. 102-573, 106 Stat. 4526-4592; 25 U.S.C. 1601 et seq.) consolidated Indian Health Service program, authorized funding to improve these programs, and created programs to educate health professionals for work in Indian Country.</p>	

Note: See Appendix A for other laws.

The Formative Years (1789–1871)

When the United States gave peace, did they not also receive it? Were not both parties desirous of it? If we consult the history of the day, does it not inform us that the United States were at least as anxious to obtain it as the [Indians]?... This relation [in a treaty between the United States and an Indian tribe] was that of a nation claiming and receiving the protection of one more powerful: not that of individuals abandoning their national character, and submitting as subjects to a master.

—Chief Justice John Marshall (1832)⁹

We are assured that, beyond the Mississippi, we shall be exempted from further exaction; that no State authority there can reach us; that we shall be secure and happy in these distant abodes.

—Headmen and Warriors of the Creek Nation, addressing Congress (1832)¹⁰

I will fight no more forever.

—Chief Joseph (1877)¹¹

Federal Indian law and policy was shaped by early comprehensive Federal legislation and by three court opinions, written by Chief Justice John Marshall and referred to as the Marshall Trilogy. They are *Johnson v. M'Intosh* (1823),¹² *Cherokee Nation v. Georgia* (1831),¹³ and, perhaps most importantly, *Worcester v. Georgia* (1832).¹⁴

Federal Power. The *Indian Commerce Clause, Article I, Section 8, Clause 3 of the U.S. Constitution* provides Congress with broad powers. “The Congress shall have Power...to regulate Commerce with foreign Nations, and among the several States, and *with the Indian Tribes.*” [Emphasis added]

The Trade and Intercourse Acts and Tribal Property Rights. Congress implemented its power by establishing a comprehensive program regulating Indian affairs. The *Indian Trade and Intercourse Act of 1790* (often referred to as the “Nonintercourse Act”) articulated Congress’ policy to implement treaties and establish the basic features of Federal Indian policy¹⁵ and—

- Brought virtually all interaction between Indians and non-Indians under Federal control.
- Broadly regulated commercial trade with the Indians and established penalties for violations by traders.
- Laid out criminal provisions for murder and other crimes against Indians in Indian Country.

⁹ *Worcester v. Georgia*, 31 U.S.(6 Pet.) 515, 551 (1832).

¹⁰ H.R. Exec. Doc. No. 102, 22nd Cong., 1st Sess. 3 (1832).

¹¹ Quoted in M. Beal, “I Will Fight No More Forever.” *Chief Joseph and the Nez Perce War* (1963).

¹² 21 U.S. (8 Wheat.) 543 (1823).

¹³ 30 U.S. (5 Pet.) 1 (1831).

¹⁴ 31 U.S. (6 Pet.) 515 (1832).

¹⁵ See F. Prucha. *American Indian Policy in the Formative Years* (1962).

Treaties With Indian Tribes

One of the crucial provisions for the act, the basis of eastern land claims, was the requirement that Indian land not be sold by the tribe without Federal approval.¹⁶ In the first case in the Marshall Trilogy, *Johnson v. McIntosh* (1823),¹⁷ the U.S. Supreme Court concluded that the “Discovery Doctrine” gave the U.S. Congress the exclusive right to extinguish the original tribal right of possession without compensation.¹⁸

The concept of the “Discovery Doctrine” was created by the European countries to benefit their expansionism in the Western Hemisphere.

Before the Forest Service was created, the U.S. Government, through the President, had negotiated, signed, and ratified 389 treaties with Indian Nations. Sixty treaties contained provisions of reserved rights on what was then public domain land. The purpose of these treaties was to allow western settlement and expansion. The policy was to confine Indian people to land areas to minimize conflict between the two cultures. Some treaties were negotiated to end wars; others to protect the dwindling Indian populations; and some to maintain peace between the two cultures while non-Indian settlement continued. Formal treaties accomplished this until 1871. Early cases clarifying these treaties established the basic elements of Federal Indian law:

1. *The Trust Relationship*. Indian tribes are not foreign nations, but constitute “distinct political” communities “that may, more correctly, perhaps be denominated domestic, dependent nations” whose “relation to the United States resembles that of a ward to his guardian.”¹⁹
2. *Tribal Governmental Status*. Indian tribes are sovereigns. They are governments. State law does not apply to Indian lands without the consent of Congress.²⁰
3. *Reserved Rights Doctrine*. The United States did not grant tribal rights, including rights to land and self-government. Tribes *reserved* such rights as part of their status as prior and continuing sovereigns.²¹
4. *Canons of Treaty Construction* (Interpretation of Treaties). Courts have adopted fundamental rules and principles to interpret written documents such as treaties. In legal terminology, these rules and principles are known as “Canons of Construction.” Canons that pertain specifically to Indian law have been developed to the benefit of tribes. For example, the canons provide that treaties be construed broadly to determine Indian rights, but construed narrowly when considering the elimination of those rights. Most of the special canons

¹⁶ 25 U.S.C. §177. See *County of Oneida v. Oneida Indian Nation*, 470 U.S. 226 (1985); *Clinton and Hotopp*. “Judicial Enforcement of the Federal Restraints on Alienation of the Indian Land.” 31 *Maine Law Rev.* 17 (1979).

¹⁷ 21 U.S. (8 Wheat.) 543 (1832).

¹⁸ *Tee-Hit-Ton Indians v. United States*, 348 U.S. 272 (1955).

¹⁹ *Cherokee Nation v. Georgia*, 30 U.S. (5 Pet.) 1 (1831).

²⁰ *Worcester v. Georgia*, 31 U.S. (6 Pet.) 515 (1832).

²¹ *United States v. Winans*, 198 U.S. 371 (1905).

of construction dealing with treaty rights also have been applied to agreements,²² executive orders,²³ and statutes²⁴ dealing with Indians.

5. *Congress' Plenary Power* (Elimination of Rights). Congress may eliminate rights established by treaty or other documents.²⁵

Most, although not all, of the above principles, first developed in treaty cases, have been extended to situations not involving treaties.²⁶ For example, Alaska Natives are both similar to and different than American Indians elsewhere. Similar, in that Alaska Natives, the original inhabitants of the region, claim aboriginal rights, a trust relationship, and inherent governmental powers (Case 1984; Price 1982; Smith and Kancewick 1990; Berger 1985).

Primarily, Alaska Natives are different in that, until recently, they experienced very little pressure to surrender their lands and traditional hunting and fishing grounds. A major exception are the Russian settlements in Southeast Alaska and the Aleutian regions before the United States purchased Alaska. Unlike Indian tribes south of the Canadian border, Alaska Natives were not conquered by Euro-Americans, did not sign treaties with the U.S. Government, and were not forced on to reservations.

Removal Era

Beginning in the 1830's, many tribes across the country were forced from their aboriginal lands and removed to the "Indian Territory," most of which is the present-day State of Oklahoma. The "Trail of Tears" was one of these removals.²⁷ The Federal Government frequently relocated tribes to new lands—sometimes at great distances from their original homelands. *In most cases, where the United States moved several tribes on to a single reservation, despite tribal distinctions, the Federal Government then, and today, regards them as a single confederated tribe.*

Some bands, or portions of tribes, refused to move with the main bodies of their tribes. Congress had the power to designate such remnant groups as "tribes" and deal with them in the normal course of the Federal-Tribal relationship.²⁸

The End of Treaty Making

Treaties are legally binding agreements between two or more sovereign governments. Treaties with Indian Nations were negotiated and concluded by a representative of the President and became binding agreements after they were ratified by a two-thirds *majority vote* of the U.S. Senate. Formal treaty making ended when Congress, by a *rider in the Appropriation Act of March 3, 1871* (16 Stat. 544, 25 U.S.C. 71), enacted legislation declaring that *tribes were no longer regarded as independent nations.* This rider

²² See, for example, *Antoine v. Washington*, 420 U.S. 194 (1975).

²³ See, for example, *Arizona v. California*, 373 U.S. 546 (1963).

²⁴ See, for example, *United States v. Dion*, 106 S. Ct. 2216 (1986); *Squire v. Capoean*, 351 U.S. 1 (1956).

²⁵ *Lone Wolf v. Hitchcock*, 187 U.S. 553 (1903).

²⁶ See F. Cohen, *Handbook of Federal Indian Law* 62-70 (1982).

²⁷ See G. Foreman, *Indian Removal* (1832).

²⁸ *United States v. John*, 437 U.S. 634 (1978).

The Reservation System (1853)

effectively ended the Presidents' treaty-making authority by providing "that hereafter no Indian Nation or tribe...shall be acknowledged or recognized as an independent, nation, tribe, or power with whom the United States may contract by treaty..." All existing treaty rights were protected.²⁹ The end of treaty making otherwise had little effect; the Government continued to enter into similar legal relationships with tribes under statutes, executive orders, and other agreements such as Presidential proclamations.

The reservation system, which began during the "Treaty-making Era," continued to expand as later reservations were added by statute and executive order. Indian law and policy continued to focus primarily on the reservation system. The reservation system was the principal means by which "Indian Country" was established.³⁰

Indian Country in Alaska. The U.S. Government purchased Alaska from Russia in 1867. Between 1884 and 1904, beginning with the Organic Act, which created the Forest Service, Congress enacted a number of statutes purported to protect "Indians or other persons" in Alaska "in possession of any lands actually in their use or occupation."

Military officers were the first U.S. Government agents in Alaska. They arrived after the Civil War to control and pacify the Indians on America's last frontier. These first agents enforced Federal customs and Indian liquor laws, preserved order, and protected non-Native traders and settlers (State of Alaska 1986:74ff)

During the period immediately following the purchase of Alaska, the U.S. Government did not give high priority to Alaska Native affairs. While the War Department was officially responsible, missionaries and teachers were the primary non-Indian contacts who carried out the largest share of work with Alaska Natives.

Both the 1884 and 1912 Alaska Organic Acts contained language protecting Native land rights. In 1870, Congress exempted Alaska Natives from a general prohibition on harvesting seals. There were also other exemptions from fish and wildlife [game] laws and international treaties.

In 1904, *United States v. Beerigan* held that the United States had both the right and duty to file suit to prevent non-Natives from acquiring land occupied by Natives, implying that non-Natives could not acquire such lands without the consent of the Federal Government. Judge Wickersham held that the authority of the United States to bring the suit in part on the theory that Article III of the 1867 Treaty between Russia and the United States entitled Athabaskan Natives "to the equal protection of the law which the United States affords similar aboriginal tribes within its borders."

Tribal Governments and Their Status in Alaska. The question of whether or not Alaska Natives have tribal governments similar to those identified in the lower 48, has been discussed and debated since the United States purchased Alaska from Russia. Article III of the treaty divided the inhabit-

²⁹ 18 U.S.C. §71.

³⁰ See generally *Antoine v. Washington* 420 U.S. 194 (1975)

California Tribes

The Federal Government's relationship with California Indians is unique. It reflects a legally and politically complex history that was shaped by the state's economic and social forces for well over a century.

As early as 1853, the California Superintendent of Indian Affairs acknowledged that California Indian affairs differed from much of the rest of the United States "...where the Indian intercourse laws were enforced by the United States and the Indian territorial possession was protected by the government." Such was not the case with the California Indians.

Contrary to the implied intent of the Treaty of Guadalupe Hidalgo (1848) to preserve and continue civil safeguards established under Spanish and Mexican rule, the State of California denied the Indian population the rights of citizenship and title to property received in Mexican land grants. Native Californian rights of settlement were further and most dramatically affected with the subsequent negotiation of 18 treaties with the Federal Government.

These treaties were negotiated by three agents and approximately 126 tribes, which represented only about 38 percent of the existing tribes. These tribes essentially included the groups that the agents could find most easily. Acting in good faith, the Indian people surrendered their rights in title to their tribal lands for promises the Government made in these treaties.

In 1852, pressures from mineral and agricultural interests, resulted in the California legislature successfully petitioning Congress to not ratify the treaties that would have set aside 8.5 million acres of land for Indian use and occupancy, and would have provided other benefits and services as compensation for loss of traditional tribal territories. However, a few reservations were established through executive order, legislation, and purchases.

Over a thousand California Indians were living on Forest Reserves in 1906, and by 1914, almost half of the California Indian population of 15,000 to 20,000 were referred to as "squatters." The *1910 Forest Allotment Act* (25 U.S.C. 337) authorized the Secretary of the Interior to make discretionary allotments of land to Indians occupying national forests. However, the Secretary of Agriculture determined the suitability of land for that purpose and required that it had to be more valuable for agriculture or grazing than for timber with the result that few allotments were granted.

In 1905, the eighteen unratified treaties came to light, and various Indian and non-Indian organizations began lobbying efforts to redress these wrongs. But because of delays in enabling legislation, it wasn't until 1928 that suit was filed in the Court of Claims. It took 16 years to reach an agreement that resulted in a relatively small cash settlement of a few hundred dollars for each tribal member and little land was received.

ants of Alaska into two broad categories: 1) the “uncivilized” tribes and 2) all other inhabitants. The last sentence of Article III has been held by [the courts] to apply the whole body of Federal Indian and statutory law to the “uncivilized” tribes of Alaska. That sentence states, “The uncivilized tribes will be subject to such laws and regulations as the United States may, from time to time, adopt in regard to aboriginal tribes of that country.”

On October 21, 1993, the Secretary of the Interior first recognized Alaska tribal governments by publishing a list of Federally Recognized Tribal Governments. The 1993 list represents a list of only those villages and regional tribes which the Department of the Interior believes are functional as political entities, exercising governmental authority. The listed entities are therefore acknowledged to have the “immunities and privileges available to other Federally acknowledged Indian tribes by virtue of their government-to-government relationship with the United States as well as the responsibilities, powers, limitations, and obligations of such tribes” 25 CFR 83.2 (1994 ed) (Printed in the *Federal Register*, Vol. 60, No. 32, Thursday, February 16, 1995). An updated version of that list may be found in Appendix C.

The Era of Allotment and Assimilation (1871–1928)

As long as Indians live in villages they will retain many of their old and injurious habits... I trust that before another year is ended they will generally be located upon individual lands of farms. From that date will begin their real and permanent progress.

—BIA Agent for the Yankton Sioux Tribe (1877)³¹

The General Allotment Act is a mighty pulverizing engine to break up the Tribal mass. It acts directly upon the family and the individual.

—President Theodore Roosevelt (1901)³²

Indian Allotments. Originally, Indian lands were communally owned by tribes. In 1887, Congress passed the *Dawes, or General Allotment, Act*, one of the most significant Federal statutes in the field of Indian law.³³ It delegated the Bureau of Indian Affairs (BIA) authority to allot parcels of tribal land to individual tribal members. Generally, each family head was allotted 160 acres with each single person over 18 years of age receiving 80 acres. Each individual allotment would remain in trust (exempt from State taxes and other State laws) for 25 years—a period that could be shortened or extended. Many of these lands remain exempt from State taxes today.

The Federal Government deemed large amounts of unallotted tribal land to be surplus to the needs of the Indian tribal reservation population and opened them to non-Indians for sale or homesteading. Some tribes received compensation for the sale of these lands; some did not. Indian landholdings decreased from 138 million acres in 1887 to 48 million acres in 1934—a

³¹ Quoted in D.S. Otis. *The Dawes Act and the Allotment of Indian Lands*. (F. Prucha, ed., 1973).

³² Quoted in S.L. Tyler. *A History of Indian Policy* 104 (1973).

³³ See generally D.S. Otis. *The Dawes Act and the Allotment of Indian Lands*. (F. Prucha, ed., 1973).

total loss of 90 million acres. The combination of allotments and homesteads caused serious jurisdiction and management problems.

Assimilation. The allotment policy was one of several policies intended to assimilate Indians into the larger society. There were also other policies.

- Indians were required to abandon their language, native dress, spiritual and cultural practices, and other traditional customs at BIA boarding schools.
- Various Christian denominations, with the concurrence of Congress, established missions on reservations and were given land to build their churches.
- Tribes' exercise of their tribal governmental authority was discouraged and a local BIA superintendent could, in effect, govern many reservations.
- Tribal sovereignty was further eroded with the *Major Crimes Act of 1885*, by which Congress authorized the Federal Government to transfer jurisdiction for dealing with certain criminal acts away from the tribes and to the Federal Courts, further reducing tribal government and encouraging assimilation into the larger society.³⁴

The Indian Citizenship Act of 1924. The Indian Citizenship Act of 1924 was enacted to provide U.S. citizenship to Indians. Indians had previously not been U.S. citizens because they remained members of sovereign nations.³⁵

Indian Reorganization (1928–1945)

John Collier was vindictive and overbearing. He tolerated no dissent, either from his staff or from the Tribes.... Who can say but that we will succeed in vanquishing the pernicious effects of the Indian Reorganization Act, finally exposing its leader for what he really was, and institute our own independent governments in all the Tribes, respected and admired by all.

—Rupert Costo (1983)³⁶

Collier's achievement as commissioner was not only to end the forced "atomization" of Indian life, to humanize the Indian administration, and to involve other agencies in the search for remedies to the problems of Indian poverty, ignorance, and despair, but above all to resurrect the "bilateral, contractual relationship between the government and the Tribes (the historical, legal, and moral foundation of Government-Indian relations)."

—Wilcomb E. Washburn (1975)³⁷

³⁴ 18 U.S.C. §1153.

³⁵ 18 U.S.C. §1401(b).

³⁶ "The Indian New Deal, 1928–1945" in *Indian Self-Rule* 14 (Institute of the American West, 1983).

³⁷ *The Indian in America* 254 (1975).

The Meriam Report. The Meriam Report of 1928 set the tone for a reform movement in Indian affairs. This influential study, prepared by the Brookings Institution, publicized the deplorable living conditions on Indian reservations and—

- Recommended an increase in health and education funding.
- Recommended an end to the allotment policy.
- Encouraged tribal self-government.³⁸

The Indian Reorganization Act of 1934. The Indian Reorganization Act of 1934 (IRA)³⁹ translated some of the Meriam Report's recommendations into legislation. Its primary thrust was to establish governments with whom Congress and the Department of the Interior could conduct governmental business. Its main points were—

- Repealing the Dawes Act.
- Providing that no new allotments be made.
- Extending the trust period for existing allotments.
- Encouraging tribes to adopt constitutions⁴⁰ and to form Federally chartered corporations.⁴¹
- Instituting Indian hiring preference in the BIA.
- Establishing a revolving loan fund for tribal development.
- Expressly allowing the Secretary of the Interior to accept additional tribal lands in trust.
- Including other provisions directed toward improving the lot of Indians.⁴²

Tribes were given 2 years to accept or reject the Indian Reorganization Act. One hundred eighty-one tribes accepted it; 77 rejected it. Many tribes viewed the Indian Reorganization Act's procedures for establishing tribal governments as a continuation of the Federal Government's role in tribal affairs.⁴³

Tribal Self-Government. The Indian Reorganization Act's (IRA's) most significant contribution was to promote tribal self-government. It encouraged the tribes to adopt a form of government. Tribes have the inherent right to operate under their own governmental systems. Many have adopted constitutions, while others operate under Articles of Association or other bodies of law, and some still have traditional systems of government. The chief executive of a tribe is generally called a tribal chairperson, but may also be called principal chief, governor, or president. The chief executive

³⁸ See generally Institute for Government Research. *The Problem of Indian Administration* (L. Meriam ed., 1928) (commonly referred to as the Meriam Report).

³⁹ 25 U.S.C. §461–479.

⁴⁰ 25 U.S.C. §476 (Section 16).

⁴¹ 25 U.S.C. §477 (Section 17).

⁴² See Generally Comment. "Tribal Self-Government and the Indian Reorganization Act of 1934," *Mich. L. Rev.* 955 (1972). On John Collier, the primary mover behind the IRA, see K.R. Phillip, *John Collier's Crusade for Indian Reform* (1977).

⁴³ See S.L. Tyler. *A History of Indian Policy* 95–124 (1973).

usually presides over what is typically the tribal council. The tribal council performs the legislative function for the tribe, although some tribes require a referendum of the membership to enact laws.

The Termination Era (1945–1961)

Following in the footsteps of the Emancipation Proclamation of 94 years ago, I see the following words emblazoned in the letters of fire above the heads of the Indians— “These people shall be free.”

—Sen. Arthur V. Watkins (1953)⁴⁴

Termination represented a...revolutionary forced change in the traditional Menominee way of life... Congress expected immediate Menominee assimilation of non-Indian culture, values, and life styles. The truth is that we Menominees have never wanted such changes imposed upon us, any more than white people would want an Indian way of life imposed upon them... The immediate effect of termination of our Tribe was the loss of most of our 100-year-old treaty rights, protections, and services.... We want Federal protection, not Federal destruction. The Menominee Restoration Act will be the dawn of a new partnership with the Government—self-determination without termination.

—Ada Deer (1973)⁴⁵

Appointed Assistant Secretary of Indian Affairs USDI in 1992

The Indian Claims Commission Act of 1946. The Indian Claims Commission allowed tribes to sue the Federal Government for past actions considered detrimental to their welfare.

In 1946, Congress created the Indian Claims Commission to provide Indian tribes an opportunity to obtain payment for the loss of tribal lands.⁴⁶ This special court was authorized to hear and decide causes of action originating prior to 1946. Tribes were given 5 years, or until 1951, to file their claims; no statutes of limitation were applied, and certain claims not previously recognized were allowed.

Although the claims process resulted in substantial recoveries for some tribes, its restrictions have been criticized in several respects.⁴⁷

- The United States was allowed so-called “gratuitous offsets” against claims awarded to tribes, in the amount of past services provided to tribes.
- No interest was allowed on claims based on takings of aboriginal title or executive order lands.
- Although the tribes were permitted to select their own counsel for these claims, such counsel had to be approved by the Secretary of the Interior (because U.S. funds were expended to hire the attorneys).

⁴⁴ Quoted in D. Getches and C. Wilkinson. *Cases and Materials on Federal Indian Law*. 130 (1986).

⁴⁵ Hearings on H.R. 7421, Before the Subcommittee on Indian Affairs, 93d Cong., 1st Sess. 32–36 (1973).

⁴⁶ 25 U.S.C. §70–70v.

⁴⁷ See Danforth, “Repaying Historical Debts: The Indian Claims Commission,” 49 *NDL Rev.* 359 (1973)

Claims were then usually divided into three separate and time-consuming stages:

- Determination of title ownership.
- Valuation of the United States' liability.
- Determination and deduction of offsets to the United States' liability.

The Indian Claims Commission Act could not provide for the recovery of land. If a claim was successful, only monetary payments were available, and they were distributed to individual tribal members rather than to the tribes themselves.

The 1946 act applied only to claims against the U.S. Government and did not cover claims against states, counties, or private entities.

In 1978, cases not completed by the Indian Claims Commission were transferred to the U.S. Court of Claims (which in 1983 became the Claims Court). As of 1996, 617 dockets had been filed, and several still remain unresolved.

The Termination Acts. *House Concurrent Resolution 108 (HCR 108)*, adopted in 1953, expressed the Federal policy on the Government's special relationship with Indian tribes. HCR 108 called for ending such relationships as rapidly as possible. In line with that policy, the following groups were terminated from their Federal relationship:

- Alabama and Coushatta Tribes of Texas*
- Catawba Indian Tribe of South Carolina*
- Klamath, Modoc, and Yahooskin Band of Snake Indians of Oregon*
- Ponca Tribe of Nebraska*
- Mixed Blood Ute Indians of Uintah and Ouray of Utah
- 40 California Indian Rancherias (32 have been restored)
- Western Oregon Indians, including Confederated Tribes of Siletz Indians*
- Confederated Tribes of the Grand Ronde Community,* and Cow Creek Band of Umpqua,* Confederated Coos, Lower Umpqua, and Siuslaw Indians
- Menominee Tribe of Wisconsin*
- Ottawa Tribe of Oklahoma*
- Peoria Tribe of Oklahoma*
- Wyandotte Tribe of Oklahoma*
- Paiute Indian Tribe of Utah*

These groups were singled out for what has become known as the termination experiment. Termination fundamentally altered the special Federal-Tribal relationship by making the following changes:

- Tribal landownership was fundamentally altered by selling Indian land to third parties (with compensation to tribal members), transferring

land to private trust, or transferring land to new tribal corporations under State law.⁴⁸

- All special Federal programs to tribes were discontinued.
- Generally, all special Federal programs (for example, health and education services) to *individual Indians* were discontinued.⁴⁹
- Exemptions from State taxing authority were ended.
- Tribal sovereignty, as a practical matter, was ended.

Congress has never abandoned HCR 108's termination policy expressly, but termination has been repudiated implicitly by the more recent self-determination policy. Congress has restored the tribes marked above with asterisks to Federal status.⁵⁰ *In addition, by action of the courts, as of 1987, 32 of the 40 California rancherias mentioned above were no longer considered to be terminated.* Many tribes have been restored with treaty rights intact; however, the land base that existed at the time of termination has not been restored.

Public Law 280. Even though their tribes were not actually terminated, many tribes saw their sovereignty greatly diminished during the "Termination Era." The most important piece of legislation in this regard was Public Law 280, passed in 1953, which was the first general Federal legislation extending State jurisdiction to Indian Country. The original five "280" States with criminal and civil jurisdictions in Indian Country were California, Minnesota, Nebraska, Oregon, and Wisconsin. Congress added Alaska later. Other 280 "option states" had full or limited criminal or civil jurisdiction over various matters in Indian Country, such as certain domestic matters, child abuse and neglect, and other areas that the tribes consented to: Arizona (for air and water control laws only); Florida (for criminal and civil jurisdiction); Idaho, Iowa, Montana, Nevada, and Utah (for criminal and civil jurisdiction and child abuse and neglect and certain domestic matters); Washington (jurisdiction limited to certain matters); North Dakota (civil jurisdiction over tribes who consent, but no tribe has yet consented to any jurisdiction); South Dakota (limited jurisdiction in civil matters); New York and Kansas (limited jurisdiction). Public Law 280 also provided State jurisdiction on other reservations in states that took the steps necessary to assume jurisdiction under the act.⁵¹

Other Policies of the Termination Era. Other policies instituted or expanded in the late 1940's and early 1950's included the transfer of many educational responsibilities to the states and the "relocation" program to encourage Indian people to leave American Indian reservations and Alaska Native communities and seek employment in various metropolitan areas.

⁴⁸ See generally Wilkinson and Biggs, "The Evolution of the Termination Policy," 5 *Am. Ind. L. Rev.* 139 (1977).

⁴⁹ See, for example, *Menominee Tribe of Indians v. United States*, 391 U.S. 404 (1968).

⁵⁰ See, for example, the *Menominee Restoration Act of 1973*, 25 U.S.C. §903-903f.

⁵¹ See Goldberg, "Public Law 280, The limits of State Jurisdiction over Reservation Indians," 22 *UCLA L. Rev.* 535 (1975).

The “Self-Determination” Era (1961–Present)

The dismal failure of the “Termination Era” combined with poor living conditions on reservations led to the reforms of the 1960’s, 1970’s, and 1980’s, in much the same way that the Indian Reorganization Act was a reaction to the negative impact of the “Allotment Era.” The “Self-Determination Era” has been characterized by expanded recognition and application of the powers of tribal self-government, and by the general exclusion of State authority from reservations. Progress has not been uniform—Indians have suffered their share of reversals—but on balance it can be said that Indian tribes and their members have benefited from more favorable legislation and judicial decisions during the 1970’s and 1980’s than in any other period in this country’s history.

Congressional Action

Indian Civil Rights Act of 1968 (ICRA). A major event between the “Termination” and “Self-Determination” eras was the ICRA.⁵² The act extended most of the protections of the Bill of Rights to individual tribal members. This action was taken because the civil rights protection of the U.S. Constitution itself did not apply to Indian tribes. A copy of the text of ICRA can be found in Appendix A.

The ICRA also allowed states that had assumed Public Land 280 jurisdiction to transfer jurisdiction back to the tribes and the Federal Government.

Alaska Native Claims Settlement Act (ANCSA). In 1971, Congress passed ANCSA.⁵³ Land claims of Alaska Natives—based on aboriginal title to much of the state—had never been resolved. ANCSA extinguished aboriginal claims and transferred 44 million acres to new Alaska Native-owned and controlled State-chartered corporations. ANCSA also provided for a total cash payment of approximately \$1 billion dollars to Alaska Natives.⁵⁴ As of this writing, not all State claims have been settled.

American Indian Policy Review Commission Report. Public Law 93–580, enacted on January 2, 1975, provided for the establishment of the American Indian Review Commission which Congress charged with conducting a comprehensive review of the policies, laws, and programs affecting the conduct of Indian affairs. The 11-person commission (six Congressmen and five Indian members) formally submitted its report in May 1977. The core of the commission’s report recommended strengthening tribal governments, affirming the trust relationship between tribes and the Federal Government, and reorganizing the BIA.

Indian Self-Determination and Education Assistance Act of 1975 (638). Through grants and contracts, the *Indian Self-Determination and Education Assistance Act of 1975* encouraged tribes to assume responsibility for Feder-

⁵² 25 U.S.C. §1301–1303 (also codified in scattered sections of 18 U.S.C. and 28 U.S.C.).

⁵³ 43 U.S.C. §1601–1628.

⁵⁴ See generally Lazarus and West. “The Alaska Native Claims Settlement Act: A Flawed Victory.” 40 *Law and Contemp. Prob.* 132 (1976).

ally funded programs designed for their benefit that had previously been administered by the BIA and IHS.⁵⁵

*Indian Health Care Improvement Act of 1976.*⁵⁶ This act consolidated Indian Health Service (IHS) programs, authorized funding that would improve IHS programs, and created programs to educate health professionals for work in Indian Country.

*The Indian Child Welfare Act of 1978*⁵⁷ addressed the long-standing problem of large numbers of Indian children being transferred from their natural parents to non-Indian parents in State adoption and guardianship proceedings. In general, the Act requires that many adoption and guardianship cases take place in tribal court; and establishes a strict set of statutory preferences for Indian guardians over non-Indian guardians for those cases that are heard in State court.

American Indian Religious Freedom Act of 1978 (AIRFA), a joint resolution signed into law by President Carter, explicitly recognizes the importance of traditional Indian spiritual practices and directs all Federal agencies to insure that their policies do not abridge the free exercise of Indian religion.⁵⁸

Native American Graves Protection and Repatriation Act (NAGPRA) of 1990 (P.L. 101-601), addresses the rights of lineal descendants and members of Indian tribes, Alaska Native, and Native Hawaiian organizations to certain human remains and to certain precisely defined cultural items. NAGPRA requires Federal agencies to prepare inventories of remains in their possession and to consult with affiliated American Indian tribal groups about their repatriation. It establishes a process for the return of institutionally held skeletal remains, grave items, and other objects sacred to groups of their cultural affiliation.

The Religious Freedom Restoration Act of 1993 (P.L. 103-141) mandates that the “government should not substantially burden the free exercise of religion without compelling justification.” The act further provides a claim or defense to persons whose religious exercise is substantially burdened by government.

During the past 20 years, Congress has greatly increased appropriations for Indian affairs. After a decrease in fiscal year 1996, such appropriations appear to be increasing again.

Executive Action. Administrative policy towards American Indians and Alaska Natives began to shift in the mid-1960’s. In 1966, Interior Secretary Stewart Udall told BIA administrators and congressional aides at a Santa Fe, New Mexico meeting, that self-determination for Indians would be the

⁵⁵ See, for example, Rosenfelt. “Toward a More Coherent Policy for Funding Indian Education,” 40 *Law and Contemp. Prob.* 190 (1976).

⁵⁶ Pub. L. No. 94-437, 90 Stat. 1400 (codified at 25 U.S.C. §1601-1603, 1611-1615, 1621, 1631-1633, 11651-1658, 1661, 1671-1675, 42 U.S.C. §139f, 1395n, 1395qq, 1396j).

⁵⁷ 25 U.S.C. §1901-1963.

⁵⁸ See 42 U.S.C. §1996.

theme of the remainder of his administration. Self-determination was also addressed by President Johnson's congressional message in 1968 and in President Nixon's message to Congress in 1970.

It is long past time that the Indian policies of the Federal Government began to recognize and build upon the capacities and insights of the Indian People. Both as a matter of justice and as a matter of enlightened social policy, we must begin to act on the basis of what the Indians themselves have been telling us. The time has come to break decisively with the past and to create the conditions for a new era in which the Indian future is determined by Indian acts and Indian decisions.

—Message to Congress from Richard M. Nixon,
July 8, 1970

Executive direction resulted in a new or modern Indian Policy, *Public Law 93-638*, which granted the BIA authority to continue Indian preference for filling vacancies. The *Indian Self-Determination Act* helped tribes become more involved in Federal decisionmaking processes on actions that could potentially affect their general memberships or natural resources. Indian preference has resulted in a steadily growing number of Indian BIA employees. Many BIA leadership positions are now held by Indians, and the Bureau is increasingly supporting self-determination for Indian tribes and individuals.

In 1977, the Department of the Interior established a new position—the Assistant Secretary for Indian Affairs. In the 1980's, the Reagan Administration repeatedly expressed its support for tribal self-determination and government-to-government relationships⁵⁹ and promoted economic development projects. President Bush reaffirmed the government-to-government policy as did President Clinton in his meeting with tribal leaders at the White House on April 29, 1994.

Judicial Action. During the 1970's, the Supreme Court heard some 33 Indian law cases—more than those in the fields of antitrust or consumer law. This trend has continued.

Tribal Action. Since the 1970's, Indian tribes have chosen to exercise their powers of self-determination, sovereignty, and self-government by—

- Restructuring the BIA organization.
- Contracting programs performed for the benefit of individual tribe(s) from BIA and IHS.
- Accepting self-governance grants from the Secretary of the Interior which enable tribe(s) to assume all the programs and activities conducted for their benefit, enabling tribe(s) to set priorities and budgets for tribal governance, programs, and activities.

⁵⁹ President Reagan's Statement on American Indian Policy, 19 *Weekly Comp. Doc.* 98-102 (Jan. 24, 1983).

- Establishing tribal courts.
- Preserving culture and language.
- Some assuming the role of state Historic Preservation Officers (SHPO).
- Some working directly with the Environmental Protection Agency (EPA) and assuming programs formerly guided by the states.
- Establishing tribal ordinances for zoning, employment, contracting, air, water, natural resources, hunting, fishing, and taxation.
- Establishing tribal and individual tribal member enterprises on Indian lands, communities, or reservations.
- Developing and maintaining active relations with Congress and the Administration.
- Seeking opportunities or developing initiatives with the Departments of Agriculture, Commerce, Education, Energy, Defense, Labor, and the Environmental Protection Agency.
- Collaborating with other tribes to seek social, economic, and educational opportunities; economic development and gaming; and protection of sovereignty, sacred sites, spirituality, and cultural practices.
- Seeking technical assistance from Federal agencies as may be needed for self-determination initiatives.
- Seeking skills for interim tribal employment or until tribal members may assume this technical assistance.

