

Gayle Olson-Raymer, "A Brief Historical Overview of the Relationship between the Federal Government and American Indian: From Colonial Times to the Present." *American Indian Issues: An Introductory and Curricular Guide for Educators*. Center for Indian Community Development (CICD) at Humboldt State University (HSU). 22 May 2006

<http://users.humboldt.edu/ogayle/kellogg/federalrelations.html>

## **A Brief Historical Overview of the Relationship between the Federal Government and American Indian: From Colonial Times to the Present**

This section includes a brief narrative history of the relationship between the colonial governments and American Indian tribes and between the United States government and American Indian tribes from 1776 through the end of the Twentieth Century. To facilitate a chronological use of this section, it has been divided into three parts: [Indian Policy: The Colonial Legacy](#); [Nineteenth Century Indian Relations with the United States of America](#); and [Twentieth Century Indian Relations with the United States of America](#).

### **Indian Policy: The Colonial Legacy**

During most of the British colonial era, the British Crown dealt with the Indian tribes as foreign sovereign nations. While there was and is no clear definition of what makes a nation sovereign, there are a number of generally accepted attributes that qualify something as sovereign.

- There must be a distinct, unique group of people who must have a distinct language, a distinct moral and religious structure, and a distinct cultural base.
- These people must have a specific geographic area that they control and regulate.
- Within that area, they must possess governmental powers, including the power to tax and the power to change their government if they see fit.
- These governmental powers must be acknowledged by the people who are subject to them, and they must be enforceable by some sort of authority, whether it be military, police, or general citizen control.
- A sovereign entity must be recognized by another sovereign. For Indian tribes, that recognition has taken place through treaties.

At the time of European contact with the North American continent, all Indian nations originally exercised the [powers of sovereigns](#). They recognized the sovereignty of other Indian Nations by forming compacts, treaties, trade agreements, and military alliances. All colonial powers also recognized the sovereignty of Indian nations by entering into treaties with various nations.

In short, Indian nations were sovereign entities that negotiated as independent, foreign nations with the colonial administrations of Britain and its colonies. Such negotiations took the form of

government-to-government treaties agreed upon by representatives of the British Crown and by Indian tribes.

However, the British Crown gradually reinterpreted the nature of tribal sovereignty. As individual colonists continually encroached upon Indian lands, the British Crown assumed a protectorate position - arguing that the Crown must protect the tribes against excesses and injustice at the hands of British colonists. To that end, in 1755, the British government assumed direct responsibility for Indian affairs. The British were worried about the French who continued to gain the loyalty of frontier tribes. So British representatives recruited tribes to fight on the British side during the [French and Indian War](#). At the War's end, the British adopted the first formal policy directed at protecting the Indians. The [Proclamation of 1763](#) established a western boundary along the crest of the Appalachian Mountains across which white settlers could not cross. As such, it provided a boundary that distinguished "Indian Country" from non-Indian country.

The King had good reason to enact the Proclamation. Many colonists were not only eager to move westward beyond the Appalachians into Indian Country, they were also quick to claim that the Indians were in the way of such progress. Indeed, many colonists were not only intolerant of Indian lifestyles, spirituality, and customs, but believed them to be an impediment to white progress, humanity, and most importantly, to Christianity. Indeed, their intolerance was deeply rooted in their commitment to Christian superiority - the belief that Christian Europeans were superior to non-Christian, non-European peoples.

By the end of the colonial era, then, intolerance and Christian superiority guided colonial attitudes. In turn, the King adopted a protectionist attitude toward the American Indians. As we shall see, by 1787, both the King's and colonists' attitudes contributed to the Indian policies created by the newly-created United States government.

## **Nineteenth Century Indian Relations with the United States of America**

After the colonists won their independence from England, they immediately claimed ownership of all Indian lands west of the Appalachians by right of conquest over Britain - the belief which originated with the Catholic Church that when a Christian people found land settled by a non-Christian people, they had the God-given right to conquer and take over the land, as well as to convert the people to Christianity.

Before the Constitution was signed, the [Northwest Ordinance of 1787](#) mapped out the manner in which the United States government would deal with the Indian nations. The Ordinance proclaimed that the government would observe "the utmost good faith" in dealing with Indians and promised that their lands would not be invaded or taken except "in just and lawful wars authorized by Congress." At the same time, however, the Ordinance provided a blueprint for national expansion into Indian territory. Thus, from the very beginning of the US government, Indian policies have been contradictory - in writing, most aimed to act in good faith toward the

Indians, but in practice, these policies endorsed actions most beneficial to the non-Indian population.

When the Constitution was written, it included a provision that established federal authority over the conduct of Indian relations. In Article 1, Section 8 ([Commerce Clause](#)) the Constitution declares that "The Congress shall have the power to regulate Commerce with foreign nations and among the several states, and with the Indian tribes." Thus, the Constitution specified that there were **three governmental entities within the United States with forms of sovereignty - Indian tribes, state governments, and the federal government.** In short, Indian governments have inherent sovereignty which is not derived from any other government, but rather from the people themselves.

Because Indian nations were [sovereign](#), the federal government immediately faced what soon became known to non-Indians as the "Indian problem." While European Americans wanted to move westward and conquer all the land to the Pacific Ocean, it was clear that the hundreds of sovereign Indian nations were not going to willingly or voluntarily give up their land. Consequently, the United States government took two steps:

- signing hundreds of treaties with Indian nations, treaties which in turn were bolstered by a series of US Supreme Court Decisions; and
- passing hundreds of laws designed to define relations between the federal government and Indian nations.

### **Treaties and Supreme Court Decisions**

Treaties were legal, government-to-government agreements between two legitimate governments - the United States and an Indian nation. When an Indian tribe signed a treaty, it agreed to give the federal government some or all of its land as well as some or all of its sovereign powers. In return, when an Indian nation gave up land through a treaty, it entered into a [trust responsibility](#) with the federal government in which the government promised to provide benefits and rights to the American Indian peoples in exchange for their land. The trust responsibility, in turn, bound the United States to represent the best interests of the tribe, protect the safety and well-being of tribal members, and fulfill its treaty obligations and commitments.

The basis for the federal relationship with Indian nations and for tribal sovereignty began to be redefined by the US Supreme Court as early as 1823. Beginning with *Johnson v. McIntosh*, the Supreme Court has produced two competing theories of tribal sovereignty:

- the tribes have inherent powers of sovereignty that predate the "discovery" of America by Columbus; and
- the tribes have only those attributes of sovereignty that Congress gives them.

Over the years, the Court has relied on one or the other of these theories in deciding tribal sovereignty cases. Whichever theory the Court favored in a given case largely determined the powers the tribe had and what protections they received against federal and state government

encroachment.

- In what is known as the Marshall Trilogy, the Supreme Court established the doctrinal basis for interpreting federal Indian law and defining tribal sovereignty.
  - ***Johnson v. McIntosh (1823)***. This case involved the validity of land sold by tribal chiefs to private persons in 1773 and 1775. The Court held that while the Indians were the rightful occupants of the land, tribes had no power to grant lands to anyone other than the federal government. The federal government, in turn, held title to all Indian lands based upon the "[doctrine of discovery](#)" - the belief that initial "discovery" of lands gave title to the government responsible for the discovery. Thus, the right of Indians to complete sovereignty was limited as European Americans had exclusive title to the land which they had "discovered."
  - ***Cherokee Nation v. Georgia (1831)***. The Cherokee Nation sued the State of Georgia for passing laws and enacting policies that not only limited their sovereignty, but which were forbidden in the Constitution. The Court's decision proclaimed that Indians were neither US citizens, nor independent nations, but rather were "domestic dependent nations" whose relationship to the US "resembles that of a ward to his guardian." Thus, Indian nations did not possess all the attributes of sovereignty that the word "nation" usually implies. This ruling set a legal basis for the trust relationship in which the US had the duty to protect Indian tribes which were "domestic dependent nations."
  - ***Worcester v. Georgia (1832)***. A missionary from Vermont who was working on Cherokee territory sued the State of Georgia which had arrested him, claiming that the state had no authority over him within the boundaries of the Cherokee Nation. The Court, which ruled in Worcester's favor, held that state laws did not extend to Indian country. Thus, the ruling clarified that Indian tribes were under protection of the federal government and that Congress had plenary, or overriding power, over all Indian tribes.

Thereafter, Indians had a kind of limited sovereignty that was to be governed by paternalistic trust and subject to the interpretation of the US government. In other words, Indian nations would have to trust the US government to do what was best for them in some areas. The first treaty that was signed by the US government was with the [Delawares](#) in 1778 during the Revolutionary War. The revolutionary government promised that if the Delawares helped their fight against the British, they would be given statehood in the future. Between 1778 and 1868 - 90 years - 371 treaties were signed. These treaties focused primarily on the way the US government would handle Indian land and the resources on those lands. In 1871, Congress formally ended the government to government treaty-making power. No longer would Indians have any negotiating power or say about their treatment at the hands of the US government. Thereafter, such determinations would be made as Congress passed various federal policies and laws.

### **Federal Policies and Laws**

From 1930 throughout the remainder of the Nineteenth Century, four specific policies were adopted by the federal government, each of which was supported by a series of laws: removal, reservations, allotment and assimilation, and elimination.

**Removal.** By the early 1830s, about 80,000 members of the [Cherokee](#), [Creek](#), [Chickasaw](#), [Choctaw](#), and [Seminole](#) Nations lived on land that many Americans felt could be more profitably farmed and settled by non-Indians. But all five nations had signed treaties with the federal government guaranteeing the right to live in their ancestral lands and maintain their sovereign systems of tribal government. Not surprisingly, these nations were unwilling to give up their land and to negotiate new treaties with the federal government that would give away part of their land.

**[President Andrew Jackson decided that a new federal policy](#)** would be necessary in order to remove the Indians from their lands. Thus, he supported the [Removal Act of 1830](#) which gave him the right to make land "exchanges" by forcibly removing the four tribes from their ancestral lands against their will. Consequently, more than 40 tribes were removed to the area that came to be known as Indian Territory - the area that now comprises the state of Oklahoma.

Between 1830 and 1840, somewhere between 70,000 and 100,000 American Indians living in the East were forcibly resettled by the US Army. Many others were massacred before they could be persuaded to leave; an unknown number died from disease, exposure, and starvation suffered during the [Trail of Tears](#) as well as on other enforced, long-distance marches westward to Indian Territory.

While the removal policy helped to alleviate the immediate "Indian problem," as more and more Americans continued to move westward, they found many other Indian tribes living in freedom throughout the continent. Because these Indians prevented non-Indians from settling in many desirable areas, and because many white settlers did not feel safe living amidst the Indian "danger," another new policy was created to deal with the Indians. This time, Indians would be confined to a land reserved exclusively for their own use - areas that came to be called reservations.

**Reservations.** The men who created the [reservation system](#) believed that if Indians could be confined to one particular geographical place reserved for them, they could become 'civilized' and assimilated into American life. They could be encouraged to stop being Indians and to become like white men. Thus, the reservations were to make sure the remaining tribes were converted to Christianity; taught English, sewing, and small-scale farming; and ultimately, Americanized.

While some Indians adjusted to life on the reservation, the vast majority did not become more like the white man. Indeed, most fought to maintain their Indian culture and traditions. The reservation system survived for almost two decades before it was clear that all Indians were not going to be confined and that the vast majority were not going to become Americanized. Thus, a new policy was created - allotment.

**Allotment and Assimilation.** Many Americans had come to believe that Indians would never become Americanized as long as they lived in large reservation communities in which they celebrated their cultural and spiritual traditions and owned land communally. Further, American policy makers believed that the reservation did not give the Indian an incentive to improve his or her situation. So, the federal government's new policy was designed to detribalize the Indian by

destroying the idea of communal land ownership on the reservations. This policy was signed into law as the [Dawes Severalty Act of 1887](#).

The Act allowed the President to give, or allot, portions of certain reservation land to individual Indians - 160 acres to each head of family and 80 acres to others - to establish private farms, and authorized the Secretary of Interior to negotiate with the tribes for purchasing "excess" lands for non-Indian settlement. Each head of family would receive final title to the land and American citizenship *after* a 25-year period during which they had willingly assumed responsibility for the land. Any land remaining after allotment would be sold to whites; all proceeds were to be used to "civilize" Indians on the reservation.

At the same time that the Dawes Act was being conceptualized, American policy makers were also experimenting with a new assimilation policy. Some reasoned that for Indians to really become assimilated, Indian children would have to be taken from their tribal environment and reeducated. Thus it was that in 1879, a former Indian fighter, Colonel Richard Pratt, created the first large [Indian boarding school](#) in the nation - the [Carlisle Indian Industrial School](#) in Pennsylvania - dedicated to totally Americanize Indian children.

Within a few years, federal authorities forced Indian parents to either send their children to an off-reservation boarding school such as Carlisle, or to boarding schools established in remote areas of Indian reservations. The boarding school had become the primary tool of assimilationists.

And what awaited the Indian children upon their arrival? We know from many [first-hand accounts](#) that the teachers spent the first few days forcing the children to discard their Indian ways and adopt American ways. For example:

- Children were forbidden to speak their native language, often under threat of physical punishment.
- Their long hair was clipped to the skull, sometimes as part of a public ritual in which the child was forced to renounce his or her Indian origins.
- Their loose-fitting clothing and moccasins were taken away and burned. Boys were then given military uniforms and girls were forced to wear tight-fitting, Victorian-style dresses.
- They sometimes were told never to use their Indian names and were given an American name instead.
- They were forbidden to practice any cultural or religious rituals, usually under threat of punishment, and were instead told that they would be expected to become devoted Christians.

Once the rules were clear, then children became involved in the daily routine which was defined by military drill and structure. Children attended school one half of each day, and the other half was spent in training for several skills - mechanics, printing, and agriculture. For most Indian children, the results were difficult. In shedding their "Indianness," they were neither accepted into American society, nor were they able to comfortably resettle into traditional Indian society.

The results of the [boarding schools policy](#) and the Dawes Act were catastrophic for American Indians.

- Indians lost even more of their land. When allotment went into effect, Indians still owned over 138 million acres of land. But when Dawes was repealed 47 years later, 90 million acres had passed from Indian hands into the hands of whites, representing a 60% loss of land.
- Indians suffered enormous loss of their cultures and languages.
- Indian family life was greatly disrupted by forcing Indian children to attend boarding schools.

Ultimately, allotment and assimilation policies failed to assimilate Indians and force them to accept a more settled, Americanized way of life. Toward the end of the nineteenth century, a large number of Indians and several Indian nations still lived in communal groups that refused to live on reservations or to be involved in allotment. Thus, the federal government moved ahead with another policy to deal with these recalcitrants - elimination.

**Elimination.** The rationale for eliminating Indians grew out of a belief that Indian resistance was equivalent to a declaration of war against the US. Using such a rationale, in the late 1800s the US Army declared war upon several tribes, began eliminating resisters, and sought to absolutely subjugate any survivors. But war was hardly a last resort nor was it something used only at the end of the nineteenth century. A review of official military records, some of which are incomplete, shows that from 1776 to 1907, the US Army was involved in 1,470 official actions against Indians. (Utter, 103.) These figures do not include actions against the Indians undertaken by either the US Navy - of which there were probably dozens - or the hundreds of hostile actions undertaken by private armies against American Indians.

The vast majority of military Indian fighting under the auspices of the US government did occur between 1866 and 1891. According to official records for this 25-year period, the Army was involved in 1,065 combat engagements with Indians. In total, 948 soldiers were killed and another 1,058 wounded, as well as 4,371 Indians who were killed and another 1,279 who were wounded. (Utter, 104.)

The war waged against the [Sioux](#) provides a tragic example of such a military encounter. In the late eighteenth century, white men first appeared in Sioux territory - in the area known as the Black Hills, an isolated ridge, roughly 40 by 120 miles, of pine-dark peaks that rise from the dry plains at the border areas of present-day Wyoming and South Dakota. In 1851, the federal government and the Sioux entered into a treaty whereby the US promised not to encroach upon Sioux territory and, in return, the Sioux promised to provide all pioneers with safe passage through their land. Shortly thereafter, in defiance of the treaty, the government erected several fortified trading posts in Sioux territory. During formal negotiations in 1866, the leader of the largest, most powerful band of the Sioux, [Red Cloud](#) of the Oglala Nation, walked out of the meeting declaring, "I will go - now! - and I will fight you! As long as I live I will fight you for the last hunting grounds of my people. After two years of war, the forts were abandoned to allow a US peace commission to meet with Red Cloud. On Nov. 6, 1868, the [Fort Laramie Treaty](#) was signed guaranteeing the Sioux,

...absolute and undisturbed use of the [Great Sioux Reservation](#)...No persons...shall ever be permitted to pass over, settle upon, or reside in territory described in this article, or without consent of the Indians...No treaty for the cession of any portion or part of the reservation herein described...shall be of any validity or force...unless executed and signed by at least three-fourth of all adult male Indians, occupying or interested in the same.

Within a few years, thousands of miners began to pass through the Black Hills without the Indians' consent. The new settlers, as well as many other Americans, demanded that the Black Hills be bought from the Indians, with or without their consent. The Sioux, however, refused any attempts to purchase their land. Thus, in direct contravention of the Fort Laramie Treaty, in June 1876, President Grant sent troops into the Great Sioux Reservation in which over 20,000 men, women, and children lived. In the [Battle of Little Bighorn](#), the Seventh Cavalry led by General [George Armstrong Custer](#), attacked a Sioux camp on the Little Bighorn River. Subsequently, Custer and all of his men were killed.

Two weeks later, the US government declared that, due to the Indians' warlike behavior, the Fort Laramie Treaty was invalid and the Sioux were expected to relinquish all claim to the Black Hills. They were then rounded up and confined to army forts where their ponies and rifles were confiscated. In September, the Sioux were presented with a document giving the US all of the Black Hills and 22.8 million acres of surrounding territory, granting rights-of-way across what was left of the Great Sioux Reservation, and ending all hunting rights outside the reservation. If the documents were not signed immediately, federal officers told Red Cloud and the other Sioux chiefs, food and other essential supplies would be delayed indefinitely. Perceiving they had no other choice, they signed.

In 1889, the Sioux people were again approached by the US government with a proposal to turn over 9 million acres of their remaining land. They refused. President Benjamin Harrison then passed an act dismantling the Great Sioux Reservation and creating the [seven reservations that exist today](#). The Oglala received the dry rolling hill country which is now known as Pine Ridge Reservation consisting of approximately 2,722,000 acres. The remainder of Sioux land was turned over to the newly created states of North and South Dakota.

In November 1890, a large contingent of infantry and cavalry arrived at and occupied the Pine Ridge Reservation with orders to quell the "hostile," traditional Sioux who increasingly were involved in the [Ghost Dance](#), a spiritual ritual that gave the Indians hope that their traditional culture and lifestyles could survive. To the US Army, however, the dance symbolized resistance and the possibility of an Indian rebellion.

On December 29, 1890, Chief Big Foot met four cavalry units under orders to capture him. After the Sioux raised a white flag to signal their promise not to fight, they were taken to an army camp at [Wounded Knee](#) Creek and ordered to give up their weapons. A medicine man started the Ghost Dance, urging his tribesmen to join him by chanting in Sioux, "The bullets will not go toward you." When one young Indian refused to give up his rifle, confusion ensued during which several braves pulled rifles from their blankets, and the soldiers opened fire. At least 150 Indian men, women, and children died; as many as 300 may have perished after the wounded died.

The Battle at Wounded Knee was one of the concluding events that marked over 100 years of American Indian policy. By the turn of the century, this first era had drawn to a close. The consequences had been disastrous for American Indians:

- The Indian population had dramatically decreased. Between 6 - 10 million native peoples lived in the US at the time of its birth; by 1900, less than 250,000 people remained and the majority of tribes had dwindled to the brink of extinction.
- Most surviving Indians had been forced onto reservations or lived on allotted lands where they were expected to shed their "Indianness" and become civilized, Christianized, and Anglicized.
- The self-sufficiency and ecological balance that characterized the Indian tribes at the time of European settlement had been destroyed. From the early 1800s forward, the Native Americans were forced into a position of economic dependency upon the US government.
- The majority of Indian tribal landholdings had passed into white ownership. Between 1887 and 1934, [tribal lands dwindled from 138 million acres to 48 million](#), 20 million of which were arid or semi-arid.

### **A Summary of Nineteenth Century Indian Policies**

The following points provide a brief summarization of this first period of federal Indian policy:

- The federal policies passed from 1787 to 1900 were directly responsible for the elimination of the vast majority of Indian peoples. Such policies, taken as a whole, indicate that the loss of 95% of a specific population of people over a 100-year period was not inadvertent, nor was it an inevitable or unintended byproduct of progress. Rather, these policies were the result of intentional decisions made by federal policymakers to officially remove the so-called "Indian problem." When considering the definition of cultural genocide - when a government officially sanctions the removal and/or repression of a particular group that subsequently eliminates and/or weakens part of that group - the actions of the federal government can be considered genocidal in both intent and consequence.
- Treaties - legal, government-to-government agreements between the United States and an Indian nation - formed the original cornerstone of American Indian policy. In signing a treaty, a trust relationship was created in which the Indian nation agreed to give the federal government some or all of its land as well as some or all of its sovereign powers and, in return, that relationship, bound the United States to represent the best interests of the tribe, protect the safety and well-being of tribal members, and fulfill its treaty obligations and commitments.
- As early as 1823, the US Supreme Court began to reinterpret the meaning of Indian sovereignty and thereafter, produced two competing theories: tribes have inherent powers of sovereignty that predate the "discovery" of America; and tribes only have the attributes of sovereignty that Congress gives them. The Supreme Court cases known as the

Marshall Trilogy gave Indians a kind of limited sovereignty that was to be governed by paternalistic trust and subject to the interpretation of the US government.

- The signing of treaties, the rendering of Supreme Court decisions, and the passing of policies and laws gradually eroded the sovereignty of American Indian nations by seeking to achieve at least two specific goals: eliminating the Indian threat to peaceful westward expansion; and attempting to destroy Indian cultural, spiritual, economic, and political traditions by assimilating Indians into American life.
- The attitudes that fueled such goals were firmly entrenched in colonial America and carried over into the new American government. The British Crown assumed protectionist policies, arguing that it was the King's duty to protect the tribes against colonial excesses and injustice. Such protectionist, paternalistic policies formed the foundation of the Indian policies created by the US government.

As we will see in the next section - "Twentieth Century Relations with the American Indians and the United States Government" - the genocidal policies against the Indians which occurred at the hands of Anglo-Europeans failed to destroy them as a people or to destroy their cultural and spiritual heritage. Those who survived the first 200 years of Anglo-European contact refused to be assimilated and victimized by their historical experiences with the federal government. With the progression of the twentieth century, many Indian nations gradually were revitalized as they continued their resistance to becoming Americanized and losing their essential "Indianness."

## **Twentieth Century Indian Relations with the United States of America**

For the first two decades of the Twentieth Century, federal relations with Indian nations remained essentially the same as during the previous 110 years. Indeed, the federal government continued to spearhead the campaign to remake Indians in the image of white Americans. Additionally, the US Supreme Court continued to whittle away Indian sovereignty.

- The [\*Lone Wolf v. Hitchcock\*](#) (1903) case was handed down after the Kiowa and Comanche Nations sued the Secretary of the Interior to stop the transfer of their lands without consent of tribal members. They argued that such land transfer violated the federal government's promises in the [\*\*1867 Treaty of Medicine Lodge Creek\*\*](#). The US Supreme Court ruled that the trust relationship served as a source of power for Congress to take action on tribal land held under the terms of a treaty. Thus, Congress could abrogate any federal treaty. The Court further ruled that Congress had plenary authority over Indian affairs.
- The [\*Winters v. United States\*](#) (1908) case recognized that Indians had federally-reserved water rights. On the other hand, the Supreme Court justices also ruled that on the whole, Congress had the power to dispose of Indian lands as it felt was necessary.
- The [\*US v. Sandoval\*](#) (1913) case upheld the application of a federal liquor-control law in the New Mexico Pueblos, even though Pueblo lands had never been designated by the

federal government as reservation land. The Court ruled that an unbroken line of federal legislative, executive, and judicial actions had attributed to the United States as a superior and civilized nation the power and duty of exercising a fostering care and protection over all dependent Indian communities within its borders.

Despite the legal constraints imposed by the federal government, American Indians endured and survived in the early years of the Twentieth Century. Many people found resourceful ways to adapt to their new lives, without losing touch with their traditional roots. For instance,

Mohawk men from Kahnawake near Montreal...traveled south to New York during the city's building boom in the 1920s, working on the Empire State Building, the Chrysler Building, and the George Washington Bridge. In Alaska, Tlingit people continued the subsistence economies of old but also joined the labor market. Tlingit men fished for the canneries and worked in mining and lumbering operations...In New England, Indian women continued to make baskets, but now they sold them door-to-door or to tourists. Many young Indian women found employment in textile mills...Native American men continued, as they had since the eighteenth century, to go to sea, while others found work closer to home as trappers, as guides, or in the logging industry...Native people in New England maintained important ties of kinship and community and began to develop regional networks and pan-Indian organizations....On the Plains, many women earned cash by selling bead work and other crafts to off-reservation markets. Plains Indian men...adjusted to the new conditions and the post-allotment world by hunting smaller game, herding, gardening, and working for wages. (Calloway, 1999: 368-69).

As Indians across the nation struggled to maintain their heritage in the midst of the ongoing Americanization campaign conducted by the US government, a few policymakers began to examine the consequences of federal Indian policy. Beginning in the 1920s, at least two efforts were undertaken to undo some of the damage produced during the previous 140 years.

- In 1924, Congress passed the [Indian Citizenship Act](#) which extended citizenship and voting rights to all American Indians. (The rights of citizenship, however, were so often denied to American Indians that in 1948, the U.S. Supreme Court ruled in *Trujillo v. Garley* that states were required to grant Native Americans the right to vote. However, full constitutional protection under the law was not explicitly extended until passage of the [Indian Civil Rights Act in 1968](#) that gave constitutional protection to American Indians living under tribal self-government on reservations.)
- In 1926, the Department of Interior commissioned a team of scholars to survey the State of Indian Affairs across the nation. The [Meriam Report](#), published in 1928, concluded that the traditional economic foundations of Indian culture could not be restored; the Allotment Act had weakened the communal and family basis of Indian life; and rural as well as urban Indians faced myriad problems, especially poverty, ill health, and despair. To remedy such problems, the report recommended reforms to increase the efficiency of the [Bureau of Indian Affairs](#) (BIA) and to improve the economic and social advancement of Indians "so that they may be absorbed into the prevailing civilization or be fitted to live in the presence of that civilization at least in accordance with a minimum

standard of health and decency." Foremost among these reforms were recommendations to terminate allotment and phase out Indian boarding schools.

Eight years after the Meriam Report was released, the US government gradually began to revise its federal Indian policies. Despite stated efforts to dramatically reform federal Indian relations, from 1932 to 1989, three policies - reorganization, compensation and termination, and self-determination - continued to vacillate between the competing theories of tribal sovereignty introduced by the [Marshall Trilogy](#) of US Supreme Court cases during the 1820s and 1830s:

- tribes have inherent powers of sovereignty that predate the "discovery" of America; and
- tribes have only those attributes of sovereignty that Congress gives them.

Beginning in the late 1960s, the duality of these policies was challenged by a growing group of Indian activists. Consequently, a fourth policy was belatedly undertaken in the late 1980s - self governance. Thus, for the last two decades of the 20th Century, both the federal government and a growing group of Indian activists began to redefine sovereignty.

The remainder of this section includes a brief narrative history of the four main federal policies utilized in the Twentieth Century - reorganization, compensation and termination, self-determination, and self-governance - as well as an explanation of the "Red Power" movement - a period of Indian activism in which the term "Red" was used by Indian people as a term descriptive of their activism and empowerment.

### **Reorganization, 1934 to 1946**

Beginning in 1934, U.S. Commissioner of Indian Affairs [John Collier](#) reorganized the BIA and the attitudes that had shaped its policies. Calling for an Indian New Deal, Collier sought to revitalize Indian cultures, languages, governments, and spiritual practices. While Collier's crusade to champion Indian rights was genuine, it was tainted by his belief that he knew what was in their best interests. In short,

... the "Indian New Deal" was not new, but another attempt by non-Indians to do what they regarded as the right thing for Indians. It was another paternalistic promise to bring "a new era" in Indian affairs, one of many twentieth-century shifts in Indian policy that left Indian people distrustful of anything coming out of Washington. It was another blueprint for reform, mandating one policy for all Indians, and making little allowance for the tremendous diversity of Indian America. (Calloway, 1999:417.)

The centerpiece of Collier's New Deal was the 1934 Indian Reorganization Act (IRA). In essence, the IRA:

- restored the right of Indian Peoples to live and worship in a traditional manner;
- permitted tribes to obtain federal loans for economic development;
- appropriated funds to reacquire a small amount of Indian land;
- prohibited new allotments and terminated the Dawes Act; and
- sought to promote tribal self-government.

Each tribe was to accept or reject the IRA through referendum. Upon acceptance by a majority of adult tribal members, the tribe then elected a tribal council and wrote a constitution, had it approved by majority vote, and submitted it for final approval of the Secretary of the Interior. Tribes which had their constitutions approved by the federal government became recipients of federal funding. In all, 174 tribes accepted the IRA; however, 78 others rejected the Act because they believed it:

- failed to recognize the diversity of Indian life by expecting Indians to function as uniform and unified tribes;
- imposed majority rule upon tribes, a practice that was alien to traditional decision-making which was by consensual agreement; and/or
- gave the federal government even more control over Indian political, social, and economic decision-making.

However well intentioned, the reorganization policies of the federal government cost the Indians more than they gained. (Mattiessen, 1992:27). Traditional forms of tribal government were replaced by Indian chartered corporations, or tribal councils, that had constitutions set up under the auspices of the BIA. Although many tribal councils constructively represented the best interests of their people, some became puppet governments that reflected BIA, and often non-Indian values, rather than those of traditional American Indians.

In the midst of reorganization efforts, the United States became involved in World War II. About 25,000 Indians served in the armed forces during the course of the War and another 40,000 Indian men and women worked in war-related industries. Some Indians became famous for their wartime roles, most notably the Navajo code talkers in the Pacific theater who stumped the Japanese with their Navajo-language code, and Ira Hayes, a Pima Indian and American marine, who participated in the flag-raising on Iwo Jima. Some Americans interpreted Indian involvement in and commitment to the United States as evidence that they were ready for assimilation. Thus, the federal government returned to its historical assimilationist mentality and adopted two other directions for future Indian policies: compensation and termination.

### **Compensation and Termination, 1946 to 1963**

In 1946, Congress was ready to admit that some injustices had been committed throughout its treaty-making history. Thus, it proposed to compensate tribes for the loss of their lands through the newly-created Indian Claims Commission which was designed to review tribal grievances about treaty enforcement and management and to resolve long-term disputes between the US governments and various Indian nations. The process, which was expected to be completed within ten years, required tribes to file grievances within the first 5-year period and to prove aboriginal title to the lands in question, and then it required the commission to review each case and assess if any and what amount should be paid in compensation.

By 1978 when the Commission ended operations, it had settled 285 cases and paid more than \$800 million in settlements. The settlements, however, exacted a toll on many tribes who were divided internally about the process. Some split as one faction favored a cash payment for land, while another faction argued that land, not money, had formed the traditional basis of their

culture. Other tribes disagreed over whether payments should be made to individuals within the tribe, or invested by tribal officials in the reservation economy.

Internal tribal conflict intensified with the passage of termination policies in the 1950s. Advocated by the new Commissioner of Indian Affairs, Dillon S. Myer, termination policies were designed to end federal services to Indian tribes and to relocate tribal members into urban areas where they were expected to find jobs and assimilate. Under House Concurrent Resolution 108 passed in 1953, federal relations would end with certain named tribes deemed as eligible due to the "progress" they had made. The explicit goals of [termination](#), as expressed in the Resolution, were:

...as rapidly as possible, to make the Indian within the territorial limits of the United States subject to the same laws and entitled to the same privileges and responsibilities as are applicable to other citizens of the United States, to end their status as wards of the United States, and to grant them all the rights and prerogatives pertaining to American citizenship.

Termination, then, sought to eliminate the federal government's historical trust responsibilities to the Indian nations. Thereafter, the provisions of Public Law 280 terminated Indian tribes in California, Oregon, Minnesota, Wisconsin, and Nebraska. Tribes in these states then became subject to state rather than federal jurisdiction. Between 1954 and 1962, when termination policy officially ended, 61 tribes were terminated. During that period, about one in eight Indians had left the reservations and moved to cities, most of whom joined the ranks of the urban poor in low-paying jobs.

During a mid-1970s Senate investigation of termination policies, investigators found that terminating federal services to Indian tribes largely resulted in negative effects. The [Klamath Tribe of Oregon offered a prime example](#). The Klamath Reservation, rich in ponderosa pine, had long been coveted by timber interests. When lumber companies approached the tribal council in the early 1950s with offers of large cash payments in return for their property, almost four-fifths of the Klamaths agreed to request termination and sell their shares of forest land. The Senate investigators found that, after termination and leaving the reservation, the Klamaths suffered extreme social disorganization, and that, as a result, many had been incarcerated in state mental and penal institutions.

Indeed, termination was a dramatic failure in its attempt to assimilate the Indians into society and to end the federal government's role with various tribes. Thus, the federal government returned to the drawing board and created yet another Indian policy - self-determination.

### **Self-Determination, 1963 to 1989**

In the early 1960s as the Civil Rights Movement continued to spread throughout the American South, a new model for reform gradually evolved in Congress. Eventually, the [plight of American Indians](#) worked its way into the Civil Rights agenda. In 1964, Congress created the Office of Economic Opportunity with a special "Indian Desk." In 1965, the newly-created Department of Housing and Urban Development helped many reservations build new housing.

In 1968, President Lyndon Johnson called for the creation of a new Indian policy "expressed in programs of self-help, self-development, and self-determination." Thereafter, he established the National Council of Indian Opportunity to review existing federal Indian programs. Furthermore, he supported the Indian Civil Rights Act of 1968 which required states to obtain tribal consent before extending legal jurisdiction over Indian reservations, thus stopping the spread of Public Law 280, and extended most protections guaranteed in the Bill of Rights and the Fourteenth Amendments to tribal members in their dealings with tribal governments.

From 1968 forward, several pieces of legislation were passed and court decisions handed down that seemed to protect Indian rights and increase Indian involvement in their own political and economic affairs.

- In 1975, the [Indian Self-Determination and Educational Assistance Act](#) recognized the obligation of the United States to provide for maximum participation by American Indians in Federal programs and services to Indian communities, including education, and sought to provide education and services that permitted Indian children to compete and achieve self-determination.
- In 1978, the [U.S. v. Wheeler](#) Supreme Court case granted the existence of tribal sovereignty, but "only at the sufferance of Congress and is subject to complete defeasance." American Indian tribes were sovereign, but such sovereignty was subject to Congressional whim.
- In 1978, the [Indian Child Welfare Act](#) responded to growing revelations that Indian families were being broken up by the wholesale removal of Indian children and their families and tribal settings and their placement in adoptive and foster homes among the white population. Thereafter, tribes had jurisdiction in Indian child custody proceedings and the rights of the extended families of Native children were fully considered.

These self-determination policies, however, did little to actually advance the cause of Indian sovereignty. Clearly the results of the three Twentieth Century policies - reorganization, compensation and termination, and self-determination - continued to reinforce the two competing theories of tribal sovereignty that had set a legal precedent via the Marshall Trilogy:

- Tribes have the inherent powers of sovereignty that predate the European "discovery" of America; and
- Tribes have only the attributes of sovereignty that Congress gives them.

Partially in response to such duality, and partially because many young American Indians were tired of dealing with the federal system that oppressed them, a distinct effort to make social, economic, and political gains as an exercise of Indian sovereignty arose in the late 1960s - the "Red Power" movement.

### **"Red Power"**

Beginning in the late 1960s, many "young, urban, and relatively well-educated Indian leaders combined dark eye-glasses with traditional headbands, plains braids, and buckskin" as they reshaped the image of the American Indian from a "defeated victim" into "a symbol of exotic masculine strength." (Guillemin, 1989:162). "Red Power" became their motto and Indian empowerment became their goal.

These new leaders articulated a list of historical grievances and demanded mitigation for violated treaties, illegal appropriation and misuse of Indian land, neglect of basic social needs, and the political and cultural compromises of tribal leadership. The contemporary list of grievances was equally disturbing, as Indian activist Clyde Warrior told the President's National Commission on Rural Poverty in 1967:

We are not free. We do not make choices. Our choices are made for us; we are the poor. For those of us who live on reservations these choices and decisions are made by federal administrators, bureaucrats, and their "yes men," euphemistically called tribal governments. Those of us who live in non-reservation areas have our lives controlled by local white power elites. We have many rulers. They are called social workers, "cops," school teachers, churches, etc....They call us into meetings to tell us what is good for us and how they've programmed us, or they come into our homes to instruct us and their manners are not always what one would call polite by Indian standards or perhaps by any standards. We are rarely accorded respect as fellow human beings. Our children come home from school to us with shame in their hearts and a sneer on their lips for their home and parents. We are the "poverty problem" and that is true; and perhaps it is also true that our lack of reasonable choices, our lack of freedoms, our poverty of spirit is not unconnected with our material poverty. (As quoted in Josephy, 1971:71-72.)

Additionally, activists criticized federal courts which generally refused to grant civil justice to Indian land claims; local and state courts as well as law enforcement officials which often treated American Indians as aliens; and the deplorable social and economic conditions faced by Indian across the nation - the infant mortality rate among Indians was the highest in the nation, and over half of all Indians could not read and write English (Deloria, 1969).

What the newly-organized Indian activists sought in the 1960s was actual self-government, federal support for traditional tribal sovereignty, and improved living conditions. Because previous attempts to work with Washington policymakers had resulted in little progress, the new activists began to attack the entire trustee-ward relationship. One of the major conduits for the attack was the [American Indian Movement \(AIM\)](#), co-founded by Chippewa Indian organizer Dennis J. Banks. Begun in 1968 in Minneapolis-St. Paul, AIM initially sought to address local police brutality against non-whites. Banks and AIM supporters walked the streets, stopping police officers from harassing Indians and publicizing any incidents of police violence. Banks' message was one of desperation:

Indians have a life expectancy of 44 years. On many reservations, there are no jobs. Unemployment on Pine Ridge is 87%. Indians have no hope. We live in rotten conditions, many in tar paper huts, without water or heat. We have little health care, and what we have is terrible. Our infant mortality rate is the highest. Our ancestors treated

with the U.S. government. In return for peace, we were guaranteed our rights over small parts of the land our peoples had inhabited for generations, so that we could continue our way of life. Then the lands were stolen. Some for gold. Others for water or coal or uranium for the energy companies or for grazing land for white cattle ranchers. The government violated every treaty. Our way of life was stolen too. The missionaries came. Our religion was stolen. The Bureau of Indian Affairs came. Our way of governing ourselves, thousands of years old, was stolen. We are still a conquered people. Our children are taken away from us, stolen, sent to boarding schools hundreds of miles away. They're punished for practicing their native religions, hit when they speak their native tongues...I just want my people to survive. No one listened when we spoke politely about injustice. Only when we raised our voices did people begin to listen. (As quoted in Stern, 1994:23-24.)

**And they did raise their voices.** Beginning in 1969, AIM and other American Indian activists and organizations began to aggressively challenge the federal government and many of its Indian policies. In November 1969, the "Indians of All Tribes" occupation took place on **Alcatraz** island. Until June 1971, Indians remained on Alcatraz claiming that the island was more suitable for an Indian Reservation and should be used as an Indian educational and cultural center.

In November 1972, Indian activists traveled to Washington, D.C. for the **Trail of Broken Treaties**. They were armed with a 20-point proposal for revamping the BIA and establishing a government commission to review treaty violations. When informed that a planned meeting with BIA officials would not occur, over 400 remained at BIA headquarters. On November 2, guards on regular duty threatened the activists with forcible removal. The protesters evicted the guards and began a week-long siege of the building, during which time some government property was destroyed and government information stolen. Shortly afterwards, the Federal Bureau of Investigation (FBI) classified AIM as an extremist organization and added it to the list of "key extremist" organizations in the country.

In 1973, AIM activists gained even more public attention after its leaders were invited to the Pine Ridge Reservation, home of the Oglala Sioux in South Dakota. Tensions were unusually high at Pine Ridge, the historical site of the **1890 Wounded Knee Massacre**. Violent animosity existed at Pine Ridge between those who supported the federal government and those who advocated traditional cultural, political, and spiritual lives. The tribal council, lead by President Richard Wilson, had enforced repressive federal/tribal rule on the reservation. Consequently, the traditionalists viewed Wilson and the tribal council as pro-government rather than pro-Indian.

To further complicate the picture, in the 1950s, uranium had been discovered on the reservation, not far south of the Black Hills city named for General George Armstrong Custer. In the late 1960s, interest in uranium rose with the creation of a domestic market for nuclear energy. Then, in the late 1960s, energy corporations began acquiring coal and oil mining rights to vast tracts of the western states, much of which was located on reservation lands. The BIA encouraged tribal councils to lease mining rights to the corporations and to share in the profits. In general, the Oglala tribal council, with BIA support, favored leasing. Many traditional Indians, however, felt that the long-term consequences of destroying their land would result in the destruction of their people.

Upon arrival at Pine Ridge, AIM leaders received a hostile reception from Wilson. Throughout and adjacent to the reservation, riots and fights erupted between the BIA-supported Oglala on the one side, and the traditional Oglala and their AIM supporters on the other side. On February 28, 1973, AIM staged the "Second Battle of Wounded Knee" vowing to fight, if necessary, to the death. The next day the FBI, U.S. Marshal Service, and BIA police surrounded the AIM compound at Pine Ridge.

On March 11, elders of the Oglala and AIM met and proclaimed the revival of the Independent Oglala Nation which proposed to discuss its treaty with the U.S. on equal terms, as equal nations. The Oglala cited the [Fort Laramie Treaty of 1868](#) as its defense. The federal government cited the authority of the Congressional Act of 1871 that stated no Indian nation could be recognized as an independent nation capable of contracting with the U.S. government by treaty. It also attempted to portray AIM as a dangerous organization that did not represent the "good Indians" of the nation.

On May 9, after 71 days, AIM and the traditionals finally surrendered. Federal authorities then began to arrest, imprison, and eventually, try many local Indians and AIM activists who participated in the Wounded Knee takeover. Many Indians claimed that "Indian goon squads," local white police officers, and FBI agents continued to harass traditional Indians in the years after Wounded Knee, resulting in the execution and disappearance of over 300 Indian men and women (Mathiessen, 1992). Consequently, by 1975, tensions were still high at Pine Ridge.

Wilson' harassment of traditionals and AIM activists had intensified. He not only outlawed the Sun Dance, a sacred ritual practiced by traditionals, he also tried to persuade the Tribal Council to accept a cash settlement for the remaining Black Hills portion of the reservation. Consequently, several traditional families again turned to AIM for advice about the possibility of organizing Indian landowners to break away from the BIA and seek outside assistance to start their own self-supporting businesses. Tensions grew to an all-time high when on June 26, 1975, two FBI agents were shot and killed on the Pine Ridge Reservation. It has since been claimed that

- The FBI "raid" of June 26 was a diversion tactic to distract attention from Wilson's granting of mining rights to the U.S. government. Others take this accusation one step further, claiming that it was designed to invite fire from AIM and the traditionals to justify the use of a federal paramilitary force on the reservation that would destroy AIM and traditional power once and for all. (Mathiessen, 1992:192).
- AIM activist [Leonard Peltier](#) was "illegally framed for the murders and was ordered to serve a life sentence in a federal prison." (Marable, 1984:158). At the time of this writing in mid-2001, Peltier had been in prison for a quarter of a century and [every plea for parole had been denied](#).

With Peltier in prison, as well as [Dennis Banks who was convicted for his role at Wounded Knee in 1973](#), the traditional Oglala at the Pine Ridge Reservation had no viable support. Four years later, however, the Nation was back in the news after a decision by the U.S. Court of Claims. The court found that no valid agreement had occurred in 1876 among the Sioux people

to cede the Black Hills to the federal government. Not only had their land been taken illegally, it had been seized without compensation. In response, the federal government offered the Nation \$17.5 million, the estimated value of the area in 1877. The traditional Indians and tribal councils of all seven Sioux nations refused the offer, demanding instead the return of their land which had never been for sale. In 1979, the government raised the amount to \$122 million; in June 1980, the U.S. Supreme Court affirmed that judgment. In April 1981, AIM established a camp in the Black Hills and reclaimed the land for the Indian people. The Oglala traditionalists then contested the decision and sought a temporary restraining order to prohibit the government from paying any part of the award. The request was denied. All the Sioux tribes have refused to take payment and the money remains in a federal escrow account where it continues to gain interest.

The militant activism of AIM and others was largely curtailed after this period. The Indian activism movement, however, was instrumental in propelling the US government into its fourth era of federal Indian policy-making - Self-Governance.

### **Self-Governance, 1989 to the Present**

For Indian nations, the ultimate goal of this current period of federal policy making has been to gain greater governance, or **sovereignty**, over tribal affairs. In the words of Douglas Endreson, a nationally-prominent American Indian lawyer in 1992:

The Indian future now depends not on the federal government, but on the choices that tribes make in the exercise of their sovereignty. Tribes are no longer on the defensive - they are on the offensive. (As quoted in Bordewich, 1996:336.)

For the federal government, the hope is that such self-governance will help Indians achieve economic self-sufficiency. The 1989 report of the Special Committee on Investigations of the Senate Select Committee on Indian Affairs urged the federal government to recognize the tribes permanent right to exercise self-government and relinquish all its existing paternalistic powers. (U.S Senate, 1989.) To that end, in 1994, President William Clinton pledged to honor tribal sovereignty:

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 respectful 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. (**Executive Memorandum of April 29, 1994.**)

By the 1990s, many Indian nations and the federal government seem determined to enter a new era designed to reverse almost 400 years of conquest, colonization, and cultural genocide. However, such a goal has been fraught with at least two very real difficulties:

- While over 700 Indian nations currently exist in the United States, their legal status differs depending upon their relationship with the federal, state, and local governments. Over 500 nations are federally recognized; thus, Indians living on these reservations are subject only to federal and tribal laws. However, when citizens of federally-recognized nations leave the reservation, they become subject to state or local jurisdiction. Indians living on reservations that still fall under Public Law 280 are subject to state jurisdiction. Many others are not formally recognized by the US government. Such a tangled jurisdictional web makes agreement on exercises of sovereignty exceedingly difficult.
- Many Indian nations continue to be divided among themselves about how to achieve economic self-sufficiency. On the one hand, some tribal people argue that extracting minerals from their land, leasing water rights, and promoting gaming will give them badly needed income to fight poverty and continued dependence on the US government. On the other hand, other tribal people argue that exploiting the land is environmentally unsound, disrespectful to the earth and their traditional ways, and a vehicle for transforming their homelands into wastelands. Such conflict over modern environmental issues can be seen in the recent interest that state and local governments and private industries have for reservations as potential disposal sites for solid, hazardous, toxic, and nuclear wastes:

In 1990 the Pine Ridge Sioux rejected proposals by subsidiaries of O & G Industries to build a landfill, but the neighboring Rosebud Sioux council approved a 5,700 acre facility, "big enough to take care of all the waste in the United States." Under the proposal, they would receive one dollar per ton of trash, an economic bonanza for the depressed reservation unless, as some Sioux and environmental critics warn, the dump becomes a toxic nightmare. The pressure for some type of economic development and employment on underdeveloped and resource-poor reservations has led the Campo of California to agree to a 600-acre landfill, and the Kaibab-Paiutes of Arizona and the Kaw of Oklahoma to accept hazardous waste incinerators. (Lewis, 1994)

Hazardous waste disposal is just one of several major environmental issues many Indian nations have debated over the past several decades. Indeed, in their struggle for self-governance, many Indian nations have also grappled with at least five other major issues:

- Control over extraction and development of tribal resources - especially minerals that could be extracted for energy consumption.
- Protection of fishing rights.
- Protection of Indian religious freedoms and sacred sites.
- Repatriation of religious and cultural property, as well as human remains of Indian people.
- Generation of income and employment through Indian gaming.

**Control Over Tribal Resources.** It has been variously estimated that western reservations currently contain about one-third of all western low-sulfur coal, one-fifth of the country's oil and nature gas reserves, and over half of the nation's uranium deposits. (Calloway, 1999:481.) As evidenced in the Pine Ridge battles of the 1970s, many Indian nations increasingly have come under pressure from both the US government and energy companies to either sell their land, or to develop and market their resources. One of the most acrimonious and enduring cases of extensive exploitation occurred after WWII on the Navajo Reservation and has been succinctly explained by Colin C. Calloway:

...Navajos who returned home after the war faced an economic crisis. With their traditional economy disrupted [by the program of livestock reduction in the 1930s and 1940s], they needed other sources of income. They found them in what seemed at the time to be attractive offers to develop the coal, oil, gas, and uranium resources of the Navajo reservation. Royalties from these operations injected much needed income into the Navajo economy. (As late of 1996, approximately 75% of the Navajo Nation's operating budget depended on royalties from coal sales.) Some Navajos...grew rich. But most Navajos benefited little from the power they were producing for other people...most Navajos remained poor as the benefits and profits from exploitation of their rich resources left the reservation. Navajo energy resources provided electricity for Albuquerque, Phoenix, Los Angeles, and other cities, but many Navajo homes lacked running water or electricity. Smoke from huge power plant at Four Corners blackened the sky. Navajo lambs were stunted, spat blood, and died. Peabody Coal Company signed leases with the Hopis and Navajos in 1966 to begin coal strip mining operations on Black Mesa. But many Navajos bitterly opposed the ensuing despoiling of the area. Navajo men working in uranium mines were exposed to excessive radiation levels and many contracted lung cancer and other respiratory ailments. In July 1979, the nation's worst release of radioactivity occurred when United Nuclear Corporation's uranium tailings dam failed at Church Rock, just outside the Navajo reservation: 100 million gallons of radioactive water flooded into the Rio Puerco and 10,000 sheep died. In 1990, the United States issued a formal apology and promised to compensate the families of Navajo men injured or killed by radiation in the government mines, but for victims' families such compensation was too little and too late. (Calloway, 1999:481-82.)

In 1975, leaders from over twenty Indian nations created the [Council of Energy Resource Tribes](#) (CERT) that helped, and continues to help, Indians collectively exert political influence and receive better terms for their energy resources from corporations.

**Protection of Fishing Rights.** In the 1970s, a new type of anti-Indian warfare broke out in the Pacific Northwest, the Great Lakes region, and on the northeast coast. In the Nineteenth Century, Indian nations in all three regions had signed treaties giving away most of their land but subsequently retaining fishing, hunting, and gathering rights in surrounding areas. Until the 1960s, Indians continued to exercise their rights with very little interference from non-Indian fishermen. However, as increasing commercial and sport fishing, as well as the effects of pollution and dams began to devastate the fish, wildlife, and native plants in these regions, Indians found themselves under assault for fishing and hunting out of season or without a

license, and for gathering plants on land they no longer owned. At least three specific instances led to heated and violent incidents, each of which ended up in court.

- *Fishing Rights in Washington State, 1974.* During the previous year, the US government representing fourteen Indian nations sued Washington State over the issue of fishing rights. Since the late 1960s, many Indians had staged "fish-ins" to publicize the fact that for almost a decade, Indians had been arrested for fishing out of season and without licenses - despite the fact that treaties signed in the 1850s gave them year-round fishing rights. In 1974, U.S. District Court Judge George Boldt ruled that the treaties guaranteed Indians the right to catch 50% of the fish in their usual and accustomed places. Many non-Indian fishermen resented the ruling and viewed Indian fishermen as having special privileges. The state advanced this argument, but the Appeals Court disagreed, as did the Supreme Court in 1979 when it upheld the treaty and its constitutionality.
- *Fishing, Hunting, and Gathering Rights in the Great Lakes Region.* In the late 1970s, the Anishinaabe and Ottawa Nations of the Great Lakes regions reasserted their rights to hunt, fish, and gather wild rice - rights that had been guaranteed to them in several Nineteenth Century treaties. In *United States v. Michigan* (1979), both nations won the right to fish commercially and without interference from state regulations. In 1983, after the US Court of Appeals upheld the decision, local fishermen committed a series of anti-Indian hate crimes during every spring spearfishing season throughout the remainder of the decade.
- *Fishing Rights in Vermont.* After the Abenaki Nation staged a series of "fish-ins" to demonstrate their sovereign right to fish without a license and out of season, in 1979, they sued in a Vermont District Court and subsequently, retained their rights as guaranteed under Nineteenth Century treaties. However, in 1982, the Vermont Supreme Court reversed that decision and ruled that the Abenaki's claim had been terminated by "the increasing weight of history."

**Protection of Indian Religious Freedom.** The earliest effort of the federal government to protect the religious freedoms of Native Peoples generally occurred with passage of the American Indian Religious Freedom Act of 1978. Earlier in the 1970s, sacred lands were returned by statute and executive order to the Taos Pueblo and the Yakama Nation, respectively. In the 1978 Act, Congress promised to protect and preserve for American Indians their inherent right of freedom to believe, express, and exercise their traditional religions, "including but not limited to access to sites, use and possession of sacred objects, and the freedom to worship through ceremonials and traditional rites." Instead, for the next decade, Indians sought specific enforcement of the Act's policy in the courts:

- **[Lyng v. Northwest Indian Cemetery Protective Association, 1988.](#)** The Yurok Indians of Northern California argued that the building of a logging road in the Six Rivers National Forest would bring irreparable damage to their sacred sites. The Supreme Court overturned the lower court's injunction against building the road, and allowed for its construction. (The road, however, was never built.)

- *Employment Division v. Smith*, 494 U.S. 872 (1990) Two members of the Native American Church had been dismissed from their jobs with the Oregon Department of Education for using peyote in the course of their religious rituals. The Supreme Court ruled that the First Amendment does not protect Indian practitioners who use peyote in Indian religious ceremonies, and that people who used controlled substances as part of their religious rituals could be prosecuted by states.

Largely in response to the *Smith* decision of 1990, Congress passed the [Religious Freedom Restoration Act \(RFRA\) of 1993](#), which stated that state governments "shall not substantially burden a person's exercise of religion" except if such exercise of religion conflicts with "a compelling government interest." However, on June 25, 1997, the Supreme Court, declared the Religious Freedom Restoration Act unconstitutional as applied to the states. Shortly thereafter, members of Congress as well as state legislators across the country began considering ways to restore the protection of religious rights to Indian nations in their states. By 1998, [Connecticut](#) and [Rhode Island](#) had strong RFRA laws in effect.

Congress took another step in 1994 when it passed the [American Indian Religious Freedom Act](#), which protected the rights of American Indians to use peyote in traditional ceremonies and amended the 1978 American Indian Religious Freedom Act to thus allow its usage.

**Repatriation.** The return of religious and cultural property and human remains of Indian people has long been an issue for many Indian Peoples who people believe that:

- their ancestors' spirits can only be freed by returning their remains to the earth;
- scientists, tourists, soldiers, and collectors have robbed Indian country for over 100 years of its human remains and material culture;
- many Indian cultural objects and people are displayed in a deeply offensive manner; and
- anthropologists and archaeologists have studied Indian human remains in a manner that exploits Indian people and denies their status as human beings.

Under both the [1906 Antiquities Act](#) and the [1979 Archaeological Resources Protection Act](#), all Indian remains and funerary objects found on federal land became the property of the US government. By 1990, it was variously estimated that about between 600,000 and 2 million Native human remains were held by universities, museums, historical societies, and laboratories across the nation. (Calloway, 1999:492.)

The Pawnee Nation challenged these holdings in the 1980s, demanding and eventually receiving the return of their ancestral remains from the Nebraska State Historical Society. The Iroquois also demanded and eventually received the return of twelve wampum belts from the New York State Museum. Congress responded to the growing wave of support for repatriation by passing a law in 1989 requiring the Smithsonian Institution to return most of its human remains and funerary objects to Indian nations. In 1990 the [Native American Grave Protection and Repatriation Act](#) was enacted requiring all institutions that received federal funds to inventory their collections of Indian human remains, sacred and funerary objects, and cultural property; to share the lists with Indian nations; and to return, when appropriate, the items requested by Indian nations.

**Indian Gaming.** The sovereignty-related issue that has received the most attention from the non-Indian public has been that of **Indian gaming.** Gambling, in one form or another, is as ancient in North America as the Indians themselves. Indeed,

Gambling paraphernalia is a regular part of the archaeological record, stories about gambling punctuate native oral histories and folklore, and various games of chance have been recorded by both casual and professional observers, forming a major component in the ethnographic record. (Miller, 1998.)

Gambling in Indian Country on a large-scale, money-making basis, however, is relatively new. It was the Seminole Tribe of Florida which initially brought the issue of - and the controversy over - Indian gaming into the public limelight. In 1979, they opened a bingo hall and offered prizes of \$10,000, ignoring a Florida state law that prohibited jackpots over \$100. It was not long before the first of two federal court cases was filed to challenge Indian gaming - cases which opened the door for widespread gaming:

- *Florida v. Butterworth* (1983). The US 5th Circuit Court of Appeals ruled that because the State of Florida did not prohibit bingo off Indian reservations, it could not do so on them; and that because the power to regulate commerce with the Indians was specifically related under the Constitution to the federal government, the state could not impose its regulations relating to bingo over the Seminole Tribe.
- *California v. Cabazon Band of Mission Indians* (1987). The Supreme Court ruled that if any given state permitted gambling in any form, it could not prevent similar gambling activities on Indian reservations within the state, nor could it impose its authority over that of a sovereign tribal government by placing controls over such activities.

In 1988, Congress passed the **Indian Gaming Regulatory Act (IGRA)** which affirmed the right of tribes to conduct gaming on Indian lands, but made it subject to tribal/state compact negotiations for certain types of gaming. Congress Intended to accomplish five objectives through the IGRA: promote tribal self-sufficiency; ensure that Indians were the primary benefactors of gambling on their reservations; establish procedures for fair and honest gambling; prevent organized crime and other corruption in Indian gaming; and establish standards for the **National Indian Gaming Commission** (NIGC). To achieve these ends, IGRA created three classes of gambling:

- Class I includes social games solely for prizes of minimal value or traditional forms of Indian gaming engaged in by individuals and is subject to exclusive tribal regulatory jurisdiction.
- Class II includes all forms of bingo and other games similar to bingo (pull-tabs and punch-boards), provided such games are played in the same location as bingo games; non-banking games that are either expressly allowed or not expressly prohibited by state law; and banking card games in existence in Michigan, North Dakota, Montana, and Washington State on or before May 1, 1988. Class II gaming is subject to tribal regulatory jurisdiction with extensive oversight by the NIGC.

- Class III includes all form of gaming not mentioned in Class I or II - slots, casino games, banking card games, horse and dog racing, pari-mutuel wagering, and jai-alai. Such gaming is lawful on Indian lands only if it has been authorized by a tribal ordinance approved by the chairperson of the NIGC, and if such gaming is permitted by the state for any purpose by any person, organization, or entity, and if it is conducted in conformance with a tribal-state compact. Class III gaming is left to the tribal-state compact negotiation process.

Under IGRA, a tribe must request a state to enter into compact negotiations. After such a request is made, the state is obligated to negotiate in "good faith" to enter into a compact - which must also be approved by the Secretary of the Interior. Subsequently, IGRA opened the way for many Indian nations to move into the gaming industry. Some - like the [Mashantucket Pequot Tribe](#) - have had spectacular success.

In 1983, the Mashantucket Pequots won federal recognition as an Indian tribe. After experimenting with a number of ventures for economic development, they turned first to bingo and then to high-stakes gambling. Within easy driving distance of Hartford, Boston, Providence, New York City, and other population centers in the most heavily populated region of the United States, the Mashantucket Pequot's Foxwoods Casino has been described as the most profitable casino in the world with a gross yield of between \$800 million and \$900 million in 1994. Profits provide the tribe housing, health care, education, care for the elderly, and cultural programs. The Mashantuckets have also built a huge museum that displays Pequot artifacts of history and culture and are involved in archaeological research to recover material evidence of their history. The casino also employs ten thousand workers, a boost to the once-flagging economy of southern Connecticut. (Calloway, 1999:496.)

Not all Indian nations have had either the success of or the enthusiasm for gaming shown by the Mashantucket Pequot Tribe. The Navajos have voted in two tribal referendums not to bring gaming onto their reservation. Indian nations in California have been tied up in legal skirmishes with the State over the constitutionality of Proposition 5 passed in 1998. Despite the supporters and detractors of Indian gaming, there is no question that it has become big business for many Indian nations - and that it has contributed to greater tribal sovereignty.

### **Conclusion: Indian Country Today**

At the end of the Twentieth Century, American Indians had clearly rebounded from the past centuries of colonization, forced assimilation, and cultural genocide. However, non-Indians still know very little about the over 2 million people who in the 1990 census, proclaimed themselves of Native American heritage. Following are just some of the questions - derived, in part, from Jack Utter's book (1993) - most often asked about Indians in today's world.

### **Who is an Indian?**

There is no single definition of an Indian. Before Europeans arrived in North America, all the inhabitants were Indians who belonged to several hundred different tribes. Tribal membership

was determined by kinship ties - by one's cultural identification either with their maternal or paternal ancestry. Today, however, most tribes follow former federal mandates and require a certain amount of Indian blood, often called blood quantum, for membership. The amount varies from tribe to tribe. For instance, the Eastern Cherokee require members to have 1/16 Indian blood, while the Hoopa Nation of Northern California has two possible routes to membership: those whose names appeared on the official roll of the Hoopa Valley Tribe as of October 1, 1949; and all children born to members of the Hoopa Tribe who are at least 1/4 Hoopa.

Tribes are not the only entities that determine who is and who is not a citizen or member. However, various federal government agencies characterize tribal citizens and Indians in other ways. For example, the US Census Bureau states that an Indian is anyone who declares himself or herself to be an Indian; while the Bureau of Indian Affairs (BIA) - which distributes funds and services to Indians - generally characterizes an Indian as an individual who is a member of an Indian tribe, band, or community that is officially recognized by the federal government.

In general, then, there are three types of Indians - those who belong to federally-recognized tribes or nations (terms that can be used synonymously); those who belong to state-recognized tribes or nations; and those who belong to non-federally-recognized tribes or nations.

### **What is a federally-recognized tribe?**

Any tribe that has a formal relationship with the United States government is federally-recognized. Tribes that are federally-recognized are eligible for certain benefits and services from the US government. There are about 560 federally-recognized tribes in the US today in the lower 48 states and another 197 recognized tribes in Alaska. Approximately 300 tribes are not recognized by the federal government either because: they never signed a treaty with the US government; they once were recognized but that status was terminated by Congress in the 1950s; and/or they desire recognition, but have been unable to receive such a designation.

### **Why does the US government provide various benefits and services to Indian tribes?**

Those tribes that are federally-recognized receive any benefits and services from the US government and subsequently, from taxpayers - many of whom include American Indians. The policy and legal basis for most of this assistance is the trust relationship. From the late 18th Century forward, Indian tribes signed treaties making peace and ceding lands. Federal courts have interpreted these treaties and other such agreements as creating a perpetual trust relationship with the federal government in accordance with the understandings of the Indians of the time. The federal government, in turn, promised to provide benefits and rights to the American Indian peoples in perpetuity, in exchange for their lands and resources. Additionally, the trust relationship involved a promise that Indian peoples could continue to hunt, fish, and gather on the land that traditionally had been theirs, even though they had officially ceded it to the US government.

It is important for all Americans - Indian and non-Indian alike - to know about the trust relationship because there is often a stereotypical belief among non-Indians that they are the only

taxpayers and are giving Indians a “free ride”, that Indians are “super citizens” who receive special privileges, and that Indians receive all sorts of “free” money and benefits. In reality, the benefits Indian people receive are those that have been legally negotiated through treaties - through the trust relationship - and represent an exchange - millions of acres of ancestral lands worth trillions of dollars which, in turn, enriched the federal government as well as millions of non-Indians, in exchange for certain benefits and services.

What specific benefits and services are available to federally-recognized tribes? Major benefits and services include but are not limited to medical and dental care; grants and programs for education; housing programs; aid for developing tribal governments and courts; resource management; and various miscellaneous services. The main federal agencies responsible for providing such benefits and services to Indians - the Bureau of Indian Affairs (BIA) and the Indian Health Service (IHS).

- The BIA, which was originally known as the Indian Office when it was created in 1824, administers programs that benefit the Indian people who are members of federally-recognized Indian tribes.
- The IHS administers medical programs that benefit Indians who reside on or near reservations.

Despite popular misconceptions, Indians do not receive regular or large payments from the federal government. There are a few situations in which Indians do receive money, usually in compensation for resources taken by the federal or state governments. For instance, in Humboldt County, as a result of a court settlement between the Yurok tribe and the federal government, contemporary children of the Yurok Tribe stand to receive a sum of federal money upon turning 18 and becoming a legal adult.

The Yurok successfully argued that the federal government had unfairly divided the ancestral lands of the Yurok and Hoopa tribes. The judgment required that the Yurok tribe be compensated. This money was divided up among tribal members who were living at the time of the judgment. For those who were minors at the time, the money was held in trust until they became adults. Once they turned 18, eligible tribal members received their portion of the judgment monies. These payments only apply to one generation and will end early in the 21st Century.

Other cases where it appears that Indians receive a “handout”, occur when tribal members receive payments from profits made from tribal business. The Hupa people provide an excellent example. The Hupa have marketable resources on their reservation - most notably timber. They harvest such resources for profit and after all the harvesting and government expenses are paid, there may be a surplus. If a surplus exists, the tribe divides the money equally among its members. Adults receive a check if there is a profit during the year - while amounts owed to minors are held in trust. Upon turning 18, the tribal members receive 18 years of payments, plus interest.

Additionally, the non-Indian public often views hunting, fishing, and gathering rights as “special benefits” made available by the federal government. In reality, these rights were part of the

treaty agreements between the federal government and various Indian tribes. The tribes retained the rights to hunt, fish, and gather on their ancestral lands whenever they wanted, for however long they wanted. So this right is simply another part of the trust relationship.

### **How many Indians live in the United States today?**

In 1990 and again in 2000, there were some 2 million individuals who identified themselves as American Indians, Alaska Natives, or Native Hawaiians. They represented 0.8 percent of the total US population. Only around 1 million of the self-identified Indians belonged to federally-recognized tribes.

The states with the largest Indian populations were: Alaska (15.6% of the state's total population); New Mexico (8.9%); Oklahoma (8%); Montana (6%); Arizona (5.6%). California's Indian population represents 0.8% of its entire state population.

And where do they live? In 1990, the Census Bureau reported that about 22.3 percent (437,431) of the total number of Indians lived on reservations, while the remainder lived in urban or suburban settings. Currently, there are about 560 federally-recognized Indian reservations located in 33 states. California, which has 95 federal reservations, is the state with the highest number of such reservations. About half of these are small rancherias that range in size from less than one to several hundred acres. The largest reservation in the nation is the Navajo - covering between 14-15 million acres of lands bordering Arizona, Colorado, Utah, and New Mexico. A dozen or so reservations have 1 million and more acres. One of the smallest is in Blue Lake, California where the tribe has less than an acre of land.

### **Why do American Indian tribes have reservations?**

In 1830, President Andrew Jackson endorsed a federal policy that was designed to remove Indians from their ancestral lands so that non-Indians could have farms. The Removal Act of 1830 authorized the president to make "land exchanges" - forcibly moving dozens of Indian tribes from their ancestral lands onto reservations in what became known as Indian Territory.

Between 1830 and 1840, somewhere between 70,000 and 100,000 American Indians living in the East were forcibly resettled by the US Army into Indian Territory in the area we now call Oklahoma. Many others were massacred before they could be persuaded to leave; an unknown number died from disease, exposure, and starvation. At the same time as these first removals, Americans were moving westward and found Indian tribes in areas they hoped to settle. In an effort to settle the areas of the west and to protect Americans from the Indian "danger," Indians were confined to land reserved for their exclusive use - lands that were called reservations.

### **What powers do Indians have on their reservations?**

Beginning in the 1830s, Indian nations began to lose much of their ability to make their own political, economic, and cultural choices as they signed treaties with and were subjected to the laws and taxes of the US government. When the first Europeans arrived to North America, all Indian tribes were sovereign. However, beginning in 1823 with the first of three US Supreme

Court cases known as the Marshall Trilogy, the federal government began to chip away at tribal sovereignty.

Today, all tribes are sovereign. Among their sovereign powers over their internal affairs are those to determine their form of government; define requirements for tribal citizenship; administer justice and enforce laws; tax tribal members; regulate the domestic relations of their members; and regulate property use. It is important to remember that because of the decisions in the Marshall Trilogy, states cannot interfere with the self-government powers of federally-recognized tribes.

### **Why can Indians conduct gambling on their reservations?**

To answer this question, we must remember that Indian land does not operate under state laws unless a federal law has been passed placing it under state law. The US Supreme Court has determined that even if a tribe is under state law, the state gaming regulations do not apply on Indian trust land. The Supreme Court's decision that federally-recognized tribes are sovereigns who can conduct gaming on their lands was affirmed in 1988 when Congress passed the Indian Gaming Regulatory Act (IGRA). The law sets forth tribal and federal regulations for traditional Indian gaming, bingo, pull tabs, lotto, punch boards, tip jars, and certain card games on tribal land. IGRA also requires a Tribal/State compact for all other forms of gaming.

By the late 1990s, there were about 145 Tribal/State gaming compacts. Nearly 130 tribes in 24 states were involved in some kind of gaming.