



History Rewritten

Presenters: Tish Keahna Kruzan and
Lisa Skenandore

History Rewritten: What you thought you knew about Tribes

Is all of the information we learned in school accurate about our tribal nations? As the presenters share the history and maybe challenge what you thought you knew, we hope you come away with a better understanding of why tribes have developed their own programs like child support. You will leave with a better understanding of the culture and history of tribal child support and come away with fresh and new perspectives.



Past, Present, & Future

- The unique legal relationship of the tribes in relation to the federal government is deeply rooted in American history and policy
- Most important thing to understand is that to the Tribes, there is no single resource more valuable than the children
- Tribes are sovereigns whose existence will continue only through their children



History Lessons – What We Are Taught

- In fourteen hundred ninety-two, Columbus sailed the ocean blue...

<https://www.youtube.com/watch?v=fNqOGhDMm8k>



History Lessons – The Truth

- "They... willingly traded everything they owned.... They were well-built, with good bodies and handsome features.... They do not bear arms, and do not know them, for I showed them a sword, they took it by the edge and cut themselves out of ignorance... They would make fine servants.... With fifty men we could subjugate them all and make them do whatever we want."
- "A hundred castellanos are as easily obtained for a woman as for a farm, and it is very general and there are plenty of dealers who go about looking for girls; those from nine to ten are now in demand."
- "We can send from here, in the name of the Holy Trinity, all the slaves and Brazil wood which could be sold."
- "I shall give them as much gold as they need and slaves as many as they shall order to be shipped."

Christopher Columbus letters/journal writings



History Lessons – The Truth

- In 1492, the native population of the island was approximately 1 million.
- Four years later, it was cut in half.
- By 1535, the entire native population was gone.
- In less than 50 years, an entire culture was exterminated.



History Lessons – What We Are Taught

- In 1620, “[The Pilgrims] had arrived in December and were not prepared for the New England winter. However, they were aided by friendly Indians, who gave them food and showed them how to grow corn. When warm weather came, the colonists planted, fished, hunted, and prepared themselves for the next winter. After harvesting their first crop, they and their Indian friends celebrated the first Thanksgiving.”

The American Tradition (textbook)



History Lessons – The Truth

- In 1623, three years after landing on Plymouth Rock, a Pilgrim elder gave his Thanksgiving sermon and said a special thanks to God for sending small pox to the Indians.
- In 1637, the Pequot Tribe had gathered for their annual Green Corn Festival. In the predawn hours the Tribe's longhouses were surrounded by English and Dutch mercenaries, who ordered the Pequot to come outside. When the men came outside, they were shot or clubbed to death while the women and children were burned alive inside their homes. The next day, "A Day Of Thanksgiving" was declared by the governor of the Massachusetts Bay Colony. 700 Pequot tribal members were murdered.
- <https://americanindian.si.edu/americans/#stories/the-invention-of-thanksgiving>



Federal Indian Policies: Dealing with the “Indian Problem”



Brief History of Federal Indian Policy Eras

1492 – 1825 Colonial & Confederation Periods

- Government to Government relationship existed between United States and the tribes with Treaties and establishment of the Federal role
- Historically the European Governments had dealt with tribes on a government to government basis before the U.S.
- Treaties often offered health services, schools, teachers, money, and other goods in exchange for land
- <https://www.youtube.com/watch?v=gNII8ZWQPkl>



Brief History of Federal Indian Policy Eras



“Indian Problem” still existed for the U.S.

- Treaties operational from 1778 – 1871
- Wisconsin Tribes all have treaties.
- 1783 George Washington wrote to Congress saying it was a waste of money and lives to fight a war with the Indians because they would vanish as white civilization advanced, just like the “animals of the wild.”

<https://youtu.be/4AxxkPN2Xhg>

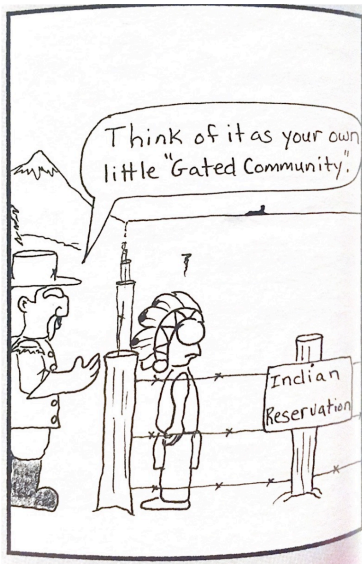
Brief History of Federal Indian Policy Eras

1829 – 1850 Removal Era

- In 1829, Andrew Jackson became President and advocated a very hostile attitude towards the Indians
- U.S. Supreme Court - Marshall Trilogy
 - Created constitutional concepts of Federal/Indian relationship defining tribes as “Domestic dependent nations” within the United States.
 - Discovery Doctrine
 - State Law inoperative within boundaries of reservation
- 1830s – Passage of the Indian Removal Act forced many tribes, including those in Wisconsin, to walk to land west of the Mississippi
 - Thousands walked for hundreds of miles through rain, ice storms, sickness, disease, starvation, and despair



Brief History of Federal Indian Policy Eras



1850 – 1887 Reservation Movement

- 1849 – Discovery of gold increased competition for land
- 1851 Indian Appropriations Act authorized creation of Reservations
 - Religious and Cultural practices of the tribes prohibited
 - President Grant delegated control of reservations first to Military then to religious groups

1887 – 1928 Allotments & Assimilation

- Allotment Act of 1887 ("Dawes Act")
- Land not allotted to the individual Indians was sold to non-Indians
 - 138 million acres in 1887 to 48 million in 1928
- Beginning of the Federal Indian Boarding Schools

Brief History of Federal Indian Policy Eras

1928 – 1945 Indian Reorganization Act - Wheeler-Howard Act

- 180 degree Shift of Government policy to strengthening tribal governments
- Why the shift?
 - 1928 Meriam Report concluded Federal Indian policy was an absolute failure and harmful to the Indians

Indian Reorganization Act

- Restored tribal right to manage land and assets
- Ended Allotment and allowed creation of new reservations
- Encouraged Tribes to adopt constitutions
- Authorized funds for land, education, and government
- Secretary of Interior has oversight and approval



Brief History of Federal Indian Policy Eras

1945 – 1961 Termination Policy

- Why Termination?
 - Post WWII - Tribal communal systems were dependent on Government and seemed too close to a communist system
- Congress initiated sixty separate termination proceedings and terminated 109 tribes, including the Menominee Nation
 - Termination proceedings included closing tribal rolls, liquidating and distributing tribal assets, and ending all federal supervision and trust
 - Menominee Nation was able to successfully lobby Congress and on December 22, 1973, President Nixon signed the reinstatement bill, over 12 years after the tribe had been originally terminated.



Brief History of Federal Indian Policy Eras

1945 – 1961 Termination Policy

- Public Law 280 – Federal Law passed in 1953
 - Plenary Power of Congress – Transferred criminal and limited civil jurisdiction to state government:
 - Alaska (except for the Metlakatla Indian Community on Annette Islands);
 - California (all Indian Country);
 - Minnesota (except Red Lake Reservation);
 - Nebraska (all Indian Country);
 - Oregon (except Warm Springs Reservation); and
 - Wisconsin (except Menominee Indian Reservation)
 - Did not extend criminal or civil jurisdiction over tribes in the areas of water rights, taxation of real or personal property, or the sale of property



Brief History of Federal Indian Policy Eras

1952 Urban Indian Relocation Program

- Encouraged Indians to leave the reservations for 9 selected urban areas:

Chicago	Los Angeles	Cleveland
Cincinnati	St. Louis	Dallas
Denver	Salt Lake City	San Francisco
- Program promised temporary housing, counseling and guidance in finding a job, opportunity for permanent housing, community and social resources, and money.
- Estimated that over 750,000 Native Americans migrated to Urban areas between 1950 and 1980

1961 – Present - Self-determination



Brief History of Federal Indian Policy Eras

1961 – Present: Self-Determination

- President Nixon, Special Message on Indian Affairs – July 8-1970

“. . . Prolonged Federal domination of Indian services programs has served to retard rather than enhance the progress of Indian People”

- Indian Self-Determination and Education Assistance Act: P.L. 93-638
 - Permitted Tribes to enter into self-determination contracts with the federal government to take control of programs, including schools for Indians.



Brief History of Federal Indian Policy Eras

- Self-Governance Compacts
 - Tribal Self-Governance Act – 1994
 - Introduced significant programming flexibility

“Federal bureaucracy with its centralized rules and regulations, has eroded tribal self-governance and dominates tribal affairs”



WHAT is Tribal Sovereignty?



Tribal Sovereignty

- The U.S. government and Tribes have a government-to-government relationship that is unique in the world system of governments.
- This Relationship was created by:
 - (1) The United States Constitution – Article I, Section 8:
To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes; and



Tribal Sovereignty

- 1823-1832 U. S. Supreme Court “Marshall Trilogy”
 - Johnson v. McIntosh 21 U.S. 543 (1823)
 - Cherokee Nation v. Georgia 30 U.S. 1 (1831)
 - Worcester v. Georgia 31 U.S. 515 (1832)



Tribal Sovereignty

The Marshall Trilogy establishes:

1. by virtue of aboriginal political and territorial status, Indian tribes possessed certain incidents of preexisting sovereignty;
2. such sovereignty was subject to diminution or elimination by the United States, but not by the individual states; and
3. the tribes' limited inherent sovereignty and their corresponding dependency on the United States for protection imposed on the latter a trust responsibility.

American Indian Law Deskbook. (University Press of Colorado, 1993)

Indian Re-Organization Act 1934

- Jurisdiction can be defined as the power or authority of a court over a particular person, area, or subject matter.

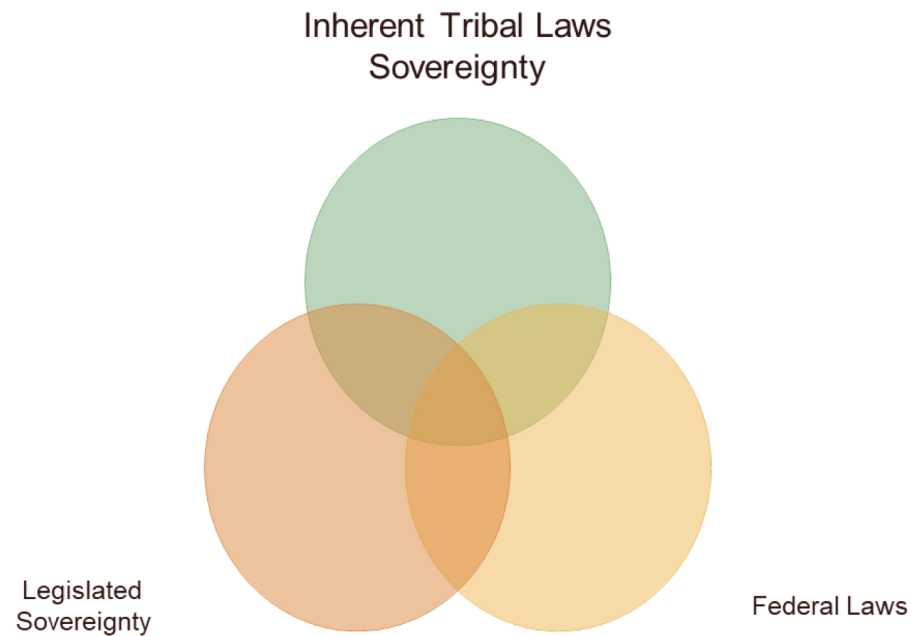
<https://www.youtube.com/watch?v=kL8Ye6fk-Sg>

Tribal Sovereignty - Powers

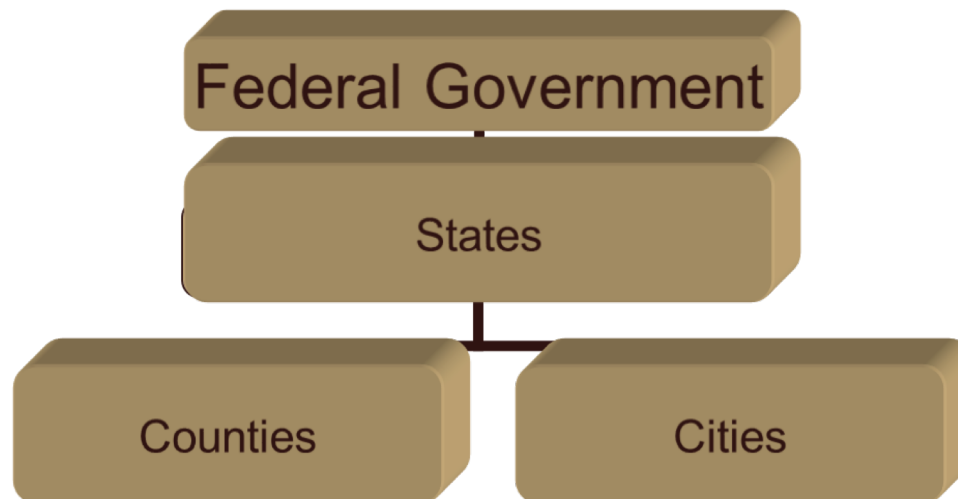
- Regulate tribal land & individually owned land
- Make laws & govern members & people on the reservation
- Establish courts and enforce laws
- Determine membership
- Sovereign immunity



Jurisdictional Entities



Indian Nations and the American Political System



Before Public Law 280 was enacted:

**TRIBES HAD JURISDICTION OVER
ALL CIVIL AND CRIMINAL MATTERS
INVOLVING THEIR PEOPLE AND TERRITORY**

**THE FEDERAL GOVERNMENT HAD ASSERTED
LIMITED, CONCURRENT JURISDICTION
OVER CERTAIN CRIMES IN INDIAN COUNTRY**



Public Law 280 Transferred:

Federal jurisdiction → to states.

PL 280 did not affect Tribes' jurisdiction.

Did PL 280 Apply to Other States and Tribes?

- Yes, but “It’s Complicated”
- “If you know one Tribe’s legal history, you know one Tribe’s legal history.”
- *Every* Tribe has a *different* legal history and status.



Where Do We Go From Here?

- Recognize that there are fundamental questions of what authority, if any, states legally acquired under PL 280.
- Recognize that every Tribe has a different legal history and status; each Tribe is an expert on its own jurisdiction.
- Seek ways to support Tribal-State cooperation efforts that further Tribes' inherent and abiding duty as governments, to protect the well-being of their children and provide for their support.



History of Tribal Child Support



- Interim Final Rule for the Tribal Child Support Program was published on August 21, 2000
- Under the Interim Final Rule, nine tribes applied for and received direct funding. Three were from Wisconsin.
- Final Rule was published on March 30, 2004
 - Didn't include certain enforcement mechanisms that States have.

History of Tribal Child Support

- Federal regulation requirements for tribal programs are not identical to the regulation requirements of state programs.
- Tribes that receive direct Federal funding are IV-D programs on equal footing with all other IV-D programs.
- There are currently 60 comprehensive tribes and 2 in the “start-up” phase nationally.
 - Comprehensive = full federal authorization to operate that meets regulation requirements
 - Start-up = development, planning phase usually 2 years prior to comprehensive



Closing



*Let us put our minds together and
see what life we can make for our
children. – Sitting Bull*

Thank you!