

American Indian Sovereignty, Federal Assimilation Policy, and Indian Self-Determination – A time-line of oscillations

Sovereignty can be defined as the inherent and supreme power from which a people derive their social, political and economic governance. It is the basis upon which a nation is formed and a people govern themselves. Sovereignty is established and asserted by the **will of the people**, and not ultimately contingent upon some other nation granting it to that people. Indian tribes were sovereign nations long before Columbus set foot on the shores of "his new world," and long before Lewis and Clark exchanged "peace medals" with the tribes of the disputed Oregon Country (as England also claimed this area). **Indian sovereignty must ultimately be defined, affirmed and asserted by Indians themselves.** Nevertheless, how the U.S. government defines its relationship with the Tribes directly affects tribal sovereignty today. This history has been as if a pendulum, swinging between self-determination and dependency.

While the United State federal government may seek to use this language and assert the power of these words (e.g., "plenary" or "domestic, dependent nation"), it is ultimately up to each Indian Nation to decide on the degree they wish to bow to the power of these words, or assert their own definition of sovereignty.

Sovereignty v. Assimilation

An Issue of Resource Control: **as expressed through Treaties, Agreements, Executive Orders and Statutes**

Prior to the United States Federal Treaty making process, the prevailing policy governing Colonial-Indigenous relationships was known as the "*Doctrine of Discovery*." Established and codified by Pope Alexander VI, this Papal Bull of 1493 among other things asserted the right of the conquering and "civilized peoples" to occupy and possess the lands and resources of the "heathen" inhabitants, without their consent.

1. Legal principles underlying the Treaties/Agreements and thus Sovereignty

a. Supreme Court ruling – *Worcester v. Georgia* (1832) – court recognized that Indian nations were "distinct political communities, having territorial boundaries, within which their authority is exclusive, and having a right to all the lands within those boundaries." The court also acknowledged the sovereign nature of Indian nations as established and recognized through treaties with the federal government.

b. – The legal status of the tribal entities is acknowledged to be that of inherent "*sovereign nations*." That is, state law is not applicable within reservation boundaries, unless abrogated by Congressional consent (e.g., Gaming Compacts with states).

c. – As established in Article VI Section 2 of the United States Constitution, treaties are the "*supreme law of the land*," are bilaterally-constructed, nation-to-nation agreements, intended to be legally binding for all time.

d. – Ownership of the land and the resources is to be held by the tribes unless *explicitly relinquished* in the language of an agreement/treaty. For example, the ownership of a lake or river, if not explicitly granted to the United States, would remain with the tribe. As such, the agreements entered into were *not grants of rights to Indians*, but rather *grants*

of rights from Indians to the United States, i.e., “reserved rights doctrine.” Property should not be taken without consent of the Indian. (*United States v. Winans*, 198 U.S. 371 1905)

e. – Treaties/agreements are to be interpreted as their signers intended, i.e, “canons of construction.”

f. – In exchange for the cession of vast tracts of land and resources, i.e. “ceded territory,” the tribes would receive educational and health benefits, and other services. Such services and allocations are thus “*purchased*” and “*contracted*” services, and not “social entitlements” or “special rights.”

g. – Especially during the late nineteenth and much of the twentieth century, the Federal government’s record of adhering to these principles was far from exemplary. Simply because one party in an agreement did not honor the accords of that agreement does not negate the legal status and continued integrity of the agreement/treaty.

h. – Over 400 treaties and agreements (executive orders) established between 1778-1902. Examples of treaties: [Treaty of Fort Laramie of 1851](#) and the [Nez Perce Treaty of 1855](#)

i. – **ultimately, how sovereignty is defined and asserted is dependent on each Tribal community, and not on how the federal government or any other outside agency “recognizes” it.**

2. Assimilation and infringement of Tribal Sovereignty by US Federal government actions and accompanying processes

a. **Legal Basis** for Federal Assimilation Policies

- Congressional *plenary powers*, i.e., rights acknowledged by treaties can be abrogated by Congress pursuant to its plenary power (*Lone Wolf v. Hitchcock*, 187 U.S. 552 1903 and as exemplified in the Dawes Act of 1887 and Termination Policy of the 1950s and Public Law 280 in 1953)
- Indian tribes are not foreign nations, but constitute “distinct political” communities within the United States, i.e., “*domestic, dependent nations*” whose relation to the US resembles that of a ward to his guardian (Supreme Court Chief Justice John Marshall in *Cherokee Nation v. Georgia* 1831). Gave birth to federal *trusteeship* in Indian affairs.

b. – **Diseases.** First major assault on Indian culture. Prior to contact, the indigenous population of North America (north of Rio Grande River) estimated at between 4 - 10 million. After contact, over 60 serious epidemics swept across landscape, reducing the population to 300,000 by 1910. Among the Crow, a pre-contact population of 8,000 was reduced to 1,600. Among the Blackfeet, a pre-contact population of 15,000 was reduced to 4,600. The contagious diseases for which the indigenous populations had no immunity were smallpox, measles, and typhoid.

c. – **War and Reservations** – Manifest Destiny (Oregon Trail and railroads; gold and land).

- Indian Removal Act of 1830 – the Seminole War and Cherokee “Trail of Tears”
- Department of Indian Affairs established in 1834 (in the Department of War), and Bureau of Indian Affairs established in 1849 (transferred to the Department of

Interior)

– Example of the Ft. Laramie Treaty of 1851 (with Sioux, Assiniboine, Arikara, Gros Ventre, Arapaho, Shoshone, Cheyenne and Crow) = Crow Reservation of 38.5 million acres; subsequent treaties and acts of Congress = Crow Reservation of 2.2 million by 1905

d. – **General Allotment Act of 1887** – “Dawes Act.” To encourage private property ownership and farming, federal government unilaterally imposed this act specifying that each person be allocated 160 acres, held in trust for 25 years. Reservation lands not allotted were opened up to non-Indian ownership. Of the 140 million acres of Indian reservation land within the United States in 1887, the Dawes Act reduced the total reservation lands to some 50 million acres by 1932. Ninety million acres were transferred to non-Indians ownership within reservations boundaries. The inheritance policy imposed called for land being divided equally among heirs, resulting in “checker-board land ownership,” and an inability to economically use the land. Created economic dependency on Federal government.

e. – **Cultural Assimilation** by Federal policies and Missionaries. The government established “Indian offensives” by 1884, including practice of “giveaways,” feasts, Sundancing, and most other forms of dancing (limited to once a month, daylight hours, mid-week, and none under 50 could take part), being a “medicine man.” While each Christian denomination approached assigned Reservations differently, typically it was a battle with Satan for the souls of Indian – forced to attend boarding schools, eliminate language, attack family structure and role of elders, prohibit religious practices, and instill Christian values and practices, as well as American farming and household skills. Created cultural void and dysfunction.

f. – “**Termination Policy**” of the 1950s and Senator Arthur Watkins – Menominee of Wisconsin and Klamath and others of Oregon (the challenge to it by such leaders as Joe Garry, Coeur d’Alene)

Self-Determination and the Reassertion of Tribal Sovereignty

1. The **Horse** among the Crow and other Plains tribes. Among effects: movement of entire populations onto the Plains (Cheyenne, Dakota-Sioux, Assiniboine, others; See Map); horse object of prestige and pride; economic re-alignment around the buffalo hunting and a transhumance cycle (no longer farmers and sedentary); re-alignment of social organization, from hereditary roles and rigid clans to achieved roles and flexible bands, e.g., the coups system and intertribal warfare; and creation of the Sundance.
2. Revitalization Religions, e.g., Handsome Lake, Ghost Dance, Native American Church, Shakers, and Washat (Seven Drum) and Smohalla
3. US Citizenship in 1924 – Dual Citizenship
4. Cultural Pluralism and John Collier
5. Meriam Report of 1928, Indian Reorganization Act of 1934 – “Wheeler-Howard Act,” and the Johnson-O’Malley Act of 1934
6. Indian Claims Commission of 1946

7. National Congress of American Indians founded in 1944, Affiliated Tribes of Northwest Indians 1953, and National Indian Youth Council and American Indian Movement founded in 1960s

8. Self Determination Act of 1975

9. American Indian Religious Freedom Act of 1978, Native American Graves Protection and Repatriation Act (NAGPRA) of 1990, and the Native American Free Exercise of Religion Act of 1993

10. Council of Energy Resource Tribes and the Columbia River Inter-Tribal Fish Commission (CRITFC) in 1977

11. World Council of Indigenous Peoples formed in 1975 and NGO UN status

12. Indian Gaming and Natural Resource Protection

– Self-Determination is thus not only reflected in the regaining of legal, political and economic sovereignty, but also in terms of cultural sovereignty, what McFee calls “150% people”

a. see in aesthetic expression, e.g., “pow wow,” arts and literature

b. see in ceremonialism, e.g., continuation of “Sun Dance,” “hand game,” and root gathering

c. see in the redefining one’s “Indian identity,” not in terms of Euro-American categories, but within the parameters set forth by each tribal community (its own unique heritage and cultural teachings, etc.)

e.g., “traditionalism” as a foundation for cultural sovereignty and basis for overcoming the negatives of assimilation/acculturation, i.e., alcoholism and drug abuse, unemployment, dysfunctional family, etc.

“We are what we imagine ourselves to be. Our best destiny is to imagine who, and what, and that we are. To go unimagined is the greatest tragedy that can befall us.” N. Scott Momaday