
OVERVIEW OF FEDERAL INDIAN LAW

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Prior to European Contact

- Indigenous peoples inhabited the Americas for thousands of years
 - Population estimates vary – at least 12 million w/ > 500 different languages, many complex cultures
- Different concept of the land
- Spirituality intertwined with governance and daily lives
 - Spiritual beliefs varied but some common themes were shared
 - Earth, land, air, water sacred
 - All things have spirits and are to be respected

1492-The Big Picture



Major Themes of Federal Indian Law

- Trust responsibility
- Sovereignty
- Self Determination
- Pre-decisional Consultation
- Government-to-Government Relationships
- Treaty Rights (on and off Tribal lands)
- Plenary power of Congress

Colonial Period (1492 – 1776)

Acquiring Indian Land

- Doctrine of Discovery
 - Indians possessed “aboriginal title”
 - Right of occupancy only
 - “Discovering” nation obtained pre-emptive right to extinguish aboriginal title by treaty, purchase, or conquest

- Settlers
 - Exploitation of land and resources
 - Make the Indians more like “us”

Treaties

- Both parties are sovereign powers
- Indian nation or Tribe has a transferable “title”
- Acquisition of Indian lands controlled by the government, *not* the states
- Note: 390 treaties with tribes between 1778 and 1871 were made and broken or abrogated
- Treaties are still the supreme law of the land

Early U.S.-Indian Relations (1776 - 1830)

- U.S. Constitution
 - Commerce Clause, Art. I, Sec. 8
 - Treaty Clause, Art. II, Sec. 2
 - Supremacy Clause, Art. VI
- Trade and (non) Intercourse Acts
 - Forbade purchase of land directly from Tribal Nations by states
 - Forbade non-Indians from settlement, hunting or grazing on Indian lands
 - Trade w/Indians subject to regulation & license
 - Basically, Indians and non-Indians treated differently.

1790



Removal Era (1820 -1850)

□ Cherokee Cases (Marshall Trilogy)

Chief Justice Marshall v President Jackson

■ *Johnson v. McIntosh* (1823)

- Doctrine of discovery endorsed

■ *Cherokee Nation v. Georgia* (1831)

- Tribes "domestic dependent nations"

■ *Worcester v. Georgia* (1832)

- Tribal sovereignty recognized
- State jurisdiction denied
- Applied to all tribes-conquered, treaty dependent or not yet encountered

Removal Era

- Indian Removal Act of 1830
 - Indians can move peacefully, or be forced out of eastern homelands
 - Massive disruption of territories, homelands
 - Trail of tears-not just Cherokee
 - Seminole, Choctaw, Chickasaw, Creek, etc
 - Delaware
 - Signed first Treaty in 1778
 - Moved from Delaware, to Ohio, Indiana, Missouri, and, finally, Indian Territory (Oklahoma)
 - Two bands fled into Canada during time of greatest “persecution”

1830



The Reservation Era (1850 - 1887)

- Further removal became difficult
 - Solution: reservations
 - Goal: acculturate, assimilate & Christianize
 - Causing further erosion of Tribal sovereignty, identity
- 1871: Congress ended treaty-making with tribes
 - Senate no longer ratified treaties
 - Tribes no longer considered independent sovereign nations
 - Rights could be limited by simple act of Congress
- The Major Crimes Act (1884)

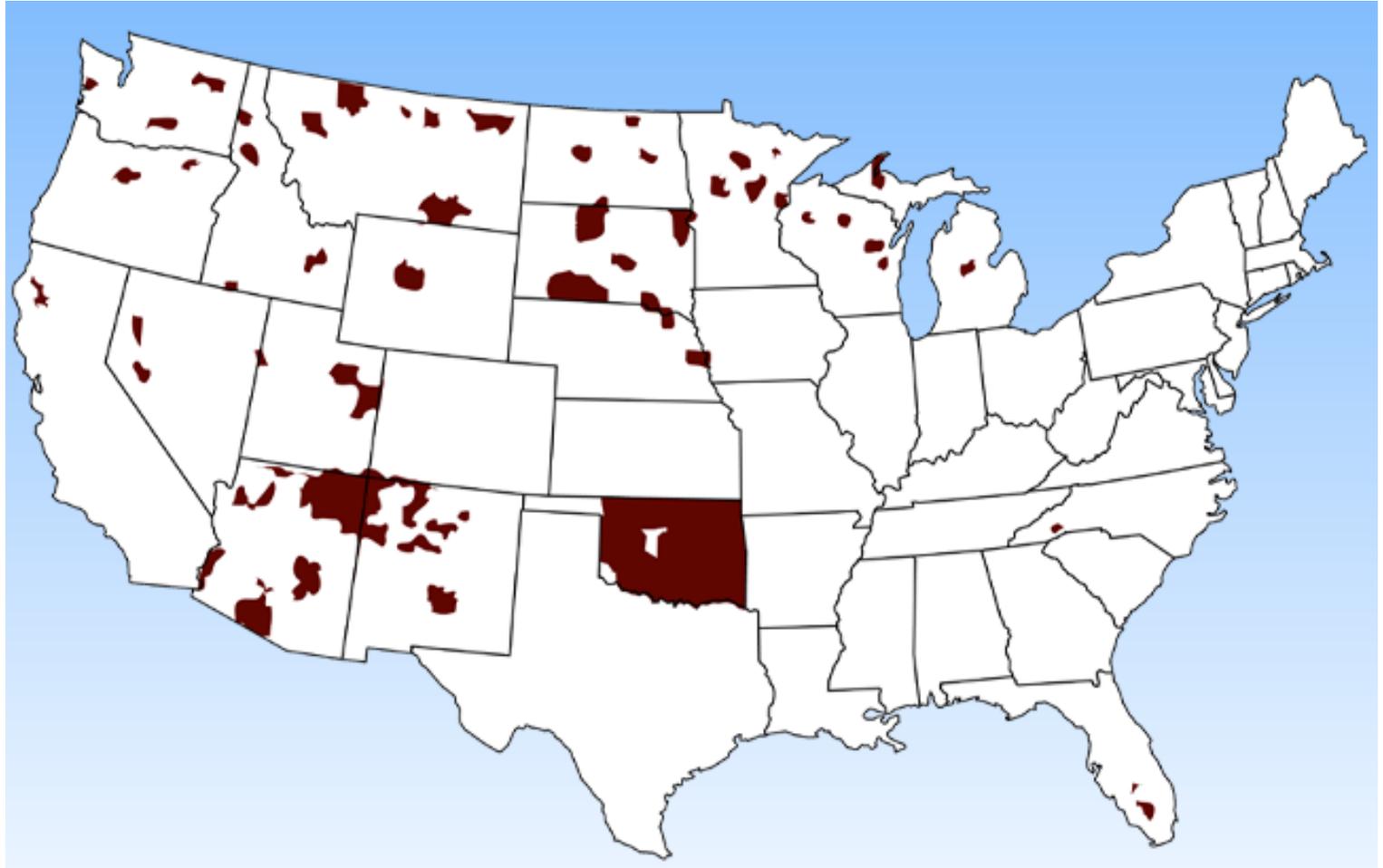
1860



Allotment and Assimilation (1887 – 1934)

- Land greed and belief in benefits of assimilation combine in...
- General Allotment Act of 1887 (Dawes Act)
 - Mechanism to divide communally held lands
 - Result:
 - 90M acres of tribal lands lost
 - Poverty, ill health, unemployment, illiteracy
 - Disruption of family structures
 - Boarding schools
 - Meriam Report (1928)

1890



Indian Reorganization (1934 – 1953)

- Indian Reorganization Act (1934)
 - Assumption: tribes not only would be in existence indefinitely, but *should* be
 - Ended practice of allotment (FDR)
 - Recognized tribes inherent right to adopt constitutions
 - Subject to approval of the Secretary of Interior
 - Model followed non-Indian pattern
 - Act provided framework for self-governance that set the stage for future legislation

Indian Reorganization Period– Corps of Engineers Actions

- Beginning of MO River Basin development
 - 1945 Act - Condemned Osage rights for Hulah Dam & Reservoir Project
 - Pick-Sloan program – 6 dams; displaced many tribes
- War Department Civil Appropriations Acts --
1945 Thru 1952
 - Various authorizations for Secretary of War to condemn Tribal lands for Corps of Engineers dam and reservoir projects

Termination & Relocation (1953 – 1968)

- House Concurrent Resolution 108 (1953)
 - Adopted official policy of “termination”
 - Tribal Nations subjected to state laws, lands sold
 - Trust relationship with 109 Tribal Nations terminated
- Pub. L. No. 280 extended state civil and criminal jurisdiction to Indian country in 6 states (1953)
- BIA encouraged reservation Indians to relocate to metropolitan centers
- Act of August 13, 1954—Western Oregon Indian Termination
 - Terminated 67 tribes; more tribes than all other termination Acts

Termination Era: Corps Activities

- Public Works Appropriations Acts – 1954 - 1962
 - 1954 – Corps authorized to compensate Tribes from having flooded the Columbia River; 1956 – relocated Indians living in The Dalles Dam Project Area; lost most important gathering place, Celilo, in the Pacific NW
 - 1957 -- Seneca Nation hired engineers to prove to Corps that Kinzua Dam could be built more effectively 30 miles downstream, keeping them from losing 10,000 acres of land; Corps would not consider the alternative
 - 1958 -- Miccosukee opposed the Everglades Project, citing negative impacts; Corps proceeded
 - In 1994 the Everglades and Kissimmee River Restoration Projects implemented to reverse the effects of 1958 project

Self-Governance

Where Tribes are Today

- ❑ Self-Governance is fundamentally designed to provide Tribal governments with more control and decision-making authority over the Federal financial resources provided for the benefit of Indian people.
- ❑ More importantly, it fosters the shaping of new partnerships between Indian Tribes and the U.S. in their government-to-government relationships.
- ❑ Self-Governance provides the opportunity for Tribal governments to exercise their sovereignty with minimal Federal intrusion and involvement.

Tribal Self-Determination (1968 to Present)

- Indian Civil Rights Act of 1968
 - Amended Pub. L. No. 280 to require tribal consent
 - Imposed Bill of Rights upon tribes
 - Tribal court system
- President Nixon declared termination a failure
 - Stressed importance of trust responsibility
 - Urged legislation to promote tribal self-determination
- Indian Self-Determination and Education Assistance Act (Pub. L. No. 93-638) of 1975

Tribal Self-Determination (cont.)

Recent Presidential documents

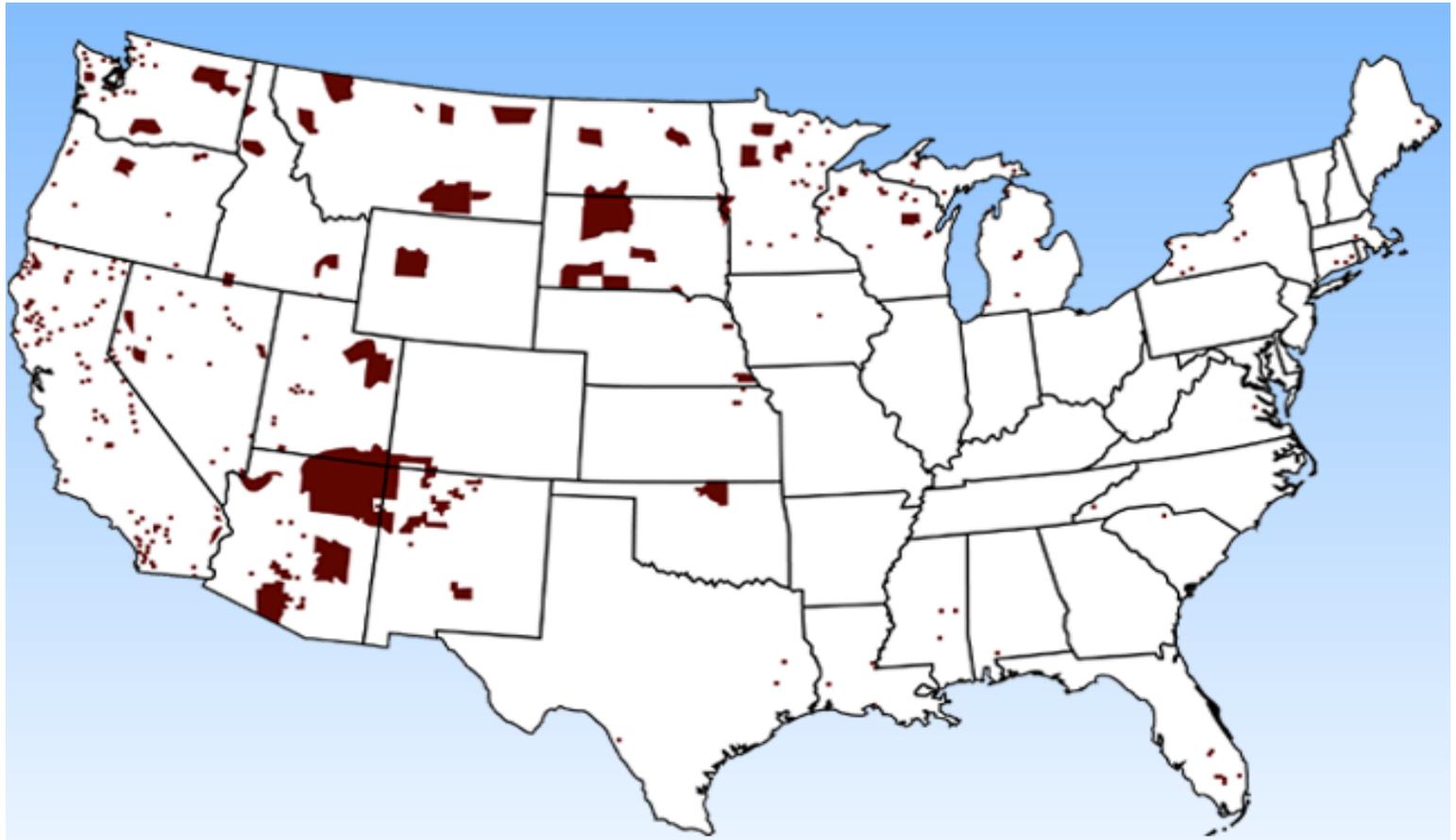
□ President Clinton

- E.O. 13007 (1996): Indian Sacred Sites
- E.O. 13175 (2000): Consultation with Tribal Gov'ts

□ President Obama

- Memorandum for the Heads of Executive Departments and Agencies, Tribal Consultation, November 5, 2009

Present Day-Reservation Lands



Indian Country Today is about 55 million acres, or 2% of US land

It's Complicated

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