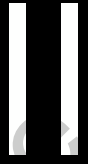


# HISTORICAL FOUNDATIONS

PART



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# 2

## NATIVE AMERICANS

### The Road from Majority to Minority, 1500s–1970s

Before any final solution to American history can occur, a Reconciliation must be effected between the spiritual owner of the land—American Indians—and the political owner of the land—American Whites. Guilt and accusations cannot continue to revolve in a vacuum without some effort at reaching a solution.

—Vine Deloria Jr.<sup>1</sup>

#### LEARNING OBJECTIVES

- Describe the fundamental differences in outlook between Native Americans and European settlers.
- Explain how White conceptions of race and desire for land disadvantaged Indians in the new United States.
- Explain how Supreme Court rulings helped the government justify Indians' forced removal and relocation.
- Describe how Indians' efforts to maintain their sovereignty and identity were challenged by U.S. federal policies.
- Discuss to what extent race has mattered in twentieth-century U.S.–Indian relations.
- Compare the accomplishments of the Native American rights movement with those of other groups.

The journey of Native nations after the arrival of Europeans in the Americas has been long and arduous. Their road differs from that of other racial and ethnic groups because, unlike the others, they existed as distinct nations in communities across North America when Whites arrived. As European settlements expanded across the continent, the status of these original nations gradually changed from a majority culture of peoples living in sovereign nations to a disadvantaged minority isolated from mainstream U.S. culture and subordinate to U.S. law. This change stemmed in large part from Indian nations' loss of land, power, and independence, all of which had long-term repercussions still apparent in Indian communities today.



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Native Americans gather on the steps of the Capitol in 1978 as part of a five-month cross-country walk to protest discrimination. Among their objections was what Indian leaders called a wave of anti-Indian legislation in Congress, challenges to which had made their way to the U.S. Supreme Court. Native Americans have faced a long and difficult road to retain and exercise their sovereignty, to protect treaty rights, and to be treated with respect as citizens entitled to equal rights and opportunities in the United States.

the **sovereignty** of Indian nations and denied Natives rights or say-so in land ownership and its use. These policies were in large part driven by the U.S. desire for land and influenced by White perceptions of Indians as an inferior race—“savages” who needed to be civilized by Christians.

Beset by violent conflict and diseases that decimated its ranks, the Native majority quickly shrank to a minority. Indians were left with limited resources with which to advocate for their rights. In fact, unlike other racial and ethnic groups examined here, Native nations did not seek to become a part of the United States and its political process. They were sovereign nations demanding their rights first against colonial imposition and then against an expanding nation. With their resources diminished and their sovereignty only sporadically acknowledged by the new White majority, Native peoples later turned to the U.S. political system and judiciary for

The arrival of Europeans in the late fifteenth century signaled a decisive change in Natives' way of life. Whites arrived with different cultural conceptions of property ownership, land use, and spirituality. They brought with them firepower, disease, and a determination to impose their culture that eventually overwhelmed Native peoples. As settlers sought land for homes and towns, Indians established relationships with the newcomers that often turned hostile as the settlers' lust for land led to broken treaties and war. Yet the relationship between Native peoples and White colonists was not always so adversarial. Many established trade relationships with White merchants, and some fought alongside Whites in the French and Indian War (1754–1763), when the French and British battled for control of land in North America.

As the White population grew and the nascent American government sought to expand its boundaries, it increasingly pushed against indigenous territories. The U.S. government's laws and policies toward Native Americans shifted frequently and most often ignored



recourse. In this chapter, we explore when, why, and how these changes took place and seek to understand where citizens of Native nations are on their road in the post–civil rights era.

*Native nations, tribes, American Indians, Native Americans, Natives, and indigenous peoples* are all terms used to refer to the people living in North America when Christopher Columbus arrived in what Europeans called the New World. These terms will be used interchangeably in this chapter, but *Native nations, tribes, and Indians* will appear most often, as they are the terms preferred by most experts on American Indian studies. In another point of terminology, remnants of individual tribes sometimes were merged into a single tribal nation, and in some cases, reservations are home to more than a single tribal nation. For example, the Iroquois Confederacy is a political entity comprised of the Onondaga, Oneida, Seneca, Mohawk, Cayuga, and Tuscarora nations.

## NATIVE COMMUNITIES IN NORTH AMERICA

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Indigenous peoples in North America in the late fifteenth century were organized into diverse communities and sophisticated political confederacies across the continent, contradicting the myth that all Native nations were either nomadic or sedentary. Although rivalries existed among Native peoples, they maintained an abiding respect for the land and the environment. Many lived in highly developed communities with agricultural irrigation systems, religious traditions, and local governments. Some prominent indigenous peoples at the time of Europeans' arrival were the Pueblo communities of the Southwest, the so-called **Five Civilized Tribes** of the Southeast—Cherokee, Choctaw, Chickasaw, Creek, and Seminole—and the Iroquois Confederacy. The Pueblo peoples, actually twenty-one distinctive societies, comprised one of the most sophisticated indigenous populations, in part because they built an irrigated agriculture system along the Rio Grande and Little Colorado River.

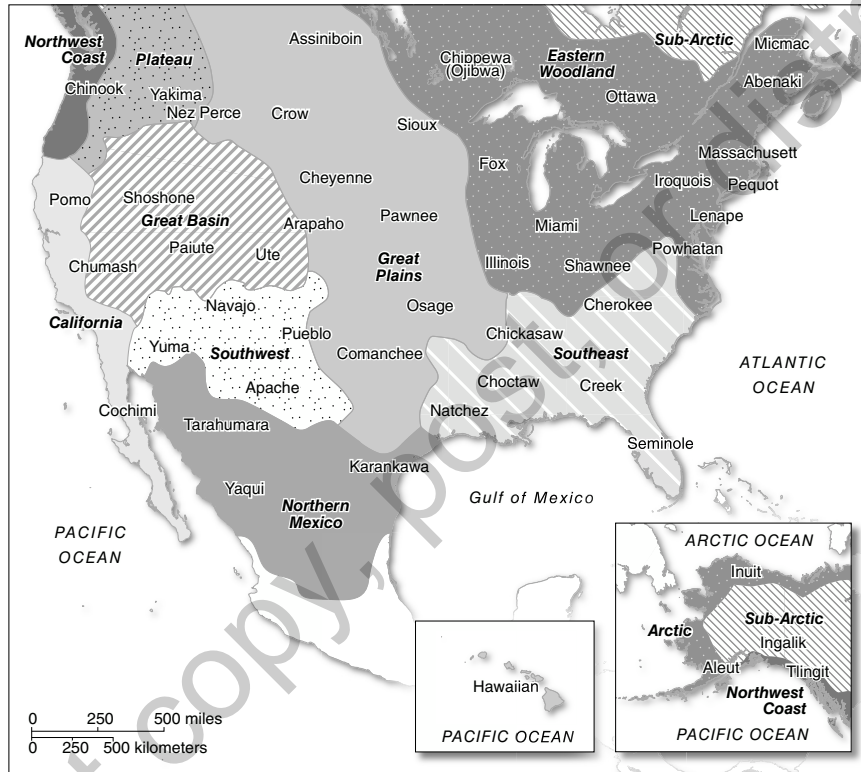
The Five Civilized Tribes lived in the Mississippi Valley, where they operated along democratic principles and had efficient economies. These Indian nations adapted to the European culture by operating commercial ventures, creating governing systems that were loosely modeled after the U.S. Constitution, and running large, plantation-type farms. The Iroquois Confederacy was located in what are now the states of New York and Pennsylvania and part of Canada. Later, in 1722, the Tuscarora joined the confederacy. While most colonial Whites did not respect or understand Indian customs and views of government, the Iroquois were an exception because they had a significant military force that reached to the Great Lakes region of present-day Illinois. Indeed, between 1641 and 1779 the Iroquois Confederacy was a major player in the balance of power in northeastern North America, where the Iroquois dominated rival tribes as well as the French, Dutch, and English.<sup>2</sup> The French and the British respected the military power of the Iroquois and considered them formidable opponents.

Some scholars believe that the Iroquois provided a model government for the colonists who wrote the Articles of Confederation (1777) and the U.S. Constitution (1787). The “Iroquois Influence Thesis” draws parallels between the Iroquois Great Law of Peace and the U.S. Constitution, which “adhered to balanced and limited political principles based upon the consent of the people.” Both governing structures also utilized complex arrangements based upon “separation of powers, checks and balances, a veto power, ratification, and impeachment (or, for chiefs, ‘dehorning’).”<sup>3</sup> Native

peoples were spread across North America. In the east they were concentrated in New England; the eastern part of Virginia, known as the Tidewater; and the coastal area of the Carolinas. The Navajo and Apache peoples occupied what became Arizona. The Great Plains were home to dozens of Native nations, while in the Far West, a diverse array of indigenous peoples lived across Washington, Oregon, and California. Map 2.1 illustrates the location of major tribes prior to Europeans' arrival.

### MAP 2.1 ■ Native American Tribes Prior to European Contact

White explorers considered the "New World" to be unsettled and available for them to claim, but as this map shows, Indians populated what is now the United States from coast to coast, with major tribes claiming large areas of land.



### The Arrival of a New but Powerful Minority

Native peoples first encountered Europeans, who were looking for gold, spices, and a route to India, in the sixteenth century. The initial contacts were between explorers and indigenous Natives with each culture confident of its superiority. When Spanish and French explorers arrived in North America, they were surprised to encounter people who looked perceptibly different in skin color, language, lifestyle, religion, and cultural tradition. From the European perspective, Indians were heathens who inhabited a wilderness on what seemed to be unclaimed and largely underutilized land.

Natives noticed that Europeans were different in physical appearance, style of dress, and their lack of reverence for the land and natural environment. Because Indians relied primarily

on an oral tradition, they left scant written records, so little is known about their views of the first Europeans. Theda Perdue, a historian of Indian culture, says that Europeans were seen as merely foreigners. They were viewed not as enemies, but rather as potentially useful newcomers. These new arrivals were outside of a kin network and the indigenous political structure. They were not seen in racial terms or as part of a racial hierarchy.<sup>4</sup> Initially, many Whites respected Indians because they flourished in an environment that perplexed Europeans. For example, Powhatan was considered the Great Emperor because he was the head of about thirty tribes in the Chesapeake area. His daughter, Pocahontas, who married English tobacco planter John Rolfe, was considered royalty in Europe.<sup>5</sup> Settlers soon followed the traders to this New World to stake their claims and build new lives. As more Whites arrived, their relationships with Indians also changed. European conceptions of race and civilization differed radically from what they found in North America, and they considered the Indians to be culturally, economically, and technologically inferior. Conflict over cultural values and land ownership followed when settlers sought to expand inland. The next five centuries saw indigenous peoples and Whites contesting control of North America.

Europeans did not have a uniform view of the various Indian nations that they encountered. This contributed to Whites' shifting policies toward Indians, whom they saw in hierarchical terms, with Europeans being superior. Despite this, Indian tribes were initially treated as sovereign states. Historian Francis Parker simplistically summed up the situation when he said, "Spanish civilization crushed the Indian; English civilization scorned and neglected him; French civilization embraced and cherished him."<sup>6</sup> It is only possible to guess how many Natives populated the Americas before Europeans arrived. Estimates range from five to eight million, far outnumbering early European settlers. Europeans, however, brought with them disease and warfare, both of which contributed to a population decline. Native populations had no defenses against these diseases. Henry F. Dobyns's 1983 study of Indian populations estimated that 3.8 million had lived in the Great Lakes region; 5.25 million in the Mississippi River Valley region; and 2.2 million in the Florida to Massachusetts area.<sup>7</sup> Besides warfare, Indians fought to survive forty-one separate smallpox epidemics from 1520 to 1899, seventeen measles epidemics between 1531 and 1892, and ten major epidemics of influenza from 1559 to 1918. Plague, diphtheria, typhus, and cholera epidemics also struck.<sup>8</sup> The Indian population greatly declined when Europeans sought to establish permanent settlements inland versus the early exploratory ones along North America's east coast.

From the beginning, cultural and religious differences shaped the relationship between Native Americans, early European settlers, and later the U.S. government. Native Americans traded with Europeans, made treaties, and even fought alongside them in wars. To the Indians, Europeans were strange because they destroyed forests, overharvested game, lived in settlements, and had a sense of individual ownership of land. Many who interacted with Whites on a regular basis learned their language, but most continued to adhere to their native language and way of life. For their part, European understanding of the languages, histories, and religious beliefs of Indian nations was difficult, in part due to the lack of written records, but also because of European assumptions based on the process of racialization. To the Europeans, Indians were uncivilized savages because of the color of their skin and the ways that their religion and ways of

life did not conform to European values and customs. The racialization of Indians in this way influenced Whites' interactions with Indians and, combined with the desire for land, resulted in hundreds of violated treaties, wars, and numerous programs to "civilize" Native peoples. From the start, race was one of the decisive barriers to Native–European relations.

## Europeans and the Quest for Land in North America

When Europeans arrived in North America, they began to create permanent settlements—clearing land, building homes, and establishing institutions such as schools and churches. They were the subjects of European monarchs who wished to claim the land, but who did not want to become involved in costly wars. As the monarchs and settlers wrestled with questions of land ownership in the New World, they were aided by the papacy, which devised a new international law doctrine called the **doctrine of discovery**. Catholic countries such as Spain, Portugal, Italy, and France were interested in the potential riches of land in the New World. Under the leadership of the pope, who was the head of the Catholic Church, rights to "unoccupied lands" in the Western Hemisphere were granted to Catholic sovereigns on the condition that the Natives became Christian. Thus, "European powers assumed they had a legal right to land discovered in the New World."<sup>9</sup> Natives were never consulted as to how this policy would be applied to them and their lands, but it was appealing to European monarchs because it kept disputes in the New World isolated from any possible European conflicts. This early policy illustrates how Whites' desires drove their policies toward Native Americans—and how little consideration was given to Native sovereignty.

The French, Spanish, and British were the major powers claiming territory in North America. The British, as had the Spanish before them, wrestled over the extent of Indian property rights versus those of Europeans. The question was, if these Indian rights existed, how were they to be treated? Since the land was wilderness, with no cities or institutions that Europeans equated with ownership and civilization, they considered the land to be ownerless. Indians did not see land in terms of personal ownership. It was instead a sacred space that could be used for hunting, fishing, gathering, and planting. Land was held collectively, not in ownership, but in stewardship.<sup>10</sup> The Europeans' concept of community was based on an Old World model of Christian civilization that valued living in villages or cities and the rights of individuals. These cultural values were in direct contrast with Native Americans, who were not Christian, viewed land as a part of their lives and spirituality, and did not operate under a governance structure premised on laws that were based on previous court decisions (known by the English as common law). In short, Indians were content with their lifestyle and uninterested in adopting the newcomers' cultural norms or the governing structure. Native Americans' relationships with Europeans were thus primarily shaped by two forces—the European concept that Christianity was a superior religion of civilized people, and the doctrine of discovery. The cultural, religious, and property differences between Whites and Indians helped to create a vastly uneven road in the ongoing relations between White settlers and Indians. Race was decisive, but not an absolute barrier in the beginning of the relationship between the two groups.

The easiest way for Europeans to decide who had title to the land was to force-fit Native Americans into British concepts of law and individual property rights. Land ownership was of

great importance to settlers, who in many cases had never owned any in their home country. When Europeans encountered the vast expanse of what they considered to be unclaimed and largely unoccupied land, they relied on the historical pattern of acquiring it through purchase or conquest. President Thomas Jefferson followed this practice when he bought land from France in what is called the Louisiana Purchase, land that was at the time inhabited by many Native nations. Jefferson and subsequent presidents faced a serious domestic problem with land-hungry settlers pushed at the southern and western borders of the United States, causing friction between them and Indian nations who had no interest in selling or moving westward.<sup>11</sup>

How much did race matter in the doctrine of discovery used to justify White claims in America?

## **RISING TENSIONS: NATIVE AMERICANS AND THE NEW UNITED STATES, 1776–1830S**

After the American Revolution in 1776, Indian nations were confronted by a new entity—the U.S. government—and all land disputes came under the authority of American jurisprudence. This new government, based on the written U.S. Constitution, provided for a legal system derived from English law. The relationship between the indigenous peoples and the United States became subject to growing inconsistencies. Settlers wanted more land, and sovereign Indian nations stood in the way of that. The U.S. Constitution’s Commerce Clause recognized Indian sovereignty but did nothing to influence the perspective that Native Americans were inferior to Euro-Americans. As a result, roadblocks to Native sovereignty increased after American independence in 1776. Race, culture, and property remained decisive barriers to Natives receiving the respect and treatment afforded to other sovereign nations. The U.S. drive for more land pushed into the homelands of hundreds of Native nations, aided by U.S. policies such as the civilization program and the forced removal of many Natives from their lands, which served to diminish the status of Indian tribes in the U.S. legal system.

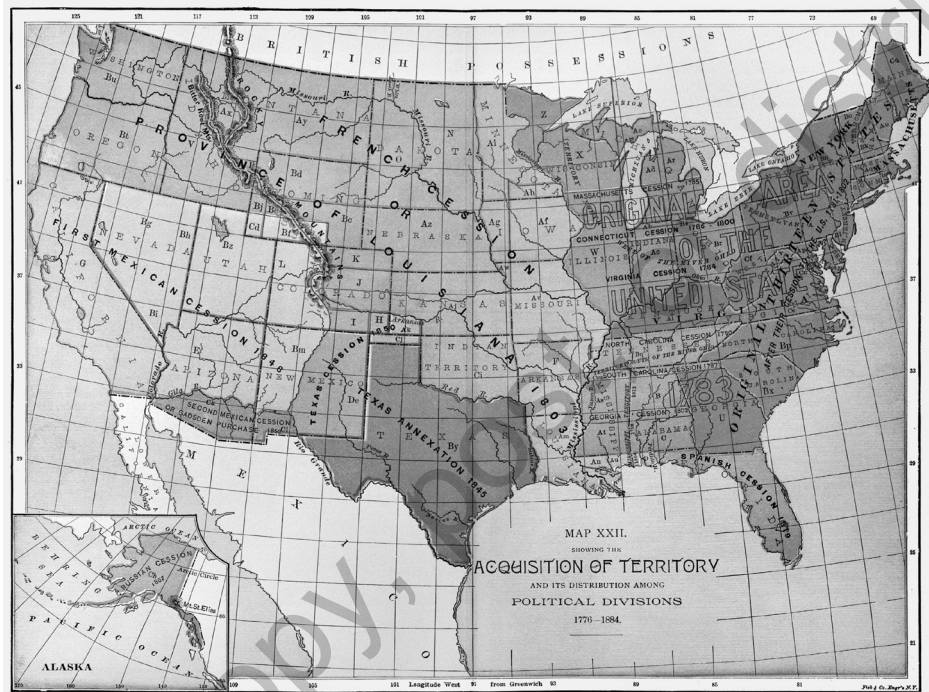
### **The Minority Threat: Westward Expansion Targets Indian Lands**

President Jefferson expanded U.S. landholdings in 1803 by buying land claimed by the king of France and, before him, the king of Spain. While the westward expansion benefited the United States, Indian nations living in that territory faced an influx of settlers claiming their lands. (See Map 2.2.) President Jefferson expanded the borders of the United States by signing a treaty with France “to purchase rights to the Louisiana Territory,” consisting of over eight hundred million acres west of the Mississippi. France, however, only gave the United States the right to be the sole purchaser *if* Indian nations that owned and occupied the land decided to sell. Jefferson initially affirmed the rights of the Indians “to hold the right to occupy their territory and maintain their political autonomy.”<sup>12</sup> He observed that Indians were different from Europeans, but he respected their cultures. Refuting those who labeled the Indian inferior, Jefferson contended that they were “on a level with whites in the same uncultivated state.”<sup>13</sup> Jefferson’s interest in studying Indians included compiling notes on “their

governments, numbers and their burial grounds.”<sup>14</sup> Race was very much on his mind because of slavery; however, he saw the Indian and slavery issues as being very different. Indians were seen as an immediate threat to the lives, property, and plans for westward expansion of White America, while slaves did not appear to threaten the expansion of the United States.<sup>15</sup>

### MAP 2.2 ■ U.S. Westward Expansion

Between 1776 and 1884, the United States expanded its territory from the East Coast to the West, claiming lands that had previously been populated for millennia by Native nations. White settlers quickly became the dominant majority.



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Despite Jefferson’s words, he was instrumental in shifting U.S. Indian policy away from seeing and treating Indian nations as sovereign. Jefferson had the land of the Louisiana Purchase surveyed by Meriwether Lewis and William Clark, who were instructed to inform the Indians that the United States had purchased France’s rights to the territory. Lewis and Clark were reminded that the Indians retained the right to occupy the lands, but the U.S. government under Jefferson was now to act as their father. This paternalistic gesture marks the beginning of formal U.S. imposition over Indian nations.<sup>16</sup> As president, Jefferson wanted Indians to move west and become “civilized.” He felt that the best route for achieving this objective was for the Native peoples to adopt the American agricultural lifestyle because hunting was perceived as an inadequate way of supplying clothing and subsistence.<sup>17</sup> His policy, called the **civilization program**, included the often forcible acquisition of huge tracts

of land from tribal nations (because more territory was needed as the White population inexorably expanded west). Jefferson believed that Indian removal from these lands would minimize the friction between the Whites and Indians. In direct opposition to his earlier words of respect for Indian nations and cultures and without consultation with them, in 1796 Jefferson requested \$15,000 from Congress to “civilize” the Indians.<sup>18</sup> His policies opened more land for settlers, even as his removal policy contradicted the civilization program’s “openly stated goals to civilize, educate, and assimilate” Indians “into White society.”<sup>19</sup>

Did Thomas Jefferson truly respect Native peoples and their culture, or was his perspective marred by expansionist ambitions?

Indians rejected Jefferson’s perspective that abandoning their land and lifestyle would bring them one step closer to civilization.<sup>20</sup> They were content to remain on their own land and abide by the treaties that had been signed with the U.S. government. These two vastly different perspectives resulted in friction as American settlers, defended by the U.S. Army, and Native nations, unwilling to relocate or become “civilized,” clashed over land.

In the nineteenth century, the United States began to expand across the North American continent and internationally through wars that increased its prestige on the world stage. Americans increasingly believed that, as Anglo-Saxons, they had a “manifest destiny” to expand their civilization westward, and they pursued it through relentless land acquisition, including the annexation of Texas in 1845, the Oregon Territory in 1848, and the Mexican Cession in 1848. Now, U.S. land extended to the Pacific Ocean, and upon winning the Spanish-American War in 1898, the United States acquired the colonies of Puerto Rico, the Philippines, and Guam. At the same time, the U.S. population expanded to over seventy-five million, including the arrival of new European immigrants. From the U.S. perspective, it needed land to satisfy its growing populace. From the Natives’ perspective, U.S. expansion was an ever-growing threat to their remaining land, sovereignty, and way of life as Native nations became surrounded by the United States.

Native nations and individuals who had both worked with and fought against colonists in the Revolutionary War and French and Indian War now had to contend with an ambitious neighbor no longer burdened by foreign monarchs. As in past experiences with Europeans, Indians found that the United States frequently violated its treaties with Indian nations and failed to consistently recognize their sovereign rights. This lack of recognition would play out in the U.S. judicial system, as Native peoples felt compelled to use the laws and institutions of their aggressive neighbor and new majority to defend themselves.

## **U.S. FEDERAL POLICY ERODES INDIAN RIGHTS, 1830S**

The nineteenth century was characterized by a struggle over Indian lands and an erosion of the rights of Native peoples that had been previously recognized in treaties. Indians continued to have their lands encroached by White settlers, especially in the southern states, where the

land was suitable for large plantations. This area of the United States was largely populated by the Five Civilized Tribes. The Cherokee, in particular, willingly engaged the U.S. economic and political systems and modified their legal and political societies accordingly. Cherokee mixed-blood elite owned slaves, developed commercial enterprises, and built roads. By 1827, the Cherokee had developed a republican governmental structure with a bicameral legislature and a court system.<sup>21</sup> Yet these characteristics of European civilization failed to affect U.S. policy toward and treatment of the Five Civilized Tribes. Between 1823 and 1832 three cases involving Native nations came before the U.S. Supreme Court, with Chief Justice John Marshall presiding. These key cases—*Johnson v. M'Intosh* (1823), *Cherokee Nation v. Georgia* (1831), and *Worcester v. Georgia* (1832), commonly referred to as the **Marshall Trilogy of cases**<sup>22</sup>—determined, from the federal government's perspective, the political status of Native nations, their relationship with the United States and the states, and Native property rights.<sup>23</sup>

These cases involved conflicts between the states and the federal government whenever states did not wish to adhere to federal laws. The executive and judicial branches were still testing the scope of their powers prior to the Civil War. Could the president ignore a Supreme Court opinion that he did not like? Would Chief Justice Marshall's assertion that the Supreme Court could declare a state law unconstitutional be accepted by the states? What rights did Indians have within the U.S. system?

### **Undermining Indian Sovereignty: *Johnson v. M'Intosh* and *Cherokee Nation v. Georgia***

Chief Justice Marshall's role was pivotal in all three cases. In *Johnson v. M'Intosh* (1823), the chief justice wrote the majority opinion that dramatically diminished property rights of Native nations. The dispute concerned property rights of American colonists who bought land from the Piankeshaw nation in contradiction to King George III's edict against individuals purchasing land west of the Appalachians without Crown permission. The Piankeshaw owned the land, while simultaneously King George III of England claimed it. The majority of justices held that the doctrine of discovery granted first European countries and then the United States a superior title to Indian lands because, according to Marshall, the lands were "effectively vacant" when Europeans found them.<sup>24</sup> Marshall asserted that Indians "could not sell tribal lands without the consent of the United States because tribal sovereignty was 'limited' and 'impaired.'" Basing his opinion on the doctrine of discovery, Marshall held that the United States had "*paramount sovereignty* over all persons and lands within its borders." His interpretation of the doctrine of discovery in this case takes on a racial perspective in contrast to the original interpretation of relying on Christian principles. This case established that tribal sovereignty could be limited by Congress.<sup>25</sup> Prior to Marshall's ruling, Indians were considered citizens of sovereign nations, which conducted foreign policy through diplomacy or warfare. *Johnson v. M'Intosh* effectively gave the U.S. government the power to limit the property rights of Native nations. Within the U.S. legal system, once-sovereign Native nations that had wielded complete ownership of their lands were now held to be subordinate to the United States.

The Cherokee nation, which had the characteristics of civilization that Whites considered valuable—a written language, a national newspaper, a political system based on laws and a



constitution, and even slave labor—was involved in the next two cases: *Cherokee Nation v. Georgia* and *Worcester v. Georgia*.<sup>26</sup> As states saw increased conflict between settlers and Indians, they sought to remove Indians from their borders. This was problematic because, by treaty with the U.S. government, Indians owned their land but could sell it to the government. This situation led to multiple conflicts: between state and federal law; between President Andrew Jackson, a former Indian fighter, and the Supreme Court; and between the Cherokee and the state of Georgia. Boundary lines delineating the state of Georgia versus land to which the Cherokee and Creek had title were laid out in the Compact of 1802. Under the agreement Georgia obtained title and sovereignty to its present-day borders. However, the Cherokee and Creek did not relinquish their title to land within Georgia's new boundaries. As a result, the federal government sought to obtain those land titles from the Cherokee and Creek.<sup>27</sup> In the 1830s, in response to pressures from White settlers, Georgia attempted to force Indians out of the state by passing laws that abolished the Cherokee court and legislature. Georgia then imposed its laws over Cherokee land while nullifying Cherokee laws and political institutions. Cherokee chief John Ross sued Georgia to stop it from trespassing and intruding in Cherokee governance.<sup>28</sup> The case hinged on the technical issue of whether the Cherokee nation was a "foreign state." The Cherokee nation held that it was a foreign state whose citizens were not citizens of the United States. However, the majority of justices held that tribes were not states "foreign to the United States." Justice Marshall was caught between a position stated in treaties, which considered the various tribes as sovereign nations with title to their own land—and an unwillingness to sell—and the reality of the increasing pressure of White settlers. In his opinion for *Cherokee Nation v. Georgia* Marshall again shifted the way U.S. laws treated Indian nations, even those practicing European means of civilization. He created a new status for Indian tribes: "domestic, dependent nations." By his definition, tribal nations were within U.S. borders and supposedly relied on "the protection and treaty promises of the federal government"; this made them dependent. Therefore, they did not constitute a foreign government, and they lacked any standing before the Court. Indian rights and freedoms had again been eroded within the U.S. system, as they were now labeled domestics and dependents of the United States.<sup>29</sup> Some scholars view this case as the source of the idea that the United States bears a trust responsibility to Indian nations.

### **Inconsistency in the Court: *Worcester v. Georgia***

At issue in *Worcester v. Georgia* (1832) was Cherokee land within the state of Georgia that was not for sale to the U.S. government. In 1828, Georgia passed a law that extended its jurisdiction over the territory of the Cherokee nation. Chief Justice Marshall's landmark decision ruled in favor of the Cherokee. Now that Indians were considered "domestic dependent nations," federal laws were to "manifestly consider the several Indian nations as distinct political communities, having territorial boundaries, *within which their authority [was] exclusive*, and have a right to all the lands within those boundaries, which [was] not only acknowledged, but guaranteed by the United States."<sup>30</sup> This is significant because the Court upheld the territorial integrity of Indian lands and the rights of tribal authority, affirmed treaties, and reminded the states that they had no jurisdiction in Indian Country.

The *Worcester* decision created a legal precedent but did not protect the Cherokee people from a forced removal. In addition to public opinion against the Indians, several factors worked against enforcement of the Supreme Court's *Worcester* ruling. Georgia had an ally in President Jackson, who had led negotiations in nine treaties between the southern tribes and the United States. The Cherokee had well-known supporters in Daniel Webster, Henry Clay, and Davy Crockett. Congress, however, had passed the Removal Act in 1830, which eventually forced the relocation of thousands of Indians from the southeastern United States to Indian Territory, in what is now Oklahoma. (The Removal Act is discussed in greater detail below.) Greed and racism were certainly factors in enforcing this policy, but most important was President Jackson's belief that Indians could not expect to sustain their land claims and their traditional customs with the increasing encroachment of White settlements.<sup>31</sup> Another problem was that enforcing the Court's decision would have required sending federal troops to Georgia to protect the Indians, instead of protecting settlers from the Indians. Although the Supreme Court's decision in *Worcester* was in favor of the Indians, the federal government did not enforce it. The case and its aftermath are a notable example of the ways in which the U.S. desire for land expansion superseded other considerations, including the rulings of its highest court.

The Marshall Trilogy was followed by several cases with questionable legal reasoning and obvious contradictions that collectively provide the underpinnings for a body of law known as Federal Indian Law. In cases such as *Ex parte Crow Dog* (1883), *United States v. Kagama* (1886), *Lone Wolf v. Hitchcock* (1903), *Tee-Hit-Ton Indians v. United States* (1955), and *United States v. Dann* (1985), the Supreme Court extended Marshall's concept that Native nations had a subordinate or limited sovereignty. It also granted Congress with **plenary**—that is, full and absolute—power over Indian nations.<sup>32</sup> The *Lone Wolf* case, for example, gave Congress the prerogative to unilaterally break treaties with Indian nations without tribal consent, effectively removing “tribal consent as a factor in federal efforts to acquire more Indian lands.”<sup>33</sup>

These cases illustrate key ways through which Indians tried to fight for their rights by using the U.S. legal system to enforce treaties and federal statutes designed to protect them. The Supreme Court, however, generally ruled in favor of the federal or state government after 1830. When the Court did rule in favor of Indians, the ruling often was not enforced by local, state, and federal authorities. By the end of the 1830s, Native Americans had no reliable means to pursue their interests within the U.S. judicial system, and the president and Congress were aligned in their approach of removing Indians from land wanted by White settlers. With only the Supreme Court supporting Indian rights, and then only occasionally and without means to enforce its rulings, Native peoples could not maintain sovereignty as independent nations or have access to equal opportunity under U.S. law. The barriers to Indians' equal treatment within the dominant White society had grown and hardened.

How did the U.S. system of government fail Indians after the *Worcester* ruling acknowledged tribal authority?



GRANGER

An Oglala Sioux encampment in the 1830s has a new neighbor in a trading post that will soon become a fort. The United States ratified nearly four hundred treaties with Native peoples, only to break provisions in all of them as the United States expanded its borders. In response to several cases brought by Indians to the U.S. Supreme Court, the Court ruled inconsistently, although it established decisive barriers to Indian rights.

### Removal and the Trail of Tears, 1838–1839

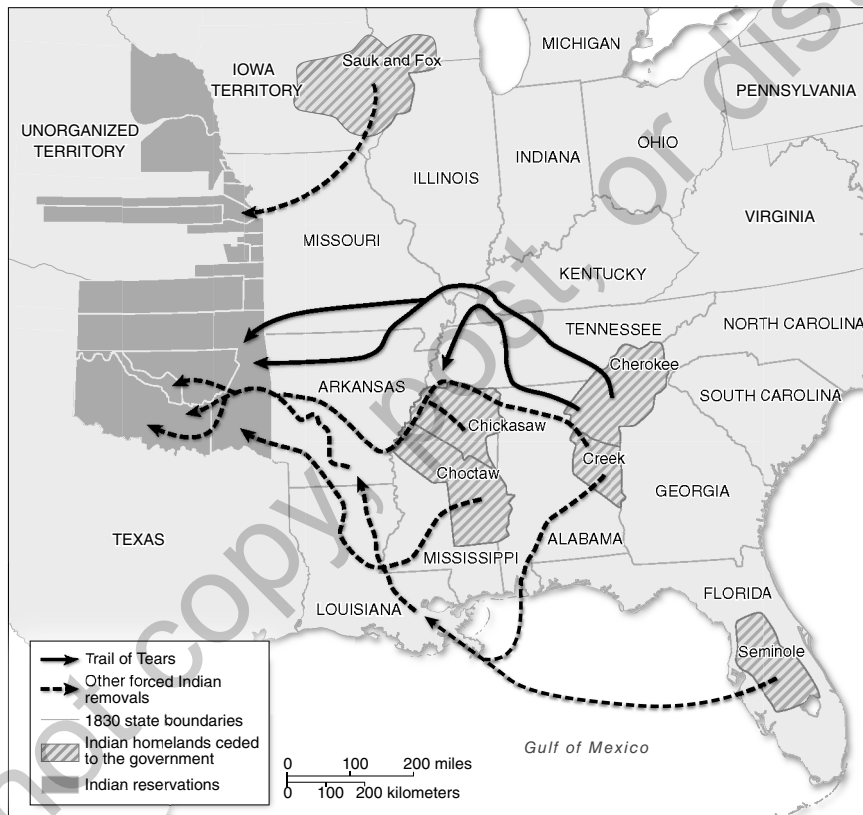
Westward expansion increased pressure on Congress and the president to remove Indians from the Mississippi Valley. The pattern of interaction between Whites and Indians was a familiar story. Settlers would encroach on Indians' land in increasing numbers, which drove away the game that Indians needed for food. If Indians retaliated, the settlers would seek U.S. military protection. After hostilities, Indians—often under duress—would sign a treaty with the victorious United States. The predictable result was that Indians lost the bulk of their homelands and were forced to relocate farther west.

This cycle continued until President Jackson took drastic steps to remove Indians from all parts of the United States occupied by White settlers. Jackson, who had fought against Indians as a U.S. Army general, did not place much stock in treaties. Instead, he believed that only military force would produce the desired results with Indians who were not adopting U.S. culture. Following Jackson's lead, Congress passed the **Indian Removal Act of 1830**, which forced thousands of Natives to move to what became present-day Oklahoma. Jackson used the military to enforce the act to remove most of the Cherokee, Chickasaw, Choctaw, Creek, and Seminole from the southeastern states.<sup>34</sup> Numerous other Natives from many tribal nations were also forcibly relocated. Although they were assimilating to American

social, educational, economic, and political customs, the Five Civilized Tribes in particular were physically in the way of White Americans who wanted their valuable land. This massive relocation sent Indians on an eight-hundred-mile journey known as the **Trail of Tears** to resettlement in western lands, first called Indian Territory and now Oklahoma. The arduous march killed thousands of Indians due to illness and starvation during the harsh winter of 1838–1839. (See Map 2.3.)

### MAP 2.3 ■ Indian Removal

The Trail of Tears was the most prominent example of efforts by the United States to forcibly remove Indians from the land it wanted. Those removed during the Trail of Tears were settled in Indian Territory, which within a few decades was also desired by Whites, leading to additional property losses by those nations.



Because tribal nations were not monolithic, there were various viewpoints within some tribes over the issue of removal. Elias Boudinot, an assimilated Cherokee who had been educated in Connecticut and married a White woman, was ostracized by Whites in Connecticut. As the editor of a Cherokee newspaper, he initially wrote articles in English that were pro-Cherokee nation and against the Indian Removal Act. He subsequently changed his opinion to advocate for removal

because he thought it would be best for the Cherokee. Cherokee leaders who opposed removal, however, ousted him as editor. Boudinot felt that for the Cherokee “their only hope to continue as a people, to continue their nation, to preserve their sovereignty was to give up their land in the Southeast and move west.” According to historian Theda Perdue, Boudinot “believed that it was more important to preserve the people than to preserve the land.” Consequently, Boudinot, along with his cousin John Ridge and his uncle Major Ridge, was instrumental in negotiating the Treaty of New Echota, which provided for the removal of most Cherokee.<sup>35</sup> After arriving in the West, a Cherokee faction opposing Boudinot’s position sought revenge for relatives who had died on the arduous road from the Cherokee homeland. Boudinot, his cousin, and his uncle were killed.<sup>36</sup>

Indians who did not seek to assimilate into the dominant White society were now quickly losing their battle to retain their land. The Trail of Tears set a pattern that would be repeated as Whites moved further westward after the Civil War. Once the removal policy was implemented, the United States and Indians entered a new phase of their relationship. Jackson’s removal policy was merely the beginning of Indians coming under greater control of the U.S. government, with little autonomy and even fewer rights. Removal was followed by Indians’ confinement to reservations—areas of land managed by tribes, often far from their homelands. Subsequent federal assimilation programs, successors to Jefferson’s civilization program, further demeaned and disregarded tribal cultures and allowed more land to be parceled out to White settlers.

Forced removal to reservations did not end Indian resistance to U.S. policies. In 1866, Red Cloud, a Lakota leader and experienced fighter in territorial wars against other Indian nations, masterminded the most successful war between an Indian nation and the United States. Angered by the U.S. Army’s building forts in Lakota territory along the Bozeman Trail in what is now Wyoming toward the Montana gold fields, Red Cloud began attacking the forts. He successfully defeated U.S. forces at Fort Phil Kearny, Wyoming, in December 1866. By 1868, the U.S. government agreed to the **Treaty of Fort Laramie**, whereby it relinquished its forts along the Bozeman Trail and guaranteed the Lakota possession of the half of South Dakota that included the Black Hills, as well as parts of Montana and Wyoming.<sup>37</sup>

Indians continued to fight to retain their land to prevent miners and settlers from invading. Sitting Bull, a Hunkpapa Lakota chief and holy man, led this fight. In 1874, the U.S. Army sent George Armstrong Custer to the Black Hills to confirm that gold had been discovered. This part of the Dakota Territory, a sacred area for Native Americans, was prohibited to White settlers under the terms of the 1868 Fort Laramie Treaty. Despite this prohibition, prospectors stormed the Black Hills looking for gold. The U.S. government sought to buy the Black Hills area, but the Lakota were not interested in selling. The commissioner of Indian affairs responded by declaring all Lakota who were not on reservations by January 31, 1876, hostile to the United States. The Battle of Little Big Horn followed, with General Custer facing Sitting Bull and three thousand Native warriors from several nations who had joined him. The consolidated Native force won that historic battle, and Sitting Bull remained firmly defiant against White intrusion and cultural practices.<sup>38</sup>

## THE CIVIL WAR AND ITS AFTERMATH: SLAVEHOLDING AND THE FOURTEENTH AMENDMENT

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The history and treatment of Native peoples is intertwined with that of Blacks. Indians and slaves were a problem for the U.S. government even when the Constitution was being written. Both are mentioned in Article I, Section 2, concerning Congress's power to levy taxes. In counting people in the states, the Constitution excluded "Indians, not taxed," while slaves were considered "three-fifths of all other Persons." This officially codified the U.S. racialization of both Native Americans and Blacks as being inferior—and of lesser value—than Whites. Indian slavery in the colonies existed, but it never became a divisive issue. By 1717, the Indian slave trade was waning because of the fear of future Indian rebellions. British colonists then concentrated their attention on African slavery, as they developed a racial ideology that sought to separate Africans from Indians and to keep them antagonistic toward one another.<sup>39</sup> Indians were far more difficult to control than slaves, who were neither organized nor armed. As racial policies evolved regarding Indians, the president and later Congress found it easier to advocate removal and separation of Indians from the U.S. population, while the more controllable African slave population could remain subordinate to all Whites. With the removal of most Indians from Georgia in 1830, the land in the lower South was available for White settlers to grow cotton on plantations with Black slave labor.

Slaves who were acquired through warfare were not uncommon within tribal nations in North America prior to European colonization. The Five Civilized Tribes were considered "civilized" by Whites in part because they had adopted the idea of private land ownership, plantation farming, and enslavement of Africans.<sup>40</sup> The Cherokee were notable because they retained slaves until 1866. Blacks were useful to Indians as workers, as translators in trading with the British, as middlemen in transactions with the White community, and as military advisers. Racial identity as a result of slaveholding and intermarriage remains an ongoing issue in the twenty-first century. Some Cherokee with African American and Indian ancestry—referred to as freedmen—acquired citizenship in that nation under an 1866 treaty and are entitled to tribal and federal benefits as Native citizens.<sup>41</sup> Some Seminole in Florida refused to follow the U.S. dictate to move west of the Mississippi and rejected the policy of selling or owning slaves. Those who remained in Florida alongside free and runaway slaves became known as Black Seminoles. Blacks were treated as part of the Seminole community, rather than as a subordinate group in a racial hierarchy. They enjoyed personal freedom and owned property. In some cases, Seminole chiefs married Black women.<sup>42</sup>

### Native American Exclusion, African American Inclusion

The Northern victory in the Civil War resulted in two different outcomes for Indians and Blacks, both of whom were outsiders of U.S. mainstream society and its political processes. Prior to the Civil War (1861–1865), Blacks were either slaves, freedmen, or in some cases citizens of a state. After the Civil War, the Fourteenth Amendment expressly incorporated Blacks into the political system by providing citizenship and granting Black men the right to vote. Blacks could now receive all of the rights and privileges of other U.S. citizens of European descent, at least theoretically. (See Chapter 3.) This was not the case for Indians, who did not seek political

incorporation. The Union victory in the war did not restore their status as sovereign nations, nor did it bring them freedom from U.S. government control.

Congress, in fact, did not consider Indians at all when it drafted the Fourteenth Amendment. A congressional report stated that the status of Indians was based on numerous treaties, acts of Congress, and Supreme Court decisions. It concluded that Indians were members of separate nations that had treaty relations with the United States, which exempted them from U.S. laws. The Fourteenth Amendment was intended to address “the change in the status of former slaves which had been affected during the War, while it recognize[d] no change in the status of Indians.”<sup>43</sup> Congress clearly wanted to follow the policy established in the Marshall Trilogy of cases that Indians were members of recognized tribes, had treaty relations with the United States, and were therefore exempt “from the operation of our laws, and the jurisdiction of our courts,”<sup>44</sup> even as it used those laws and institutions against Indian nations. The 1830s were turbulent during President Jackson’s first term in office, as federalism was still evolving. Not only did tensions exist between the federal government and the states, but there also was no agreement on Indian policy between the Supreme Court and the president. Georgia and South Carolina were asserting states’ rights in an attempt to override federal authority, particularly regarding Indian policy. The result was no consistent government Indian policy, although the Marshall Trilogy did begin to establish a federal policy regarding Indian rights.

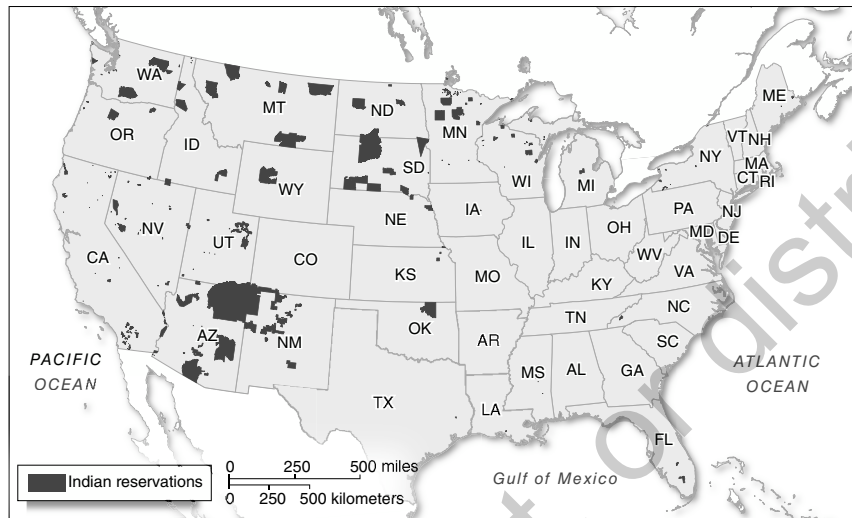
These examples continue to show that the United States frequently acted in a manner that did not respect the sovereignty of Indian nations. Instead, it applied its laws and institutions to Native peoples when it was convenient to expand its own territorial, economic, and political interests. The decision not to include Indians in the Fourteenth Amendment, while broadly affirming tribal sovereignty, denied individual Natives who sought to assimilate into the dominant White society access to the same rights and opportunities as other minority group members at this time. In contrast to other minority groups, Native Americans over time experienced further erosion of their rights as their land and their sovereignty came to be dominated by the United States.

### **A Limited Solution: Reservations and the Bureau of Indian Affairs**

By the 1880s, Native nations no longer represented a military threat to the U.S. government. The process of forced removal, loss of land, and depopulation had significantly damaged Indians’ way of life. While some still fought against Whites, many more who were weary of battle sought a resolution to their conflict with the United States. Indians and the U.S. government reached agreements whereby indigenous peoples now live in reserved areas exclusively set aside for them, from which we get the term **reservation**. (Map 2.4 illustrates reservations in the United States today.) Indians reluctantly agreed to cease military operations and to turn over their remaining lands to the U.S. government in exchange for guaranteed permanent protection from further incursion by White settlers.<sup>45</sup> They retained the right to self-governance within their diminished homelands. On its surface, this federal policy offered transplanted or merely reduced Native peoples the possibility of rebuilding their communities and attaining the self-sufficiency that had been slowly taken away from them over the preceding years. In fact, confining Indians to reservations was one of the most stringent of policies because it permanently separated Native nations from U.S. society.

**MAP 2.4 ■ Indian Reservations in the Continental United States**

Natives living on reservations today have the right to self-governance, but the measures taken before the U.S. government agreed to their exclusive right to the land and honored that agreement, left Native peoples far from their original homes and greatly decimated in population and means.



Source: Indian Reservations in the Continental United States, National NAGPRA, National Park Service, U.S. Department of the Interior, <http://www.nps.gov/nagpra/DOCUMENTS/ResMap.htm>.

With the establishment of reservations Native nations retained governing power, but they gradually became subject to U.S. and sometimes state law. U.S. citizenship for Native individuals was imposed in 1924, although tribal citizens remained marginalized and isolated from the mainstream society, with few resources available to them. Congress by then had largely assumed responsibility for managing Indian relations, and the **Bureau of Indian Affairs (BIA)** within the U.S. Department of the Interior was charged with the conflicting tasks of fulfilling the federal government's treaty and trust obligations to Native peoples, while also forcing tribal individuals to assimilate into the larger society. BIA officials made little effort to understand Indian culture, religious practices, or traditions. Native peoples, frequently confined to desolate reservation lands, were subjected to the paternalistic policies of Congress and the whims of bureaucrats. While Indians resided territorially within the United States, they remained outside of its political system.

What factors precluded the United States from bringing Native peoples and individuals and their concerns into its policymaking process?

### **U.S. FEDERAL POLICY: ASSIMILATION VERSUS CULTURE AND SOVEREIGNTY, 1870S–1950S**

The United States continued to violate the provisions of treaties with Native nations even after armed conflict ended. In 1871, as part of its ramped-up assimilation campaign, Congress decided that it would no longer conduct treaties with Indians:



No Indian national or tribe, within the territory of the United States shall be acknowledged or recognized as an independent nation, tribe, or power, with whom the United States may contract by treaty.<sup>46</sup>

This was a continuation of the U.S. practice of crafting Indian policy without consultation with or respect for Indian nations. In 1885, U.S. policy began to usurp what sovereignty it had inconsistently recognized in Native nations by enacting legislation that effectively supplanted traditional tribal criminal and civil authority in Indian Country. The Major Crimes Act, which was part of the Indian Appropriations Act of 1885, “unilaterally extended [U.S.] jurisdiction over felonies occurring among Indians in Indian territories,” stripping Indian tribes of jurisdiction in major criminal cases. This was only one act out of approximately five thousand federal statutes aimed at once more extending U.S. control over Indian affairs.<sup>47</sup>

A further blow was struck against tribal nations in *United States v. Kagama* (1886), which challenged the assertion that Congress had jurisdiction over crimes between one Indian and another. Justice Samuel F. Miller addressed the issue of sovereignty in his opinion:

But these Indians are within the geographical limits of the United States. The soil and the people within these limits are under the political control of the United States. . . . These Indian tribes are the wards of the nation. They are communities dependent on the United States.<sup>48</sup>

These, along with other cases and statutes, undermined the sovereignty, proprietary rights, and cultural distinctiveness that Native nations had struggled to protect. Their efforts faced another assault when the federal government increased pressure to incorporate Natives into the now-majority White mainstream. Indian goals to preserve their cultural traditions and self-government were in stark contrast to the objectives of the waves of European immigrants seeking entry into the United States at the time. **Assimilation**, the process of becoming American, was desirable for immigrants who often observed special days or prepared ethnic foods, but simultaneously adopted American customs and language. Native peoples, for the most part, did not share this desire to assimilate. At the same time, Christian missionaries promoted assimilation by converting Indians to Christianity and educating them in American customs.

Native indifference to Euro-American assimilation worried some Christian groups, which met from 1883 to 1916 to discuss Americanizing Indians. Assimilationist ideas from these conferences eventually became the core principles of the 1887 General Allotment Act as the government sought to territorially break down the remaining communal lands of tribal nations, believing that such a process would expedite “Americanization” and “civilization.” Coercive assimilation was the unilateral federal policy goal that aimed to destroy Indian cultural values such as the collective land system; respect for natural resources of land, water, and forests; and a society only modestly stratified on the basis of racial distinctions.

The **General Allotment Act of 1887**, also known as the Dawes Act, became the major vehicle for forcing assimilation. Federal legislation sought to assimilate Indians into American culture by unilaterally changing their lifestyle and relationship to the land. The plan was to shift Indians from their traditional collective land system to the White tradition of personal land use by granting (allotting) Indians a parcel of 40, 80, or 160 acres of land. The model for this land

distribution policy was the 1862 Homestead Act, which allotted settlers 160 acres of land after the head of a family had cleared land, built a house, and lived on the land for five years. As we discuss in Chapter 6, most beneficiaries of the Homestead Act were White settlers. This plan had worked well with European immigrants who wanted to own their own land, but when it was applied to Natives, it disregarded their cultural values, lifestyle, and sovereign rights.

The General Allotment Act was one more federal plan to civilize and Americanize Indians by eliminating collective landholdings and dismantling Indian governing institutions. The ultimate objective was eradicating Indian cultural traditions. The allotment plan diminished remaining Native landholdings by approximately two-thirds. Tribes were coerced by the federal government to relinquish landholdings because of pressure from state and territorial leaders, Congress, the BIA, and White settlers who desired to settle in the West. The federal government supported the policy because it would “hasten the arrival of civilization and Christianity at the tribal doorstep.”<sup>749</sup> Indian landholdings became fragmented, which in turn broke up tribal social structure. The result was that Indians and Whites gradually came to live side by side, creating a pattern of land ownership within reservations that, contrary to federal expectations, did not promote more amicable relations between Whites and Indians. This policy dramatically undermined the structure of formerly cohesive tribal communities. By the 1920s, the government recognized that its plan had not worked. Indians had not warmly adopted the White occupational model of becoming farmers or ranchers, nor had most adopted American cultural or economic habits.

The Dawes Act marks an era, 1887 to 1934, when citizens of Indian nations came to be treated as though they were wards of the federal government, which had formally assumed the role of guardian. Indians who were not adopting American cultural values and traditions were relegated to a subordinate status and deprived of the right to make decisions about their remaining lands, governments, and economies. Indians continued to meet and negotiate with representatives of the U.S. government, but they had little real influence and were unable to use the laws, tactics, or institutions available to most other minority communities. For example, in this same period, many Mexican Americans had U.S. citizenship and could participate in the political process. They owned businesses alongside Whites, could buy land and build homes, and were able to use U.S. laws and institutions to promote their interests. (See Chapter 4.) In contrast, many Native individuals, while theoretically having the rights of U.S. citizenship, were largely denied actual benefits and legal protections as either Natives or Americans. Under the allotment program, the Department of the Interior acted as a trust agent for leasing Indian land allotments to the natural gas, oil, and timber industries, along with grazing and mining interests. Fees were paid to the U.S. Treasury that were held in trust for the Indians, but individual Natives rarely received all of the money due them, prompting a major class-action lawsuit in the 1990s that would finally be settled in 2010.

After enduring forced removal and U.S. assimilation efforts, Native peoples struggled to rebuild their communities and governing structures in order to maintain their way of life on reservations. The Dawes Act further reduced Indian resources and autonomy. These circumstances drastically limited their ability to act effectively to advance their interests. Native peoples are the only group subject to such focused legislative, executive, and judicial destruction of cultural values as well as confinement to reservations in peacetime. The racist policies of the

Jackson era were subsequently implemented under the guise of helping Indians assimilate by breaking up collective landholdings.

### White Cultural Dominance and Indian Identity

The late nineteenth and early twentieth centuries were characterized by a dramatic loss of additional land, brought about by the Dawes Act, an imposition of U.S. cultural values, and a marginalization because of confinement to reservations. Natives were physically isolated from American society and marginalized politically because their sovereignty as Native nations was not being respected. There was no recourse when they did not have the same rights of citizenship that European immigrants enjoyed. Consequently, Indians had very little influence on members of Congress who might have been supportive of their position. When it came to Indians, the United States continued to treat them as a special case.

Throughout the history of their interactions with Whites, Indians encountered significant barriers because Europeans, and then the U.S. government, firmly believed that White American culture was superior to the non-Christian Indian culture. Thus, it seemed natural from this perspective that an assimilation policy would benefit all Indians. The federal government unilaterally decided to impose ethnocidal policies on Indians that were coercive, disrespectful of indigenous culture, and, in the long run, deeply harmful. While the government's objective was to reallocate the land, it also sought to influence cultural values in response to pressure from Christian groups that advocated assimilation.

By 1887, the government and Christian social reformers were intent on assimilating Indians into American society. To speed up the process that would undermine tribal culture, they sought to replace the traditional communal economic base with a system of private property; send children to distant boarding schools that separated them from their families; and regulate every aspect of Indian social life, including marriage and religious beliefs. Indian tribes could only become self-governing by adopting constitutions that had been approved by the federal government.<sup>50</sup> The Dawes Act was so antithetical to the values of Indian communities that it was considered by Indians to be part of a plan to destroy all of their culture.<sup>51</sup> As David Wilkins, a scholar of Native politics, notes, all of these policies “undermined the confidence, hopes, and self-respect of indigenous communities.”<sup>52</sup> The allotment plan struck at the heart of tribal social structure, which was founded on a communal land policy. Indians did not view property as being private, belonging to only one person. Instead, land was a collective gift from the Creator held in common for hunting, fishing, and planting. Land was to provide basic material needs and subsistence. Natives saw themselves as stewards, not as owners, of the land.<sup>53</sup> In an effort to break up the reservations, the federal government offered Indians tracts of land—held in trust—with the hope and expectation that they would become “civilized,” independent farmers within twenty-five years. The federal government retained control by prohibiting the sale of the land for twenty-five years without the permission of the secretary of the interior. This assimilation process forced Indians to adapt to an American lifestyle by living on a parcel of land that was considered private property.

The government decided that any land that was not allotted to tribal members would be declared “surplus.” This extra land could then be sold to Whites who would reside among Indians to serve as appropriate models of White behavioral patterns.<sup>54</sup> Indians were powerless to contest the sale of the “surplus” land and, consequently, lost millions of acres. Not only was there a huge loss of land, but the land that was retained was often less desirable for farming.<sup>55</sup> The federal government purchased over 200,000 acres of the surplus land, which amounted to a more than 90 percent loss of Indian lands. In the case of the Cheyenne and Arapaho in Oklahoma, over 529,000 acres were retained, but over 3 million were declared surplus.<sup>56</sup> Between 1887 and 1934, the Indian land base dropped from about 138 million to only 48 million acres.<sup>57</sup>



GRANGER

Native American children stand before the Carlisle Indian Industrial School, where they will soon become students. The United States established boarding schools across the country to encourage Native children—sometimes forcibly—to assimilate to the dominant White culture. Students wore Whites’ style of dress, were required to speak English, and were taught skills and trades that Whites deemed appropriate.

Since the Five Civilized Tribes had been exempt from the Dawes Act because of previous treaties, they were placed under additional pressure by the Curtis Act of 1898 to provide for the allotment of their property. Interestingly, the original draft of the Curtis Act was authored by U.S. Representative Charles Curtis, who was of Kansa, Osage, Potawatomi, and French descent. Curtis, however, was dissatisfied with the outcome because it contained little of the original draft. The Five Civilized Tribes had been running their own governments and schools, which “had produced more college graduates than were then living in either Texas or Oklahoma.” Along with this, the federal government terminated the indigenous governance structure of the Five Civilized Tribes and replaced it with government officials appointed by the president.<sup>58</sup>

Acquiring land as a part of the Spanish-American War peace treaty made the United States a powerful new member of the club of colonial powers. In the twentieth century, land acquisition remained a driving government interest, as did maintaining racial barriers against any group that was not White. President Theodore Roosevelt and the commissioner of Indian affairs, Francis E. Leupp, clearly stated that the goal of the forced assimilation policy, as expressed via allotment, was to act as “a mighty pulverizing engine to break up the tribal mass.”<sup>59</sup>

### The Role of Blood Quantum in Indian Affairs

Racial classification had been an intractable problem for both the state and the federal government because of the introduction of Africans as slaves into the American population. Children resulting from unions between Whites and Blacks created a mixed-race population that Americans felt had to be classified. The category they developed was “mulatto.” (See Chapter 1.) The federal government tended to classify persons with Native and any Black ancestry as Black because Southern planters found it easier to dominate a dual racial system of Blacks and Whites. It was simpler to classify everyone as either White, which gave you a privileged position no matter how poor you were, or Black, which usually meant you were a slave. This classification system facilitated capturing runaway slaves and maintaining order on plantations. Indians frequently identified as White to avoid the stigma of being Black. Not until after the Civil War in 1870 did a separate classification for Indians exist in the U.S. Census. Simultaneously, some people identified as Indians to avoid paying taxes to the federal government.

Not only did the Dawes Act attack Native American property and cultural values, but it also set the stage for a new factor regarding indigenous identity. In 1917, the commissioner of Indian affairs insisted that blood quantum be part of the calculation for determining whether a Native remained eligible for federal trust protection as a legally “incompetent” person. The presumption was that Natives with more than one-half Native blood were less “competent” to handle their own economic affairs, while individuals with less than one-half blood—the other half being White—were presumed to be more sophisticated because of the preponderance of White blood. This is similar to the classification rules for Blacks, discussed in Chapter 1, in which the federal government established categories like “octoroon” to represent those with one-eighth Black blood.

Was blood quantum for Indians any less racialized a policy than the one-drop rule for African Americans?

The **blood quantum** test was and remains a unique and arbitrary test, but many Native nations and federal agencies still rely on it to determine eligibility for services, benefits, and tribal citizenship. Certainly, European immigrants were never subjected to racial tests that determined their identity based on a percentage of blood. Yet there are similarities between Indians and African Americans on proving their identity based on the extent of their White ancestry. African Americans were subjected to the one-drop rule, which decreed that having any ancestor of African descent, even one-sixteenth or one-thirty-second, made one Black. For Native people, an individual had to have a preponderance of Native blood to be deemed indigenous, and therefore eligible for tribal status. For both Indians and African Americans, being able to prove White ancestry was a way to elevate their status.

Distinctions among Indians as to who was a full-blood, a half-blood, or simply a mixed-blood became important for many reasons. Membership in a tribal nation was determined by each nation. Being a member depended on a number of factors: “social, cultural, linguistic, territorial, socio-psychological, and ceremonial.”<sup>60</sup> Through the blood quantum policy the federal government heavily influenced tribal membership and Native identity. This sometimes pitted Natives against one another based on how assimilated they allegedly appeared to be. But defining who is an *Indian* is a substantial problem because there are both ethnographic and legal definitions of the term. Felix Cohen, a leading attorney on federal Indian law in the 1930s and 1940s, explained it this way:

We may nevertheless find some practical value in a definition of “Indian” as a person meeting two qualifications: (a) That some of his ancestors lived in America before its discovery by the white race, and (b) That the individual is considered an “Indian” by the community in which he lives.<sup>61</sup>

Once the blood quantum was introduced as a qualifier for Indian benefits to property and continued federal trust protection, the government decided that it could also be used as a major “eligibility factor” for any federal benefit program for Natives. Indians found themselves subject to the blood quantum standard in order to obtain health care, education, and annuity payments.<sup>62</sup> Tribal reservations, often located far from urban centers, sometimes struggled to secure quality medical care, education programs, and economic development because of their remoteness. Other minority groups in urban areas had more accessible benefits to government programs such as Head Start and health clinics.

In the late nineteenth century, aside from the government, private individuals undertook assimilation efforts to bring Indians into American culture, so they would cut their hair, learn English, and wear suits and dresses. A prominent spokesperson on Indian policy was General Richard Henry Pratt, who had served in the 10th Cavalry Buffalo Soldiers. As a former Indian fighter and an ardent proponent of assimilation, he was presumed to be an expert on what the federal policy should be toward Indians. To promote his ideas, he founded and served as superintendent of the **Carlisle Indian Industrial School**, established in 1879. He emphasized learning English and becoming Christian as he endeavored to promote the philosophy of “kill the Indian, save the man.” The culturally destructive plan forced young Natives into boarding schools run by Whites who sought to erase indigenous cultural identity. The boarding schools were designed so that members of the same tribe did not live together, in the hopes of breaking down tribal ties and fostering the learning of English. In order to socialize Indians into American habits and cultural values, they were placed in White homes in the summer to increase contact with American culture. The boarding school plan was only partially successful, however; Indian children who had spent years learning “civilized ways” often devised plans to retain their languages and values even while in school. Many of these Natives also decided to return to their reservations, which disappointed federal bureaucrats.

## U.S. Citizenship Is Extended to Native Americans, 1924

By 1920, all U.S. citizens—men and women, Whites, Blacks, Latinos, Asians, and other groups—had the right to vote, even though obstacles remained for minority members, who frequently sought to exercise the franchise. Still, they, in theory, could engage in the U.S. political process. Some Natives, however, still lacked U.S. citizenship and therefore could not vote in state or federal

elections. In the 1920s, extending American citizenship to Indians remained an unresolved issue. Were Indians citizens or foreigners? Although nearly two-thirds of Native individuals had acquired federal and state citizenship by 1920 through allotment, treaties, or specific congressional acts, the other one-third remained citizens solely of their Native nation.

After World War I, however, the issue of extending U.S. citizenship to remaining Native individuals was raised again because Natives who had volunteered to fight for the United States in Europe felt that they were entitled to voting rights in light of their service. Progressive senators Burton K. Wheeler, Bob La Follette Jr., and Lynn Frazier were known as “Friends of the Indian” Whites, who were concerned about the condition and status of Indians. As advocates for assimilation and citizenship, these “friends” asserted, “The sad uniformity of savage tribal life must be broken up! Individuality must be cultivated.”<sup>63</sup>

Native individuals had their own perspective. Members of the Society of American Indians (SAI), a group of college-educated men who had integrated into American society, were the most pro-citizenship, assimilationist group. A founding member of SAI and a Santee Sioux, Charles Eastman, summed up the SAI position: “We do not ask for a territorial grant of separate government. We ask only to enjoy with Europe’s sons the full privileges of American citizenship.”<sup>64</sup> After several proposed bills tried to tie Indian lands to the granting of voting rights, Congress unilaterally extended citizenship to those remaining noncitizen Natives in 1924. This made Native individuals, the original peoples of the land, the last category of individuals to acquire American citizenship. Importantly, it was understood that the grant of U.S. citizenship would not affect existing tribal property rights. Consequently, Native individuals remained simultaneously under the jurisdiction of tribal governments, state governments, and the federal government.<sup>65</sup>

Not all Native nations welcomed the imposition of U.S. citizenship. The Iroquois Confederacy responded to this political incorporation with a note to the federal government stating that the Iroquois were not, had never been, and did not intend to become U.S. citizens.<sup>66</sup> As Wilkins notes, the Iroquois and other tribal nations refused to accept federal citizenship, arguing that their preexisting national status was sufficient. Since they had neither requested American citizenship nor gone through the normal procedures to attain it, they questioned how the United States could unilaterally extend its citizenship to their peoples, who constituted a separate nation previously recognized in ratified treaties. Many Iroquois nationals today maintain the position that the congressional act that extended them U.S. citizenship has no effect on them. Moreover, a number of tribal nations continue to seek recognition before the United Nations as separate nations. Some Hopi and Iroquois citizens “travel abroad on passports issued by their own governments.”<sup>67</sup>

### **Assimilation’s End: The Indian Reorganization Act of 1934**

Despite this backdrop of a struggling Indian identity in the face of a determined dominant culture, it was clear by the 1920s that the government’s assimilation policies and allotment provisions were not effective. Boarding schools did not ease the paths of Natives into American society, while the allotment policy had only pauperized and created thousands of landless Natives. In some cases, fraud was so rampant that some Indians lost all of their land,

an integral part of their cultural fabric. With so many broken agreements, Indians were also less trusting of American motives. In searching for a new Indian policy, the federal government commissioned the Brookings Institution, a nongovernment organization, to examine the conditions of Natives throughout the United States. The 1928 study, popularly known as the Meriam Report, was critical of past policies that had not adequately addressed the health, economic, educational, land, or legal status of Indians, who generally lived in dire poverty. The criticism of the BIA showed that federal administrators had not taken into account Indian cultural or property values. The report recommended the following:

The fundamental requirement is that . . . [the Indian Service] be made an efficient educational agency, devoting its main energies to the social and economic advancement of the Indians, so that they may be absorbed into the prevailing civilizations.<sup>68</sup>

It, along with other analyses, culminated in the federal government developing a modified statutory and policy approach to Indian affairs—the **Indian Reorganization Act (IRA)**. This sweeping law dramatically rejected the allotment policy of 1887 and provided for the return of some Indian landholdings. Reservations were now to be considered important cultural units where Indians could govern themselves, write their own constitutions, and establish elected tribal councils. Under the IRA, tribal governments would have a greater degree of self-governing authority, though still be subject to the approval of the secretary of the interior.

## BOX 2.1 ROAD SIGN

### A TALE OF TWO TEAMS: THE REDSKINS AND THE INDIANS

What does it mean to call someone a Redskin? From the Indian perspective, Redskin is a disparaging or insulting term of racialization. While the term has eighteenth-century roots, it is not clear if red referred to skin color or the use of facial paint, or was merely a way to differentiate Natives from Whites and Blacks. Another interpretation is that red referred to the scalps or skins with which bounty hunters returned to prove they had killed Indians. Native Americans have asserted that the names of professional sports teams such as the Cleveland Indians with a “chief” logo and the Washington Redskins are derogatory. The contention is that these names and mascots perpetuate and subtly reinforce negative stereotypes. Indeed, researchers in a 2016 survey showed that people living in cities with Native American mascots were more likely to think of Native Americans as warlike.<sup>69</sup> Since 1968, when the National Congress of American Indians and a group called “Change the Mascot” began to protest, several high schools and universities have modified their names. Professional sports teams, however, have been slow to make name changes. A continuing holdout against a name change was Dan Snyder, the previous owner of the Washington Redskins. Since it took time to select a new name, clear trademark hurdles, and design a new logo, the team was called the Washington Football Team until 2022. In contrast to the Redskins, the major league baseball team in Cleveland, which has been known as the Indians since 1915, changed its name to the Cleveland Guardians in 2021. Statues known as the “Guardians of Transportation,” located at the ends of Cleveland’s Hope Memorial Bridge, are given as the source of the new name.<sup>70</sup> The



Cleveland team settled a legal battle over the name Guardians with a local roller derby team that had been known as the Cleveland Guardians for several years. Both will be known as the Guardians.<sup>71</sup> The Washington Football Team was renamed the Washington Commanders in 2022, and Dan Snyder sold his ownership of the team in 2023.

The incoming Franklin D. Roosevelt administration proved to be favorable to the Indian community. The appointment of John Collier as head of the BIA was key to implementing the new policy because he was not a traditional bureaucrat. Formerly a social worker, Collier had respect for and knowledge of tribal cultures. When he accepted the position, he felt optimistic that he could garner sufficient federal support for implementing the needed reforms. The IRA, which he helped draft, sought to reverse policy not only by stopping the allotment of Indian lands, but also by instituting educational reforms. For the first time the federal government asked Native nations for their opinion about the bill and gave them an opportunity to choose their own governing arrangements. Although indigenous support for the IRA was far from unanimous, Collier's greatest achievement was giving the tribes an opportunity to express their views on the IRA.

Getting Indian support was facilitated by a Chippewa-Cree anthropologist and writer, D'Arcy McNickle, who worked hard to gain the trust of Natives wary of such a dramatic shift in federal policy. With considerable effort by both Collier and McNickle, 189 Indian nations—a total of 130,000 people—agreed to reorganization, while approximately 90,000 rejected the proposal.<sup>72</sup> This new government policy, which gave Indians a direct vote in accepting or rejecting a government proposal, was a substantial departure from previous unilateral federal decisions regarding Indian governance.

The IRA was a landmark law. Although it left the newly created tribal constitutions and bylaws subject to the approval of the secretary of the interior, for those tribes that accepted the provisions of the act, the allotment policy was terminated, a \$10 million revolving credit fund was created to spur economic development, and tribal governing bodies were enabled to negotiate with non-Indian governments. This plan was to promote joint ventures with non-Indian businesses in order to improve the economic condition of Indians living on reservations. However, this effort to make the IRA acceptable met swift and strong resistance.<sup>73</sup> In addition, the IRA provided for the regulation of resources and the establishment of an affirmative action policy for Indians within the BIA. This preferential hiring program, which favored Indians who worked at the BIA, was challenged in *Morton v. Mancari* (1974).<sup>74</sup> The Supreme Court held that affirmative action for Indians was a political, not a racial, classification that would be “upheld if rationally related to Congress’s unique obligation to Indian tribes.”

As was typical with Indian affairs, there was a contradiction in the IRA policy. The tribal constitutions rarely coincided with traditional White understandings of political authority and governance. In some cases, the IRA sometimes supplanted those indigenous institutions, which increased internal tribal differences.<sup>75</sup>

## TERMINATION OF FEDERAL SUPPORT OF TRIBES, 1945–1950S

The onset of World War II followed by Collier's resignation in 1945 resulted in another period of upheaval in U.S.–Indian affairs because war took priority in government spending. Despite government reports documenting the extent of poverty among the tribes and the mismanagement of the BIA, congressional policy preference continued to be for assimilation over tribal cultural autonomy.

In the 1940s, most Indians lived on reservations, but not all tribes had accepted reorganization. Indians were not confined to reservations, but they were still viewed as “problems” because often land on the reservations contained coal or uranium that the private sector wanted to mine. This question was part of the debate between the “assimilators” and “terminators,” who wished for absorption of Indians in order to create internal territorial integrity, and the “IRA liberals,” who advocated maintaining Indian nations as colonized enclaves.<sup>76</sup> Indians were offered the choice between endorsing the IRA liberal position of colonization or finding ways to quietly express their discontent.



George Gillette (left), chair of the Fort Berthold Indian Tribal Business Council, covers his face and weeps as J. A. Krug, secretary of the interior, signs a contract accepting the tribe's sale of 155,000 acres of its reservation for a federal dam project in 1948. The termination of federal support for impoverished tribes left them with few resources to support themselves beyond what comparatively little land was left to them.

In what ways did the termination policy continue to erode indigenous sovereignty, treaty rights, and access to equal opportunity?

By 1952, the BIA had submitted a list to Congress of various Indian tribes that it deemed “ready to undergo . . . complete termination of all federal services.” This would effectively end the federal government’s trust responsibility over “terminated” tribal communities.

The proposal culminated in the Indian **termination policy**, passed in 1953. Abruptly removing 2.5 million acres of land from Indian control only further destroyed links among tribal communities. This measure established the policy that would culminate by 1960 in the processing of some 109 cases of termination “affecting a minimum of 1,362 acres and 11,466 individuals.”<sup>77</sup> Besides termination, the federal government also spent about \$1 million attempting to relocate thousands of Natives from rural or reservation areas to cities. Relocation was appealing to some Indians because the government provided moving expenses and job training if they went voluntarily. Approximately thirty-five thousand were resettled in Los Angeles, San Francisco, Denver, Phoenix, Minneapolis, Seattle, Boston, and Chicago, in the hope that they would abandon their ties to their tribal communities and join American society.<sup>78</sup>

Termination and relocation were two related policies that aimed to end tribal sovereign status. The negative consequences of termination were disastrous and utterly predictable. Wilkins notes how in two cases the Menominee of Wisconsin and the Klamath of Oregon found that their conditions declined precipitously after they had been terminated. Previously, both tribes were sustaining their peoples on reservations with more than adequate natural resources. After termination, conditions declined as tribal lands moved into private ownership and the trust relationship ended, which now subjected Indians to state laws and taxes. In addition, federal services were ended and their status as legal and political sovereigns was effectively concluded.<sup>79</sup>

Native nations and individuals around the country began to openly protest and resist both termination and relocation. The Blackfeet of Montana, with the help of attorney Felix S. Cohen, physically occupied tribal buildings in the face of BIA impoundment of them. Another stand-off was carried out by the Oglala Lakota of Pine Ridge, South Dakota. Spokespersons for the Association of American Indian Affairs used lobbying and public relations to defend Indians. They even endorsed IRA colonialism as their defense against termination. It was not until 1959 that the Dwight D. Eisenhower administration shifted the policy, announcing that it would no longer “terminate tribes without their consent.”<sup>80</sup> The relocation policy continued until 1980, when the urban employment centers were closed.<sup>81</sup>

## **CIVIL RIGHTS AND SELF-DETERMINATION, 1960S–1970S**

From the early days of their relationship with Whites, when they were a minority, Native peoples have persistently resisted efforts to integrate into White society. Although just as persistently at a disadvantage when it came to combating such policies, the advent of the civil rights movement in the 1960s and 1970s heightened public attention to the inequities

in American social, economic, and political life. From Rosa Parks's defiance of Southern segregation in 1954 to D'Arcy McNickle's drafting of the Declaration of Indian Purpose in 1961, and through the 1960s, minority groups—Indians, African Americans, Latinos, and others—demanded their rights and equality. For Indians, who had long tried to promote their interests from both outside and within the U.S. system, the founding of the **American Indian Movement (AIM)** in Minnesota in 1968 ushered in a new wave of militant activism. Native rejection of federal mandates became more visible and insistent in 1969, when scholar and activist Vine Deloria Jr. published *Custer Died for Your Sins: An Indian Manifesto*, often viewed as the seminal work in Native resistance literature. This was quickly followed by *We Talk, You Listen*, which has been described as “an American Indian Declaration of Independence.”<sup>82</sup>

Heightened Native activism took place as other marginalized groups—Blacks, students against the Vietnam War, and the women's and Chicano movement for rights—were gaining momentum. While some Indian activists in the 1960s and 1970s adopted some strategies and rhetoric from the civil rights movement, many others found the movement's call for equality and integration incompatible with their own vision of a separate, sovereign indigenous identity, rooted in their having their own governments, their own homelands, and their own unique cultural identities. Nevertheless, the goal of equal rights had widespread appeal and received support from across racial and ethnic groups, including that of some prominent Native leaders.

Dennis Banks, cofounder of AIM, contended that inequality and injustice for Indians had never abated. He described the living conditions of many Native Americans at the time:

[T]he living conditions we found ourselves in were deplorable. It wasn't that we didn't know there was racism in the cities. It was how racism forced us into squalid slum tenement buildings, closed doors to job opportunities, and fostered racist laws, jails, and prisons.<sup>83</sup>

Using interest group politics moved Indians closer to their goal of **self-determination**, which meant respect and support of tribal sovereignty, especially regarding a tribe's authority to decide on actions to support its people and the right to control how those needs were met. They wanted to end the termination policy and stop the relocation program that fractured Native communities. There was a new attitude under Presidents John F. Kennedy and Lyndon B. Johnson, who were sympathetic as Indians began to press the government for “restoration of lands, federal recognition of government-to-government relations, legal and political participation, and inclusion enough to negotiate their interests and rights.”<sup>84</sup>

After a meeting in Chicago in 1961, delegates from over one hundred tribal nations agreed on a **Declaration of Indian Purpose**, drafted in part by activist D'Arcy McNickle. This document, which was presented to President Kennedy, “called for an end to termination, major educational reforms, and tribal control of resource management and social services.” Kennedy's interior secretary, Stewart Udall, subsequently submitted a report in 1961 that supported ending termination.<sup>85</sup>

In 1964, President Johnson’s War on Poverty legislation attempted to address tribal issues through the Economic Opportunity Act. Indians could now benefit from access to private and public organizations (community action programs), which focused on empowering the poor, without having them go through the BIA. This allowed tribes to match federal programs with their particular needs. The policy, however, was a minor reform that did not address the larger issues of sovereignty or the need for federal compliance with treaties.

The seizure of Alcatraz Island by Natives in 1969 proved to be a pivotal event that received broad media coverage as Indians from many tribal nations asserted their right to self-determination. First, some history to this crucial event. After the federal prison on Alcatraz was shut down in 1963, a group of Native Americans filed an unsuccessful lawsuit claiming the island under a Sioux treaty that gave them the right to unused federal land. On March 9, 1964, Allen Cottier, president of the American Indian Council, led Sioux Indians in an occupation of the island and demanded that Alcatraz be used for a Native American cultural center and university. The U.S. Coast Guard established a blockade around the island, but the federal government did not interfere because the protest was nonviolent. In June 1971, as the number of occupiers waned, a small federal force peacefully retook the island. The event marked the beginning of the **Red Power movement** of 1969–1978, which focused on holding the federal government “to account for its past and present misdeeds and omissions.” Deloria was forthright when he noted that “the criteria for protest and the idea was to play directly on whatever reservoir or cumulative guilt lay hidden in the public psyche.”<sup>86</sup>

In 1968, Congress passed the **Indian Civil Rights Act (ICRA)**, extending the protections of most of the Bill of Rights to all persons in Indian Country. Passage of the ICRA was not without controversy, as this represented the first time that portions of U.S. constitutional law were made applicable to Native governments. The act legitimized tribal dispute resolution forums and expedited the evolution of tribal courts and tribal laws. The act also required states wishing to assume civil and criminal jurisdiction in Indian Country to first obtain tribal consent, which they previously had been required to do.

## BOX 2.2 CROSSROAD

### NATIVES CONTINUE THEIR FIGHT AGAINST THE DAKOTA ACCESS PIPELINE

In 2016, a prolonged protest against the 1,172-mile-long pipeline took place at the Standing Rock Sioux reservation in North Dakota that drew other Indian nations and their supporters, including environmentalists and veterans. As the Natives’ largest protest in decades, it became an international issue that pitted four Sioux nations against Energy Transfer Partners of Dallas, Texas, the primary construction company involved. Natives said the route runs under Lake Oahe, a source of drinking water on the Standing Rock Sioux reservation, and that an oil spill could contaminate the reservation’s drinking water.

In December 2016, President Barack Obama halted completion of the \$3.8 billion Dakota Access Pipeline by executive order. Such orders can be rescinded by a future president. Upon taking office in January 2017, President Donald Trump reversed Obama's order and allowed the pipeline to become operational.

Energy Transfer Partners contended that the pipeline was safe, while Standing Rock Sioux chair Dave Archambault II maintained the pipeline had leaked three times. Although it was considered to be inconsequential, one leak in May 2017 was about eighty-four gallons due to a mechanical failure.<sup>87</sup>

In June 2017, the Standing Rock nation attained a legal victory in the protracted fight against the Dakota Access Pipeline. A federal judge on the Washington, D.C., district court "held the U.S. Army Corps of Engineers did not perform an adequate study of the pipeline's environmental consequences as required by the National Environmental Policy Act of 1970 when it approved its construction."<sup>88</sup> The judge found that the Corps' study was inadequate in considering the impact of an oil spill on fishing and hunting rights. While the court did not order the pipeline to be shut off, which is the usual remedy, it did order the attorneys to develop a new set of arguments regarding continued operation of the pipeline. While a new study is not an indication that the outcome will favor the Indians, the final ruling could set precedents for future issues of environmental justice and treaty rights.

The judge noted two ways in which the environmental study was inadequate. First, by a treaty with the U.S. government, the Standing Rock Sioux have fishing and hunting rights, which provide a source of food. Before approving the pipeline, the Corps did not study whether an oil spill would kill the river's fish; nor did it consider whether the chemicals used to clean up a spill could poison local game, making them unfit as a food source.

The second issue involves a federal regulation, which requires that major construction projects near a poor community, community of color, or Native American reservation have an environmental justice study. The Corps dismissed many of these rules because the Native population lives just over a half-mile from the pipeline.

The Indians did not win every issue raised in the suit. The judge found that the pipeline did not impinge on Standing Rock's cultural heritage or obstruct the religious practices of the Cheyenne River tribe, one of the Sioux nations.

Complications remain because of the legal history of the pipeline. At one point the pipeline crosses the Missouri River, a federal waterway that is under the jurisdiction of the Army Corps of Engineers. The legal battles continue as moral and ethical dimensions continue to complicate the situation.

### Considering This Crossroad

- Do you agree with President Trump's decision to make the pipeline operational? What would be the significance if the Biden administration also agreed to it being operational?
- Native Americans have used protest politics and the federal court to redress their grievances. Which strategy has produced the best results?
- Environmental disputes can last for years. Why do the communities that are affected consider them so important?

As laws slowly changed, Indians continued to fight for their rights through interest groups such as AIM and a myriad of others that focused on law, treaties, education, economic development, health, and other concerns. Considered the most militant of the Indian rights groups, AIM found it difficult to reverse years of federal policy. The seventy-one-day occupation at Wounded Knee, South Dakota, in 1973 gave the protesters from sixty-four tribes—as well as Black, Chicano, and White activists—national press coverage. The standoff did little to bring about positive, long-term change, however, and AIM began to unravel as the federal government essentially bankrupted the organization through lengthy court battles.<sup>89</sup> The Alcatraz and Wounded Knee occupations garnered press coverage when the United States was still fighting the Vietnam War, which caused some people to see similarities between the two situations. American imperialism in Southeast Asia and the colonial status of Indians within the United States drew the attention of activists who opposed federal policies in both cases.

How have Native nations' and individuals' collective activism affected the political, legal, and cultural status of indigenous peoples?

The reservation system was essentially a colonial policy that resulted in abysmal living conditions comparable to those in a poor, developing nation. As of 2008, some 40 percent of a total 4.9 million Indians lived on reservations; of these, 38 percent were below the federal poverty level. Although the federal government remains the largest employer on reservations, unemployment is a major problem because of the lack of jobs and job skills. Housing remains inadequate, and “90,000 are homeless or under-housed” on the reservations. Existing housing is overcrowded, with “less than 50 percent connected to a public sewer.”<sup>90</sup> Currently, 55 percent of Indians are relying on the Indian Health Service for medical care as they battle diseases such as diabetes, heart disease, tuberculosis, and cancer.<sup>91</sup> One factor that significantly impacts health and employment is the high rate of alcoholism. The Indian Health Service notes that “the rate of alcoholism among Native Americans is six times the U.S. average.” It is important to note that medical research has shown that there are two genes that protect against alcoholism, and Native Americans do not have them.<sup>92</sup>

Most Indian tribes are located in remote areas with no ready tax base, and tribal governments must develop what business opportunities are available. This has historically included negotiating with corporations that have sought to extract increasingly valuable natural resources (coal, natural gas, uranium, etc.) from Indian lands. In addition, Congress passed several measures to help spur tribal economic development, including tribal gaming. Although Indian gaming generates billions of dollars, its benefits are unevenly distributed, and most Native Americans on reservations continue to struggle to meet basic needs.



Michael Nigro/Pacific Press/LightRocket via Getty Images

Protests at Standing Rock at the Oceti Sakowin Camp in North Dakota the day after the Army Corps of Engineers denied the easement needed to build the pipeline. Despite driving snow and 40-plus-mile-an-hour wind a group of 700-plus veterans and water protectors marched toward the barricade on Highway 1806.

## CONCLUSION: A CONTINUING STRUGGLE FOR EQUAL RIGHTS

The grievances of Native nations and Native individuals, who have not been as visible as other racial or ethnic groups in American society, have frequently been ignored by the U.S. government. It was not until Indians followed the twentieth-century model of civil rights organization used by the Black and Latino communities that media attention briefly focused on the Indian rights movement in the late 1960s and the 1970s. This new visibility, however, was temporary, and in stark contrast to what had been an often invisible struggle for the past five hundred years.

Without the attention of national news, the internal and external problems that continue to plague Indians went unnoticed by the majority. Unlike other minority groups in the United States today, Indians remain trapped in a colonial relationship because the U.S. government has never disavowed the plenary power (full and absolute) doctrine. Treaties signed by the U.S. government and Native nations are only sporadically enforced by the federal government. American citizenship thrust upon Indians in 1924 extended the franchise to individuals, but failed to address the issue of restoring or protecting the sovereignty rights of Indian nations; in fact, as this chapter has shown, it failed even to extend the full protection of the Bill of Rights to individual Indians until 1968.<sup>93</sup>

The intent behind the 1988 Indian Gaming Regulatory Act (IGRA) was to help tribal governments become more financially self-sufficient. Today, tribes are fragmented and in turmoil over the issue of who is legally an enrolled Indian (a problem based on blood quantum) because only enrolled Indians can share in gaming revenues. This has led to the disenrollment of several



thousand Native citizens from numerous tribal nations. While mainstream media emphasize the potential income from tribal casinos, this income is primarily derived from casinos near urban areas. And despite increased money coming into tribal coffers, problems caused by long-term poverty remain intractable. Federal aid to tribes since 2008 has risen to over \$4.5 million. These funds, which are used for health care services, road repair, and environmental preservation, do not have to be repaid because they are for the support of tribal governments.<sup>94</sup> Land continues to remain Indians' most valuable resource. The question of claiming tribal membership endures as Indians face perennial conflicts over governance as well as use and reclamation of their land, especially when the value of that land is enhanced by natural resources such as oil, gas, and minerals. Numerous treaty issues and Indian claims to sovereignty have never been resolved.

### THE ROAD AFTER 1972

Federal policy has gone through periods of annihilation, annexation, and assimilation, only to find that its measures failed to completely destroy Indian culture and identity. Members of Indian nations are neither silent nor invisible, and they challenge those laws deemed unjust or intrusive. While Indian rights activists have continued to stage protests, their most significant victories have been won via sophisticated legal challenges launched by tribes and individual Indians. Their successes include the 1973 Menominee Restoration Act, the 1978 American Indian Religious Freedom Act, the 1990 Native American Graves Protection and Repatriation Act, and the 2010 *Cobell* claims settlement act.

Native Americans are often involved in jurisdictional disputes. Courts must then decide if a case is to be decided at the federal, state, or Indian reservation level. *McGirt v. Oklahoma*, a 2020 case, clarified that McGirt's crime, which was committed on Creek land, came under the jurisdiction of the Major Crimes Act of 1885. This act granted the federal government the right to exercise criminal jurisdiction over certain felonies committed on Indian reservations. The majority opinion reaffirmed that 3.2 million acres covering the eastern half of Oklahoma, including much of Tulsa, constituted the reservations of the Creek, Cherokee, Choctaw, Chickasaw, and Seminole reservations.

In making his cabinet look more like the American population President Biden opened a new chapter in U.S. and Native American relations when he appointed Debra A. Haaland, a member of the Laguna Pueblo, as secretary of the interior. She is one of the first two Native American women elected to Congress and the first Native American cabinet member. Secretary Haaland is keenly aware of the many lingering problems emanating from the assimilation policy from the 1860s–1960s, when Indian children were forcibly taken from their parents to be sent to boarding schools. She knows firsthand of the trauma caused by this policy because she is the descendant of grandparents who were separated from their families as children. Under Secretary Haaland, more scrutiny is being given to the legacy of Indian boarding schools and recently found gravesites. Secretary Haaland has ordered an investigation into the abuse and deaths of children who attended these schools.

Native peoples are still asserting their rights even though they continue to reside on reservations and in the poorer sections of cities. Without a doubt they still consider tribal sovereignty to be at the core of their relations with the U.S. government. In 2016, the Obama administration finally settled lawsuits with seventeen Native nations over the issue of federal mismanagement “of their funds and natural resources.” This settlement of \$492.8 million resolved most outstanding claims by more than one hundred nations of over a century. Native nations continue to make their voices heard even though they constitute less than 2 percent of the entire population.

### DISCUSSION QUESTIONS

1. When, how, and why did it vary when White explorers and settlers acted honestly and respectfully in their dealings with Native peoples? Explain your answer.
2. How did race and land matter in the history of U.S.–Indian relations? Identify three moments in which each played a significant factor in Whites’ treatment of Indians.
3. How did Whites’ perceptions of race influence their dealings with Native peoples? Have these views changed over time?
4. How were Indians’ efforts against the U.S. government’s policies and actions limited by their lack of access to laws and institutions that Whites recognized and understood?
5. To what extent did the granting of U.S. citizenship to Native individuals help them to achieve more equal rights and opportunities? What were the costs to this granting of citizenship (especially since it was forced, in some respects)? How did this affect their tribal relationship?
6. Did Indians benefit from their civil rights activism as much as other groups? Explain your answer.

### KEY TERMS

American Indian Movement (AIM)  
 assimilation  
 blood quantum  
 Bureau of Indian Affairs (BIA)  
 Carlisle Indian Industrial School  
 civilization program  
 Declaration of Indian Purpose  
 doctrine of discovery  
 Five Civilized Tribes  
 General Allotment Act of 1887  
 Indian Civil Rights Act (ICRA)

Indian Removal Act of 1830  
 Indian Reorganization Act (IRA)  
 Marshall Trilogy of cases  
 plenary  
 Red Power movement  
 reservation  
 self-determination  
 sovereignty  
 termination policy  
 Trail of Tears  
 Treaty of Fort Laramie