

# Brief History of U.S.-Tribal Relations

## Pre-Constitution Policy (1533-1789)

- Administrators of British and Spanish colonies negotiated treaties with Indian Tribes. Treaties are agreements between two sovereign governments, and are considered to be the supreme law of the land.
- These treaties had the effect of according Tribes an equivalent status to that of the colonial governments.

## The Formative Years (1789-1871)

- The new U.S. Government assumed the role of the British and Spanish Governments in making treaties with Indian Tribes. U.S.-Tribal treaties are indexed in international law publications with treaties made by all other nations of the world.
- Federal policy instead of state policy dominated because the U.S. Constitution specified in Article 1, Section 8 (Commerce Clause) that "The Congress shall have the power to. . . (t)o regulate Commerce with foreign nations and among the several states, and with Indian tribes."
- The Marshall Trilogy (Johnson v. McIntosh – 1823; Cherokee Nation v. Georgia – 1831; Worcester v. Georgia – 1832) handed down by the Supreme Court further defined the relationship Tribes had with the U.S. Government, and established the doctrine of federal trust responsibility.

## The Era of Allotment and Assimilation (1871-1928)

- The U.S. quit making treaties with Tribes during this time. One of the reasons for this was that treaty-making was seen as an impediment to the assimilation of Indians into "white" society.
- To encourage assimilation, Congress passed the General Allotment Act of 1887 (also called the Dawes Act). This act changed the communal ownership of tribal lands to individual ownership. Each Indian male over 18 years old was given an allotment of acres and the rest of the tribal lands, considered to be "excess," were sold to non-Indians.
- The Indian Citizenship Act was passed in 1924. This granted Indians United States citizenship for the first time.

## Reorganization Era (1928-1945)

- The Merriam Report of 1928 set the tone for reform. It declared allotment to be a complete disaster.
- The Indian Reorganization Act of 1934 set up Reservation Business Councils to govern tribes, and provided for the adoption of constitutions and the granting of federal charters.

## Termination Era (1945-1961)

- Legislation passed that called for a reversal of the Tribal self-government movement previously endorsed and called for an end to the trust relationship between federal and Tribal governments.
- This resulted in the termination of more than 50 Tribal governments. The federal government simply no longer recognized them as Indian Nations.
- Public Law 280 passed in 1953, gave six states mandatory and substantial criminal and civil jurisdiction over Indian country. The states included were Alaska (except for Metlakatla Reservation), California, Minnesota (except Red Lake Reservation), Nebraska, and Oregon (except Warm Springs Reservation). Ten other states also opted to accept some degree of P.L. 280 jurisdiction. They are: Arizona, Florida, Idaho, Iowa, Montana, North Dakota, South Dakota, Utah, and Washington.

## Self-Determination Era (1961-present?)

- The abuses of the termination era led to reforms. This period has been characterized by expanded recognition of the powers of Tribal self-government.
- Important legislation includes: Indian Civil Rights Act of 1968, Indian Self-Determination and Education Assistance Act of 1975, Indian Child Welfare Act of 1978, American Indian Religious Freedoms Act of 1978, and Native American Graves Protection and Repatriation Act of 1990.