Indian Law 101

Professor Vanessa Racehorse

UNM School of Law

State Bar of New Mexico – 2023 Annual Meeting

July 27, 2023

Terminology

"Indian," "Indian Country," and "Indian law" are legal terms.

"Federal Indian Law": Body of law on status of Indian tribes and their relationship with federal government.

"Tribal Law": Internal law each tribe applies to its own members and matters of internal self-governance.

"Tribes," "Nations," "Native peoples" and "Indigenous peoples" are frequently used in similar contexts.

Distinct tribal names for 574 federally recognized tribes and 63 state recognized tribes.

What is an Indian Tribe?

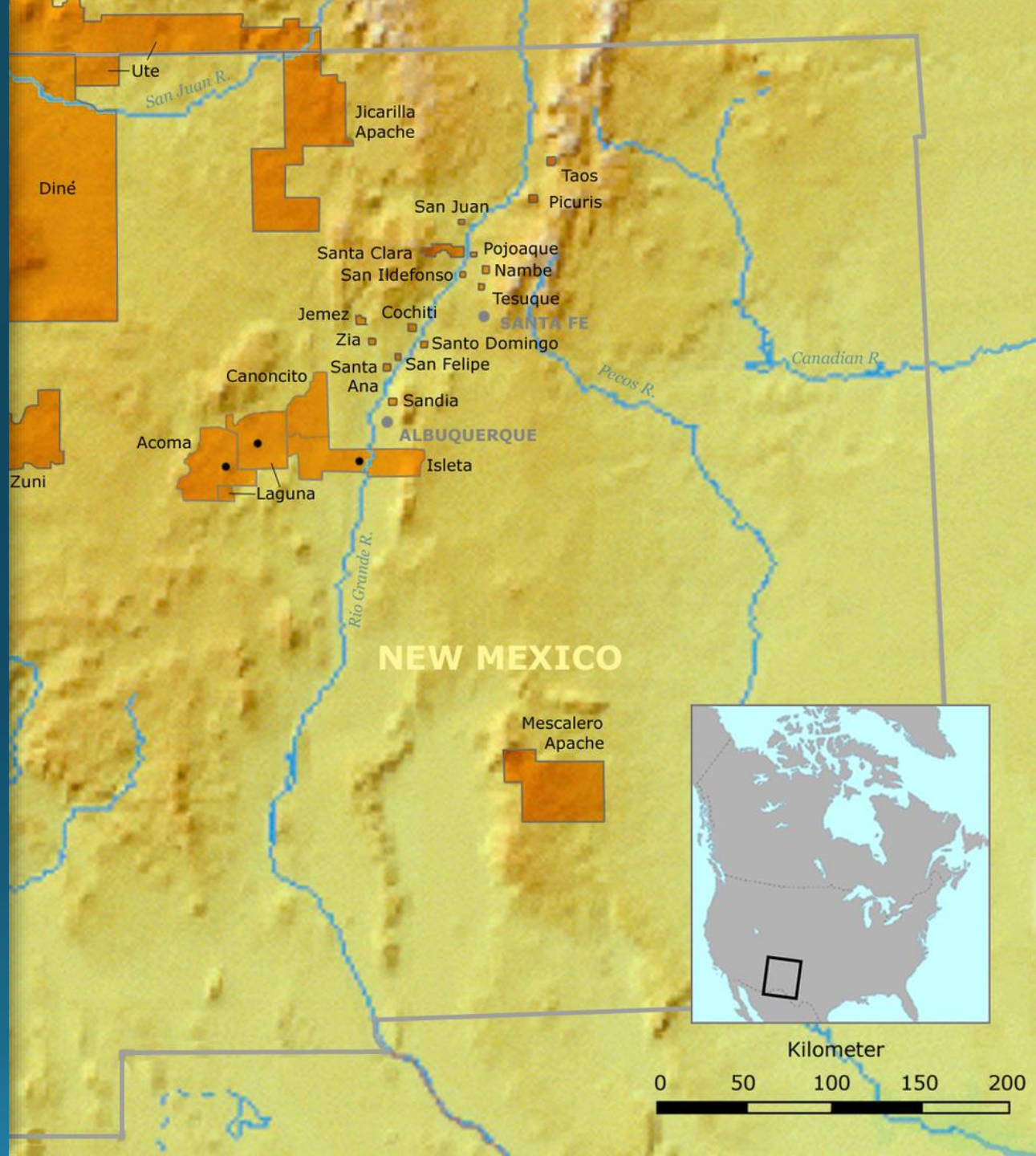
- *"a distinct political society separated from others capable of managing its own affairs and governing itself"*
- *"a domestic dependent nation"*
- *NOT a "foreign" state*
- Cherokee Nation v. Georgia, 30 U.S. (5 Pet.) 1 (1831)
- a *"unique aggregation possessing attributes of sovereignty over both their members and their territory"* United States v. Wheeler, 435 U.S. 313, 323 (1978)

Tribes Today

- 574 federally recognized tribes – 229 are village groups in Alaska.
- 326 federally recognized Indian reservations – tribes' land holdings vary.
- During the 1950's, Congress terminated the federal relationship with more than 100 tribes.
- 2020 Census Data: 9.7 million (2.9%) self-identified as American Indian and Alaska Native alone or in combination with another race.

Pueblos, Tribes & Nations in New Mexico

- Native Americans are 10.6% of the New Mexico population.
- 23 tribes in New Mexico- 19 Pueblos, 3 Apache tribes, & the Navajo Nation.



Themes of Indian Law

(1) Tribes are sovereign governments with inherent powers of self-government.

(2) **Diminished Tribal Sovereignty Doctrine**: Tribal sovereignty is subject to Congressional power;

(3) **Congressional Plenary Power Doctrine**: Congressional authority over Indian affairs is plenary and exclusive;

(4) State governments have no authority to regulate Indian affairs absent Congressional delegation; and

(5) **Trust Doctrine**: Federal government has trust responsibility to protect tribes and their resources.

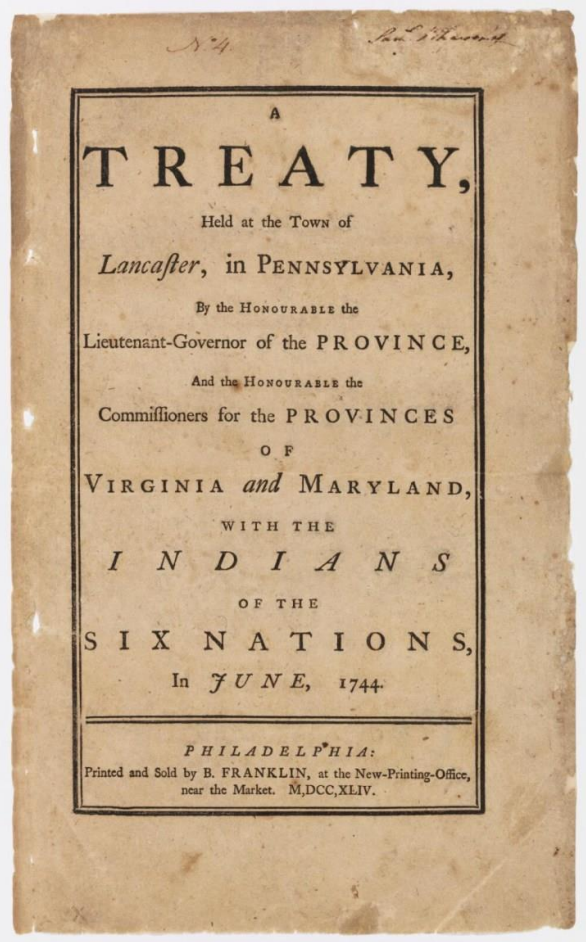
Tribal Sovereign Immunity

- One of the most important doctrines in modern Indian law.
- Tribes are protected from suits in the same way the United States is shielded from liability in domestic courts.
- This sovereign immunity applies in state, federal and tribal courts.
- However, it's not a shield against suits brought by the US against tribes.

Sovereign Immunity

- Tribes enjoy sovereign immunity from suit even when a tribe is engaged in off-reservation commercial activities. Kiowa Tribe of Okla. v. Mfg. Technologies, Inc., 523 U.S. 751 (1998).
- Michigan v. Bay Mills Indian Cmty., 134 S. Ct. 2024 (2014).
- Waivers of sovereign immunity must be "clear" and unequivocal. C&L Enters. Inc. v. Citizen Band Potawatomi Indian Tribe of Okla., 532 U.S. 411 (2001).
- Waivers must be granted and authorized in accordance with tribal law. Sanderlin v. Seminole Tribe of Fla., 243 F.3d 1282 (11th Cir. 2003).

Sources of Indian Law



A

TREATY,

Held at the Town of

Lancaſter, in PENNSYLVANIA,

By the HONOURABLE the

Lieutenant-Governor of the PROVINCE,

And the HONOURABLE the

Commiſſioners for the PROVINCES

OF

VIRGINIA *and* MARYLAND,

WITH THE

INDIANS

OF THE

SIX NATIONS,

In *JUNE*, 1744.

PHILADELPHIA:

Printed and Sold by B. FRANKLIN, at the New-Printing-Office, near the Market. M,DCC,XLIV.

1. United States Constitution
2. Treaties with Indian tribes
3. Acts of Congress
4. Federal regulations
5. Executive Orders
6. Judicial Opinions – Supreme Court
7. International law

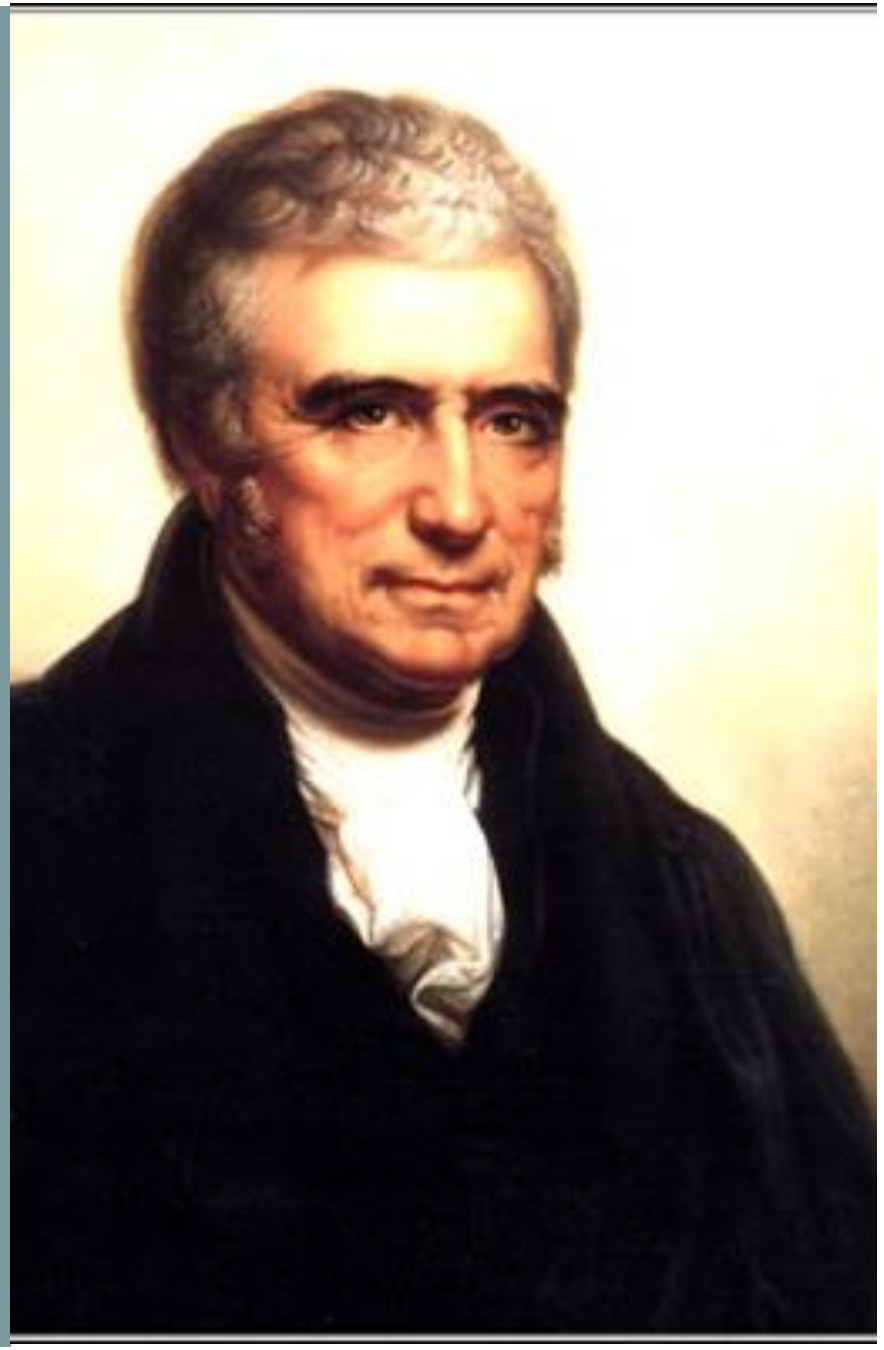
Printed Copy of the Indian Treaty Between the Provinces of Maryland and Virginia and the Six Nations Held at Lancaster, Pennsylvania (Courtesy of the US National Archives). See Indigenous Digital Archive Treaties Explorer, available at https://digitreaties.org/.

Indian Commerce Clause 1787

- Theoretically, local and state authorities have no rights regarding Native American affairs.
- Historically this has not always been the practical reality for Native American tribes.

The Marshall Trilogy

- Chief Justice John Marshall ---------->
- Seen as one of the most influential Supreme Court justices in American history.
- Prioritized strengthening federal government
- Big Believer in National Supremacy Clause
- Believed in implied powers

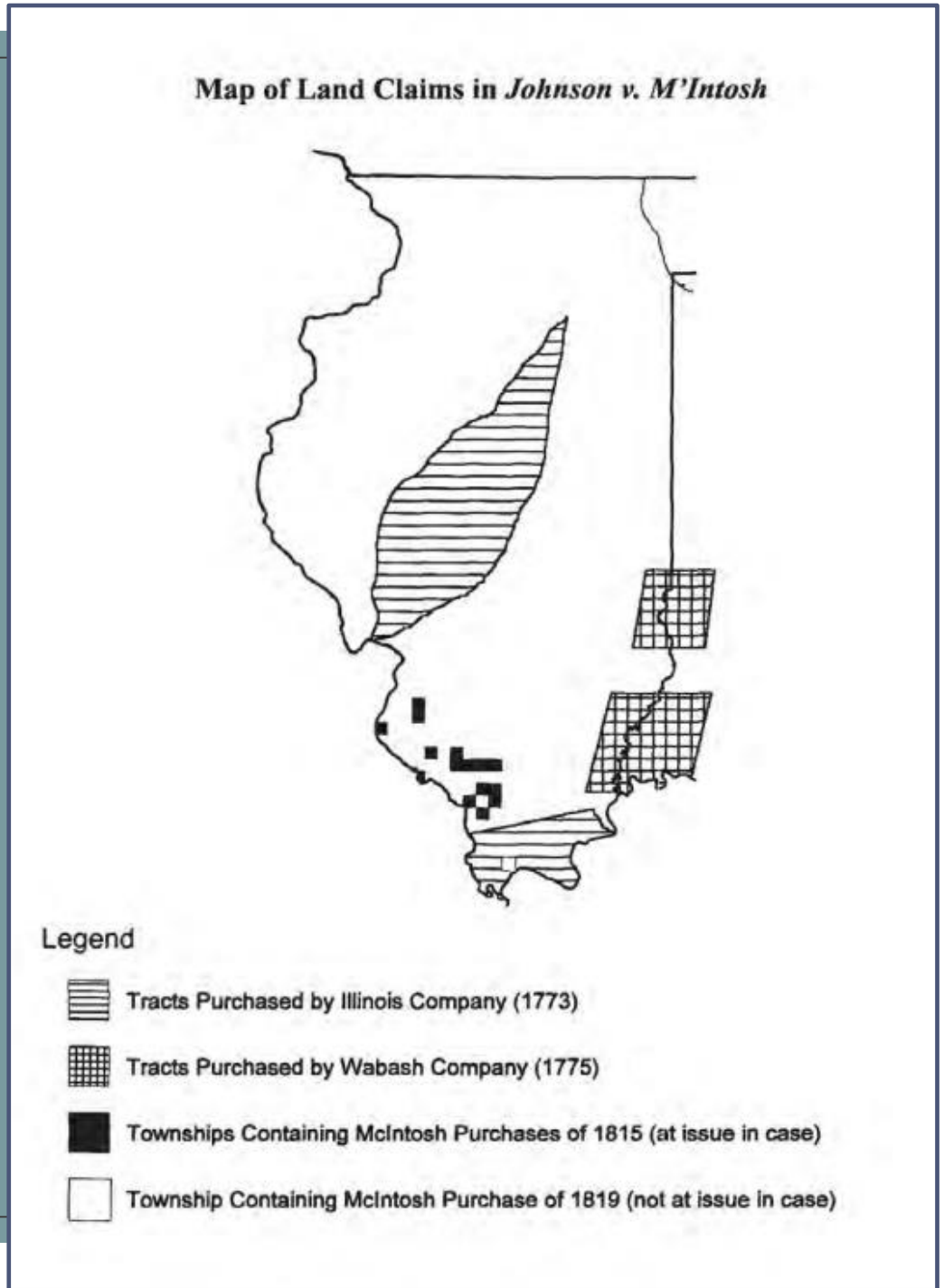


Johnson v. McIntosh, 21 U.S. 543 (1823)

- First of Marshall Trilogy
- Issue: Validity of a grant of land made by tribal chiefs (Chiefs of Illinois and Piankeshaw tribes) to private individuals (Johnson) in 1773 and 1775
- US gov't purportedly gives the same land to other settlers (McIntosh)
- Later, first of Trade and Intercourse Acts (1790) prohibited such transactions
  - Non-Indians couldn't acquire land from Indians except by treaty
  - Legislation didn't characterize nature of Indian interest in those lands

The Land at Issue

- Lands described in filed statement of facts.
- Most of M'Intosh's land in southwestern Illinois, outside lower Wabash purchase.
- Companies argued most of the land overlapped, but there were some ambiguities in the Companies' description of boundaries.



Map from Kades, Eric, "History and Interpretation of the Great Case of Johnson v. M'Intosh" (2001). Faculty Publications. 50. https://scholarship.law.wm.edu/facpubs/50

Johnson v. M'Intosh & the Doctrine of Discovery

- Established the doctrine that only the federal government had the authority to enter into land deals with the tribes.
- Court found Indian lands in the U.S. were granted to the federal government through treaty with Great Britain and that "these grants have been understood by all to convey a title to the grantees, subject only to the Indian right of occupancy."
- The Court acknowledged that, despite the U.S. holding title to the lands, tribal rights to occupy an area could not be extinguished unless the tribe ceded its rights to the government.
- "They were admitted to be the rightful occupants of the soil…but their rights to complete sovereignty, as independent nations, were necessarily diminished, and their power to dispose of the soil, at their own will, to whomsoever they pleased, was denied by the original fundamental principle, the **discovery gave exclusive title to those who made it."**

Cherokee Nation v. Georgia (1831)

- At Issue: whether the Supreme Court has original jurisdiction.
- Art. III, §2 of Constitution: defines federal judicial power.
- SCOTUS has original j(x) over controversies between "a state, or the citizens thereof, and foreign states, citizens, or subjects."
- Really about the tribes' status as sovereign.

Arguments Before the Court

- Cherokee Nation's Arguments:
  - (1) Cherokees are either a state or a foreign nation.
  - (2) Cherokees are not a state.
  - (3) Therefore, they are a foreign nation.

- The State of Georgia's Argument(s)?

Cherokee Nation v. Georgia (1831)

- Marshall distinguishes the sovereignty of Tribes from foreign nations and acknowledges them as "states" but not foreign states.

- Characterized tribes as "**domestic dependent nations.**"

- Further determined that these domestic nations "are in a state of pupilage" and that "their relations to the US resemble that of a ward to his guardian."

- Hints at possibly different outcome if Cherokees bring "a proper case with proper parties."

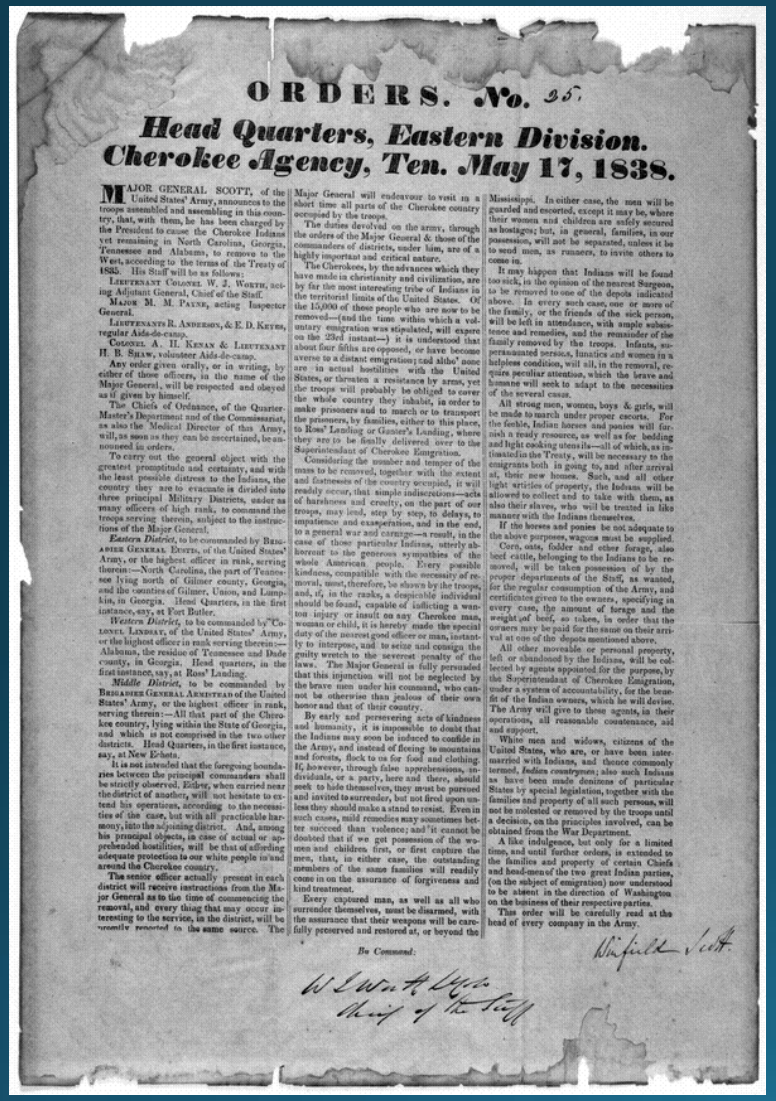
Worcester v. Georgia (1832)

- December 1830: Georgia statute required white people residing in Indian Territory after February 1, 1831, to obtain a license & swear allegiance
- Group of missionaries, including Samuel Worcester, openly refused
- Arrested, convicted, and sentenced September 1831.
- October 27, 1831: SCOTUS issues Writ of Error
- Georgia's response?
  - "[T]he State of Georgia will not compromise her dignity as a sovereign state… as to appear in answer to, or in any way become a party to any proceedings before the Supreme Court" that interfere with state court opinions in criminal matters.

Description of State's Title

- "The **extravagant and absurd** idea, that the **feeble settlements** made on the sea coast, or the companies under whom they were made, acquired legitimate power by them to govern the people, or occupy the lands from sea to sea, did not enter the mind of any man. They were well understood to convey the title which, according to the common law of European sovereigns respecting America, they might rightfully convey, and no more. This was the **exclusive right of purchasing such lands as the natives were willing to sell**."

Removal Period



ORDERS. No. 25.

Head Quarters, Eastern Division.
Cherokee Agency, Ten. May 17, 1838.

MAJOR GENERAL SCOTT, of the United States' Army, announces to the troops assembled and assembling in this country, that, with them, he has been charged by the President to cause the Cherokee Indians yet remaining in North Carolina, Georgia, Tennessee and Alabama, to remove to the West, according to the terms of the Treaty of 1835. His Staff will be as follows:

LIEUTENANT COLONEL W. J. WORTH, acting Adjutant General, Chief of the Staff.

MAJOR M. M. PAYNE, acting Inspector General.

LIEUTENANTS R. ANDERSON, & E. D. KEYES, regular Aids-de-camp.

COLONEL A. H. KENAN & LIEUTENANT H. B. SHAW, volunteer Aids-de-camp.

Any order given orally, or in writing, by either of those officers, in the name of the Major General, will be respected and obeyed as if given by himself.

The Chiefs of Ordnance, of the Quarter-Master's Department and of the Commissariat, as also the Medical Director of this Army, will, as soon as they can be ascertained, be announced in orders.

To carry out the general object with the greatest promptitude and certainty, and with the least possible distress to the Indians, the country they are to evacuate is divided into three principal Military Districts, under as many officers of high rank, to command the troops serving therein, subject to the instructions of the Major General.

Eastern District, to be commanded by BRIGADIER GENERAL ERETT, of the United States' Army, or the highest officer in rank, serving therein:—North Carolina, the part of Tennessee lying north of Gilmer county, Georgia, and the counties of Gilmer, Union, and Lumpkin, in Georgia. Head Quarters, in the first instance, say, at Fort Butler.

Western District, to be commanded by COLONEL LINDSAY, of the United States' Army, or the highest officer in rank serving therein:—Alabama, the residue of Tennessee and Dade county, in Georgia. Head quarters, in the first instance, say, at Ross' Landing.

Middle District, to be commanded by BRIGADIER GENERAL ARMSTRONG of the United States' Army, or the highest officer in rank, serving therein:—All that part of the Cherokee country, lying within the State of Georgia, and which is not comprised in the two other districts. Head Quarters, in the first instance, say, at New Echota.

It is not intended that the foregoing boundaries between the principal commanders shall be strictly observed. Either, when carried near the district of another, will not hesitate to extend his operations, according to the necessities of the case, but with all practicable harmony, into the adjoining district. And, among his principal objects, in case of actual or apprehended hostilities, will be that of affording adequate protection to our white people in and around the Cherokee country.

The senior officer actually present in each district will receive instructions from the Major General as to the time of commencing the removal, and every thing that may occur interesting to the service, in the district, will be promptly reported to the same source. The Major General will endeavour to visit in a short time all parts of the Cherokee country occupied by the troops.

The duties devolved on the army, through the orders of the Major General & those of the commanders of districts, under him, are of a highly important and critical nature.

The Cherokees, by the advances which they have made in christianity and civilization, are by far the most interesting tribe of Indians in the territorial limits of the United States. Of the 15,000 of these people who are now to be removed—(and the term within which a voluntary emigration was stipulated, will expire on the 23rd instant—) it is understood that about four fifths are opposed, or have become averse to a distant emigration; and altho' none are in actual hostilities with the United States, or threaten a resistance by arms, yet the troops will probably be obliged to cover the whole country they inhabit, in order to make prisoners and to march or to transport the prisoners, by families, either to this place, to Ross' Landing or Gunter's Landing, where they are to be finally delivered over to the Superintendant of Cherokee Emigration.

Considering the number and temper of the mass to be removed, together with the extent and fastnesses of the country occupied, it will readily occur, that simple indiscretions—acts of harshness and cruelty, on the part of our troops, may lead, step by step, to delays, to impatience and exasperation, and in the end, to a general war and carnage—a result, in the case of those particular Indians, utterly abhorrent to the generous sympathies of the whole American people. Every possible kindness, compatible with the necessity of removal, must, therefore, be shown by the troops, and, if, in the ranks, a despicable individual should be found, capable of inflicting a wanton injury or insult on any Cherokee man, woman or child, it is hereby made the special duty of the nearest good officer or man, instantly to interpose, and to seize and consign the guilty wretch to the severest penalty of the laws. The Major General is fully persuaded that this injunction will not be neglected by the brave men under his command, who cannot be otherwise than jealous of their own honor and that of their country.

By early and persevering acts of kindness and humanity, it is impossible to doubt that the Indians may soon be induced to confide in the Army, and instead of fleeing to mountains and forests, flock to us for food and clothing. If, however, through false apprehensions, individuals, or a party, here and there, should seek to hide themselves, they must be pursued and invited to surrender, but not fired upon unless they should make a stand to resist. Even in such cases, mild remedies may sometimes better succeed than violence; and it cannot be doubted that if we got possession of the women and children first, or first capture the men, that, in either case, the outstanding members of the same families will readily come in on the assurance of forgiveness and kind treatment.

Every captured man, as well as all who surrender themselves, must be disarmed, with the assurance that their weapons will be carefully preserved and restored at, or beyond the Mississippi. In either case, the men will be guarded and escorted, except it may be, where their women and children are safely secured as hostages; but, in general, families, in our possession, will not be separated, unless it be to send men, as runners, to invite others to come in.

It may happen that Indians will be found too sick, in the opinion of the nearest Surgeon, to be removed to one of the depots indicated above. In every such case, one or more of the family, or the friends of the sick person, will be left in attendance, with ample subsistence and remedies, and the remainder of the family removed by the troops. Infants, superannuated persons, lunatics and women in a helpless condition, will all, in the removal, require peculiar attention, which the brave and humane will seek to adapt to the necessities of the several cases.

All strong men, women, boys & girls, will be made to march under proper escorts. For the feeble, Indian horses and ponies will furnish a ready resource, as well as for bedding and light cooking utensils—all of which, as intended in the Treaty, will be necessary to the emigrants both in going to, and after arrival at, their new homes. Such, and all other light articles of property, the Indians will be allowed to collect and to take with them, as also their slaves, who will be treated in like manner with the Indians themselves.

If the horses and ponies be not adequate to the above purposes, wagons must be supplied.

Corn, oats, fodder and other forage, also beef cattle, belonging to the Indians to be removed, will be taken possession of by the proper departments of the Staff, as wanted, for the regular consumption of the Army, and certificates given to the owners, specifying in every case, the amount of forage and the weight of beef, so taken, in order that the owners may be paid for the same on their arrival at one of the depots mentioned above.

All other moveable or personal property, left or abandoned by the Indians, will be collected by agents appointed for the purpose, by the Superintendant of Cherokee Emigration, under a system of accountability, for the benefit of the Indian owners, which he will devise. The Army will give to these agents, in their operations, all reasonable countenance, aid and support.

White men and widows, citizens of the United States, who are, or have been intermarried with Indians, and thence commonly termed, *Indian countrymen*; also such Indians as have been made denizens of particular States by special legislation, together with the families and property of all such persons, will not be molested or removed by the troops until a decision, on the principles involved, can be obtained from the War Department.

A like indulgence, but only for a limited time, and until further orders, is extended to the families and property of certain Chiefs and head-men of the two great Indian parties, (on the subject of emigration) now understood to be absent in the direction of Washington on the business of their respective parties.

This order will be carefully read at the head of every company in the Army.

Winfield Scott

By Command:

W. J. Worth Lieut. Col. Chief of the Staff

https://www.loc.gov/item/rbpe.1740400a/

- "Marshall has made his law, now let him enforce it."
- Indian Removal Act signed by President Andrew Jackson on May 28, 1830 (before *Cherokee* cases were decided).
- Some moved peaceably, but many tribes resisted this relocation policy.

The Trail of Tears

TRAIL'S END
The last detachment arrives in Indian Territory on March 24, 1839. The Cherokee are promised subsistence rations through March 1, 1840, in compliance with the Treaty of New Echota.

BENGE ROUTE
Starting from Fort Payne, on September 28, 1838, Cherokee leader John Benge escorts 1,079 Cherokee toward present-day Stilwell, Oklahoma.

BELL ROUTE
Starting from Fort Cass on October 11, 1838, John Bell of the Treaty Party leads 660 Cherokee, ending at present-day Evansville, Arkansas.

TAHLEQUAH, OKLAHOMA
The Cherokee National Council designates Tahlequah as the capital of the Cherokee Nation on October 19, 1841.

WATER DETACHMENTS
Cherokee removals from Ross's Landing and Fort Cass include four water route detachments that prove to be punishing for the Indians: 3,103 depart; 2,273 arrive at Mrs. Webber's Plantation (near present-day Stilwell), Fort Coffee, Lee's Creek (near Stilwell), and Illinois Campground (near Tahlequah).

ROSS'S LANDING
Location: Present-day Chattanooga, Tennessee. From June 6 to June 17, 1838, three detachments are forced to leave their homeland for Indian Territory.

BLYTHE FERRY
Location: Meigs County, Tennessee. Nine detachments with more than 9,000 Indians cross the Tennessee River.

FORT CASS
Location: Present-day Charleston, Tennessee. From August 23 to December 5, 1838, 10 detachments totaling 9,302 Cherokee are marched from Fort Cass toward Indian Territory.

VANN'S PLANTATION
Location: Present-day Wolftever Creek, Tennessee. Two detachments totaling 1,642 Cherokee leave in September 1838 bound for Indian Territory.

REMOVAL CAMPS
After being forcibly removed from their homes in Georgia, Alabama, Tennessee, and North Carolina, most Cherokee are moved into 11 removal camps — 10 in Tennessee and one in Alabama. There they await the start of an 800-mile journey.

Department of war era

- During the Revolution, the Continental Congress established three regional departments of Indian affairs, charged with negotiating treaties and alliances with tribes, most of which sided with the British during the war.

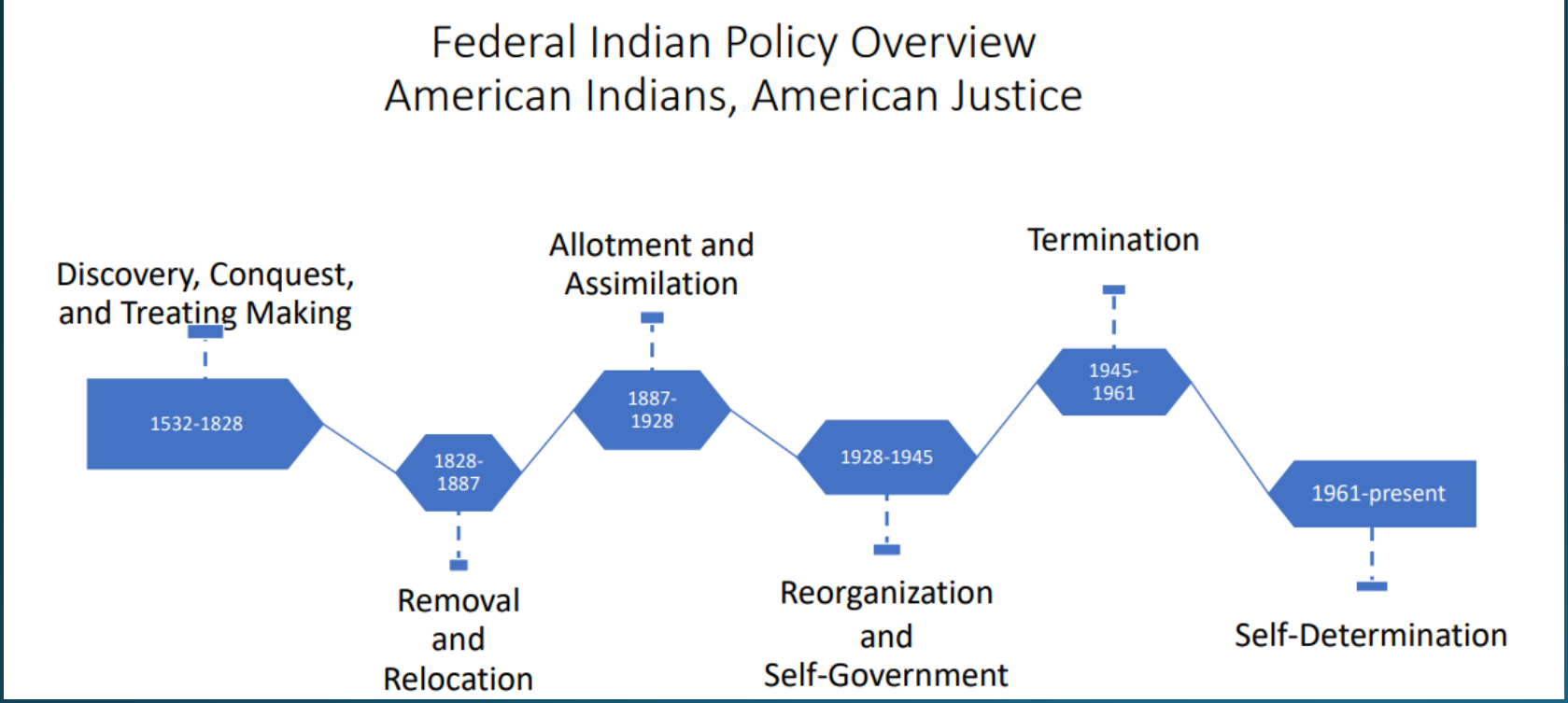
- With creation of U.S. Constitution in 1789, new Congress transferred those duties to the newly established U.S. Department of War.

- The Bureau of Indian Affairs remained under the Department of War until 1849 when it was transferred to Department of the Interior.

End of Treaty Era

- 375 Treaties were entered into between 1778-1871.
- Treaties ceased with the passage of the 1871 Indian Appropriations Act, declaring that "no Indian nation or tribe" would be recognized "as an independent nation, tribe, or power with whom the United States may contract by treaty."
- Congress thereafter developed new methods of dealing with Indians. The federal government continued to pass statutes and make agreements with the Indians, but both Senate and House had to approve them.
- Other mechanisms were also developed and used outside of the federal legislature-such as executive orders.

Federal Policies



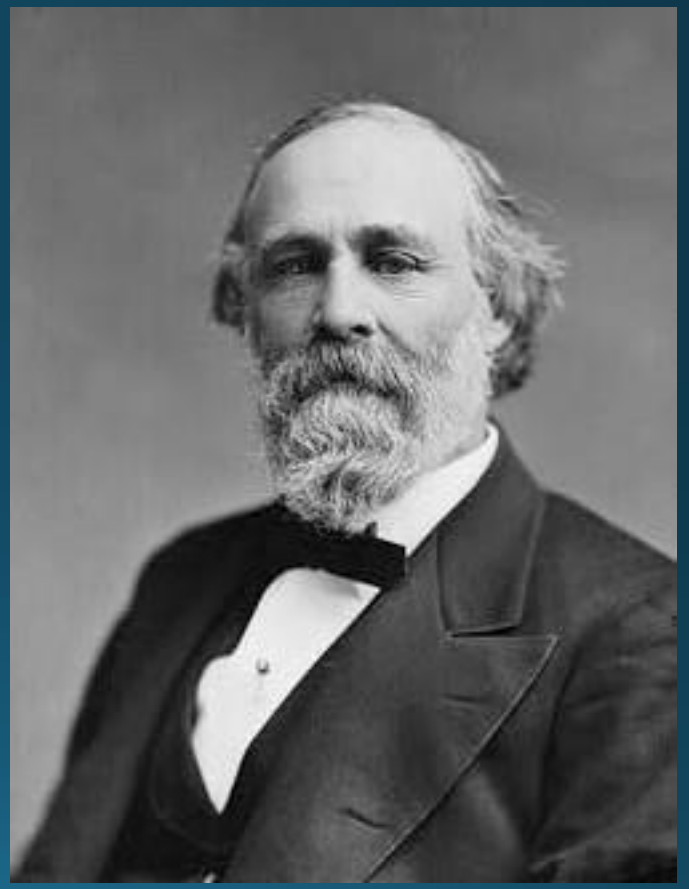
- Rollercoaster of policies and programs designed to:
  - ❑ Relocate;
  - ❑ Assimilate;
  - ❑ Reorganize; and
  - ❑ Terminate tribes
  - ❑ Tribal "Self-Determination" for past 60 years – promoting role of Indian people and tribes as active participants

"Winning the west"

Men standing with pile of buffalo skulls, Michigan Carbon Works, Rougeville, MI, 1892 (Burton Historical Collection, Detroit Public Library)

Allotment Era (1877-1934)

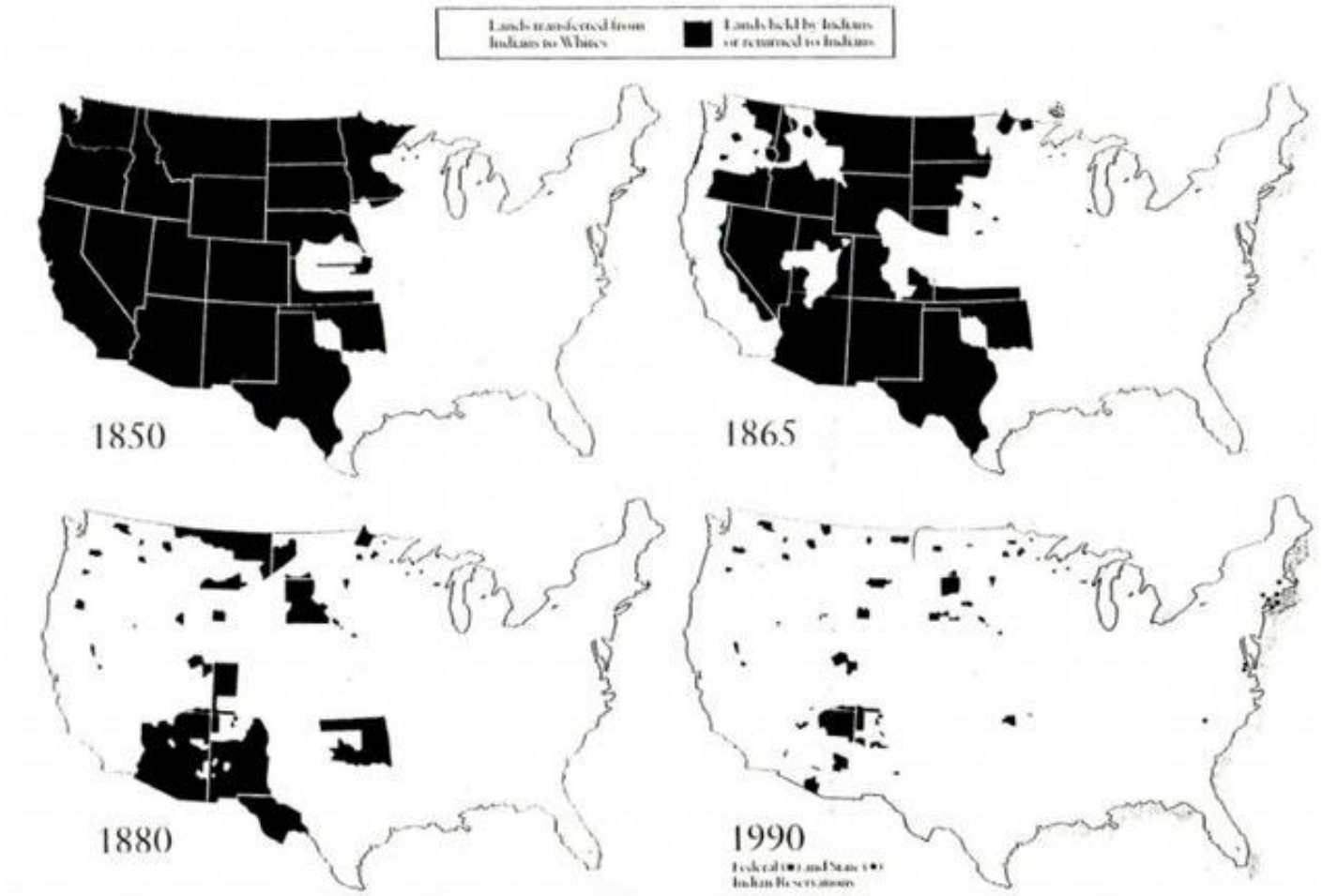
- Congress passed the Dawes Act (General Allotment Act) in 1877.
- This Act allowed the Bureau of Indian Affairs (BIA) to transfer tribal lands to individual tribal members, who would now own the land.
- Many tribes were also allotted land under special legislation similar to the Dawes Act.



Result of Dawes Act 1877

- 60 million acres of reservation land was either ceded outright or sold to the government for non-Indian homesteaders and corporations as "surplus lands."
- Despite original safeguards to help Indian people retain their land, the General Allotment Act caused Indian land holdings to plunge from 138 million acres in 1887 to 48 million acres by 1934 when allotment ended.

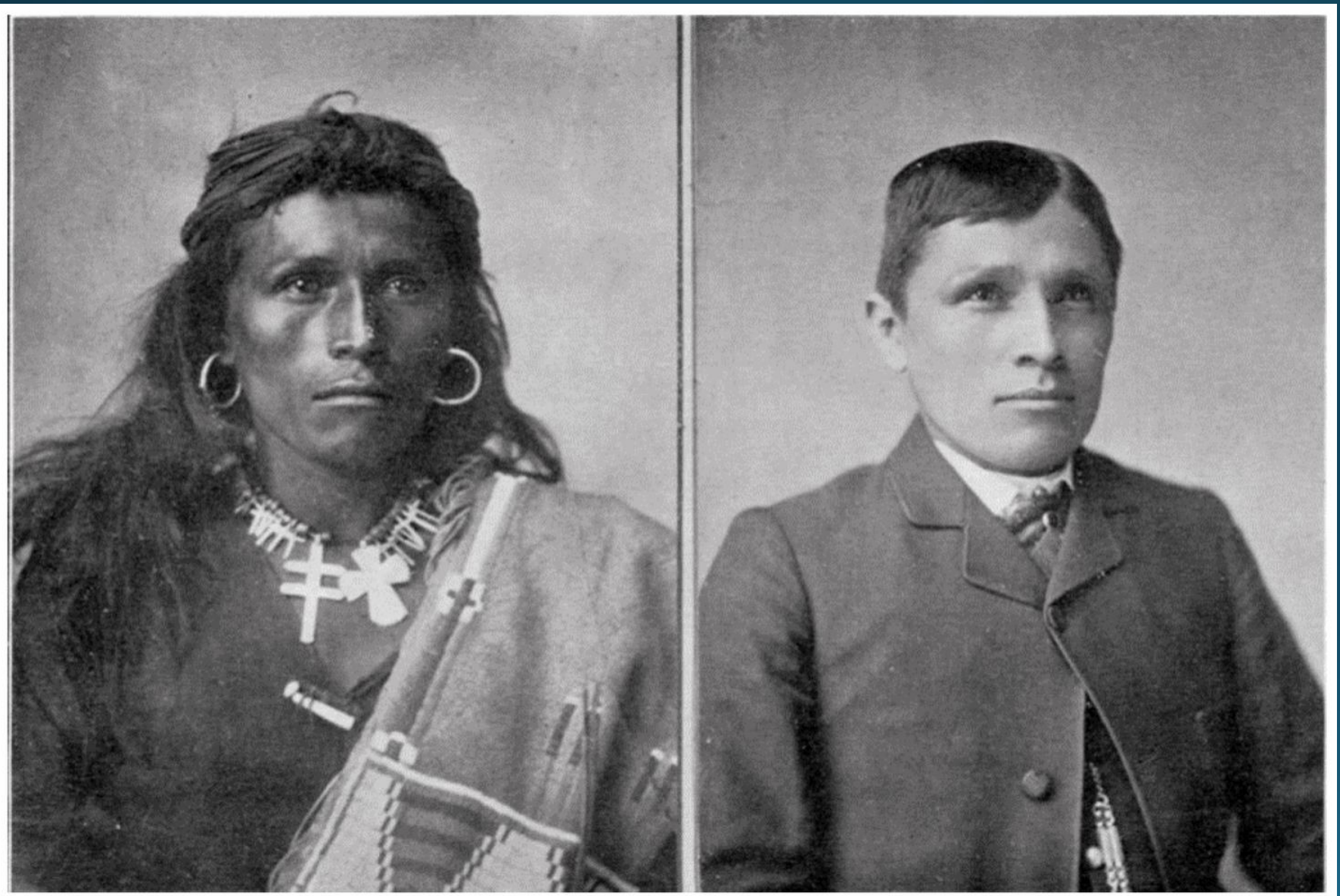
Progression of Indian Lands



White= Lands transferred from Indians to non-Indians

Black=Lands held by Indians or returned to Indians

Map from Eve Tuck & K. Wayne Yang, Decolonization is not a Metaphor (2012)



BOARDING SCHOOL ERA (1860-1978)

"Kill the Indian, save the man"

"A great general has said that the only good Indian is a dead one. In a sense, I agree with the sentiment, but only in this: that all the Indian there is in the race should be dead. Kill the Indian in him, and save the man."

Tom Torlino—Navajo, "As he entered the school in 1882" and "As he appeared three years later" from *Souvenir of the Carlisle Indian School*, 1902. Courtesy of the Carlisle Indian School Digital Resource Center.

Ex Parte Crow Dog (1883)

Chief Crow Dog

- Crow Dog murders Spotted Tail in Indian Country.
- Sioux tribal gov't orders Crow Dog to pay restitution.
- Dakota charges Crow Dog w/ murder

Chief Spotted Tail

Reasoning for Not Upholding Jurisdiction

- "It tries them, not by their peers, nor by the customs of their people, nor the law of their land, but by **superiors of a different race**, according to the law of a social state of which **they have an imperfect conception**, and which is opposed to the traditions of their history, to the habits of their lives, to the **strongest prejudices of their savage nature**; one which **measures the red man's revenge by the maxims of the white man's morality**."

MAJOR CRIMES ACT (1885)

- 18 U.S.C. § 1153
- Grants j(x) to federal courts, exclusive of states, over Indians who commit any listed offense.
    - Victim's Indian status doesn't matter, as long as the defendant is an Indian and the crime occurred in Indian Country
- Doesn't terminate tribal j(x)

United States v. Kagama (1886)

- Congress has power to extend federal jurisdiction to crimes committed between Indians in Indian Country.

- SCOTUS holds Major Crimes Act was exercise of congressional power justified by the dependent status of the tribes as wards of federal gov't.

Indian citizenship

- Post-Civil War opinions interpreted Fourteenth Amendment as excluding Indians
- Citizenship extended through treaties and statutes.
- Citizenship Act of 1924 naturalized all "Indians born within the territorial limits of the United States."

President Calvin Coolidge poses with tribal citizens at the White House after signing Indian Citizenship Act.
Photo from Library of Congress, http://loc.gov/pictures/resource/cph.3c11409/

Indian Reorganization (1928-1945)

- John Collier, Commissioner of BIA during Roosevelt's New Deal Administration
- **Meriam Report** (1928): criticized allotment and other approaches to the "Indian problem." Argued that the gov't hadn't appropriated enough funds.
- **Indian Reorganization** (Wheeler-Howard) Act of 1934 was a major reversal of governmental policy on Indian Affairs
- Didn't end, or contemplate end of, federal guardianship.
- Tribal self-government encouraged, rather than discouraged

TERMINATION ERA (1945-1969)

- 1949 Report on Indian Affairs by Hoover Commission
  - "Complete integration" of Indians should be the goal so that Indian would move "into the mass of the population as full, taxpaying citizens."
- **House Concurrent Resolution 108**
  - "[A]t the earliest possible time, all of the Indian tribes and the individual members thereof located within the States of California, Florida, New York, and Texas, and all of the following named Indian tribes and individual members thereof, should be freed from Federal supervision and control and from all disabilities and limitations specially applicable to Indians."

Result of termination

- Approximately 109 tribes and bands were terminated.
- Minimum of 1,362,155 acres and 11,466 individuals affected.
- Withdrawal of federal obligations to tribes (aid, services, and protection), end of those tribes' reservations, end of exemption from state taxing authority.
- Most regained federal recognition through political process, appealing to Congress, and Supreme Court decisions.

Termination era programs:

- Public Law 280 (1953): Extended state civil and criminal jurisdiction into Indian Country in 5 states: California, Minnesota, Wisconsin, Nebraska, Oregon.
- Relocation programs promoting migration to urban areas, such as Denver, the chance of a lifetime
- Transfer of Indian health responsibilities from BIA to Dept. of Health, Education and Welfare

SELF-DETERMINATION ERA (1970-Present)

- "[I]t should be up to the Indian tribe to determine whether it is willing and able to assume administrative responsibility for a service program which is presently administered by a Federal agency."
- President Nixon's Message to Congress (July 8, 1970)

Indian Self-determination and education assistance act of 1975

- Gives express authority to Secretary of Interior & Secretary of Health and Human Services to contract with, and make grants to, Indian tribes and other Indian organizations for the delivery of federal services.

- Tribal programs funded by federal gov't, but planned/administered by tribes themselves.

The *Montana* Doctrine

- Montana v. United States, 450 U.S. 544 (1981) – SCOTUS held that when there is no showing that tribal interests are affected, a tribe lacked inherent power to regulate hunting and fishing by non-Indians on non-Indian reservation land.
- Two exceptions:
- (1) A tribe may regulate, through taxation, licensing, or other means, the activities of nonmembers who enter consensual relationships with the tribe or its members, through commercial dealing, contracts, leases, or other arrangements; and
- (2) A tribe may regulate conduct of non-Indians that threatens or directly affects the political integrity, the economic security, or the health or welfare of the tribe.

(Some) Cases involving Pueblos

- *Santa Clara Pueblo v. Martinez*, 436 U.S. 49 (1978) – tribes enjoy sovereign immunity from suit.
- *United States v. Sandoval*, 231 U.S. 28 (1913) – Although Pueblo Indians own land in fee, Congress still had authority to prohibit sale of liquor in their territory
- *City of Albuquerque v. Browner*, 865 F. Supp. 733 (1993) – EPA's approval of Isleta Pueblo's heightened water quality standards upheld
- *Merrion v. Jicarilla Apache Nation* (1982) – Power to tax is an essential attribute of Indian sovereignty & is a necessary instrument of self-government & territorial management.

Other Very Important Cases

- *Morton v. Mancari*, 417 U.S. 535 (1974) – SCOTUS upheld Indian preference – Congress legislates to Indians as a political classification, not a racial one

McGirt v. Oklahoma (2020)

- Holding: land reserved for the Creek Nation since the 19th century remains "Indian Country" under the Major Crimes Act, which grants the federal government exclusive jurisdiction to try certain major crimes committed by enrolled members of a tribe on that land.

- Fact that Oklahoma has been exercising jurisdiction in these cases doesn't make it any more correct.

- "Unlawful acts, performed long enough and with sufficient vigor, are never enough to amend the law."

Oklahoma v. Castro-Huerta (2022)

- Held: The Federal Government and the State have concurrent jurisdiction to prosecute crimes committed by non-Indians against Indians in Indian country.

Haaland v. Brackeen, No. 21-376 (June 15, 2023)

Lawsuit brought by Texas, Indiana, Louisiana, and individual plaintiffs

Argued Congress lacks authority to enact ICWA. Court rejected this ("Congress's power to legislate with respect to Indians is well established and broad")

Argued several provisions violate anticommandeering principle of Tenth Amendment. Court rejected this argument because it applies to both state and private actors.

Argued that because the Indian Child Welfare Act applies to "Indian children," and creates placement preferences that prioritize Indian families, it violates equal protection

- Supreme Court did not address this because the plaintiffs lacked standing.

Argued it violated nondelegation doctrine by allowing tribes to write rules that override state law. Court didn't address this due to lack of standing.