Establishment of Federal Role: Colonial Era to 1820

- Contemporary Indian communities, reservation, urban, and rural, represent the continuing existence of a particular group of people who have a moral and legal claim against the United States.

- These nations survive exposure to European attitudes/relations through subsequent adjustments, legally, culturally, and politically; Therefore, they possess an understanding of the world that is unique among groups in the United States.

- The U.S. Constitution refers to Native people as an identifiable group:
  1) Article I, section 8, clause 3: Congress is given exclusive power to regulate commerce with foreign nations, among the several states, and with the Indian tribes. (Indian Commerce Clause)
  2) Article II, section 2, clause 2: The President is empowered to make treaties, necessarily including Indian treaties, with ratification by the U.S. Senate.

- British Royal Proclamation of 1763: Claimed Indians were occupants of “British land.” Banned colonial settlement in “lands reserved to the Indians.”

- Northwest Ordinance (1787): “Their lands and property shall never be taken from them without their consent…they shall never be invaded or disturbed, unless in just and lawful wars authorized by Congress.”

Treaties

U.S. Treaty Period: 1778-1871

- The United States entered into 371 treaties with Indian nations during this period.
- Delaware Treaty: first treaty (1778)
- U.S. shifts negatively in respect to treaty relations with Indians (c. 1820).
- America attempts to redefine treaty boundaries.
- Increased land grabbing (squatting/cession) in Indian Country.

- While treaties often called for an exchange of land with the U.S., these treaties were written in English, half-truthfully explained, fraudulently signed in some cases (removal treaties), and were almost immediately broken upon ratification.

- Congress, growing resentful of being excluded from the direction of Indian Affairs, attached a rider to an Indian appropriations bill in 1871. This attachment provided that “No Indian nation or tribe shall be acknowledged or recognized as an independent nation, tribe, or power with whom the United States may contract by treaty,” thus ending the treaty period.
Origins and Development of Tribal Sovereignty
- Two competing theories of tribal sovereignty:
  1) Tribes have inherent powers of sovereignty that predates “discovery.”
  2) Tribes have only those attributes of sovereignty that Congress gives them.

*It is important to note that whichever theory the Court has favored in a given case has
determined to a larger extent what powers the tribes have and what protections they
receive against federal and state encroachment.

-In what is known as the “Marshall trilogy,” the U.S. Supreme Court establishes the
doctrinal basis for interpreting federal Indian law and defining tribal sovereignty.

  Johnson v. McIntosh, 21 U.S. (8 Wheat.) 543 (1824)
  This case concerned the validity of a grant of land made by tribal chiefs to
private individuals in 1773 & 1775 (pre-Constitution). Promoting the “Doctrine of
Discovery,” Chief Justice John Marshall ruled for the Court that Indian tribes
could not convey land to private parties without the consent of the federal
government. The Court reasoned that, after conquest by the Europeans and the
establishment of the United States, the rights of the tribes to complete sovereignty
were diminished, and the tribes’ power to dispose of their land was denied. The
tribes retained the right to occupancy, recognizing a legal right of Indians in their
lands, good against all third parties but exiting at the mere sufferance of the federal
government. This right to occupancy is frequently referred to as “aboriginal title,”
or simply “Indian title.”

  Cherokee Nation v. Georgia, 30 U.S. (5 Pet.) 1 (1831)
  The State of Georgia enacted a series of laws that divided up the Cherokee
territory among several Georgia counties, extended state law to the divided
territory, invalidated all Cherokee laws, and made criminal any attempts of the
Cherokees to act as a government. The Cherokee Nation attempted to sue,
classifying itself as a “foreign state,” within the boundaries of Art. III, 2, of the
Constitution, which defines the meaning of federal judicial power. The Court
addressed the question of whether the Cherokee Nation was a “foreign state” and,
therefore, could sue the state of Georgia in federal court under diversity
jurisdiction. Chief Justice Marshall, writing for the court, determined that the
Cherokee Nation had succeeded in demonstrating that it was a “state,” as well as
“a distinct political society separated from others, capable of managing its own affairs
and governing itself,” and that treaties between the Cherokee Nation and the U.S.
had so recognized it. However, Marshall determined that the Cherokee Nation could
not be considered a “foreign” state. In Marshall’s words, “they may be, more
correctly, perhaps be denominated domestic dependent nations…in a state of pupilage;
their relation to the United States resembles that of a ward to his guardian.”
-The Courts characterization of Indian nations as “dependent nations” is the basis for what has been called the trust relationship between the United States and Indian nations.

-This presumption serves as justification for many policies and actions by the federal government that have, in the past and present, intruded on and diminished tribal sovereignty.


The Court addressed the issue of whether the state of Georgia could impose criminal penalties on a number of missionaries who were residing in Cherokee territory, without having a license from the governor of Georgia. Ruling that the laws of Georgia could have no effect on in Cherokee territory, the Court stated, “The Cherokee nation…is a distinct community, occupying its own territory, with boundaries accurately described, in which the laws of Georgia can have no force, and which the citizens of Georgia have no right to enter, but with the assent of the Cherokees themselves, or in conformity with treaties, and with the acts of Congress…”

-This established the principle that states are excluded from exercising their regulatory or taxing jurisdiction in Indian Country.

**Collective Effects of the Marshall Trilogy**

1) By virtue of aboriginal political and territorial status, Indian Nations possessed certain incidents of preexisting sovereignty.
2) Such sovereignty was subject to diminution or elimination by the United States, but not by individual states.
3) Their limited inherent sovereignty and their corresponding dependency on the United States for protection imposed on the latter a trust responsibility.

**Ethnocentrism as Federal Policy**

-Policies and attitudes, triggered by masculine Eurocentric perceptions regarding native worldviews, establish “assimilation” and “extermination” programs designed to remove both Native identity and Native occupancy from the Western Hemisphere.

**Bureau of Indian Affairs**

-Federal agency created in 1824 (War Department) that has been used as the primary instrument in “managing” Indian affairs. Transferred to the Department of the Interior in 1849.

**Indian Removal Act (1830)**

-President Andrew Jackson, refusing to uphold treaties with Indian nations, signed this act into law; Therefore, all Indian nations residing east of the Mississippi River were to be forcibly removed to Indian Territory (Oklahoma).
Second Seminole War (1835-1842)
-The Seminole Nation refused to moved, led by Osceola, Wildcat, Alligator, and many Seminol lvtse (Black Seminoles), they fought the United States in the second of three 19th Century wars between these two nations The United States spent 20 million dollars and suffered close to 2000 casualties. Close to 4000 Seminoles were forcibly removed while under 1000 were able to stay in Florida.

Extermination
-To accommodate the demands of Euro-American “settlers,” the United States employs the military to remove and suppress “hostile savages.”

1) Sand Creek Massacre (1864)
-The Colorado militia, led by John Chivington, attacks a Cheyenne village, killing and dismembering over 200 Native children, women, and men. The militia celebrates by displaying the genitalia and scalps of the victims during a parade in downtown Denver.

2) Washita Massacre (1868)
-The U.S. Cavalry, led by Lt. Colonel George Custer, attacks a Cheyenne village, flying a flag of truce, in Indian Territory, killing 168 Native children, women, and men. Among the victims is Black Kettle, widower and survivor of the Sand Creek Massacre.

3) Wounded Knee (1890)
-Following an improbable defeat at Little Big Horn (1876), the reorganized 7th Cavalry surrounds a migrating band of Lakota. Stereotyping the band as violent “Ghost Dancers,” over 250 Lakota children, women, and men are killed.

Assimilation
-Vowing to break up the tribal mass and “kill the Indian, save the man,” the United States begins opening up boarding schools to “educate and Christianize” the “savage heathens,” while forcing Native communities to adopt Euro-American lifestyles.

-Major Crimes Act (1888)
   Ex parte Crow Dog (1883): The Supreme Court overturned a conviction of Crow Dog, because, at that time, it was not against the law for an Indian to kill another Indian. Pressured to change the way Indians view justice, the Major Crimes Act was passed, giving the federal government jurisdiction concerning the following crimes: murder, manslaughter, kidnapping, maiming, incest, assault with intent to commit murder, assault with a dangerous weapon, arson, burglary, and robbery.
**Dawes Act/General Allotment Act (1888)**
- This act, abolishing communal land holdings by tribes, provided for 160-acre allotments to individuals (head of household), and 80 acres to others. This also created the tribal rolls. Therefore, by limiting the number of tribal members, and acres allotted, the number of “actual” Indians are reduced and the surplus acres available to “settlers” is increased. Did not apply to the Mvskoke, Cherokee, Choctaw, Seminole, and Chickasaw.

**Snyder Act (1921)**
- Congress could appropriate money toward Indian health facilities and programs.

**Indian Reorganization Act/ Wheeler-Howard Act (1934)**
- This allowed Indian nations to set up legal structures designed for self-government and ended the practice of allotment. To aid in self-government, Indian nations began to organize and adopt constitutions and by-laws subject to the ratification by vote of tribal members.

**Termination (1953)**
- This policy called for the termination of the “relationship” between tribes and the federal government. This includes tribal land, jurisdiction, and diminishes sovereignty requiring the tribe and its members to assume a “naturalized” status. Several small tribes were termination and two large tribes (Klamath and Menominee) were terminated. Their tribal status was restored in 1973.

**Relocation**
- Program started by the BIA in the 1950’s to provide educational and employment opportunities for Indian people in rural/reservation areas. This called for Indian people to relocate to urban areas. This not only attempted to assimilate Indian people, but it also attempted to diminish the presence of Indian people within their own communities. Between 1952-1960, over 35,000 Indians were relocated to cities ranging from Denver, Los Angeles, Phoenix, Salt Lake City, San Francisco, Oakland, Chicago, Dallas, Tulsa, Oklahoma City, and Albuquerque.

- Dillon S. Myer, Commissioner of Indian Affairs (1952-1953)
  - Japanese Internment Camps (WWII)
  - Promoted the adoption of Indian children to non-Indian families
- Relocation did not live up to the BIA propaganda.
- Nearly 1/3 of relocated Indians returned home.
- Relocation/urbanization led to several Pan-Indian movements.

**Occupation of Alcatraz (November 1969-June 1971)**

**The Trail of Broken Treaties Washington, D.C. (October-November 1972)**
Occupation of Wounded Knee (February-May 1973)

During the 1970s, the federal-Indian relationship began to shift toward tribal self-determination.

Indian Self-Determination Act (1975)
-tribes were extended authority to manage their own affairs.
-for health: Indian Health Service (I.H.S.) is the intermediary between tribes & personnel/programs.
-amendments, granting tribal governments more authority, were passed in 1994.

Indian Health Care Improvement Act (1976)
-set up priorities of health initiatives
-Congress micromanages objectives

Recent Court Decisions/Congressional Acts

Public Law 280 (1953)
-Congress gave states (California, Minnesota, Nebraska, Oregon, Wisconsin, Alaska) extensive criminal and civil jurisdiction over Indian country.

Indian Child Welfare Act (1978)
-Provides jurisdictional safeguards for tribal governments and establishes an order of preference for the adoption and placement of Indian children.

Oliphant v. Suquamish Indian Tribe (1978)
-The Supreme Court, diminishing tribal sovereignty, ruled that tribes do not have criminal jurisdiction over non-Indians on tribal land.

American Indian Religious Freedom Act (1978)
-Protects Indians right/freedom to believe, express, and exercise their traditional religions, and to provide access to sites, use and possession of sacred objects, and the freedom to worship through ceremonials and traditional rights.
-However, it does not include penalties/prosecution.
-It also does not provide for the protection of sacred areas.

-G-O road” case
-The Yurok, Karok, and Tolowa tribes file suit to prevent the U.S. Forest Service from building a road through the Chimney Rock Section of the Six Rivers National Forest, an area that has been historically used for religious purposes. However, the court ruled that the road would not “disrupt” the tribes’ right to practice their religion.
Indian Gaming Regulatory Act (1988)
-Provides that Indian nations have the exclusive right to regulate gaming activity on Indian lands if the gaming activity is not specifically prohibited by federal law and is conducted within a state which does not, as a matter of criminal law and public policy, prohibit such gaming activity.

Native American Graves Protection and Repatriation Act (1990)
-Orders museums to catalog and notify tribes of their holdings, and to make arrangements for the return of cultural items, remains, and scared objects.
-only applies to public institutions.

Indian Arts and Crafts Act (1990)
-States that a person who exhibits Native American art for sale must be able to prove, through tribal membership or certification, that the maker is indeed an American Indian.

Native American Languages Act (1990; 1992)
-ends official U.S. discrimination against Native American languages.
-the acts do not establish penalties/prosecution.
-provided meager financial assistance for tribal language renewal.
-today, some high schools (where there is a significant Native American student population) offer a Native language through a federal grant program.
-colleges and universities also offer Native languages:
EX: University of Oklahoma
-offers four tribal languages (Kiowa, Cherokee, Choctaw, and Mvskoke).
-the most Native languages offered at any academic institution in the world.
-the three semester courses can be used to fulfill the undergraduate/graduate language requirement.
-equal makeup of students who enroll/complete the courses (Native and non-Native students).
**NDN representation in American Popular Culture**

**Historical Representation of Native Americans**
- Jamestown (1607): located in the mouth of the James River
- Powhatan Confederacy: 25-30 tribes (Algonquin)
- Wohunsonacook (c.1150-1618): incorrectly referred to as “Powhatan”
- Nataoka (c.1595-1617): his daughter

(1614): Nataoka is captured/converted, marries John Rolfe, becomes Lady Rebecca Rolfe, they go to England, have a son, Thomas.
(1617): Nataoka dies.

1607: John Smith-leader of 100 man military contingent.
1608-1624: no reports of life-threatening situations, captivity, or Nataoka.
1609: Smith injured in gunpowder explosion, returns to England.
1615: Smith goes on expedition in New England.
1624: Smith, in trouble financially and socially, changes his story.
- Smith mentions being captured, and states that an “Indian princess” rescues him.
- Ironically, this “rescue” motif was also used by Smith when he documented his experiences in Italy, Turkey, and France.

1631: Smith dies.

Myth v. Reality: The Powhatan Confederacy was a patrilineal society. At the time of their alleged contact, Nataoka would have been twelve years old. Her father, a leader, was one of many leaders within the confederacy, and she would not have had access to the council as a child.

**Captivity Narratives**
Feb. 1675: Mary Rowlandson, a young housewife, is captured/released.
1682: *The Captivity and Restoration of Mrs. Mary Rowlandson*.
   - Her book is realistic, pro-Christian yet fair in descriptions.
   - The book becomes a bestseller, started a fad.
   - 1682-1920’s: over 100 captivity novels published.

**Indian Death Song Fad (1770s)**
- Philip Freneau
- A lament, mourning, etc.,
- popular in areas where there is now little contact w/ Indians.

1766: *Ponเทคh; or the Savages of America*
- A Robert Rogers’ play about Ponเทคh
- extols his foe...makes Red Devil a Noble Savage
Indian Drama Fad (1820-1855)
1828: 1st production of *Metamora; or, The Last of the Wampanoags*.
- A play written by John Augustus Stone (1802-1838).
- Metamora resists, fights the good fight, loses, “death song,” dies, extolled.
- Other plays/novels of this era:
  *The Indian Wife*
  *The Wig Wam*
  *The Indian Princess,*
  *Nick of the Woods*
  *The Yemassee*

Era of the Vanishing American (1820s-1960s)
- “Last of a people” theme
- James Finnemore Cooper, Washington Irving, Henry Longfellow
1823-1841: Cooper would publish his “Leatherstocking Series,” which included *The Deerslayer, Last of the Mohicans, The Pathfinder, The Pioneers,* and *The Prairie.*
- These works viewed European culture as superior, but there are things that Europeans can learn from Indians. These works highly romanticize Native people, incorporating the Red Devil/Nobel Savage stereotypes, as well as allowing Europeans to “out-Indian” the Indians.
1855: Longfellow’s work *The Song of Hiawatha* is published.
- changes Hayonwentha to Hiawatha because it flows better.
  *very popular: 4000 copies-1st week, 10,000-1st month, 30,000-6 months, 50,000-1½ years.*
- These works would set the tone of Indian representation in literature past and present, as well as in television, movies, and American pop culture.
  - refer to the Hobson & Churchill readings on literature & film.

*Participation points. Write a two page, single-spaced essay on a LIVING Native American person whose efforts, image/appearance, and/or accomplishments challenge the stereotypical representations of American Indians in American pop culture. Once you have made a decision on the individual you wish to profile, please confirm your choice with the T.A., Timothy Petete. Only one student per profile will be allowed.*