2016 Tribal State Transportation Conference

FEDERAL INDIAN LAW FOR PLANNERS

Eastern Washington University
Tribal Executive Planning Program

Margo Hill, JD | Assistant Professor of Urban and Regional Planning
Dr. Dick Winchell, FAICP | Chair, Planning & Public Administration

September 27, 2016
Planners increasingly will be involved with projects that involve tribal issues.

Local tribes have Federal Trust lands located off reservation.

Consultation for Environmental Reviews in “Usual and Accustomed Areas”

Consultation for Historic Preservation Planning

Water Rights Issues
29 Tribes in Washington State
We cannot understand or do good planning in Indian Country without knowing some American Indian history or understanding the concepts of tribal sovereignty and federal preemption of the field of Indian Affairs.

European colonial governments presupposed their right to take the New World from its original habitants. They found justification in Christian evangelism, the Roman law of conquest, and the international law of the day.
Sources of Federal Indian Law

1. International Law and Practice--Look to borrowed settled principles of International law. Roman Law, Land Title of European governments. Spanish law of Conquest

2. Inherent Tribal Sovereignty--The inherent right or power to govern. At the time of the European discovery of America, the tribes were sovereign by nature and necessity; they conducted their own affairs and depended upon no outside source of power to legitimize their acts of government.

3. Treaties--369 treaties entered into with the United States of America
Sources of Federal Indian Law

• 4. Federal Statutes – Statues are laws enacted by Congress. There are some laws enacted by Congress that specifically apply to Indians and tribes such as the Indian Child Welfare Act (ICWA) or the Indian Gaming Regulatory Act (IGRA).

• 5. Executive Orders -- unilateral agreements entered into with the President that typically establish the reservation. (This is opposed to treaties that are bi-lateral agreements between the Tribe and the United States government.)

• 6. Federal Court Decisions- these are decisions made in federal courts that apply to tribes. In Indian Country tribes want to be careful of the cases they bring forward. Bad facts make bad law.
Sources of Federal Indian Law

- 7. Administrative Regulations come from Federal Regulatory agencies. – When it comes to federal regulations its validity depends upon its being within the statutory authority Congress conferred upon the regulating agency. The Secretary of Interior issues regulations that apply to tribes. The Environmental Protection Agency – puts forth regulations that apply to tribes.


- 9. Tribal Law – Tribes enact Constitution/codes/statutes—the internal law that each tribe applies to its own affairs and members. (Example – the Tlingits have a highly evolved traditional property law.)
These preceding theories and thoughts (precedents) established that Native American tribes were sovereign nations, but subservient to the Christian states which “discovered” them. The discoverer gained the exclusive right to strip Indian nations of their land and sovereignty, whether by war or by treaty.

“Until the discoverer exercised its rights, Indigenous nations retained both their territory and sovereignty.”
- John C. Sledd, Columbia Legal Services

The first congresses passed Trade and Intercourse Acts which put Indian affairs under exclusive federal control, prohibited all but federal agents from negotiating for cessions of Indian land, and defined areas of “Indian Country” into which non-Indian access was restricted. E.g., 1 Stat. 137.
The Federal government engaged in Treaty Making

A treaty is: “essentially a contract between two sovereign nations” according to the United States Supreme Court.

Indian tribes were recognized as sovereign nations by the European countries that began settling in North America during the 1600s.

Europeans entered into treaties with Indians to acquire land.

After the United States gained its independence from Great Britain is relied on treaties to conduct its formal relations with Indian tribes.
The United States Supreme Court noted in 1823, that Indian tribes were regarded by the nations of Europe and by the United States “as distinct, independent political communities, retaining their original natural rights,” and ranked “among those powers capable of making treaties.”

The legal and political relationship between tribes and the federal government has been augmented (has become greater) by Congress, the executive branch, the courts, and the tribes themselves largely within this “Treaty” framework.
Not every tribe signed a treaty.

Principles drawn from cases analyzing treaties (and other aspects of the nations historic dealings with tribes) really help define the nature of the tribal legal status.

Treaties
- Dealt with acquisition of Indian lands; and
- Defined the nature of Indian tribes as governments relative to other sovereigns (federal government and the states).
The goal of the United States in nearly all of its treaties was to **OBTAIN** cessions of Indian land through negotiation rather than warfare.

In exchange, the United States typically gave the tribe a set of promises.

While all of the treaties varied from one tribe to another, nearly all of them “expressly recognized the sovereignty of the tribes and many contained express assurances that the federal government would protect the tribes.”
Provisions of the Treaties

Variable from treaty to treaty but include common elements:

- A guarantee of peace;
- A delineation of boundaries (often with a cession of specific lands from the tribe to the federal government);
- A guarantee Indian hunting and fishing rights (often applying to the ceded land); and
- A statement that the tribe recognized the authority or placed itself under the protection of the United States.
Early on the tribes negotiated from positions of strength but that changed quickly. As time went on the federal government became able to dictate terms.

Treaties were written in English and the terms were not explained to the signatories.

The very concepts of land ownership and governmental relations embodied in the treaties were often wholly foreign to the tribal cultures.

The federal government frequently negotiated with individuals who it had selected and who were not the traditional leaders of the concerned tribes.

All of these factors contributed to the overreaching on the part of the federal government.
Important rights were guaranteed to the tribes by treaty, and many of these rights continued to be enforceable.

Rights secured to the tribes by treaty today include beneficial ownership of Indian lands, hunting and fishing rights, and entitlement to certain federal services such as education or health care.

Many of these present rights are now a product of statute or executive agreement.
Indian treaties stand on essentially the same footing as treaties with foreign nations.

- Treaties are made pursuant to the Constitution, therefore they take precedence over any conflicting state laws by reason of the Supremacy Clause (U.S.Const., Art. VI, § 2).

The First Trade and Intercourse Act, forbade the transfer of Indian lands to individuals or states except by treaty “under the authority of the United States.”
The initiation of the treaty process and the terms of negotiation are in control of the executive branch.

Two-thirds of the Senate must concur in any treaty.

Congress grew increasingly resentful of being excluded from the direction of Indian affairs. The result was the passage of the 1871 act providing that “No Indian nation or tribe shall be acknowledged or recognized as independent nation, tribe, or power…” 25 U.S.C.A. § 71.
To compensate for the disadvantage position of tribes during bargaining and to help carry out the federal trust responsibility, the Supreme Court has fashioned rules of construction sympathetic to Indian interests.

Treaties are to be construed as they were understood by the tribal representatives who participated in their negotiations. *Tulee v. Washington*, 315 U.S. 681, 684-85 (1942).
Ambiguities to be Resolved in Favor of the Indians

They are to be liberally interpreted to accomplish their protective purposes, with ambiguities to be resolved in favor of Indians. Carpenter v. Shaw, 280 U.S. 363 (1930).

Courts “look beyond the written words to the larger context that frames the Treaty, including the ‘the history of the treaty.’ the negotiations, and the practical construction adopted by the parties.” Minnesota v. Mille Lacs Band of Chippewa Indians, 526 U.S. 172, 196 (1999).
In Winters, the tribe had ceded to the United States a large tract of land to be opened up for settlement.

- The tribes reserved land which became the Fort Belknap Reservation in Montana.
- The settlers argued that the land ceded for settlement should also come with water for them to become fruitful.
- The United States argued that the lands would not have been reserved for tribes unless water also had been reserved to make the Reservation productive.

**Held:** Establishment of reservation includes the implied reserve of water rights in sources within or bordering the reservation. Water rights reserved at the date of creation of the reservation.
The Court chose to construe the agreement from the standpoint of the Indians and to resolve the conflict in their favor. The resulting decision has become the foundation of all Indian water law.

Interpretation of treaties as the Indians understood them has also preserved extremely important fishing rights.

- Treaties here in the Pacific Northwest that guaranteed Indians the right of “taking fish” at customary stations off-reservation “in common with all citizens of the Territory” were held to guarantee up to half of the harvestable fish; they did not merely guarantee the same rights as those enjoyed by non-Indians. See Washington v. Washington State Commercial Passenger Fishing Vessel Ass’n, 443 U.S. 658/(1979).
The Supreme Court held that lake and stream beds, clearly included in an executive order reservation and essential to its purposes, remained in tribal ownership and did not pass to Idaho upon statehood.

Subsequent lower court decisions have also applied sympathetic construction and held that the bed of navigable waters is conveyed to a grantee tribe if the tribe was known to be dependent upon fishing at the time of treaty.

See *Puyallup Indian Tribe v. Port of Tacoma*, 77 F.2d 1251, 1258 (9th Cir.1983).
1. Ambiguities in treaties must be resolved in favor of the Indians.

2. Treaties must be interpreted as the Indians would have understood them.

3. Treaties must be construed liberally in favor of the Indians.
Unfairness of Treaty-Making

➢ The cannons of construction benefit treaty tribes, as the United States Supreme Court intended they would, in order to help compensate for the fact that the tribes were at a significant disadvantage in the treaty-making process.

➢ As mentioned the treaties were always written in English and thus the Indians could not be certain what they were signing. Tribes were dependent upon government interpreters to explain these treaties to them.

➢ Almost all treaties were signed under threat of force and therefore were inherently unfair.
A treaty creates a trust relationship between the tribe and the United States, a relationship that requires the federal government to enhance—not injure—tribal interests, and therefore it should be presumed that the treaty was intended to provide the tribe with what it needed to prosper.

These cannons of construction have been extremely important to Indians resulting in favorable court decisions in numerous cases.
Indian treaties can be abrogated (abolish/nullify) unilaterally by Congress.

However, the congressional intent to abrogate a treaty is not easily to be implied. See Termination Act of Menominee’s treaty hunting and fishing rights.

As the quoted language of the Menominee case indicates, abrogation of a treaty may give rise to a claim of compensation when the abrogation destroys a property right. The abrogation itself is effective, but the tribe is entitled to a claim for a “taking” under the Fifth Amendment. See United States v. Creek Nation, 295 U.S. 103 (1935).
How can tribes enforce treaty rights?

1. Indians and tribes are entitled to enforce their treaty rights.
2. A violation of an Indian treaty is a violation of federal law.
3. No one may take any action inconsistent with an Indian treaty unless Congress has expressly authorized it.

If a violation of an Indian treaty right is occurring, a lawsuit may be filed in federal court to halt the violation.
“Indian treaties belong not just to Indians; they belong to everyone in the United States.

Today, some of these treaties, especially those reserving water rights of hunting and fishing rights, or granting immunities from certain state taxes, may seem “unfair” to non-Indians, just as many of these treaties seemed unfair to Indian at the time they were signed.

But regardless of how they sound then or now, the citizens of this country have a legal, moral and ethical duty to enforce these treaties.”
Indians paid dearly for their treaty rights, and the United States must keep its end of the bargain.

Some people, calling these treaties “ancient documents,” argue that they no longer need to be enforced. However, the Declaration of Independence and U.S. Constitutions are “ancient” documents as well.

As one court observed in enforcing a century old treaty, the mere passage of time has not eroded, and cannot erode, the rights guaranteed by solemn treaties that both sides pledged on their honor to uphold.

The extent to which the United States honors its treaty commitments to Indian tribes reflects the extent to which our society is committed to the rule of law and justice. The integrity of our country depends on it.
The current definition of Indian Country is found at 18 U.S.C. §1151, and it includes all land within any Indian reservation, regardless of ownership; parcels called “allotments” which are held by the U.S. in trust for Indian individuals; and all “dependent Indian Communities” (including Pueblos).

The special jurisdictional rules of Federal Indian law generally operate only within Indian Country.
The Four Themes of Federal Indian Policy

1. The tribes are independent entities with inherent powers of self-government.

2. The independence of the tribes is subject to powers of Congress to regulate and modify the status of the tribes.

3. The power to deal with and regulate the tribes is wholly federal; the states are excluded unless Congress delegate power to them.

4. The federal government has a responsibility for the protection of the tribes and their properties, including protection from encroachment by the states and their citizens.
One major concept is “Sovereignty,” the ability of tribes to govern their people and their lands.

Tribal sovereignty has been recognized from the very beginning of American history. Tribe’s have inherent sovereignty which means that our ancestor’s had the power to govern their people before Europeans arrived.

The boundaries of tribal self-government have been narrowed in recent years by the United States Supreme Court, particularly with regard to tribal authority over non-Indians.
The U.S. Supreme Court, in a series of opinions by Chief Justice John Marshall, explicitly adopted the “Doctrine of Discovery,” defined inherent tribal sovereignty, and established the status of tribes as nations “dependent” upon the United States for protection and subservient to federal law.

1. *Johnson v. McIntosh*, 21 U.S. (8 Wheat) 543 (1823);
2. *Cherokee Nation v. Georgia*, 30 U.S. (5 pet.) 1 (1831); and
Johnson v. McIntosh, 21 U.S. (8 wheat) 543 (1823)

- Johnson v. McIntosh was the first decision in which the Supreme Court attempted to formulate its view of Indian tribes and their legal and historical relationships to the land.

- This case concerned the validity of a grant of land made by tribal chiefs to private individuals in 1773 and 1775 (Prior to the passage of the Trade and Intercourse Acts in 1790), which would have prohibited such transactions.
The Court held the sale of land from the chiefs to the private person invalid.

Discovery of lands in the New World, said the Court, gave the discovering European sovereign a title good against all other Europeans, and along with it “the sole right of acquiring the soil from the natives” (21 U.S. at 573).

Under the “Doctrine of Discovery,” the discovering sovereign could extinguish, either “by purchase or conquest.” The sovereign (now the United States) was free to grant land occupied by the Indians.
In 1831, the Cherokee nation brought a suit against the State of Georgia in the United States Supreme Court.

Chief Justice Marshall declared that the Court lacked jurisdiction because Cherokees were neither U.S. citizens nor Independent nations.

Terms (still used today): “domestic dependent nations”: they occupy their own territory which the United States asserts title independent of their will.

Relationship is that of “ward to his guardian”.
In 1832, several missionaries were arrested by Georgia authorities for violating a state law requiring non-Indians residing in Cherokee territory to obtain a license from the state governor.

**Facts:** Worcester & Butler (missionaries) were arrested because they did not get permission and take the oath. They were sentenced to 4 years hard labor. Missionaries then petitioned the United States Supreme Court.
The missionaries brought suit challenging the State of Georgia’s claim to have jurisdiction over him in Cherokee country. Now because U.S. citizens were involved it fell within the Court’s jurisdiction.

In Worcester v. Georgia, the court found that the Cherokee Nation was a “distinct community, occupying its own territory” in which “the laws of Georgia can have no force.”
The Courts decision was one of the most important in the history of U.S. Indian relations. It recognized that state law had no force in Indian country.

President Jackson said: “John Marshall made his decision. Now let him enforce it!”

It still did not help the Cherokees. The state of Georgia would not tolerate a sovereign nation within its boundaries. Nor would it tolerate the federal protection of that sovereignty. Georgia ignored the Supreme Court’s ruling.
Homesteading and Land Runs

Homestead hopefuls waiting for Cheyenne & Arapaho Run April 19, 1892, Oklahoma Territory

- To “better” Indian people, federal negotiators began to insert provisions into treaties allowing Indian lands to be parceled out to individual tribal members. This was encourage individual initiative and make them farmers.

- At first, these parcels were merely “assignments.”
During the treaty era, millions of acres were lost by tribe’s. Tribes were forced into submission and ceded (gave-up) their traditional homelands for a small land base called a reservation.

Even though tribes fought it, treaty provisions included language to parcel out land for individual use, with the remaining staying in common ownership with the Tribe. Provisions like this appear in all treaties negotiated in Washington state. E.g., Treaty of Point Elliott, Art. 7, 12 Stat. 927 (1855).
Recognition of Tribal Political Identity

- Treaty-making did not create tribal governments; it was a means by which the United States recognized tribal political identity (Washington v. Washington State Commercial Passenger Fishing Association, 443 U.S. 658; 99 S. Ct. 3055; 1979).

- Treaty provision formed the basis for federal responsibility for Indian health, Indian nations therefore purchased a prepaid health care plan with cessions of their lands.
The Trust Relationship is of the most important doctrines in Federal Indian Law.

- The trust relationship was defined by the United States Congress American Indian Policy Review Commission in 1977.

- The trust relationship is “an established legal obligation which requires the United States to protect and enhance Indian trust resources and tribal self-government, and to provide economic and social programs necessary to raise the standard of living and social well-being of the Indian people to a level comparable to the non-Indian society.”
Generally speaking, the trust responsibility of the United States is the duty to assist Indians in the protection of their property and rights. For example their land and natural resources like minerals, water, and timber. The underlying purpose being the continued survival of Indian tribes as self-governing entities.

- The federal courts have confirmed that the U.S. Congress is the ultimate trustee, which means that Congress is the only federally entity that may define the scope of the federal trusteeship.
While Congress has placed major trust responsibilities in the Department of Interior, it also has delegated certain duties to the other government agencies.

The official relationship is between the United States Congress and tribal governments.

There are three areas of trust duties:

1. Protection of Indian trust property;
2. Protection of the Indian right to self-government; and
3. Provision of those social, medical, and educational services necessary for survival of the tribes.
As governments, Indian tribes have general powers to:

1. make laws governing the conduct of persons in Indian country;
2. establish bodies such as tribal police, tribal courts, and administer justice,
3. exclude non-members from the reservation
4. Regulate hunting and fishing and land use and environmental protections.
Shared Powers

- The power to control Indian affairs remains shared between the federal government and Indian Nations, to the exclusion of the states.

- Many of these diverse, complicated elements may, at any given time, impinge on the design and implementation of tribal planning and land use.
In 1887 Congress passed the General Allotment Act, 24 Stat. 388 (also known as the Dawes Act after the bill sponsor Massachusetts Senator, Henry L. Dawes), as an enabling act which provided for the allotment of land to tribal members on any Indian reservations, regardless of specific treaty provisions (25 U.S.C. § 331).

These allotments were generally 80 to 160 acres in size.

After every Indian household had an allotment, any remaining land could be opened to settlement by non-Indians, whose close example was expected to further edify Native people (25 U.S.C. § 348).
Allotments under the Dawes Act were to be held “in trust” by the United States for twenty-five years. During which time they would be inalienable, free from state taxation and from execution or levy, and generally free from state jurisdiction (25 U.S.C. §§ 334, 336, 337).


After 25 years the Indian owners were expected to be assimilated enough to manage the land on their own. The United States could then patent (deed) the land to them in fee.
Transferring the land to the Indians in fee was a goal. So an amendment to the Dawes Act in 1906 allowed the process to be accelerated if individual owners were “competent” to manage their own affairs. 25 U.S.C. §§349.

“Competency committees” roved Indian Country making wholesale certifications of competence.”
- John C. Sledd, Columbia Legal.

Fee patents issued willy-nilly.

Real estate speculators and state property tax assessors make quick work of allottees who spoke little English, read none, and had no cash to pay taxes.

Within a generation, 90 million acres, more than two-thirds of all Indian land had left Indian hands.
Even when the land was retained, allotment had devastating consequences. For a variety of reasons, many Indian allottees never prepared wills. Their heirs took the land as tenants in common, holding undivided shares which got smaller with each intestate generation. By now, single allotments may have tens or hundreds of owners.

No one owner can make exclusive use of the land without consent of the others, nor can it be leased, logged, grazed or mined without consent of a majority of the undivided interests.

U.S. only holds land in trust for Indians. Non-Indian spouses and heirs landholdings can come out of trust and become subject to state taxation and possibly other state law.

“Congress halted the carnage of allotment.”

The Indian Reorganization Act (IRA) extended the trust period for existing allotments indefinitely, and authorized acquisition of new land in trust for tribes and individuals.

Allotments can now leave trust only with the consent of their Indian owners (25 U.S.C. 483).
The Indian Reorganization Act, authorized tribal governments to adopt written, federally approved Constitutions through which they might exercise their sovereignty.

Most, although not all, Washington tribes now operate under IRA constitutions. Had to be approved by popular vote of tribal members.

Research your (selected) tribe’s constitution. Is it a IRA patterned constitution?
Fee Land: Title in Fee Simple Absolute. You have full title with no encumbrance (clear title, no rights-of-way) and land is taxed by the government.

- Allotment resulted in a checkerboard of land ownership.

- Most Idaho reservations now include:
  - Trust land of Individual Indians
  - Land held in fee by tribes or Individual Indians
  - Land held in fee by non-Indians
  - Allotment also resulted in significant non-Indian populations on many Indian reservations
Property Law: A Bundle of Sticks

Land Ownership Bundle of Rights

• Grant rights-of-way
• Right to Transfer Ownership
• Right to Lease
• Right to Sell
There are many BIA regulations that guide Indian land transfers.

Before land can be sold a appraisal is required. ($)

Before tribe can buy land it must go through environmental review. ($)

Fee to Trust Transfers – lengthy process depending on competency of BIA staff.
Jurisdictional Problems

- Criminal Law – Domestic Violence
  - No jurisdiction over non-Indians

- Civil Law
  - Montana Test- Consensual Relations with the tribe
  - Environmental Problems
  - Zoning Problems
Facts of the Case:


- Ordinance applies to all lands within the reservation boundaries. Including fee lands owned by Indians or non-Indians.

  1st Parcel owned by Brendale, who was part Indian, had inherited 160 acres and wanted to divide into 20 acre parcels. The land was zoned as “Reservation Restricted Area” by the tribe.

  2nd Parcel owned by Wilkinson. Tribe zoned as agricultural and County zone as general rural.
The area of the reservation is 2,185.94 mi² (5,661.56 km²) or approximately 1,130,000 acres within the exterior boundaries. (For comparison, that is larger than both Delaware and Rhode Island.) The Yakama Reservation population in 2010 was 31,279 people. Of that number, only 6,300 were tribal members.
The Yakama Nation challenged the County’s authority to zone the land. (Tribe had zoned area agricultural and County had zoned area as general rural).

Tribe argued that reservation Treaty stated that the reservation was set aside for the exclusive use and benefit of the Tribe.

Tribe has power to exclude so it should have authority to zone the land.

Opened and Closed portions of the reservation.
Yakama Rez

YAKAMA INDIAN RESERVATION
ROAD CLOSED TO PUBLIC
EXCEPT BY PERMIT FROM
THE YAKAMA TRIBAL COUNCIL
ACTION WILL BE BROUGHT
AGAINST ALL VIOLATORS

WARNING
INDIAN LAND
DO NOT ENTER

BOUNDARY
YAKAMA INDIAN
RESERVATION
NO
FISHING•HUNTING
OR TRESSPASSING

NO CAMPFIRES
The Supreme Court in a Split decision held that the Tribe no longer retained the “exclusive use and benefit” of all the land within the Reservation boundaries.

Based on the principle in *Montana* the Court held that the Yakama Nation has no authority to impose zoning ordinance on the fee lands owned by Brendale and Wilkinson.
Closed Areas of Reservation

YAKIMA INDIAN RESERVATION
ROAD CLOSED TO PUBLIC
EXCEPT BY PERMIT FROM
THE YAKIMA TRIBAL COUNCIL
ACTION WILL BE BROUGHT
AGAINST ALL VIOLATORS

66
First, a tribe may regulate through taxation, licensing if the nonmembers enter into consensual relationships with the tribe through commercial dealings such as contracts or leases.

Second, a tribe may retain inherent power to exercise civil authority over the conduct of non-Indians on fee lands within the reservation when that conduct threatens or has some direct effect on the political integrity, the economic security, or the health or welfare of the tribe.
Here there is no consensual relationship.

The Yakama Tribe contends the tribe has authority under the second Montana exception. The Court disagreed.

Court reasoned that authority would only exist if the Tribe was threatened in some way. So authority could switch depending on the use and landowners need certainty.

The Court held that the Wilkinson development and the County’s approval does not imperil any interest of the Yakama Nation.

Tribe can zone the closed portion of the reservation and therefore Tribe can zone Brendale property.
What is the planning future for tribes?

- Zoning is the process whereby a community defines its essential character.
- Tribes can still retain some power to regulate non-Indian fee lands with regard to things such as water pollution.
  - Under CWA, EPA can treat tribes as states.
- Tribes should develop comprehensive plans with clearly stated land use concerns.
What are the take-a-ways from this case?

✓ Yakama Tribe didn’t have a Comprehensive Land Use Plan
✓ If you want to control your land you must have an approved Comp Plan.
✓ Non-members must have a voice (DP) in setting tribal land use policy.
✓ The U.S. Supreme Court felt that concurrent zoning of jurisdictions is unworkable because it has the effect of nullifying the work of both sovereigns.
✓ Strong environmental programs based on good science (TAS/WQS)
✓ Working relationships with Counties and local governments
The most important key to jurisdiction and choice of law in Indian country is the fact that each tribe is its own sovereign, which must develop its own laws.

The subjects over which tribes have legislated and the substance of the legislation are different with each of Washington’s 29 tribes.

Most tribal codes are more limited in scope than are state codes, and many tribal court system are young and lack a large body of precedent.
Very little can be done in Indian Country without referring to federal law and possibly involving the federal government.

Originally within the War Department, now within the Department of Interior.

Administrative responsibility for Indian affairs is mostly vested in the Bureau of Indian Affairs (BIA).

The BIA ran everything from schools to jails.
Federal Indian Policy

- Indian Law is a reflection of national Indian policy, which has undergone numerous shifts in direction in the course of American history.

- Sometimes the Federal Indian policies are pro-tribal in which a geographic land base is protected. Then the pendulum swings...

- Then the Federal Indian policies go against tribes and the dominant position is that tribes should be in the process of decline and disappearance.
Shifting Federal Indian Policy

- 1887 General Allotment Act
- 1934 Indian Reorganization Act
- 1950's Congressional Policies
- 1975 Indian Self-Determination Act
- Treaties & Reservations
- Termination Relocation
  "No special status"
After the pain of allotment, the brief promise of Indian reorganization, and a dark twenty years know as the “Termination Era,” when Congress tried to end the federal-Indian relationship, the pendulum of federal Indian policy swung again in the 1960s.

Starting with President Nixon and continuing to the present day, Congress and the Executive branch of the United States government have followed a policy of Self-Determination, encouraging tribes to take control of their own destinies, and reducing the role of Federal Indian bureaucrats and, to some extent, state and local governments.
Two major statutes reflect the policy of self-determination:

1. The Indian Self-Determination and Education assistance Act of 1975
2. The Tribal Self-Governance Statute

These statutes authorize tribes to enter self-determination contracts for self-governance
Break time!