

U.S. Assimilation Policies:
Reservations, Allotment, Termination + Relocation,
Education, Adoption
(September 10, 2016)

I. Reservations

- A. Reserved homelands ("reservations") were not *given* by the U.S. but *reserved* by Native Nations when homelands were ceded to the U.S.
 - Some Native Nations were removed to Indian Territory from their ancestral homelands to open land up to Euro-American settlers. Removal Act of 1830.
 - Relocation enforcement was carried out by the U.S. Army.
 - Hunting, fishing and gathering rights on some traditional homelands (no longer part of reservation) were reserved by treaty.
 - Tribal lands are held in trust by U.S. (federal trust responsibility)
 - Tribal member allotments are held in trust by U.S. (after 1887)
- B. Reservation policy was to "civilize," contain and assimilate Indians.
 - BIA controlled life on the reservation, including food supply, health care, police, law, courts, education.
 - US began contracting with denominational schools to provide education for Indians.
- C. CFR Courts (Code of Federal Regulations) established by BIA in 1883.
 - Established under general powers of Commissioner of Indian Affairs -- no statutory authority.
 - Federal purpose was to "educate" and "civilize" Tribal people.
 - BIA law and order code prohibited "barbarous" practices such as ceremonial dances and other traditional customs.
 - CFR courts were staffed by Indian judges who served at the pleasure of the BIA agent, not the Tribal community.
 - Ultimate court decisions rested with the BIA agent.
 - Patronage system rewarded Indians who were assimilating ("friendlies") rather than those who were more traditional ("hostiles").
 - CFR courts operated on about two-thirds of Indian reservations
- D. 1885 Major Crimes Act established first federal court jurisdiction in Indian Country over certain felonies committed by Indians on Indian reservations.

II. Allotment (1887 - 1934)

- A. Native property systems before European contact:
 - Exclusive use rights in land, maintained by continuous use, not legal title (e.g., "customary use areas" and grazing permits in Navajo Nation)
 - Customary family trusts ("most logical heir") to avoid fragmentation of land usage

- Exclusive use of fishing sites
 - Family territorial systems with hunting rights
 - Lands held communally (subject to tribal governance) – but not in common (used by individual families/bands/clans)
 - Property rights in names, carvings, songs, family crests
 - Disputes resolved through peacemaking
- B. In 1887, Congress passed the Allotment Act (a.k.a., the Dawes Act) which authorized the survey, division, and allotment of Indian reservations *without tribal consent*.
- To teach Indians the civilizing force of private property and overcome “savage tribalism”
 - To destroy tribal governments (and their communal land systems)
 - To provide “security” through fee title (“protection from settlers”)
 - To provide the benefits of “civilization”
 - To teach Indians how to become farmers
 - To assimilate Indians into the American “mainstream” culture
- C. The Dawes Act (and subsequent allotment acts) provided a smaller acreage for children and a larger acreage for heads of family, with “surplus” lands opened to settlement by homesteaders (so Indians would benefit from the “civilizing” influence of non-Indian neighbors)
- Allotments were to be held by U.S. in trust for 25 years (Indian allottees were declared “incompetent” to handle their land affairs).
 - No training in agriculture or farming equipment was provided.
 - U.S. citizenship was issued with fee patent (“competency”).
 - BIA had unilateral discretion to declare Indians “competent” and issue fee patent at any time.
 - Proceeds from “surplus” land sales were deposited in a tribal trust fund to be used, among other things, for Indian education.
 - “Surplus” lands were often the most agriculturally productive lands.
 - 1928 Meriam Report documented huge Tribal land losses, widespread fraud and misappropriation by government agents + fractionated heirship issues.
- D. Tribal land losses
- Before allotment in 1887, tribes had already lost 80-90% of homelands
 - By 1934 when allotment ended (Indian Reorganization Act), tribal lands had been reduced from 138 million acres to 48 million acres.
 - Access to many important sacred sites was lost.
 - Reservation lands were “checker-boarded,” creating jurisdiction problems and resulting in litigation.
- E. Primary causes of land losses because of allotment
- 60 million acres were lost to homesteaders as “surplus” (tribes were paid below market value (e.g., \$1.25/acre, compared to \$10-15/acre off reservation).
 - 3.7 million acres were lost through government sale of allotments (1902 and 1907 acts of Congress)

- 23 million acres were lost after land was transferred into fee patents (by fraudulent land sales, mortgage + default + foreclosure and confiscation for failure to pay taxes).
- F. Fractionated heirship resulted from Dawes Act.
- Allotted lands descended to heirs according to state/territory laws for those who died without a will (intestate).
 - Native wills weren't authorized by Congress until 1910.
 - Highly fractionated lands worsened w/each passing generation (individuals received an undivided interest in the tract of land)
 - In 1957, the Army Corps of Engineers (w/ BIA) surveyed 116 acre agriculture allotment on Yankton Sioux Reservation (for flooding by Pick-Sloan Project): 99 heirs of original allottee (largest land interest: approx. 8 acres with a value of \$586; smallest land interest: approx. 253 sq. ft. with a value of \$.37).
 - Hodel v. Irving (U.S. Sup. Ct. 1987): A 40 acre tract of land produces \$1,080 in annual income. It has 439 owners, one-third of whom receive less than 5 cents per year in annual rent. The smallest heir receives one penny every 177 years. 1983 Indian Land Consolidation Act provision for returning fractionated land to Tribe under certain conditions was declared unconstitutional (no provision for compensation).
- G. Department of the Interior (Bureau of Indian Affairs) responsibilities:
- Maintain land ownership records (regional title plants)
 - Handle probate
 - Approve agricultural, commercial, mineral leases
 - Oversee sales of timber and other tribal resources
 - Monitor rights-of-way
 - Collect and distribute income to allottees. (Most allotted lands were leased by non-Indian farmers or businesses. Payment for leases and minerals on allotted lands was deposited into Individual Indian Money accounts.)
- H. Cobell class action law suit filed in 1996 against the U.S. for mismanagement of Native allottee funds (56 million acres of land/\$10 billion in losses)
- Elouise Cobell (Blackfeet) noticed many irregularities when she served as treasurer for the Blackfeet Nation.
 - After 14 years of litigation, federal court approved \$3.4 billion settlement on December 21, 2010. www.IndianTrust.com
 - 327,957 historical accounting class members + 38,220 estates

III. Termination (1953 - 1968)

- A. 1953 House Concurrent Resolution 108 expressed the desire of Congress to end the government-to-government relationship with Indian Tribes. Intent was to assimilate Indians into mainstream American society ("freeing the Indian from wardship status").

- B. Over 100 Indian Tribes were statutorily terminated from their federal relationship with the U.S. (e.g., Menominee Termination Act of 1954).
 - Terminated Tribes were devastated, with enormous land losses and critical damage to sovereignty, governance, jurisdiction, health care and education.
- C. In 1953, P.L. 280 allowed some state courts to assume criminal jurisdiction *without tribal consent*. Other states were authorized to *unilaterally* assume jurisdiction under this law.
- D. The Indian Relocation Act of 1956 encouraged Indians to leave reservations and seek employment in various metropolitan centers.
 - Federal government promised housing and jobs
 - One-way ticket made it difficult to return to reservation
 - Urban Indians do not have access to federal programs available on their reservations.
 - Social services issues with non-Indian case workers caused loss of children through involuntary, misunderstood court procedures.
 - Many urban areas have large Indian populations as a result of this policy (e.g., Denver, Phoenix, Los Angeles, Chicago)
- E. In 1970, President Nixon declared the U.S. termination policy a failure.
 - Congress began the process of restoring the federal relationship with terminated tribes. Menominee was the first restored tribe (Menominee Restoration Act of 1973).

IV. Education

- A. During the same era as allotment, BIA boarding schools were established at distant locations in order to:
 - Break family ties, kinship systems and tribal/extended family relationships
 - Train Indian children in “civilized” ways
 - Teach individualization (accumulate personal wealth, don’t give it away: “he is richest who keeps the most”)
 - Prepare for US citizenship: taught US history, government and holidays (e.g., Columbus Day)
 - “Destroy the Indian, save the child.”
- B. Some Native Nations had already established boarding schools closer to home (e.g., Cherokee Female Seminary, established in 1851)
- C. Many parents resisted sending their children to distant boarding schools (forced acculturation).
 - BIA agents would withhold food rations and use agency police to round up their children. Sometimes parents would be incarcerated.
 - Spotted Tail withdrew his children from Carlisle because of militaristic training (“made to drill like white soldiers”).
 - Widespread fear that their children would “come back a stranger.”
- D. In 1879, first BIA boarding school was established in Carlisle, PA.
 - Conversion to Christianity was considered essential.

- Children received very little formal instruction (e.g., science, math) until later.
 - English/Christian names were assigned to children, replacing “unpronounceable, pagan” Indian names.
 - Long, traditional hair styles were cut short (sacredness of hair + symbolism of cutting hair).
 - Uniforms replaced traditional clothing (which was burned).
 - English only was required (pan-Indian environment encouraged use of English for communication among students).
 - Denigration of forbidden “savage” traditions and customs.
 - Highly regimented way of life (military atmosphere w/clock time).
 - Severe punishment for not following the rules included beatings, withholding food, time in school “jail,” sometimes in leg irons.
 - Other maltreatment, including sexual abuse.
 - Students were responsible for school upkeep: they tended school farms, gardens and dairies, built and repaired campus buildings, made and repaired shoes, animal bridles/harnesses and furniture, laid cement sidewalks.
 - “Before” + “after” photos had great value for public relations.
 - Girls learned to knit, sew and quilt. They baked, cooked, washed and ironed clothes, cleaned and cared for the sick.
 - Sports were used to teach discipline (Jim Thorpe played football at Carlisle and won 2 Olympic gold medals in 1912).
- E. Federal policy severely restricted home visits (homesickness)
- “Outing” system placed Indian children in Anglo homes for vacation, sometimes longer, to learn about “civilization” first hand.
 - Many placements were little more than servitude.
 - Children often didn’t return home for years.
 - Homesickness caused many attempts at running away.
 - Boarding school regulations required parents to make a deposit at the child’s school to cover round trip expenses, including train fare, if they were allowed to go home for the summer (most families, often decimated by disease and poverty, didn’t have the money).
 - “Moccasin telegraph” on reservations was often the best/only source of information.
- F. Diseases in BIA boarding schools (e.g., TB, trachoma, influenza)
- Overcrowding (funding was based on a per capita basis)
 - Poor food (many children were underweight)
 - Irregular medical care
 - Failure to segregate sick children
 - Unsanitary conditions (e.g., shared beds, bath water, towels, school supplies)
- G. Boarding school cemeteries
- Many students were buried in school cemeteries
 - Some bodies were sent home for traditional burial.

- Some died of TB in sanitariums and were buried there.
- H. US Indian boarding school policy was declared a “miserable failure” (1901)
- US policy moved from immediate assimilation to gradualism.
 - More schools were established on the reservation
 - 1918 Carlisle closed
 - 1934 Johnson-O’Malley Act provided federal subsidies for education of Indian children in public schools--rather than provide separate schools.
- I. Contemporary Indian boarding schools
- Help build relations with Indians from other tribes
 - Provide opportunity to learn in a Native environment
 - Offer positive teachings about Native custom and tradition, survival and healing
 - Examples of contemporary schools include Haskell Indian Nations University www.haskell.edu (Lawrence, KS), Flandreau Indian School www.flandreau.k12.sd.us (SD), Chemawa Indian School www.chemawa.bie.edu (Salem, OR), Sherman Indian High School www.sherman.k12.or.us (Riverside, CA) and Santa Fe Indian School www.sfis.k12.nm.us (Santa Fe, NM)
 - 37 Tribal Colleges (American Indian Higher Educ. Consortium). www.aihec.org
- J. Bureau of Indian Education (BIE) www.bie.edu oversees a total of 183 elementary and secondary schools in Indian Country
- 126 schools are tribally-controlled; 57 are operated by BIE

V. Adoption (“the stolen generations”)

- A. Indian Adoption Project (1958-1967)
- Administered by the Child Welfare League of America
 - Funded by the BIA and the US Children’s Bureau
 - Many churches involved in adopting Indian children into non-Indian Christian homes.
 - 395 Native children were placed with Anglo-Americans
 - Many social workers considered leaving a child with persons outside the nuclear family as *neglect* and thus as grounds for terminating parental rights.
 - Voluntary waiver of parental rights was a device widely employed by social workers to gain custody of children (required only a minimal judicial process).
 - Sealed adoption records prevented adoptees/biological parents from accessing birth information without a court order.
 - Currently only six states have open adoption records.
 - Native activists denounced the project and supported enactment of the Indian Child Welfare Act.

B. Indian Child Welfare Act of 1978

- Overall purposes: (1) to affirm existing tribal authority to handle child protection cases involving Indian children; (2) to establish a preference for exclusive tribal jurisdiction; and (3) to regulate and set minimum standards for the handling of those cases remaining in state court and child social services agencies.
- ICWA sets federal requirements for state child custody proceedings involving an Indian child who is a member of or eligible for membership in a federally recognized Indian Tribe.
- Centrality of kin relations and extended family are reflected in adoptive placement preferences: (1) a member of child's extended family; (2) other members of the Indian child's tribe; or (3) other Indian families.
- Grandparent visitation + custody rights more extensive in tribal court.

C. Mississippi Choctaw v. Holyfield (Sup.Ct. 1989)

- Unmarried tribal member moved off reservation for sole purpose of delivering twins and placing them with non-Indian family. Birth parents consented to adoption by Holyfields.
- Mississippi state court entered adoption decree.
- Mississippi Choctaw Tribe moved to vacate state adoption decree and transfer case to tribal court.
- Mississippi Supreme Court upheld state jurisdiction (children were voluntarily surrendered and never lived on the reservation).
- US Supreme Court reversed and held that state court had no jurisdiction to enter adoption decree because ICWA provides exclusive jurisdiction in tribal court (governed by tribal law) for Indian child who lives or is *domiciled* on reservation.
- Domicile for child follows domicile of parents.

D. Adoptive Couple v. Baby Girl (Sup.Ct. 2013)

- South Carolina couple adopted baby girl through open adoption agreement with biological mother (Hispanic) in Oklahoma. Consent of biological father was not obtained prior to adoption.
- Biological father (enrolled Cherokee) was estranged from birth mother and didn't realize their baby girl was being put up for adoption. Once he learned about it, he fought the adoption.
- The Cherokee Nation intervened in the lawsuit.
- South Carolina Supreme Court granted custody to biological father based on ICWA.
- Non-Indian adoptive couple appealed to U.S. Supreme Court.
- In 5-4 decision, Supreme Court remanded case back to South Carolina court on technicality (non-custodial parent did not have "continued custody" so did not violate ICWA purpose of removing Indian children from Indian families).
- South Carolina Supreme Court ordered baby girl returned to adoptive couple.