

NATIVE NATIONS SEMINARS **(July 18 and August 1, 2018)**

European Contact

Europeans arrived in the "New World" with life experiences, belief systems, teachings and expectations which were very different from the many Native Nations who had called this land home for over 13,000 years. Across the Americas, the people spoke some 1,200 separate languages that have been classified into as many as 180 linguistic families. By contrast, all of Europe has just four language families.

A military alliance among the Seneca, Cayuga, Onondaga, Oneida, Mohawk and later, the Tuscarora (the Haudenosaunee or "Six Nations") was probably the greatest indigenous polity north of the Rio Grande in the two centuries before Columbus.

In the beginning, European colonists needed alliances with Native Nations to help keep the peace; they developed a "**doctrine of discovery**" to minimize conflict among themselves. As the colonies grew, so did the expectations--and the differences became even more significant

Here are just a few of the differences:

Native Nations

Respect for nature
Land belongs to everyone/usage rights
Moving with the seasons
Spirituality
Consensual leadership
Native languages
Oral history, customary laws
Elders as tradition keepers/teachers
Trade, non-cash economy/generosity
Peacekeepers/consensus (win-win)
Original dispute resolution
Customary sanctions
Law, justice, religious beliefs combined
Focus on restoring harmony/restitution
Traditional "probation officers" (family)
Mutual respect and community focus
Giving/sharing
Cooperation

Euro-Americans

Conquest of nature
Exclusive land ownership w/recorded title
Fencing and farming
Church membership/strict belief systems
Vertical hierarchy (both church and state)
European languages
Written history and laws
Formal education, schools, diplomas
Money, accumulation of wealth/greed
Courts, judges/adversarial (win-lose)
Alternative dispute resolution
Punishment/incarceration/prescribed sanctions
Separation of church and state
Focus on punishing the offender
Officers of the state
Individual rights
Taking/saving
Competition

As more Europeans arrived, a series of epidemics, including smallpox and influenza, devastated Native communities. The Lakota describe the year 1780-81 as a time when "smallpox used them up."

The colonist focus was on land acquisition, sometimes through fraud and shady individual dealings which often caused conflict. In an attempt to keep the peace, in 1763, King George III proclaimed that all land transactions with Native people must either be negotiated by the King's representatives or approved by the Crown. All other land transactions were illegal. Lands west of the Appalachian Mountains were declared Indian territory.

Formation of the United States

Early treaties between the newly organized government were for peace and friendship with powerful Tribes along the eastern seaboard (e.g., 1778 treaty with the Iroquois Confederacy, 1778 treaty with the Delaware Nation).

King George III's policy was adopted by the United States in 1790, as land negotiations and treaties with Native Nations continued. Only those land transactions negotiated or approved by the federal government were legal. However, a number of states entered into treaties with Tribes and did not seek U.S. approval. Conflicts between federal and state management of Indian affairs continued under the new government.

In a pair of decisions (Cherokee Nation v. Georgia, 1831 and Worcester v. Georgia, 1832), the U.S. Supreme Court held that Native Nations are "**domestic, dependent nations**," that the federal government has a "**trust responsibility**" to protect Tribes and that states have no jurisdiction over treaty-protected Tribal land. President Andrew Jackson adamantly disagreed with the Supreme Court. He is quoted as saying, "John Marshall [Chief Justice of the Supreme Court] has made his law. Now let him enforce it."

Removal policy

A devastating removal policy was adopted by Congress in 1830. As the federal government accommodated its own citizens, Native Nations were moved west of the Mississippi to "Indian Territory." Relocation enforcement was carried out by the U.S. Army.

One of the most infamous removals was the Cherokee "Trail of Tears." In 1838, Cherokee people were forcibly taken from their homes, incarcerated in stockades, forced to walk more than a thousand miles and removed to Indian territory. More than 4,000 died.

Indian Territory was vastly different from their aboriginal homelands. Relocation meant a whole new ecosystem in a distant location in addition to the loss of their homelands. And those Native Nations whose ancestral homelands were located in "Indian Territory" (later called Oklahoma) were required to accommodate the arrival of relocated Indian Tribes.

Reservation era

Across the continent, Native people resisted the coercive move to smaller reserved lands, sometimes located far from their aboriginal homelands. Sometimes multiple Native Nations were placed on one reservation and treated as one federally recognized tribe (e.g., The Confederated Tribes of the Colville Reservation). Sometimes one Native Nation was divided and placed on separate reservations (e.g., the Ute Nation). Tribal governments and justice

systems were targets of destruction while reservations were used by the BIA to teach Euro-American values ("greed is good"). Native ceremonies, as well as other customary and traditional practices could only be maintained in secret.

Allotment and forced assimilation

An invasive set of cultural values was applied to the Natives. Sectarian Christian groups felt the crusade-derived need to "save" Native souls. Others sought to "civilize" Indians by moving them in the direction of farming. The government allowed missionaries to work alongside the military mission of containment and pacification, sometimes in response to corruption by government agents in Indian Country. In 1849, responsibility for Indian Country was moved from the Department of War to the newly created Department of the Interior (Bureau of Indian Affairs).

"Manifest Destiny" provided additional justification for taking lands ("taming" the wilderness) and "civilizing" those they saw as inferior "heathens" and "savages." It was a 19th century belief (c. 1845) that Americans had a divine duty to expand across North America. This belief was based on a superior moral right to govern because of religious, cultural and racial superiority.

Gold was discovered in California territory in 1848 and in Colorado territory in 1858 resulting in massive migrations across the continent with hordes of miners trespassing throughout Indian Country. The transcontinental railroad was completed in 1869.

There were a number of events during the 1860s and 70s which heightened hostilities between Native Nations and the United States [1864 Sand Creek Massacre] [1876 Battle of the Little Big Horn] [1877 Nez Perce/Chief Joseph] [1879 Battle at Milk Creek and Meeker Incident].

In 1871, Congress ended treaty-making with Native Nations. After that, there were agreements with tribes and executive orders which carried similar legal weight as treaties.

The **Allotment Act of 1887** was an extension of the "civilizing" process and a handy device for opening up more lands for Anglo settlers. Individual allotments were held in trust by the U.S. (initially for 25 years) while Indians were taught how to fence and farm. "Excess" lands were opened up for non-Indian homesteading. Most Native lands subjected to allotment became "checker boarded," creating a jurisdictional nightmare.

Native children were involuntarily removed from their families for re-education into 19th century settler values ("Kill the Indian, save the child."). BIA agents would withhold food rations and use agency police to round up the children. Sometimes parents would be incarcerated.

In 1879, in the remnants of an old cavalry barracks, the **Carlisle Boarding School** was born. It was located in Pennsylvania, far from the reserved homelands of Native America. Native children were forcibly taken from their families. In order to eliminate all vestiges of their traditional cultures, their hair was cut, their names changed, their languages and "savage" traditions and customs forbidden. They led a highly regimented life in a strict, military

atmosphere as they were trained in "civilized" ways. At one time there were 25 off-reservation Indian boarding schools operating in the U.S.

The children maintained the institution which was often underfunded by the government. Boys tended school farms, built and repaired buildings, made and repaired shoes, laid cement sidewalks. There was cooking, sewing and laundry work for girls. They ate "white man's food" (often inadequate and poor quality), lived in unsanitary conditions and suffered diseases such as tuberculosis and influenza. Children often didn't return home for years. Some died and were buried in boarding school cemeteries. Some bodies were sent home for traditional burial.

A single incident in 1891, a death as a result of an internal conflict on Lakota lands between Crow Dog (a traditional leader) and Spotted Tail (a "progressive" leader) and the settlement by Lakota tradition and customary law brought the clash of cultures into the spotlight. Federal authorities were dissatisfied with the tribal resolution and sought the death penalty for Crow Dog in federal court. However, the U.S. Supreme Court held that there was no federal jurisdiction over Indian-on-Indian crimes occurring on Indian lands (Ex Parte Crow Dog, 1893). As a result of the non-Indian uproar that followed, Congress passed the **Major Crimes Act in 1895**, authorizing certain major crimes committed by Indians in their own countries to be tried in federal courts, an invasive intrusion into Indian Country jurisdiction.

Congress gave U.S. citizenship to all Indians in 1924, partially in recognition of the thousands of Natives who served in the military during World War I, including Choctaw code talkers. During World War II, the U.S. military used code talkers from the Choctaw, Cherokee, Comanche, Lakota and Navajo Nations. State citizenship was slow in coming. It was 1962 when the last state (New Mexico) finally granted voting rights for Natives.

Recovery and reorganization

It wasn't until the reforms of President Roosevelt's "Indian New Deal" and passage of the **Indian Reorganization Act of 1934 ("IRA")**, that tribes began to reorganize and recover from the devastating federal assimilation policies. The IRA ended allotment, but by then over 80% of Native lands had been lost. Boilerplate constitutions offered by the BIA included substantial federal oversight in tribal government operations and looked a lot like the U.S. Constitution. Many tribes refused to organize under the IRA, including the Navajo Nation.

Termination and relocation

In the 1950s, the federal government shifted once again into destructive assimilation policies. Established in 1953, the termination policy dissolved the government-to-government relationship with over 100 Native Nations. The BIA **relocation policy** resulted in moving many individual Indians to urban areas with promises of jobs and an opportunity to "live the American dream." **Public Law 280** (1953) gave tribal jurisdiction to certain states (without the consent of Native Nations) and invited other states to unilaterally assume tribal jurisdiction. The BIA **adoption policy** resulted in placement of Native children with non-Indian families.

When President Nixon declared the termination policy a failure in 1970, Congress began the process of restoring the federal relationship with terminated tribes. It was outstanding tribal leaders like Ada Deer (Menominee) who went to Washington to insure **restoration** of the federal relationship for their Native Nations.

Self-determination era

In 1968, Congress passed the **Indian Civil Rights Act ("ICRA")**. This law was the result of concerns expressed by non-Indians about the lack of U.S. Constitutional protections for Indians. ICRA applied many of the U.S. Bill of Rights protections to tribal governments, stopped states from future acquisition of PL-280 jurisdiction without tribal consent and authorized **retrocession** (the return of jurisdiction to Tribes).

Expressions of Native resistance to a history of negative federal policies include the American Indian Movement (founded in 1969 in Minneapolis, MN) + the 1969-71 Alcatraz occupation + the 1971 Trail of Broken Treaties + the Wounded Knee protests (Pine Ridge) in 1972 + the 1973 take-over of the BIA building in Washington, DC.

As Native Nations began to make gains through litigation (e.g., by protecting and asserting treaty rights to hunt and fish in traditional places and in traditional ways), anti-Indian organizations were formed to protest what they claimed was inequality. These organizations include PARR (Protect Americans Rights and Resources) + CERA (Citizens Equal Rights Alliance) + ICERR (International Congress for Equal Rights and Responsibilities) + ACE (All Citizens Equal) + ERFE (Equal Rights for Everyone) + TEA (Totally Equal Americans).

The civil rights movement of the 1960s brought new hope for racial equality in the U.S., but there was considerable misunderstanding about the treaty-based rights of Native Nations and their citizens. BIA employment preference for Indians was challenged as discriminatory, a violation of equal protection under the U.S. Constitution. However, the U.S. Supreme Court in Morton v. Mancari (1974) declared the BIA preference nondiscriminatory because it was based on a unique legal status (Native Nation citizenship), not race. In 1978, the U.S. Supreme Court affirmed Native Nations' authority to determine their own citizenship requirements, including those with different requirements for female and male citizens. (Santa Clara Pueblo v. Martinez, 1978).

With passage of **the Indian Education and Self-Determination Act of 1975** and a series of similar federal statutes in the decades which followed, Native Nations began (yet again) a slow rebuilding and cultural reinvigoration process which continues today. Out of the ashes of decades of destructive historical trauma, Native Nations continue the healing process.

Contemporary issues concerning **Tribal sovereignty and jurisdiction** continue to be of primary concern. In 1978, the U.S. Supreme Court said that *Native Nations have no jurisdiction over non-Indians who commit crimes on the reservation* (Oliphant v. Suquamish, 1978). Many tribes established civil fines in lieu of criminal prosecution. Tribal licenses for hunting and fishing on reservations began to be conditioned on consent to tribal jurisdiction. In 1990, the U.S. Supreme Court decided that *Native Nations have no jurisdiction over non-member Indians*

who commit crimes on the reservation (Duro v. Reina, 1990) Tribal leaders headed for Washington to convince Congress that the Supreme Court got it wrong. Congress responded by amending the ICRA: "... powers of self-government means the *inherent power* of Indian Tribes, hereby *recognized and affirmed*, to exercise criminal jurisdiction over all Indians." A challenge to Congressional authority to effectively reverse a Supreme Court decision followed. In 2004, the Court upheld this Congressional action by reaffirming the "plenary" power of Congress to act on behalf of Indians under the federal trust responsibility.

A Supreme Court decision in 1987 upheld Tribal gaming rights in a challenge brought by California (California v. Cabazon Band of Mission Indians, 1987). By 1988, Congress had enacted the **Indian Gaming Regulatory Act**. Citing fear of infiltration into Indian Country by organized crime, the National Indian Gaming Commission was established to oversee gaming in Indian Country and compacts between Native Nations and states were required for high stakes gaming. Depending on location, gaming has provided much-needed income for tribes to run their government operations.

A number of other laws were enacted by Congress during this time, established to protect Native rights (e.g., **Native American Graves Protection and Repatriation Act** in 1990).

Some Native Nations (e.g., the Southern Ute Indian Tribe and the Tulalip Tribes) have built a diversified economy which enables them to provide a wide range of services for their people. They have created extraordinary museum and culture centers. (For more information, check out their websites: www.southernute-nsn.gov and www.tulaliptribes-nsn.gov)

In 2013, Congress enacted the **Violence Against Women Act** which extends tribal court jurisdiction over non-Indians who commit domestic/dating violence or violate a protection order on reservation. Tribes must meet certain standards before exercising this jurisdiction. This is the first time criminal jurisdiction over non-Indian defendants has been restored in Indian Country since 1978.

Cultural sovereignty

Historically, Native people have had to bridge the American culture and their Nations of birth. Notwithstanding decades of oppressive federal and state policies, they've found ways to retain and protect their languages, traditional ceremonies and songs, sacred and ancient teachings. Cultural sovereignty places an emphasis on pre-contact indigenous cultures, languages, ceremonies and traditional values. It involves reclaiming indigenous history, utilizing customary law, building Tribal educational systems that teach traditional languages and values as well as healing the harm done by destructive federal policies, colonialism and oppression based on attitudes of superiority and forced assimilation into Eurocentric values. By reclaiming indigenous history and wisdom, Native Nations are protecting their inherent sovereignty as pre-Constitutional cultures and nations.

Today, there are 573 federally recognized Tribes. There were 57 state recognized Tribes in 2015.