



The Foundations of Native Law and Policy

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Today's lecture will contain a LOT of technical terms, Supreme Court cases, and legislation. Here is a brief guide to help you navigate them:

Requirimiento

Declaration read in Spanish demanding Indigenous submission to the Spanish Crown and Catholic Church with the threat of violent force.

Doctrine of Discovery

A term characterizing a broad set of Catholic Church declarations that legitimize European claims to title when "discovering" lands occupied by Indigenous people, who are regarded as lacking sufficient "civilization" for claiming sovereignty over land themselves.

Proclamation Line of 1763

Following the French and Indian War, the British established a line that clearly demarcated the boundaries between their colonies and Native-controlled territory. American frustration with that Proclamation Line in part drove the American Revolution.

The Commerce Clause

The portion of the US Constitution that designates Congress as regulating affairs with Indian tribes as governments of their own.

Marshall Trilogy

- Johnson v. M'Intosh (1823)
Native people have the right of occupancy, but do not own title to their lands.
- Cherokee Nation v. Georgia (1831)
Native people are "domestic dependent nations" and the US relationship with them "resembles that of a ward to his guardian."
- Worcester v. Georgia (1832)
The laws of Georgia have no force within the Cherokee Nation.

Indian Removal Act (1830)

Prompted the forced removal of thousands of Native people from homelands east of the Mississippi, including Native communities in Illinois.



Plenary Power

- Ex Parte Crow Dog (1883)
The court does not have jurisdiction over Indian-on-Indian murder within reservation lands.
- United States v. Kagama (1886)
Following passage of Major Crimes Act (1885), limited criminal jurisdiction extends into reservations.
- Lone Wolf v. Hitchcock (1903)
The US Congress has the authority to unilaterally abrogate (back out of) treaties with Native nations.

The End of Treaty-Making in the U.S. (1871)

The US Congress ends the practice of engaging in treaties with Native people, relying instead on Congressional acts and Presidential Executive Orders to manage relationships with Native people

Indian Act [Canada] (1876)

An act that designates who is an Indian and how Native governments will operate

General Allotment Act (1887)

This policy divided reservations from

Indian Citizenship Act (1924)

All Native people in the United States become US citizens, provoking mixed feelings.

Indian Reorganization Act (1934)

An era of reform within US-Indian bureaucracy,

House Concurrent Resolution 108 (1953) "Termination" / The White Paper [Canada] (1969)

Two proposals to end sovereign recognition of Indigenous communities.

The Sixties Scoop [Canada] / Indian Child Welfare Act [US] (1978)

Generations of Native children were adopted into non-Native homes. The Indian Child Welfare Act established a set of procedures to give preference for Native children who are adopted to remain in Native homes/families.

American Indian Self-Determination and Educational Assistance Act (1975)

The Bureau of Indian Affairs (BIA) transforms its approach to relationships with Native people, restructuring to allow Native people more control of their engagement with the BIA.

American Indian Religious Freedom Act (1978)

Much delayed tenets of basic religious freedom finally apply to Native people and their own spiritual practices.



Indian Gaming Regulatory Act (1988)

Native American casinos are already legal without Congressional action (based on tribal sovereignty), but the Congress does regulate the activity of Native casinos.

Native American Graves Protection and Repatriation Act (1990)

Allows for the return of Native American cultural objects and human remains held by museums and in the collections of other federally-supported institutions.

City of Sherill v. Oneida Indian Nation of New York (2005)

When Native people have the opportunity to buy back lands, only those lands within their current reservation are eligible to be transformed back into “trust land.”

Trust land vs. Fee Land

Reservation lands that are held in federal trust and lands to which the US holds the title and reserves it for Native people, managing it in their “best interests.” Trust land is not taxable by state or municipal governments. Fee land is privately owned lands subject to local property tax. Reservations are generally composed of both trust land and fee land.

Also, recommended by one of our students: N. Scott Momaday video
youtu.be/rbqzm6x7Noo