Indian and American Indian Tribe

The term *Indian* can be defined in either an ethnological (blood quantum) or in a legal/political sense. However, neither in an ethnological nor legal sense is there a universally accepted method for determining who is an Indian.

- There is no single definition of the term ***Indian***. Each government—tribal, federal, and state—determines who is an Indian for purposes of that government's laws and programs. This can result in someone being an Indian under tribal law but not under federal law, an Indian under federal law but not tribal law, and so forth.
- In 1924 Congress extended U.S. citizenship to all Indians born in the United States. Prior to that, Indians became citizens by treaty or federal statute. It is now settled law that an individual Indian can be both a citizen of the United States and a member of an Indian tribe and have all the benefits and obligations that arise out of that dual status.
- As with the term *Indian*, the term ***Indian tribe*** can have more than one definition. To qualify for the many benefits that Congress has made available to federally recognized tribes, a group of Indians must satisfy the seven requirements for federal recognition established by the Department of the Interior, Bureau of Indian Affairs. There are 566 federally recognized Indian tribes, including 229 Alaska Native entities.
- Federal recognition by the Interior Department guarantees that an Indian tribe will qualify to participate in virtually all federal Indian programs. However, a denial of federal recognition does not necessarily disqualify a tribe from all federal programs because it may participate in federal programs that Congress has not specifically limited to federally recognized tribes. (See separate Fact Sheet on Federal Recognition)
- Examples of tribes that may be defined by their legal/political character is the Fort Belknap Indian Community in Montana, which is one tribe politically but is composed of two ethnological tribes, the Gros Ventre and Assiniboine. Also, single ethnological tribes may have been divided and placed by the federal government on different reservations and have obtained separate political identities. For example, various bands of Sioux (Lakota), Chippewa, and Shoshone were placed on separate reservations and now are treated as separate tribes politically.
- **IMPORTANT LEGAL NOTE:** In Morton v. Mancari, the Supreme Court established that American Indians and Alaska Natives can be treated differently from other U.S. citizens by the federal government despite anti-discrimination laws. The Court held that members of tribes must be considered political rather than racial groups as long as the law or action is based on longstanding legal responsibilities toward Native American interests and promote tribal self-governance. This is significant because it means that when members of Indian tribes receive special treatment from the federal government (as under the ACA) under the trust doctrine, that treatment cannot be considered racial discrimination because tribes are political groups, not racial groups.

American Indians and Alaska Natives – What about Alaska?

- In 1971, Congress passed a comprehensive law, the Alaska Native Claims Settlement Act (ANCSA), which changed the nature of the government's relationship with Alaska Natives and gave them rights and interests not enjoyed by any other indigenous group.
- The ANCSA gave Alaska Natives approximately $960 million in compensation for extinguishing all of their aboriginal land claims. ANCSA also gave Alaska Natives ownership rights to 40 million acres of land.
- Of the 40 million acres, the surface rights in 22 million acres were divided among over two hundred Native villages according to their population, with each village selecting its homelands and incorporating itself under state law. The remaining 18 million acres and the subsurface rights in the entire 40 million acres were conveyed to thirteen Alaska Native regional corporations. Therefore, 22 million acres patented to the villages are dually owned: the surface is owned by the village corporation while the subsurface is owned by the regional corporation.
- Under ANCSA, all persons living on December 18, 1971 and possessing one-quarter or more Native blood were automatically enrolled in a regional corporation and issued one hundred shares of its corporate stock.
- ANCSA requires each regional corporation to use its land and resources for the profit of its shareholders.
- When originally enacted ANCSA prohibited shareholders from selling their shares for twenty years and it also exempted the land owned by Native corporations form state and local taxation during this same twenty year period. In 1988, Congress amended ANCSA and extended the restriction on taxation indefinitely and permitted the corporations to extend indefinitely the restriction on sales of corporate stock.
- While ANCSA was enacted by Congress with the intent that litigation could be avoided regarding land claims, it has resolved some disputes but created others.
- In 1993 the Department of the Interior issued a ruling stating that Native villages and corporations have the same status as the tribes in the lower forty-eight states and are "entitled to the same protection, immunities, and privileges as other acknowledged tribes."
- In 2001, the Alaska Supreme Court reversed three of its prior decisions and held that "Alaska Native tribes are sovereign powers under federal law" and therefore had the right, as was the specific issue in the case, to enforce the provisions of the Indian Child Welfare Act (ICWA). See In re C.R.H.

American Indians and Alaska Natives – Treaties

- A treaty is a contract between nations.
- Nearly four hundred treaties were signed between Indian tribes and the U.S. until 1871 when Congress passed a law (25 U.S.C. 71) that prohibited the federal government from entering into additional treaties with the Indian tribes. This law did not repeal any existing treaties stating, "no obligation of any treaty . . . shall be hereby invalidated or impaired."
- The Supreme Court held, in Lone Wolf v. Hitchcock (1903) that treaties with Indian tribes may be abrogated, or broken by federal law and Congress has abrogated many Indian treaties in this fashion.
- The Fifth Amendment of the U.S. Constitution provides that Congress may not deprive anyone of "private property . . .without just compensation." The Supreme Court has held Indian treaty rights are a form of private property protected by the Just Compensation Clause. Therefore, although Congress may abrogate an Indian treaty, it must adequately compensate a tribe for the value of any rights or property that are lost. See Shoshone Tribe v. U.S. (1937), Menominee Tribe v. U.S. (1968).
- It is important to note that money often provides little compensation to people who have lost their homes and sacred lands. For example, the Supreme Court awarded the Sioux Tribe more than $100 million in compensation for the loss of the Black Hills, their priceless sacred lands, which had been guaranteed to them in a treaty.
- A federal agency may not abrogate an Indian treaty without specific congressional authorization.
- States may not abrogate Indian treaty rights.
- Existing Indian treaties have the same force and effect as federal statutes such that a violation of an Indian treaty is a violation of federal law.

American Indians and Alaska Natives – The Trust Responsibility

The 'trust responsibility' is a legal principle that the Supreme Court noted in United States v. Mitchell (1983) is "the undisputed existence of a general trust relationship between the United States and the Indian people." This relationship is one of the most significant and motivating concepts in federal Indian law.

- The Supreme Court first recognized the existence of a federal-Indian trust relationship in its early cases interpreting Indian treaties. Between 1787 and 1871, the U.S. entered into nearly four hundred treaties with Indian tribes. Generally, in these treaties, the U.S. obtained the land it wanted from the tribes, and in return, the U.S. set aside other reservation lands for those tribes and guaranteed that the federal government would respect the sovereignty of the tribes, would protect the tribes, and would provide for the well-being of the tribes.
- The Supreme Court has held that treaties created a special relationship between tribes and the federal government that obligates the government to keep its end of the bargain given that tribes have kept theirs. This principle, that the government has a duty to keep its word and fulfill its treaty commitments is known as the doctrine of trust responsibility. See, e.g., Seminole Nation v. U.S. (1942), and U.S. v. Mason (1973), and Morton v Mancari (1974).
- The trust doctrine is a source of federal responsibility to Indians requiring the federal government to support tribal self-government and economic prosperity, duties that stem from the government's treaty guarantees to protect Indian tribes and respect their sovereignty.
- In 1977, the Senate report of the American Indian Policy Review Commission expressed the trust obligation as follows:

  > The purpose behind the trust doctrine is and always has been to ensure the survival and welfare of Indian tribes and people. This includes an obligation to provide those services required to protect and enhance tribal lands, resources, and self-government, and also includes those economic and social programs which are necessary to raise the standard of living and social well-being of the Indian people to a level comparable to the non-Indian society.

- A second aspect of the trust responsibility arises from the fact that Congress, primarily through legislation, has placed most tribal land and other property under the control of federal agencies to the extent that virtually everything a tribe may wish to do with its land must be approved by the federal government. Courts have recognized that when Congress delegates to federal officials the power to control or manage tribal land, their actions with respect to those resources must be "judged by the most exacting fiduciary standards." Seminole Nation v. U.S. (1942)

American Indians and Alaska Natives – Federal Recognition

- Historically, most of today's federally recognized tribes received federal recognition status through treaties, acts of Congress, presidential executive orders or other federal administrative actions, or federal court decisions.
- In 1978, the Interior Department issued regulations governing the Federal Acknowledgment Process (FAP) to handle, in a uniform manner, requests for federal recognition from Indian groups whose character and history varied widely. These regulations – 25 C.F.R. Part 83 – were revised in 1994 and are still in effect.
- Also in 1994, Congress enacted Public Law 103-454, the Federally Recognized Indian Tribe List Act (108 Stat. 4791, 4792), which formally established three ways in which an Indian group may become federally recognized:
    - By Act of Congress,
    - By the administrative procedures under 25 C.F.R. Part 83, *or*
    - By decision of a United States court.

- A tribe whose relationship with the United States has been expressly terminated by Congress may not use the Federal Acknowledgment Process. Only Congress can restore federal recognition to a "terminated" tribe.
- The Federally Recognized Indian Tribe List Act also requires the Secretary of the Interior to publish annually a list of the federally recognized tribes in the Federal Register. The most recent list was published on May 6, 2013. http://www.gpo.gov/fdsys/pkg/FR-2013-05-06/pdf/2013-10649.pdf
- A non-federally recognized tribe has no relationship with the United States, except where a relationship is created under a particular statute as is the case the ANA's Native American Programs Act where non-federally recognized tribes, Native Hawaiians, and Pacific Islanders are eligible for federal assistance.

American Indians and Alaska Natives – Indian Country and reservations

- Broadly speaking, *Indian Country* is all the land under the supervision of the federal government that has been set aside primarily for the use of Indians. This includes all land within an Indian reservation and all land outside a reservation that has been placed under federal superintendence and designated primarily for Indian use.
- As a general rule, state laws do not apply to Indians in Indian country. Instead, tribal and federal laws apply.
- *Indian country* is defined in a federal criminal statute (18 U.S.C. 1151) as follows:

> (a) all land within the limits of any Indian reservation under the jurisdiction of the United States government, notwithstanding the issue of any patent, and including rights-of-way running through the reservation.
> (b) all dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a state, and
> (c) all Indian allotment, the Indian titles to which have not been extinguished, including rights-of-way running through the same.

- An *Indian reservation* is land that has been set aside by the federal government for the use, possession, and benefit of an Indian tribe or group of Indians. The terms *Indian country* and *Indian reservation* are often used interchangeably, but they are not the same. Indian country is a larger concept because it includes not only all Indian reservations but also dependent Indian communities and trust and restricted allotments located outside a reservation.

American Indians and Alaska Natives – By the Numbers

When Europeans first arrived in North America, approximately five hundred sovereign Indian nations were prospering in what is now the United States. Each nation possessed its own government, culture, and language. War and disease reduced the Indian population from more than one million people at the time of Columbus to about three hundred thousand in 1900. Since then, the numbers of American Indians and Alaska Natives has grown.

The following information in based on Census Bureau numbers in 2012.

- There are 5.2 million American Indians and Alaska Natives making up approximately 2 percent of the U.S. population.
- There are 14 states with more than 100,000 American Indian or Alaska Native residents. These states are California, Oklahoma, Arizona, Texas, New Mexico, Washington, New York, North Carolina, Florida, Alaska, Michigan, Oregon, Colorado and Minnesota.
- The proportion of Alaska's population identified as American Indian and Alaska Native was 19.6 percent, the highest rate of any state. Alaska was followed by Oklahoma (13.4 percent), New Mexico (10.4), South Dakota (10.0 percent) and Montana (8.1 percent).
- The median age for American Indians and Alaska Natives is 31 years, compared with a median age of 37.4 for the U.S. population as a whole.
- While there are currently 566 federally recognized Indian tribes in the United States, there are 325 American Indian reservations and a total of 618 legal and statistical areas for which the Census Bureau provides statistics, including reservations, off-reservation trust lands, Oklahoma tribal statistical areas, tribal designated statistical areas, state American Indian reservations, and state designated American Indian statistical areas. Twenty-two percent of American Indians and Alaska Natives live in American Indian or Alaska Native statistical areas.
- There are approximately 1,122, 043 American Indian and Alaska Native family households. Of those, 54.7 percent are married couples with children.
- Twenty-one percent of American Indian and Alaska Natives speak a language other than English.
- The American Indian and Alaska Native median household income is $35,310 compared with $51,371 for the United States as a whole.
- The poverty rate for American Indians living on reservations is 29.4 percent compared with the U.S. national average of 15.3 percent.
- The reservation poverty rate for Indian families is 36 percent, compared to the national family poverty rate of 9.2 percent.