



Tribal Nations

The Story of Federal Indian Law

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More information about the film and additional resources can be found at:
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Introduction.....

When Columbus reached the Americas there were millions of people living on the land we now call the United States. They called themselves 'the people,' 'the original ones.' The people were living in tipis, longhouses, pueblos and other dwellings well adapted to their environments and they had gained considerable knowledge about agriculture, medicine, astronomy, music, and art. There were hundreds of tribal nations, and each had developed its own unique culture and ways of governance.

Five European countries crossed the ocean after Columbus to claim land in the 'New World.' The European governments had an unwritten agreement with one another, that what ever land a nation claimed, that nation had the right to 'settle' the land rights with the aboriginal inhabitants and define the relationship with the original people. That agreement between the European nations is known today as the '**Rule of Discovery.**' It is the international root for federal Indian law, and it grew in a unique way in the United States. This is the story about the political relationship between the federal government and Indian tribes.

Early Times.....

For the first 250 years after Columbus arrived, five European nations were competing to control the land we now call the United States. It was not clear at first which one would win, but eventually, the British settlers prevailed, establishing colonies from which they extended their reach into the interior of the Americas. Although peace treaties were sometimes negotiated with the Indians, conflicts over the demand for land began a long pattern of removing Indians from their homelands, creating tragic hardships and strained relationships between the settlers and the Indians.

Tribes had endured challenges long before Columbus came. Sometimes there were food shortages, wars between tribes, and disease. But the arrival of the Europeans presented new challenges for the people, and tribal communities could not have even imagined how many problems the arrival of the Europeans would bring. The invisible invaders of new diseases took a tremendous toll on the Indian people. In addition there were new wars, loss of homelands, culture, and the introduction of alcohol which is still a challenge that faces Indian country today.

A Proclamation.....

The British nearly lost control over the land during the French and Indian War (1754 – 1763) because the French had better relations with the Indians. The long and bloody war weakened the British army. So, to improve their relationship with the Indians the British issued a Royal Proclamation in 1763.

The Royal Proclamation of 1763 was the first time that any European government used the term **'Indian country.'** 'Indian country' was used to describe all the country west of the Appalachian Mountains as a place where the colonists could not go and get land, and where the laws of the Indians applied. In fact the Proclamation so said that the laws of the Indians applied, and the laws of Great Britain do not. Anyone who went into the Indian country was subject to the laws of the Indian tribes.

The Proclamation of 1763 was intended to improve relationships between the colonies and the Indians, but it seemed to do just the opposite. The Proclamation and other English enactments became the reasons for the American Revolution. The Proclamation prohibited colonists from going into the Indian country and trying to acquire Indian lands, or speculate on Indian lands, and that did not please the colonists.

The Proclamation was in effect for the next 20 years, but it was largely ignored by the colonists and failed to protect Indian lands. The Proclamation of 1763 is

where the legal term 'Indian country' originated and the idea that Indians had land where their laws applied.

The U.S. Constitution.....

The colonists declared independence to form a new country in 1776, and defeated the British who opposed independence in the Revolutionary War. Ben Franklin and other colonial leaders looked to the **Great Law of Peace** of the Iroquois Confederacy for ideas on how to set up a union among state sovereigns. The Great Law of Peace was the constitution of the Iroquois League of Nations. It was a system where power was balanced between the 6 tribes and the overarching Iroquois government. It was a progressive alternative to the European style of government which concentrated power in the hands of monarchs. The Great Law of Peace inspired the drafters of Articles of Confederation, and then the United States Constitution, in the design of the new government.

Because tribes were viewed as separate sovereigns they weren't included in the Constitution when it was adopted in 1789. However, they were referred to in two places: one as 'Indians not taxed' which is a vague reference to the sovereign status of the tribes, and secondly in the commerce clause, suggesting an economic relationship between the federal government and the tribes.

The first acts of Congress set up the new government, and almost immediately thereafter Congress established the relationship between the new government and the Indian tribes. The **Trade and Intercourse Act of 1790** prohibited trading of Indian lands without the participation of the federal government, prohibited the introduction of liquor into Indian country, and prohibited non-Indians from entering Indian country without tribal or federal consent. The magnitude of this early Act indicated the significance of Native American issues to the new Congress.

The authority of Congress over Indian tribes was perhaps underappreciated when it was first written into the Constitution; it was a brief couple of lines in a couple of provisions. Eventually, Congress became the branch of the federal government with the most power over Indian tribes. The United States Supreme Court has recognized that Congress has plenary power in Indian affairs. **Plenary power** means that Congress has broad powers to pass legislation over tribes, and Indian people. Congress has the power to recognize tribes, to terminate tribes, to limit their jurisdiction, to enhance their jurisdiction, to fund Indian programs or not to fund them.

Treaties with the Indians.....

From the arrival of the first settlers, treaties had been used to negotiate with the Indian tribes, and the new federal government continued this practice. A **treaty** is a contract between nations in which one nation pledges its word to another, or

others. The United States entered into just under 400 treaties with Indian tribes and most tribes in the Lower 48 states have at least one treaty. Those treaties, by in large, were treaties of peace in that Indian tribes agreed not to go to war, or to end war with the federal government and to relinquish the land that the federal government wanted.

Some treaties, however, were negotiated under a situation of extreme duress. Indian tribes were frequently defeated militarily. Sometimes it was in the middle of winter and the tribe was surrounded by the United States military that had defeated them. So, in exchange for not starving the tribes would give up certain land rights and rights to natural resources. Today, a contract negotiated under extreme duress like that would make the contract invalid.

By the taking of Indian land and resources through treaty making, the federal government also took on a **trust responsibility** to provide services such as medical care, education, and to protect the remaining Indian lands and resources.

In 1871 Congress ended the practice of making treaties with the Indians. From that point on, Congress no longer negotiated with Indian tribes, but now simply regulates Indian affairs through legislation.

The Marshall Cases.....

The relationship that tribes have with the federal government was initially set by treaty making, the recognition of tribes in the U.S. Constitution, and by acts of Congress. The judicial branch of the federal government became involved through a series of cases between 1823 and 1832 that came before the United States Supreme Court. Chief Justice John Marshall issued three decisions which provide the basic framework for the status of Indian tribes. These court cases, referred to as the '**Marshall Trilogy**,' remain the basis of federal Indian law in the United States even to today.

In the first case, ***Johnson v. M'Intosh*** (1823), Justice John Marshall announced the nature of Indian land rights. It was a front page issue in those days, because there were a lot of land purchases being made from tribes. In this case, Marshall held that Indian tribes have always had the right to live on the land and not to be trespassed upon. Only the federal government could settle that right, so private individuals could not purchase land directly from the Indians. However, the decision took away Indian ownership of land rights based on 'conquest and discovery.' Indian land would be owned by the federal government, and Indians had the right to use and occupy the land.

After that case, the historic Cherokee cases came before Justice Marshall. In ***Cherokee Nation v. Georgia*** (1831), Marshall found that there was a trust relationship between the United States and Indian tribes. He called it a guardian-

ward relationship, but that was the language of that day and today we commonly say 'trust relationship.'

But the great case, one of Marshall's greatest cases ever, one of the most important cases ever handed down by the Supreme Court even today, one of the most cited pre-civil war cases in all of Supreme Court law, was ***Worcester v. Georgia*** (1832). Four missionaries had been living and preaching on the reservation, and that was alright with the Cherokees, but it violated Georgia law which required a state license for non-Indians to live on the reservation. The State of Georgia found the missionaries guilty of a crime for living in Cherokee territory without a state license, and sentenced them to four years of hard labor. The case was appealed to the United States Supreme Court.

Georgia had contempt for the United States government, for the Supreme Court, and for the Cherokees, so much contempt that Georgia refused to file a brief in the case, and Georgia refused to appear at oral argument. The only lawyers who argued that day the case was heard were the Cherokee lawyers. Marshall was finished being cautious in Indian law and he came down with a powerful pronouncement of Indian tribal sovereignty, the self-determination that aboriginal people the world over yearned for, that's at the heart at their existence. Marshall found that tribes were separate nations, distinct communities, and then in almost furious words held that this was a place where the laws of Georgia could have no force.

Marshall's decision did not grant tribal sovereignty, it simply recognized something that the tribes have always inherently had. **Tribal sovereignty** is the authority to be self-governing, a very powerful right. Since Marshall's decision in the *Worcester* case however, Congress through its broad powers over Indian tribes has limited tribal sovereignty. When Congress is silent or unclear about a matter over Indian affairs, the United States Supreme Court has issued decisions that have also limited tribal sovereignty.

Removing Indians from their Homelands.....

In 1828, between the first and second case of the Marshall Trilogy, Andrew Jackson was elected President of the United States on a campaign that pledged to support western expansion. His policy supported the idea of **manifest destiny**, an idea that America was destined to spread itself from sea to shining sea. Removing Indian tribes from their homelands that were in the way of the westward movement became the center piece of federal Indian policy even though the United States Supreme Court supported tribal sovereignty and security for tribes in their homelands. This process was accelerated with the passage of the **Indian Removal Act of 1830**, which provided funds for President Jackson to conduct land-exchange ('removal') treaties. Altogether more than 100,000 Indian people from various tribes including the Chickasaw, Choctaw,

Creek, Seminole, and Cherokee were removed from the southeast, and of this number more than 25,000 people perished.

The Cherokee story is perhaps the best known. The Cherokees used every means to resist removal. They had a bilingual newspaper with editorials against removal, they sent their young men on speaking tours of the United States, they lobbied Congress, they took their case to the Supreme Court, and finally even presented a petition with more than 15,000 signatures to Congress. Virtually the entire Cherokee Nation was saying that they opposed removal. But in May of 1838, the U.S. army began rounding up Cherokee people and took them on the 1,200 mile journey that became known as the **Cherokee Trail of Tears**. On this trip more than 4,000 Cherokee people died, most of them were old people and children.

The Cherokee people were taken away from their homeland, everything they knew, all their traditions, the stories about the spirits in the rivers, the graves of their ancestors, and these were very important to the Cherokees. Indian people had a whole different concept about moving than the Europeans who came. Europeans thought it was ok to move from place to place, Indian people didn't want to move from their homelands. For the Cherokees going west was the direction of death and the darkening land. To the Cherokees it wasn't the walk that was so devastating, because they had been to Indian Territory before, they had traveled everywhere. The devastation was the fact they were leaving everything that was dear to them.

Reservations.....

In the following years, many reservations were established across the west through acts of Congress, treaties, or executive orders of the President. Indian people tried to defend their original homelands, but they were weakened by disease, cultural disruption, and violence. Eventually they were overpowered by the military might of the U.S. Army and forced to accept the reservation system.

An **Indian reservation** is a piece of land that is set aside by the federal government for the use of the tribe and its members. The land is owned by the federal government, and the tribe has the rights to use, possess, and occupy that land. The federal government has a responsibility to protect the reservations, but it can also terminate and remove the reservation from the tribe at any time, and it has done this in the past. There are about 300 Indian reservations in the United States, which means that not all of the country's more than 550 recognized tribes have a reservation. Some tribes have more than one reservation, others have none. Some tribes own land in fee simple title, some are landless.

Major Crimes.....

In 1883 events in the Indian country of the Lakota people, now the State of South Dakota, led to a major change in federal Indian policy. The incident involved the killing of Chief Spotted Tail, by a man named Crow Dog.

When Crow Dog killed Spotted Tail the tribal community responded to that killing by imposing a Lakota sentence. They required Crow Dog to support Spotted Tail's family and provide the family with certain items, restitution, and the matter was settled. The federal government disagreed with that sentence, viewing it as too lenient. So the federal government then came in and arrested Crow Dog for the murder of Spotted Tail and tried him in the Dakota territorial court. He was convicted and was sentenced to hang for the killing of Spotted Tail.

The case was appealed to the United States Supreme Court which ruled that although federal criminal law applied in Indian country when non-Indians were involved, it did not apply to a murder involving one Indian against another. So Crow Dog was set free.

As a result of that ruling, Congress was upset because in their eyes Crow Dog hadn't received justice for the murder of Spotted Tail. Congress then passed federal legislation which we call today the **Indian Major Crimes Act**. The Act authorized the federal government to have criminal jurisdiction over certain enumerated major crimes committed by Indians on Indian reservations.

The Crow Dog case illustrates the use of the broad powers of Congress over Indian affairs. Congress has the ultimate power to create federal Indian law. However, if Congress is silent or unclear about its Indian policies, the Supreme Court can make a ruling that in effect becomes law until Congress changes it. This is one of the basic principles of how federal Indian law works.

Assimilation Policies.....

From this point forward, the federal government progressively adopted policies which were aimed at assimilating Indian people. **Assimilation** means mainstreaming everyone into the general society, with no particular political rights for Indian people, or unique cultural identity.

One of the forms of assimilation policies was to separate Indian children from their families and send them to boarding schools. Indian children were required to go to those schools, often against their will. At the schools they were regularly punished for speaking their Native languages, or having anything to do with their traditions and Indian culture.

In this theme of assimilation, Congress passed legislation which resulted in the loss of 90 million acres of Indian reservation land, an area the size of California.

The General Allotment Act of 1887 required the federal government to assign allotments of land to adult Indians whether they wanted them or not. For the first time, Indians owned real estate. The concept of individual people owning land was totally foreign to Indian people. Parcels within the reservations that were not allotted to Indians were then sold to non-Indians. Tens of thousands of non-Indians moved onto the reservations, owning land within the Indian reservations. As a result of the General Allotment Act, two thirds of the land holdings that tribes had prior to 1887 were lost, and the land transferred ownership from the tribes to non-Indians.

The result of the General Allotment Act was to leave tribes with checker-boarded reservations. Instead of having just one solid tribal land ownership, some land is owned by individual Indians, individual non-Indians, and large blocks by non-Indians. In addition to reducing the land base, the Act made land management much more difficult for the tribes, they lost wildlife habitat, and non-Indian society was brought into the reservations. The General Allotment Act was a policy of assimilation, using land as a way of bringing non-Indians into Indian communities.

Wounded Knee.....

By the end of the 19th century there had been more than 100 Indian wars, many of which were caused by the U.S. failing to enforce the treaties, and the Indians trying defend their lands, their food supplies, and their way of life. A few days after Christmas of 1890, the U.S. Cavalry opened fire and killed 370 Indian refugees who had surrendered, been disarmed, and herded to a temporary campsite. Two thirds of the Indians were women and children. The massacre at Wounded Knee was the last significant conflict between the U.S. Army and the Indians.

Indian Reorganization Act.....

In the early part of the 20th century Indians and Indian tribes were in a state of despair. They were living in extreme poverty, and had very little access to education, social services, and health care. In 1928 there was a report issued called the **Meriam Report** which went into great detail as to what was going on in Indian country. The Report described the deplorable living conditions on the reservations and was critical of dividing up land, boarding school policies, and health systems for Indians. The Report was so revealing that eventually Congress was willing to go forward and pass an omnibus reform act, an act that covered a wide variety of areas affecting Indian tribes and their members.

Under the presidency of Franklin Roosevelt and his New Deal platform, Indian policy was influenced by the Meriam Report and took a dramatic change. In 1934, Congress passed the **Indian Reorganization Act (IRA)**. The IRA is also

known as the Indian New Deal because it was enacted in order to reform what was going on with Indian tribes and individual Indians.

The IRA had numerous purposes; one was to stop the allotment of land to individual Indians, and another was to allow tribes to reorganize. In 1934 there was a great depression, and companies all over the United States were going bankrupt. Bankruptcy laws for companies allow them to reorganize. So, Congress was using the terms of bankruptcy to describe how it was going to reform Indian tribes and federal Indian law. They allowed Indian tribes, like bankrupt companies, to reorganize. One of the very interesting things about the IRA is that it was the first time Congress addressed tribal governments, recognizing that they are viable political entities.

The Act also implemented Indian hiring preference in the Bureau of Indian Affairs, and established mechanisms for tribal business enterprises. Many, but not all tribes organized under the IRA, which requires tribes to have constitutions ratified by the Secretary of Interior.

Felix Cohen's Handbook, the Bible of Federal Indian law.....

In 1942 a man named Felix Cohen was the Associate Solicitor in the Department of Interior for Indian Affairs. Felix wrote a detailed handbook on federal Indian law, which remains one of the fundamental written guides for federal Indian law today. **Cohen's Handbook of Federal Indian Law** is often referred to as 'the bible on federal Indian law.' The handbook is updated by Indian law scholars from time to time to keep current as federal Indian law progresses. Felix was a brilliant Indian advocate, and once said: "Like the miner's canary, the Indian marks the shifts from fresh air to poison gas in our political atmosphere and our treatment of Indians, even more than our treatment of other minorities, reflects the rise and fall in our democratic faith."

Termination Era, 1950s.....

Native Americans fought valiantly in every war since the arrival of the Europeans. Since most Indians did not receive U.S. citizenship until 1924, all those who fought in World War I and every war prior, fought as volunteers. World War II occupied the federal agenda during the 1940s, but after the war, federal Indian law policies shifted back to policies of assimilation, and even to policies of terminating Indian tribes.

In 1950 Dillon S. Myer, former director of the detention camp program for Japanese Americans during the war, became Commissioner of Indian Affairs. Under the oversight of Mr. Myer, new federal policy took a three pronged approach: **termination** of Indian tribes, **relocation** of Indian people, and transferring federal jurisdiction to state governments through **Public Law 280 (P.L. 280)**.

Congress passed **House Concurrent Resolution 108** in the early 1950s, which had the spirit to terminate tribes as rapidly as possible. To have the federal government withdraw its supervision was extremely harsh. When tribes were terminated, they were no longer federally recognized, the land became subject to taxation, the people had no federal services such as health care, education, housing, or other services that were provided to tribes at that point. It was a cultural, political, and economic disaster for those tribes. Overall, 109 tribes were terminated under this policy.

Another policy during the 1950s was a federal program to relocate Indian people. The whole purpose of **relocation** was to get Indian people off the reservations. The Bureau of Indian Affairs paid one way tickets to someplace off the reservations, often the farthest from them. As a result of this we have thousands of Indian people living in major cities across the country, such as Minneapolis, Chicago, Dallas, Cleveland, Los Angeles, and New York City.

One piece of federal Indian law from this decade remains a particularly complicated piece of legislation for tribes in several states. It affects **jurisdiction**, which is the authority to enforce law. **Public law 280** is a law passed by Congress in 1953, due to a perceived lawlessness in Indian country. And for better or worse, it really hasn't fixed justice in Indian country, but it brought state police, and investigators and prosecutors into Indian country.

Public Law 280 extended criminal state jurisdiction, first in five states, and later six, plus several states adopted a partial P.L. 280 jurisdiction over certain things such as highways. It also extended jurisdiction over civil causes of action to state courts, basic tort disputes or basic contract disputes. The criminal side was exercised frequently over the past 50 years of P.L. 280's history, and the civil side more recently.

One of the problems tribes in P.L. 280 states have faced is hesitance of the federal government to fund their tribal courts. While P.L. 280 gave some states jurisdiction over criminal and some civil subjects, it did not take away criminal or civil jurisdiction from the tribes. So in the states where Public Law 280 applies, both tribes and states share jurisdiction over criminal and civil matters. This often creates confusion over jurisdiction, and can create a race to the courthouse and a race to judgment. In the states where Public Law 280 applies, tribes and states need to agree on a systematic process for resolving jurisdictional disputes. There is a prime example of such an agreement in Wisconsin called the 'Teague Protocol.'

Indian Civil Rights.....

The 1960s were filled with civil rights movements on many fronts, and Indian tribes were no exception. Almost seventy years earlier, in a case called **Talton v.**

Mayes (1896), the Supreme Court ruled that the United States Bill of Rights does not apply to the activity of Indian tribal governments. The climate of the 1960s was the time that Congress chose to change that.

The **Indian Civil Rights Act** was passed by Congress in 1968. It is considered a very controversial law, because it is the only law that Congress has ever passed that limits the powers of tribal governments in their internal affairs. It tells them what they cannot do with respect to self-government. The Act limits tribal powers by giving to the people who are subject to tribal authority certain rights and protections against governmental abuse. Those people, both Indians and non-Indians, can go to the tribal court and say that the tribe is violating one of their rights that is listed in the Indian Civil Rights Act.

The Indian Civil Rights Act was intended by Congress to give people who are subject to tribal authority the same basic constitutional rights that are given by the United States Constitution, based on the Bill of Rights. So people who are living on reservations, or who are dealing with Indian tribes, have freedom of speech, freedom of press, and protection against unreasonable searches and seizures. In a criminal setting, people have the right to bail and a right to a trial by jury.

Although the Indian Civil Rights Act is similar to the Bill of Rights there are some differences. For example, tribes are not required to separate church and state, and are not required to provide a court appointed attorney. Tribes are the enforcers of this Act and federal courts can only review cases when someone who is incarcerated files a writ of habeas corpus.

Indian Self-Determination.....

In the 1970s, President Nixon was instrumental in changing federal policy towards American Indians with a special message on Indian affairs. He said that the federal policy toward tribes should be “to strengthen the Indian sense of autonomy without threatening his sense of community.” Under this spirit, Congress passed an act that initiated the current era of tribal self-determination.

The **Indian Self-Determination and Education Assistance Act** was passed in 1975 to make a basic change in the policy and the operation of services to Indian tribes. For many years prior to that, the Bureau of Indian Affairs was the primary agency that provided services and programs to American Indian tribes and people. After the activism of the 1960s, the idea of self-determination caught fire, and the Indian Self-Determination Act was one of the major acts that came from that thinking. The Act allowed tribes themselves to administer and manage their own programs and provide services through contracts with the Bureau of Indian Affairs and the Indian Health Service. Development of Native American management skills and expertise, and fine tuning of programs and services to

better fit the needs of American Indian and Alaska Native people, has been a result of this self-determination policy.

Indian Children.....

Prior to 1978, 25% of all Indian children, one out of every four, were taken from their Indian parents, removed from their Indian communities, separated from their Native identities, and placed in non-Native settings. Today, many of these Native Americans are still seeking a connection to their Native self. To stop this tragic loss, Congress passed the **Indian Child Welfare Act** (1978).

The Indian Child Welfare Act set up a system of regulations that states have to follow when they take Indian children into custody. State courts have to notify the child's tribe and they have to follow a certain order of preference placement with Indian families when possible. The Act's effect on state courts, combined with tribal court protection of children, has effectively stopped the mass separation of Indian children from Indian families.

Indian Gaming.....

Indian gaming is an initiative that some tribes have undertaken to produce revenue. Although this is an exercise of tribal sovereignty and self-determination, Congress has passed legislation regulating Indian gaming.

Indian gaming began in the 1970s when tribes started offering high stakes bingo. Only a few tribes did so at first, but soon several tribes followed. In 1988 Congress enacted the **Indian Gaming Regulatory Act** that created a regulatory structure for Indian gaming. It both confirmed the existence of Indian gaming and allowed it to continue in the future. The Act gave states a limited role in Indian gaming because tribes that want to offer casino style gaming have to first have a state-tribal compact. They have to go to the state to get such an agreement. Gaming has been successful for some tribes around the country, but it has not been successful for all tribes. Some of the largest and poorest tribes do not operate gaming at all. It has not solved all the problems in Indian country by any means. It has given a handful of tribes fabulous wealth, and it has given some tribes the basic income to build schools, hospitals, social services, and those sorts of things. But it has not reached all tribes equally.

The Trend of the U.S. Supreme Court.....

A roll of the United States Supreme Court throughout history is the protection of the rights of minorities. From the 1960s, throughout the 70s, and throughout most of the 80s the Supreme Court, in a really inspiring way, recognized Indian rights, recognized tribal sovereignty, fishing rights, the trust relationship and tribal jurisdiction over non-Indians. Those decades were times when tribes brought their grievances to the Court and by and large they were honored. But starting in

the late 1980s there has been a change. Instead of the Supreme Court advancing Indian law in favor of tribal sovereignty, the Court has gone in a different direction, making a series of decisions which undermined tribal sovereignty. In the 1990s, tribes lost 23 out of 28 cases in which they appeared before the Supreme Court.

The Supreme Court has moved away from guiding principles called '**canons of construction.**' Under those guidelines, the Court would interpret treaties and Indian statutes in favor of the tribes when they were unclear or uncertain. It is one area of law that has always been useful to the tribes. The Supreme Court ever since *Worcester*, and all the way through the 19th and 20th centuries has recognized that Indian treaties and statutes should be construed in favor of the tribes. If there is unclear language, the Court interpreted those ambiguities in favor of the tribes.

For example, a treaty might say that the tribe has the right to hunt, and at treaty time the Indians were speaking their language and they didn't have separate words for hunt and fish, they just had a word for gathering wild animals. Then the Court is going to say that 'hunt' means 'hunt and fish.' If there are unclear words they are read in favor of tribal rights. That rule is still alive in the Supreme Court, but the Court doesn't use it with as much vigor as it did during the 1960s, 70s, and 80s. The rule is important to tribes because many pieces of federal Indian law are ambiguous.

Tribes each have Unique Government-to- Government Relationships.....

There are now over 550 federally recognized tribes in the United States. The relationships between the tribes and the United States government are government-to-government relationships. Federal recognition is a political relationship, not a racial relationship.

Although the basic principles of federal Indian law apply to tribes throughout the country, tribes in different regions have distinctive legal circumstances. Each individual Indian tribe is unique, with its own history, its own culture, and its own relationship with the United States. Many tribes have specific language in their treaties affecting their legal circumstances. Some tribes have specific acts of Congress that apply to them. Aboriginal land claims were settled in a unique way for the 231 Alaska tribes, creating jurisdictional debates. The relationships that tribes have with the states they are within also vary. So, one must look to the basic principles of federal Indian law, political practices of the states tribes are in, and also to the uniqueness of each tribe to fully understand their legal and political standing.

The Future.....

Gary LaRance, Chief Judge Hopi Tribal Court: “Whenever people look back at the history of the relationship between the federal government and Indian tribes they sometimes refer to a swing in the pendulum of federal policy. What they are talking about is that over the last several hundred years the federal government has changed its position and policies on how to deal and work with Indian people. Some of these policies swing back and forth. One of the first policies was to work with Indian people, tribes and tribal governments. We are in that federal policy mode now, it’s called Indian self-determination. Through the swing in the pendulum, at one time the policy was to terminate and end the status of Indian tribes and to assimilate them into the bigger American public.....Federal policies toward Indians swing from one side to the other. It all depends on what the policies and attitudes of the American people are, and on what administration is in power at the time.”

Stephen Pevar, American Civil Liberties Union: “What the future holds is anybody’s guess because historically we have seen the pendulum go back and forth. This is why I encourage tribes, and Indians, and those who care about their rights to lobby Congress, and to educate the public about how important it is that we keep our word to Indian people. It’s important to allow Indians and tribes to be self-governing. We have a melting pot in which we are respectful of different groups and we must recognize and honor and cherish the promises that we made to tribes in these treaties. But what the future holds, I’m nervous about it because historically we have seen that there are people and groups out there who are opposed to the assertion of Indian rights. “

Todd Matha, Chief Trial Judge, Ho-Chunk Tribal Court: “Tribal people are very resilient. They have needed to overcome great adversity throughout centuries. I don’t believe that merely because tribes are becoming economic players that they are going to lose that at this point in time. I do believe that tribal people, the elder members of the community, need to inculcate and teach the youth so that those principles that have maintained tribes and tribal people during the history of conflict with the greater society can help tribes to continue on in that same stead.”

Dana Melton, American Indian Development Associates: “The best way I think I can help my tribe is by completing my education, obtaining my law degree, and then coming back to the tribe, helping them building their capacities, continue their self-determination, and use it to become economically stable while maintaining their traditions. I want to be there for the next generation as the past generations have been there for me.”

Eugene Whitefish, Presiding Judge, Forest County Potawatomi Tribal Court: “Our people have been fighters throughout our history, and yet we still prevail. It’s the inner spirit within ourselves that enables us to survive. It’s our

ancestors, our grandfathers our grandmothers our aunties and our uncles who have survived so that we could be here. The same way as a nation, we are going to survive, we are going to continue to survive as a nation because of our sovereign rights. I think it is going to grow; our sovereign rights are going to expand. Hopefully when my grandchild is my age he is going to see things that I didn't get to see, just as I have seen things that my great grandfather didn't get to see. This was his dream at one time, and my dream my grandson will have, it will be his reality."

Gene Thin Elk, CEO, Medicine Wheel Inc.: "When I look towards the future, and the future of our children, and our children's children, we have the ability today to transcend whatever transgressions that took place. In the Native world we realize that when we say 'history' we talk about our 'her story.' The process of 'her story' is nurturing, birthing, death, regeneration, and rebirthing. With that process in mind, no matter what has taken place, we can look at this history, learn from it, and utilize it as a tool, so that it doesn't happen again. There is even a more powerful tool within each of us who are walking this earth, and that is to be able to overcome oppressors, whoever oppressed in whatever form. Whether it be psychological, spiritually, emotionally, physically.....to be able to overcome the oppressors fear by giving forgiveness, and holding accountable based on the structure of that history, that at what places we can intervene to restore dignity to everyone involved so that we can walk in a good path. I think it's the future hope for our people, for all of our people."

People interviewed in the film.....

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Barbara Duncan
Museum of the Cherokee Indian, North Carolina

Jerry Wolfe, Tribal Elder
Museum of the Cherokee Indian, North Carolina

Terry L. Cross
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Honorable Stacy Leeds
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Honorable Eugene White-Fish
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