



PRESENTATION TO THE NCAI FEDERAL
RECOGNITION TASKFORCE

NOVEMBER 8, 2020

DE-COLONIZING THE MINDSET

An Introduction to Tribal Sovereignty in the United States

All Indigenous Peoples have inherent rights—rights that exist regardless of state or federal definitions. Unfortunately, America has consistently ignored some tribes while recognizing others. For centuries, the United States legal system has treated Native Americans as inferior beings to those of European descent, and therefore deserving of lesser rights. This degradation does not eliminate the inherent rights of Indigenous peoples; it merely means they have been ignored.

A problem exists in the commonly used modern definition of a “tribe” within the United States. The federal government commonly defines "tribes" exclusively as those with federal recognition—completely ignoring non-federally recognized tribes. This definition, promulgated over the years, creates a false correlation that tribal sovereignty equates federal acknowledgement. This federal definition contradicts the modern federal Indian policy of self-determination, and infringes upon the inherent sovereignty of all tribal nations.



ISSUES OF FEDERAL "ACKNOWLEDGEMENT"

The process for Federal acknowledgment directly contradicts the modern federal Indian policy of self-determination, and infringes upon the inherent sovereignty of all tribal nations.

Under U.S. law, federally recognized tribes are considered independent sovereigns exercising governmental authority over their own territory. The federal government seeks to prevent tribes from exercising their inherent authority by withholding a "legal relationship" with the United States through the federal acknowledgment process.

Adding a tribe to the official list of federally recognized tribes typically clarifies remaining uncertainty surrounding such tribe’s legal status and governmental authority.

However, a tribe omitted from the official list must pursue other means to achieve federal recognition simply to exercise their inherent rights.

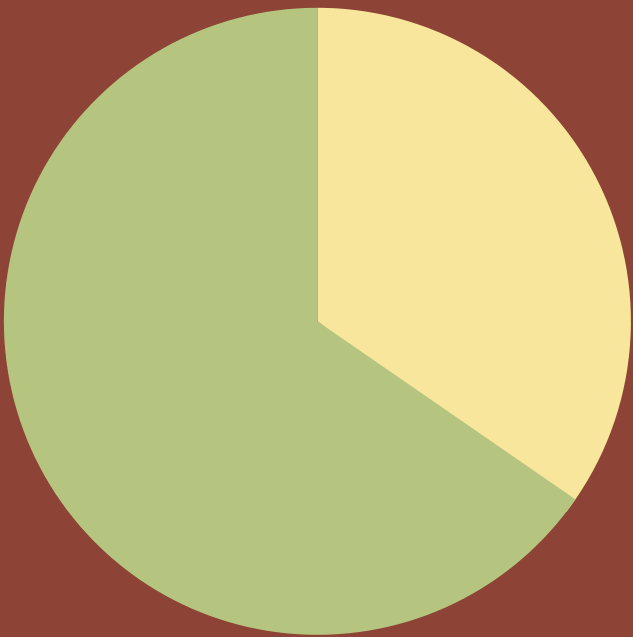
Since the Federal Acknowledgement Process was initially implemented in 1978, 356 tribes announced their intention to apply for federal recognition.

Yet the government has decided only 52 cases in the last four decades. Of those determinations, the federal government granted 18 petitions for recognition and denied 34 others.

While 574 Indian tribes are currently “recognized” or “acknowledged” and included on the list of federally recognized tribes, hundreds of others remain nonexistent, ineligible for government services, denied their sovereignty, and dismissed by courts.

The problems with the modern definition of tribe—as the federal government commonly uses it today—is that problems exist in the process and the requirements are too burdensome to prove. As a result, the government frequently ignores the inherent rights of non-federally recognized tribes contributing to the federal government falsely linking tribal sovereignty to federal acknowledgement as if the government delegates tribal authority and affirms tribal legitimacy.

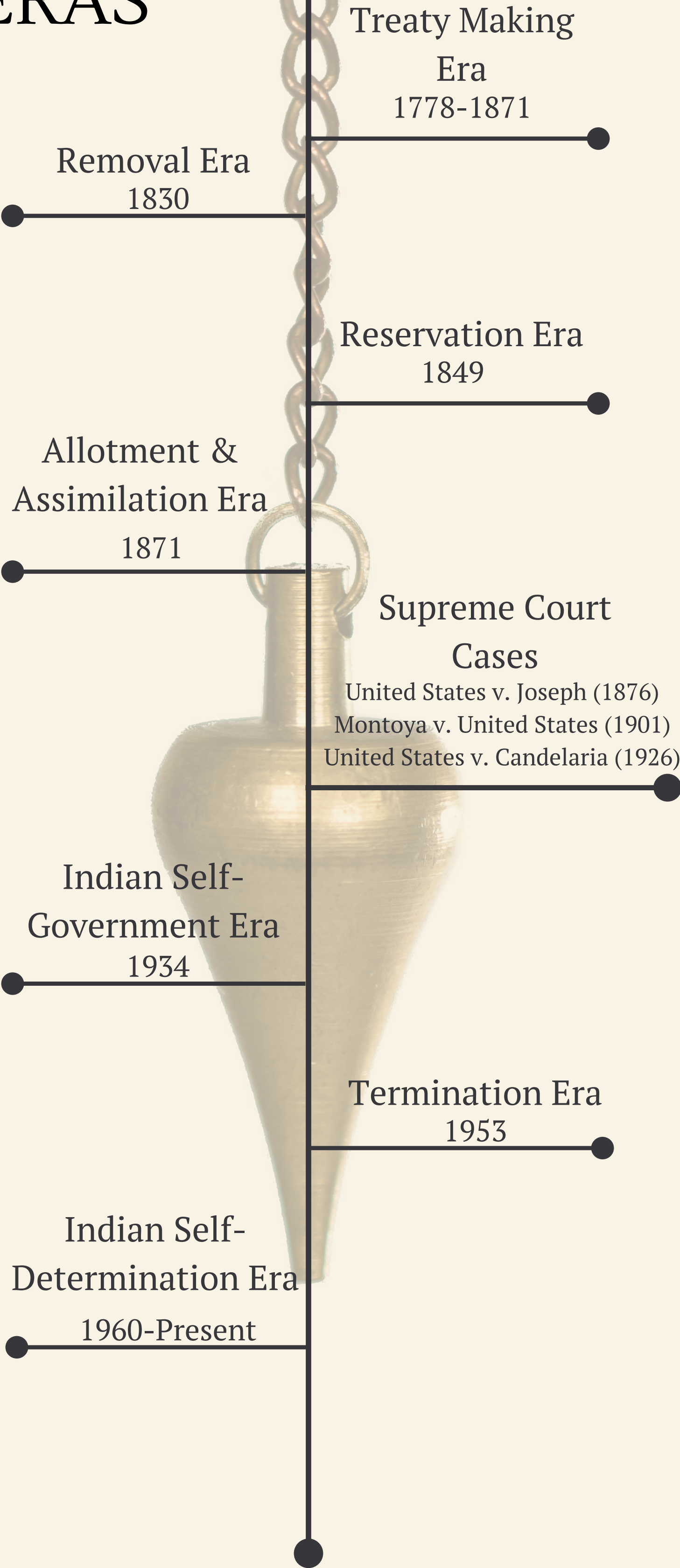
Office of Federal Acknowledgment (OFA)



Petitions Approved
34.6%

1978-2020

INDIAN POLICY ERAS



APPROPRIATE ALTERNATIVES

THE CURRENT ACKNOWLEDGEMENT PROCESS IS AN OBSTACLE REQUIRING TENS OF THOUSANDS OF PAGES, LEGAL ASSISTANCE, AND RESEARCH EXPERTISE. THE INDIAN ARTS & CRAFTS ACT PROTECT INHERENT TRIBAL RIGHTS WITHOUT BEING CONTINGENT UPON A TRIBE'S FEDERAL RECOGNITION STATUS. IT IS ALSO CONSISTENT WITH FUNDAMENTAL PRINCIPLES OF INDIAN LAW.

INDIAN ARTS & CRAFTS ACT

(A) ANY INDIAN TRIBE, BAND, NATION, ALASKA NATIVE VILLAGE, OR OTHER ORGANIZED GROUP OR COMMUNITY WHICH IS RECOGNIZED AS ELIGIBLE FOR THE SPECIAL PROGRAMS AND SERVICES PROVIDED BY THE UNITED STATES TO INDIANS BECAUSE OF THEIR STATUS AS INDIANS; OR

(B) ANY INDIAN GROUP THAT HAS BEEN FORMALLY RECOGNIZED AS AN INDIAN TRIBE BY A STATE LEGISLATURE OR BY A STATE COMMISSION OR SIMILAR ORGANIZATION LEGISLATIVELY VESTED WITH STATE TRIBAL RECOGNITION AUTHORITY.

THE INDIAN ARTS AND CRAFTS ACT, 25
U.S.C. § 305 (1990).

THE UNITED NATIONS DECLARATION ON THE RIGHTS OF INDIENOUS PEOPLES (UNDRIP) AFFIRMS INDGENOUS PEOPLES INHERENT SOVERIGNTY, SELF-DETERMINATION, AND POLITICAL STATUS. THIS DECLARATION HAS BECOME ADOPTED BY THE ORGANIZATION OF AMERICAN STATES (OAS) TO PROMOTE THE NEED TO RESPECT INHERENT RIGHTS OF INDIGENOUS PEOPLES.

INTERNATIONAL LAW

UNITED NATIONS DECLARATION ON THE RIGHTS OF
INDIGENOUS PEOPLES (UNDRIP)

“[I]NDIGENOUS PEOPLES ARE EQUAL TO ALL OTHER PEOPLES; AND HAVE THE RIGHT TO BE DIFFERENT AND TO BE RESPECTED; NOT TO BE SUBJECTED TO FORCED ASSIMILATION OR DESTRUCTION OF THEIR CULTURE; TO BE A CULTURALLY AND HISTORICALLY DISTINCT PEOPLE; TO CHOOSE THEIR OWN POLITICAL STATUS; THE RIGHT TO PRACTISE AND REVITALIZE THEIR CULTURAL TRADITIONS AND CUSTOMS; TO MANIFEST, PRACTISE, DEVELOP AND TEACH THEIR SPIRITUAL AND RELIGIOUS TRADITIONS, CUSTOMS AND CEREMONIES; TO PARTICIPATE IN ALL DECISION-MAKING IN MATTERS WHICH WOULD AFFECT THEIR RIGHTS; TO DETERMINE THEIR OWN IDENTITY.

UNITED DECLARATION ON THE RIGHTS
OF INDIGENOUS PEOPLES AT 2-10.

Conclusion: Call to action

Issues arise under the modern concept of federal acknowledgement as it fails to recognize tribes, and inadvertently perpetuates colonial policies allowing the government to define the scope of tribal sovereignty. A tribe’s inherent power is derived from its status as an independent sovereign, not upon the federal government’s approval. However, this principle is significantly undermined when federal acknowledgement is treated as a prerequisite to a valid exercise of tribal authority.

The very notion of inherent sovereignty is threatened when “federally recognized” operates as a threshold inquiry to determine whether an individual is an “Indian” or an entity is an “Indian tribe.” Under this standard, the legitimacy of tribal authority—for both federally and non-federally recognized tribes—is at the mercy of a government whose initial goal was the complete destruction of tribal authority.

Accordingly, a definition that protects a tribe’s inherent rights without regard to their recognition status is more consistent with fundamental principles of Indian law, and furthers the NCAI’s primary goals of defending against termination and safeguarding inherent sovereignty.



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ACET
Alliance of Colonial Era Tribes