10

Tribal Self-Determination

Termination caused immense hardship for individual Indians and threatened the very existence of tribes. Indians, however, refused to abandon their governments and cultures. They resisted termination policies. For example, in 1963, South Dakota imposed PL 280 upon the tribes within the state in the name of "civil rights."[1] But the Sioux tribes rallied together and invoked the state's referendum process to block PL 280's implementation.[2] The Sioux defeat of PL 280 was one of many tribal victories that culminated in a federal Indian policy revolution.

10.1 SHEEP AND SOVEREIGNTY

As the 1950s came to a close, tribal sovereignty gained new life thanks to a debt collection action on the Navajo Nation. Paul and Lorena Williams, citizens of the Navajo Nation, purchased goods on credit from the Ganado Trading Post, owned by Hugh Lee. The Williamses allegedly failed to make timely payment; accordingly, Lee filed suit against the Williamses in Arizona state court. The state court issued a writ of attachment authorizing Lee to seize the Williamses' sheep. Lee had the county sheriff enter the Navajo Nation and impound twenty-eight of their sheep from the Williamses' residence. The sheep were housed at the

[1] Richmond L. Clow, *State Jurisdiction on Sioux Reservations: Indian and Non-Indian Responses, 1952–1964*, S.D. HIST., Summer 1981, at 171, 178, www.sdhspress.com/journal/south-dakota-history-11-3/state-jurisdiction-on-sioux-reservations-indian-and-non-indian-responses-1952-1964/vol-11-no-3-state-jurisdiction-on-sioux-reservations.pdf [https://perma.cc/R9G7-9BSZ].

[2] *Id.* at 179, 183.

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Ganado Trading Post. The Williamses managed to pay off all but $81 of the debt, but Lee would not release their sheep.[3] Lee had grown up on the Navajo Nation and spoke fluent Navajo. However, his willingness to seize Navajo sheep revealed a remarkable cultural ignorance.

Sheep, though brought to the southwest by the Spanish, are an integral part of Navajo culture.[4] Part of the cultural significance of sheep is their food value. Seize a family's couch, and they will be less comfortable. Seize a family's sheep, and they may go hungry.[5] This was particularly true during the era of the Williamses' dispute as there were few paved roads on the Navajo Nation, and the exclusive source of goods were federally approved Indian traders like Lee.[6]

Lee's state court action represented another colonial assault on the Navajo Nation and its sheep. The Navajo were ultimately forced to enter a treaty with the United States because Kit Carson sabotaged their food supply, including slaughtering thousands of sheep.[7] The federal government killed 50,000 more Navajo sheep and other livestock during the New Deal. Unlike Carson's butchery, the federal government's sheep culling was done to prevent overgrazing on the Navajo Reservation. Federal officials feared too many sheep would cause soil erosion and jeopardize the Hoover Dam by causing silt to build up behind it.[8] The United States compensated Navajo for their livestock at a below-market rate. Navajos who refused to relinquish their sheep were jailed. Exacerbating the toll of surrendering a cultural symbol and source of livelihood, federal officials killed the sheep in front of their owners' eyes then left the meat to rot. This was a senseless outrage to the Navajo.[9]

With their flocks diminished, numerous Navajo families experienced financial hardship and were forced from shepherding into wage labor. Jobs were available during World War II, but the war's end left many

[3] Bethany Berger, Williams v. Lee *and the Debate Over Indian Equality*, 109 Mich. L. Rev. 1463, 1502 (2011).

[4] Hal Cannon, *Sacred Sheep Revive Navajo Tradition, For Now*, NPR (June 13, 2010), www.npr.org/templates/story/story.php?storyId=127797442 [https://perma.cc/3XMW-QRFM].

[5] *Indian New Deal & Navajos*, myText, https://mytext.cnm.edu/lesson/indian-new-deal-navajos/ [https://perma.cc/LZN2-T4MT].

[6] Berger, *Indian Equality*, *supra* note 3, at 1499.

[7] *Navajo-Churro History*, Navajo Sheep Project, www.navajosheepproject.org/navajo-churro-history [https://perma.cc/U9QB-PE8J].

[8] Ezra Rosser, *Reclaiming the Navajo Range: Resolving the Conflict Between Grazing Rights and Development*, 51 Conn. L. Rev. 953, 960–62 (2019).

[9] *Id.* at 963.

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Navajo unemployed.[10] Amplifying the ills of poverty, blizzards and droughts pummeled the reservation soon after the war. These disasters caused some Navajo to starve and freeze.[11] This made Navajo families depend on credit from federally authorized Indian traders. Using the Arizona court system to seize the Williamses' sheep was the embodiment of an outside government attempting to exterminate the Navajo people.[12]

The Williamses fought back by challenging the Arizona court's jurisdiction over the debt. Due to the implications for tribal sovereignty, the Navajo Nation paid for the Williamses' lawyer.[13] While the case was pending, Lee sought permission to sell the sheep as the cost of maintaining them was more than they were worth. The Williamses objected, but the state court granted Lee's request. Eleven sheep were sold, and more than enough money to pay off the Williamses' debt was generated. However, the county sheriff claimed the surplus. The Williamses had lost eleven sheep even before the case had been decided.[14] When the state court cases concluded, the Williamses lost at both the trial court and the Arizona Supreme Court.[15]

The United States Supreme Court disagreed with the Arizona courts in its 1959 opinion in *Williams* v. *Lee*.[16] Justice Hugo Black opened his unanimous opinion by summarizing *Worcester* v. *Georgia* and describing the case as "one of [Chief Justice John Marshall's] most courageous and eloquent opinions."[17] Acknowledging that Georgia refused to obey the decision and federal Indian policy has fluctuated over the years, Justice Black stated, "[T]he basic policy of *Worcester* has remained."[18] Justice Black explained "the internal affairs of the Indians"[19] were a purely tribal matter and state authority over reservations exists exclusively by congressional decree. Furthermore, Justice Black pointed out that Congress has "encouraged tribal governments and courts to become stronger and more highly organized."[20] Justice Black believed the exercise of state

[10] Berger, *Indian Equality*, *supra* note 3, at 1483.
[11] *Id.* at 1483.
[12] *Id.* at 1503.
[13] *Id.*
[14] *Id.* at 1504–05.
[15] Williams v. Lee, 83 Ariz. 241 (1958), *rev'd*, 358 U.S. 217 (1959).
[16] Williams v. Lee, 358 U.S. 217 (1959).
[17] *Id.* at 219.
[18] *Id.*
[19] *Id.* at 221.
[20] *Id.* at 220.

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jurisdiction over reservations would frustrate federal policy. This rationale led Justice Black to conclude:

> Essentially, absent governing Acts of Congress, the question has always been whether the state action infringed on the right of reservation Indians to make their own laws and be ruled by them.
>
> Congress has also acted consistently upon the assumption that the States have no power to regulate the affairs of Indians on a reservation.[21]

In this short but powerful opinion, Justice Black reversed the Arizona courts.[22]

Despite prevailing at the Supreme Court, the Williamses were never compensated for the deprivation of their sheep.[23] Still, *Williams* remains one of the greatest affirmations of tribal sovereignty in Supreme Court history. Even during the termination era, the Court in *Williams* recognized tribes had always been regarded as separate and independent governments.[24] *Williams* affirmed the foundational principle espoused in *Worcester* v. *Georgia* – state authority ends where Indian country begins.[25]

Williams v. *Lee* gave legal force to a brewing social movement. The federal government's Indian relocation policy caused immense hardship by removing Indians from their tribes; however, relocation to urban areas also led to the formation of a pan-Indian identity. That is, Indians from diverse tribes were able to share their experiences and unite on common issues, like racial discrimination and economic opportunity. Increased Indian advocacy coincided with the ongoing civil rights movement, which brought attention to injustices against all racial minorities. However, the push for Indian rights was about more than racial justice – it was about tribal sovereignty. The Miccosukee Tribe of Florida made this clear by engaging in international diplomacy with a United States' Cold War enemy.

10.2 BUFFALO TIGER AND FIDEL CASTRO

The Miccosukee have a long history in what is the present-day state of Florida. Like countless Miccosukee before him, Mostaki[26] Tiger was born

[21] *Id.* (citation omitted).
[22] *Id.* at 222.
[23] Bethany R. Berger, *Sheep, Sovereignty, and the Supreme Court: The Story of Williams* v. *Lee*, *in* Indian Law Stories 359, 383 (Carole Goldberg et al. eds., 2011).
[24] Williams v. Lee, 358 U.S. 217, 218 (1959).
[25] *Id.* at 221.
[26] Buffalo Tiger & Harry A. Kersey, Jr., Buffalo Tiger: A Life in the Everglades 65 (2008).

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in the Everglades in March of 1920.[27] Tiger grew up speaking Mikasuki,[28] as the tribe had little contact with the outside world until the Tamiami Trail was built through the Everglades in 1928.[29] The Trail brought economic opportunities along with white culture.[30] As Tiger got older, he spent time at a local commercial village.[31] Tiger took a job as a housepainter where he learned English,[32] and also played sports with white children. The non-Indians could not pronounce Mostaki, so they decided to give him a nickname. He earned the moniker "Buffalo" because of his running style.[33] Before long, everyone called him "Buffalo."[34]

By the 1950s, the federal government threatened to terminate the Miccosukee and the related Florida Seminoles.[35] The tribes joined together and successfully opposed termination. Nevertheless, the United States collectively recognized both tribes as the Seminole Tribe of Florida in 1957.[36] As far as the United States was concerned, the Miccosukee were part of the Seminole Tribe rather than a separate sovereign.[37] The Miccosukee opposed the consolidation.

Buffalo Tiger immediately led a formal separation from the Seminole, and Florida recognized the Miccosukee as a separate tribe in 1957.[38] However, the United States still refused to acknowledge the Miccosukee. When the United States denied the Miccosukee recognition, Buffalo Tiger attempted to reaffirm the tribe's colonial era treaty rights by meeting with the British and Spanish embassies.[39] His effort failed.

[27] Michelle Tirado, *Buffalo Tiger, Miccosukee Tribe's First Chairman, Walks On*, Indian Country Today (updated Sept. 13, 2018), https://indiancountrytoday.com/archive/buffalo-tiger-miccosukee-tribes-first-chairman-walks-on [https://perma.cc/JL98-SCHP].

[28] *Buffalo Tiger*, peoplepill, https://peoplepill.com/people/buffalo-tiger [https://perma.cc/ERP6-MTQJ].

[29] Tirado, *supra* note 27.

[30] *Buffalo Tiger*, *supra* note 28.

[31] Tiger & Kersey, *supra* note 26, at 66.

[32] *Buffalo Tiger*, *supra* note 28.

[33] Tiger & Kersey, *supra* note 26, at 66.

[34] *Id.*

[35] Albert Bender, *Buffalo Tiger, Miccosukee Indian Rights Warrior Passes On*, People's World (Feb. 12, 2015), www.peoplesworld.org/article/buffalo-tiger-miccosukee-indian-rights-warrior-passes-on/ [https://perma.cc/4QRV-SB8A].

[36] *Id.*

[37] *Id.*

[38] *Id.*

[39] Tiger & Kersey, supra note 26, at 87; Harry A. Kersey, Jr., *The Havana Connection: Buffalo Tiger, Fidel Castro, and the Origin of Miccosukee Tribal Sovereignty, 1959–1962*, 25 Am. Indian Q. 491, 496 (2001).

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Rather than give up, Buffalo Tiger turned to Cuba in 1959.[40] The communist Castro regime had seized power from the United States-backed Batista regime less than a year earlier,[41] and it gladly accepted the opportunity to host a Miccosukee delegation.[42] Tiger personally met with Fidel Castro and asked Castro to recognize the Miccosukee.[43] Castro told Tiger he recognized the Miccosukee; furthermore, Castro guaranteed the Miccosukee lands in Cuba if the United States would not acknowledge Miccosukee sovereignty.[44] Castro then presented the Miccosukee delegation with a document honoring "the perseverance of your indomitable and freedom-loving people …"[45]

The Miccosukee's Cuban expedition was a public relations nightmare for the United States. The United States had long been uncomfortable with communist nations highlighting its discriminatory treatment of racial minorities. Hence, the Miccosukee turning to communist Cuba to secure rights in the United States was a national embarrassment.[46] As soon as the Miccosukee returned to Florida, Tiger recounted, "[T]here were all kinds of phone calls from Washington. The government started dealing with us seriously then."[47] The United States promised to reassess the tribe's recognition if it severed ties with Cuba,[48] and in 1962, the United States officially recognized the Miccosukee as an Indian tribe.[49] Buffalo Tiger was elected the tribe's chairman and served in this capacity for twenty-four years.[50] He would go on to become one of the most transformative tribal leaders in United States' history.[51]

[40] Tiger & Kersey, *supra* note 26, at 87–90; *Buffalo Tiger*, *supra* note 28.
[41] *Batista Forced Out by Castro-Led Revolution*, Hist. (updated Dec. 22, 2020), www.history.com/this-day-in-history/batista-forced-out-by-castro-led-revolution [https://perma.cc/38A8-HHB4].
[42] *Buffalo Tiger*, *supra* note 28.
[43] Tiger & Kersey, *supra* note 26, at 88–89; *Buffalo Tiger*, *supra* note 28.
[44] Tiger & Kersey, *supra* note 26, at 89.
[45] Bender, *supra* note 35.
[46] Kersey, *Havana Connection*, *supra* note 39, at 502.
[47] Tiger & Kersey, *supra* note 26, at 90–91; Bender, *supra* note 35.
[48] Kersey, *Havana Connection*, *supra* note 39, at 501–02.
[49] *History*, Miccosukee Tribe of Indians of Florida, www.miccosukee.com/history [https://perma.cc/L6LC-G3TS].
[50] Beverly Bidney, *Former Miccosukee Chairman Buffalo Tiger Passes at 94*, Seminole Tribune (Jan. 29, 2015), https://seminoletribune.org/former-miccosukee-chairman-buffalo-tiger-passes-at-94/ [https://perma.cc/9A4A-X3EH].
[51] Kersey, *Havana Connection*, *supra* note 39, at 503.

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10.3 INDIANS IN THE GREAT SOCIETY

Indian issues had reached the national stage by 1960 as Senator John F. Kennedy appealed to the president of the Association of American Indian Affairs that year. Kennedy wrote:

> As stated in the platform, my administration would see to it that the Government of the United States discharges its moral obligation to our first Americans by inaugurating a comprehensive program for the improvement of their health, education, and economic well-being. There would be no change in treaty or contractual relationships without the consent of the tribes concerned. No steps would be taken by the Federal Government to impair the cultural heritage of any group. There would be protection of the Indian land base, credit assistance, and encouragement of tribal planning for economic development.[52]

Kennedy's campaign succeeded as he was elected president by a slim margin over Richard Nixon, the sitting Republican vice president.[53] Tragically, President Kennedy was assassinated before he was able to focus on Indian policy.[54]

Lyndon Baines Johnson succeeded Kennedy as president and championed many of Kennedy's policy proposals.[55] Few presidents have been as effective at passing legislation as President Johnson. His Great Society agenda included Medicaid, Medicare, economic development programs, and the Civil Rights Act. Johnson's Great Society, however, largely neglected Indian country, and Indians let him know.[56] In 1966, the president of the Mescalero Apache Tribe, Wendell Chino, sent President Johnson a letter requesting a treaty rights conference.[57] The Johnson administration responded positively to the proposal and developed a number of reform proposals in 1967. Nonetheless, Indian country soundly rejected the reforms because the policies were devised without tribal input.[58]

[52] Letter from John F. Kennedy, U.S. President-Elect, to Oliver La Farge, President, Ass'n of Am. Indian Affs. (Oct. 28, 1960).

[53] *John F. Kennedy Elected President*, HIST. (updated Nov. 5, 2021), www.history.com/this-day-in-history/john-f-kennedy-elected-president [https://perma.cc/27L6-W7BF].

[54] *John F. Kennedy*, WHITE HOUSE, www.whitehouse.gov/about-the-white-house/presidents/john-f-kennedy/ [https://perma.cc/XZY7-EKC3].

[55] *Great Society*, HIST. (updated Aug. 28, 2018), www.history.com/topics/1960s/great-society [https://perma.cc/ZRG6-YLDR].

[56] Rebecca L. Robbins, *The Forgotten American: A Foundation for Contemporary American Indian Self-Determination*, 6 WICAZO SA REV. 27, 28 (1990).

[57] *Id.*

[58] *Id.* at 30.

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On March 6, 1968, President Johnson gave a speech to Congress[59] solely devoted to Indian Affairs – something no sitting president had ever done.[60] Johnson noted the past injustices against Indians and presented data revealing how far Indians lagged behind other Americans on most socioeconomic measures, including a twenty-year gap in life expectancy between the general population and Indians. Johnson also noted Indians had an unemployment rate in excess of ten times the national average. Johnson declared, "No enlightened Nation, no responsible government, no progressive people can sit idly by and permit this shocking situation to continue."[61] Thus, Johnson eschewed termination and paternalism in favor of "a policy of maximum choice for the American Indian: a policy expressed in programs of self-help, self-development, self-determination."[62] Johnson claimed his efforts to improve Indian welfare were in the best interest of the United States as a whole.[63] Johnson outlined several initiatives designed to improve Indian welfare. One was controversial: the Indian Civil Rights Act (ICRA).[64]

Tribes' existence as pre-constitutional sovereigns meant they were not bound by the Constitution because tribes were not parties to it. Thus, tribes surrendered no sovereignty at the Constitutional Convention and were not obligated to ensure the same rights as the federal government. Although some tribal governments had adopted Bill of Rights-type protections independently, most had not. Consequently, tribal governments were not required to afford persons within their borders the fundamental rights Americans enjoy outside of Indian country. While there were examples of tribal abuse, hearings on the ICRA revealed the primary violators of Indian rights were the state and federal governments.

Indians appreciated civil rights; however, they found the premise behind ICRA ironic. For years, non-Indian governments had violated Indians' rights and non-Indian officials were still abusing Indian rights. Nonetheless, Johnson and Congress were only concerned about tribal malfeasance. Irony aside, ICRA was a federal imposition of western norms

[59] Special Message to the Congress on the Problems of the American Indian: "The Forgotten American," 1 Pub. Papers 335 (Mar. 6, 1968).

[60] Alysa Landry, *Lyndon B. Johnson: Indians Are "Forgotten Americans,"* Indian Country Today (updated Sept. 13, 2018), https://indiancountrytoday.com/archive/lyndon-b-johnson-indians-are-forgotten-americans [https://perma.cc/R37G-776B].

[61] Special Message, "The Forgotten American," *supra* note 59, at 336.

[62] *Id.*

[63] *Id.*

[64] Indian Civil Rights Act of 1968, Pub. L. No. 90–284, Tit. II, §§ 201–203, 82 Stat. 77 (codified as amended at 25 U.S.C. §§ 1301–1304 (2024)).

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on Indigenous justice systems. The most noteworthy differences between ICRA and the Bill of Rights are the First and Second Amendments. ICRA does not contain an Establishment Clause because a handful of tribes have nonsecular governments; accordingly, an Establishment Clause would have destroyed their governments. ICRA also does not ensure Indians have the right to bear arms, perhaps because, as the Supreme Court would note decades later, one of the Second Amendment's purposes was to ensure Americans could defend themselves against Indians.[65] Additionally, ICRA greatly circumscribed tribal criminal authority by limiting the maximum penalty a tribe could issue in a criminal case to six months in jail and a $500 fine. As a result, ICRA forced tribes to rely on external governments to prosecute serious crimes on reservations because six months in jail is too lenient a punishment for serious offenses like rape and murder.

10.4 TRIBAL SELF-DETERMINATION

Johnson was succeeded by Richard Milhous Nixon. Nixon served as President Dwight Eisenhower's vice president, and the Eisenhower administration oversaw the worst of the United States' tribal termination policies.[66] Accordingly, Indian country did not have high hopes for Nixon. Despite this inauspicious background, no president has done more to support tribes' existence as separate governments than Nixon.[67]

There are two theories why Nixon actively supported tribal sovereignty. One possible reason is Nixon was a Quaker, and Quakers have a long history of respecting Indian rights.[68] However, Nixon's college football coach was likely the key factor in Nixon's passion for tribal sovereignty. Nixon always wanted to play tackle. While this is a perfectly noble goal, Nixon faced a significant obstacle – he only weighed 175

[65] Adam Crepelle, *Shooting Down Oliphant: Self-Defense as an Answer to Crime in Indian Country*, 22 Lewis & Clark L. Rev. 1284, 1312, 1312 (2018).

[66] Alysa Landry, *Dwight D. Eisenhower: Tried to Knock Out Jim Thorpe, and Assimilate Indians*, Indian Country Today (updated Sept. 13, 2018), https://indiancountrytoday.com/archive/dwight-d-eisenhower-tried-to-knock-out-jim-thorpe-and-assimilate-indians [https://perma.cc/FY3R-8KSS].

[67] Nick Martin, *Indian Country Deserves a Better Hero Than Richard Nixon*, New Republic (Oct. 21, 2019), https://newrepublic.com/article/155440/indian-country-deserves-better-hero-richard-nixon [https://perma.cc/E5RU-YLJ7].

[68] Duane Champagne, *How One U.S. President Became a Native Advocate*, Indian Country Today (updated Sept. 13, 2018), https://indiancountrytoday.com/archive/how-one-us-president-became-a-native-advocate [https://perma.cc/N7RN-Q7WB].

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pounds.[69] No coach gave him a chance to pursue his dream of being a lineman – that is, until the coach at Whittier College, Wallace Newman, gave him an opportunity. Nixon never made the team, but he did serve as a reserve tackle.[70] Owing to his association with the team, Nixon developed an abiding respect for Newman, stating in his memoir:

> I think I admired him more and learned more from him than any other man aside from my father. He drilled into me a competitive spirit and the determination to come back after you have been knocked down or after you lose. He also gave me an acute understanding that what really matters is not a man's background, his color, his race, or his religion, but only his character.[71]

Newman was an Indian.

Newman was born on the Luiseno Indian Reservation in La Jolla, California in 1902.[72] His given name was Jose, but his aunt changed it to Wallace in hopes of reducing the prejudice he would face. Newman earned a football scholarship to the University of Southern California and served as the team captain, where he earned the nickname "Chief." An injury ruined his chances of playing professional sports, so he turned to coaching. He started at the high school level and won several championships. Whittier College then hired him to serve as head coach of its football team.[73]

Newman was successful at Whittier but never got a chance to coach in the National Football League (NFL) although both of his successors, George Allen and Don Coryell, would go on to NFL careers.[74] Newman was an Indian;[75] it was the 1930s; and the color barrier was real. After the legendary Fritz Pollard was fired from his NFL coaching position in 1925, every NFL head coach was white until 1979.[76] Thus, Newman was

[69] *Presidents Who Played Football*, Pro Football Hall of Fame, www.profootballhof.com/presidents-who-played-football/ [https://perma.cc/TEE9-Y8U9].
[70] *Id.*
[71] Dean Chavers, *Richard Nixon's Indian Mentor*, Indian Country Today (updated Sept. 13, 2018), https://indiancountrytoday.com/archive/richard-nixons-indian-mentor [https://perma.cc/ML33-4CYP].
[72] Nicholas Stamates, *Nixon and the Chief: Quakers, the Return of Blue Lake and Nixon's Indian Mentor Wallace J. Newman* 4 (Apr. 5, 2019) (paper, U. of Wis.-Milwaukee), https://dc.uwm.edu/cgi/viewcontent.cgi?article=1078&context=rsso [https://perma.cc/74LA-Z2PF].
[73] *Id.*
[74] Chavers, *supra* note 71.
[75] *Id.*; Stamates, *supra* note 72, at 5.
[76] Stamates, *supra* note 72, at 5.

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stuck at Whittier, a Quaker institution, no matter his merit.[77] Nixon was not willing to ignore this injustice.

Addressing Congress in a July 1970 Special Message on Indian Affairs,[78] Nixon forever changed the course of federal Indian policy. Nixon began his speech by stating, "The first Americans – the Indians – are the most deprived and most isolated minority group in our nation. On virtually every scale of measurement – employment, income, education, health – the condition of the Indian people ranks at the bottom."[79] He said these statistics were a result of "centuries of injustice,"[80] and "[e]ven the Federal programs which are intended to meet [Indian] needs have frequently proved to be ineffective and demeaning."[81] Despite the hardships, Nixon said Indians have made "enormous contributions to this country."[82] Nixon rejected both termination and paternalism, declaring:

> It is long past time that the Indian policies of the Federal government began to recognize and build upon the capacities and insights of the Indian people. Both as a matter of justice and as a matter of enlightened social policy, we must begin to act on the basis of what the Indians themselves have long been telling us. The time has come to break decisively with the past and to create the conditions for a new era in which the Indian future is determined by Indian acts and Indian decisions.[83]

Though his speech used "Indian," Nixon clearly distinguished between Indians as a racial minority and citizens of sovereign tribal governments. This is evidenced by Nixon taking immediate action to fortify tribal governments.

Indeed, the Nixon administration took numerous steps to expand tribal sovereignty. One of the most consequential was restoring the Blue Lake to Taos Pueblo. Blue Lake had featured prominently in Taos Pueblo religion for ages.[84] In addition to its spiritual significance, Taos Pueblo held title to thousands of acres encompassing Blue Lake as recognized by Spain and Mexico, and the United States recognized Taos Pueblo's title

[77] Chavers, *supra* note 71.
[78] Special Message to the Congress on Indian Affairs, 1 Pub. Papers 564 (July 8, 1970).
[79] *Id.*
[80] *Id.*
[81] *Id.* at 564–65.
[82] *Id.* at 565.
[83] *Id.*
[84] William F. Deverell, *The Return of Blue Lake to the Taos Pueblo*, 49 Princeton U. Libr. Chron. 57, 58 (1987).

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in the Treaty of Guadalupe Hidalgo.[85] Despite their clear property rights, President Theodore Roosevelt took the Blue Lake from Taos Pueblo and added it to the Carson National Forest. Taos Pueblo received no compensation for the taking of its sacred Blue Lake. For years, Taos sought to regain Blue Lake. Nixon answered their call.

Six months after his address to Congress, Nixon signed bipartisan legislation returning Blue Lake to Taos Pueblo. During the signing ceremony, Nixon explained:

> So I think that in this Christmas season to sign this particular bill which, as I said, might be interpreted as a gift in the Christmas season but actually simply is the rectifying of an injustice, I can't think of anything more appropriate or any action that could make me more proud as President of the United States.[86]

Nixon noted restoration of Blue Lake to Taos Pueblo was a victory for religious freedom for all Americans. The restoration of Blue Lake marked the first time the United States had returned lands to a tribe.[87]

Nixon did not stop at Blue Lake. To help resolve the long-running grievances of Alaska Natives, Nixon supported and signed the Alaska Native Claims Settlement Act in 1971 (ANCSA).[88] ANCSA granted Alaska Natives more than forty million acres of land in fee simple plus approximately one billion dollars for natural resource deprivations. It also created twelve regional corporations with Alaska Natives serving as the shareholders in the corporations.[89] Nixon re-recognized tribes that had been terminated. He advocated for and signed legislation to increase economic opportunities for Indians and improve access to healthcare for Indians.[90] Nixon's boldest Indian policy proposition provided tribes with the authority to assume total control of all federal Indian programs.[91]

[85] *Id.* at 59–60.

[86] Remarks on Signing Bill Restoring the Blue Lake Lands in New Mexico to the Taos Pueblo Indians, 1 Pub. Papers 1131, 1132 (Dec. 15, 1970).

[87] Joan Livingston, *Nixon Crucial to Taos Pueblo's Recovery of Blue Lake*, Santa Fe New Mexican (Sept. 11, 2010), www.santafenewmexican.com/news/local_news/nixon-crucial-to-taos-pueblos-recovery-of-blue-lake/article_7b9d68d3-78f4-57a8-965f-a503b13dde37.html [https://perma.cc/7W5Z-BAW7].

[88] Alaska Native Claims Settlement Act of 1971, Pub. L. No. 92–203, 85 Stat 688 (1971) (codified as amended at 43 U.S.C. §§ 1601–1629h (2024)).

[89] *Id.* § 7(a); Francis Paul Prucha, The Great Father: The United States Government and the American Indians 370 (abr. ed. 1986).

[90] *President Nixon: Champion for Native Americans*, Richard Nixon Found. (Sept. 13, 2016), www.nixonfoundation.org/2016/09/president-nixon-champion-for-native-americans/ [https://perma.cc/SHT9-6VMW].

[91] Prucha, Great Father, *supra* note 89 at 380.

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Due to the Watergate Scandal, Nixon resigned before he could see his Indian policy agenda through.[92]

Nixon's vision of placing federal Indian programs under tribal control largely came to fruition with the Indian Self-Determination and Education Assistance Act of 1975.[93] Congress passed the Act because it found federal policies had harmed Indian development, and "the Indian people will never surrender their desire to control their relationships both among themselves and with non-Indian governments, organizations, and persons."[94] Accordingly, the Act made it federal policy to solicit Indian input on programs intended to serve Indians. The Act further proclaimed the United States' commitment to aid "Indian tribes in the development of strong and stable tribal governments, capable of administering quality programs and developing the economies of their respective communities."[95] As a result of the Act, tribes can contract with the federal government and take over federal services the United States previously performed in tribal communities. Studies have consistently shown tribes significantly outperform the federal government when they engage in self-governance contracts. The reason: Tribes are accountable to the tribal citizenry while unelected federal bureaucrats are not.

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Tribes survived centuries of hardship, including policies aimed at the outright extermination of their governments and cultures. Since 1975, every president and Congress have embraced tribal self-determination. Several pieces of legislation supporting tribes ensued, such as recognizing tribes have the same authority as states under federal environmental statutes, protecting Indian religious freedom, and granting tribes federal recognition. Notwithstanding, tribes still face significant, federally imposed obstacles to self-governance.

[92] *Richard Nixon's Resignation Letter and Gerald Ford's Pardon*, Nat'l Archives Found., www.archivesfoundation.org/documents/richard-nixon-resignation-letter-gerald-ford-pardon/ [https://perma.cc/6Y69-LCV6].

[93] Indian Self-Determination and Education Assistance Act of 1975, Pub. L. No. 93–638, 88 Stat. 2203 (codified as amended at 25 U.S.C. §§ 5301–5423 (2024)).

[94] *Id.* § 2(a)(2); 25 U.S.C. § 5301 (a)(2) (2024).

[95] 25 U.S.C. § 5302(b) (2024).

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