

## 2022 POLICY RESOLUTION #2

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The United States Federal Government should significantly reform its policies regarding federally recognized tribes in the United States.

### BACKGROUND

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Famed conservative, William F. Buckley, Jr. said, “There is an inverse relationship between reliance on the state and self-reliance.” Federally recognized Indian tribes have long been subjected to federal control in one form or another; the result is continuing paternalism and lack of political will on the part of the US and a dependency and distrust on the part of tribes.<sup>1</sup>

According to the Bureau of Indian Affairs, there are 565 federally recognized tribes: 340 in the lower 48 states and 225 in Alaska. There are 6.8 million Native Americans in the US and 1.9 million of those individuals live on a reservation. However, upwards of 60-70% of the population on reservations is made up of non-Native Americans.<sup>2</sup>

Article 1 Section 8 of the US Constitution grants the federal government authority for dealing with American Indian tribes. The complex relationship between the settlers and the indigenous tribes existed long before the United States was formed. Indigenous tribes, with their fundamental beliefs that the land and its resources are not owned, lived on the land when American settlers arrived with their opposing fundamental beliefs about the value of owning land. Wars were waged and won in order to form the United States and expand from the Atlantic to Pacific coasts. Westward expansion kept

moving the boundaries of the United States into perpetual conflict and brutality with the American Indian population. There are more than 370 ratified treaties between the United States and Indian tribes; treaties made promises to exchange US aid and money for land.<sup>3</sup> US courts, in the so-called “Marshall Trilogy,” from 1823 to 1832, established both federal authority in American Indian affairs and the dual sovereign structures that still exist today. The 1831 case of *Cherokee Nation v Georgia* referred to tribes as “domestic dependent nations” and characterized the relationship of the federal government to tribes as one “of a ward to his guardian” which established the trusteeship between the federal government and tribes.<sup>3</sup> That basis of tribal dependency has dictated federal policy for nearly two centuries resulting in wildly swinging policy objectives ranging from removal to assimilation to termination to self-determination.<sup>4</sup> No matter the policy objective, the results are that today’s Native Americans are faring the worst in virtually any demographic: approximately one-third of American Indians and Alaskan Natives live in poverty; they have an average of 5 years shorter lifespan than all other Americans; murder and suicide rates are double the national average; violence against women is five to ten times higher than the rest of the population; they experience higher rates of child abuse, substance abuse, obesity, and disease.<sup>5</sup>

The 1960s ushered in an era of tribal self-determination and attempts at recognizing tribes as independent nations governing themselves; however, the relationships are tangled and complex.<sup>6</sup> Reservations are often rural and undeveloped with populations that are spread out. Some estimates are that

reservations' untapped energy and mineral resources could generate more than \$1 trillion dollars in revenues to tribes, but the many barriers are difficult to overcome.<sup>7</sup> Land ownership on reservations is a mix of fee simple, individual trusts and tribal trusts, but the vast majority (95%) is considered "trust land."<sup>8</sup> Any transaction with trust lands requires cumbersome, bureaucratic approvals by the Bureau of Indian Affairs that often takes years. Required environmental reviews are also costly and time consuming. The tribal justice system has its own rules and is viewed with skepticism by non-tribe members. Indian Health Service provides federally-funded health services to American Indians and Alaska Natives, but its services are often considered substandard due to distance, staffing, or lack of medical resources.

## STRENGTHS

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This topic is uniquely under-explored and offers an opportunity to learn about a variety of educational subjects ranging from historical perspectives, legal commitments, property rights, dependence, societal structures and social ills among others.

Exploring federally recognized Indian tribes yields many avenues for reform. Educational topics to explore include sovereignty, religious freedom and sacred places, gaming, housing, taxing and interstate commerce issues, internet access, economic development, violence against women, alcohol and substance abuse, education, guaranteed health care, veteran's issues, environmental protection, climate change, land rights, energy, mineral rights, and more.

With approximately \$20 billion per year going to American Indian and Alaskan Native spending, there are lots of options.<sup>9</sup> While the Bureau of Indian Affairs and Bureau of Indian Education are the primary federal agencies responsible for

carrying out federal policy toward tribes, agencies receiving the most funding include the Department of Health and Human Services, Indian Health Service, Department of Education, Bureau of Indian Affairs, Bureau of Indian Education, Food and Nutrition Service of the Department of Agriculture, Department of Energy's Office of Indian Energy Policy, the EPA, and the Department of Justice.<sup>9</sup>

## WEAKNESSES

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Debating about federally recognized tribes poses a risk of being culturally insensitive in what is currently a very sensitive climate. There is also a great deal of US-self-loathing prevalent in today's culture that could be stoked researching the topic.

Additionally, the topic is broad, and solutions are complex. Untapped tribal wealth is tied to its land resources and property rights. Property rights, surface and subsurface rights, mineral rights, and trusteeships can be difficult to understand. Social problems on reservations include widespread poverty, substance abuse, human trafficking, and violence against women and children which could be emotionally difficult topics to tackle.

## AFFIRMATIVE TOPICS

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- Federal control over tribal lands
- Land trust structure
- Plenary power doctrine as it pertains to tribes
- Environmental review processes required for energy development
- Federal permitting regulations
- Diversified economic development incentives to produce stable employment opportunities

- Land fractionation
- Separation of tribal criminal law from state and federal law
- Federal responsibility for major crimes on tribal lands
- Protection of sacred sites
- Environmental protections on reservations

## NEGATIVE TOPICS

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Negative ground is just as robust. With over 500 federally recognized tribes, interests are varied, and one-size-fits-all approaches may not be worthy. Some tribes are small, some are large. Some are located in populated areas, most are very rural. Solutions that decrease federal oversight benefitting some tribes could be seen as an existential threat to another tribe that fears the government would no longer uphold its obligation to protect its interests. Because affirmatives cannot fiat the tribes, policy prescriptives must come from the USFG. Past US failures lead to present tribal distrust. The communal nature of tribes could make individualistic ideas unworkable. Promises made to care for American Indians are a legal obligation even if that obligation creates a dysfunctional dependence, so solvency may be difficult to achieve.

## RESOURCES

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<sup>1</sup> Yaegley, Rebekah May. "Why Native American Reservations Are the Most Poverty-Stricken Lands in America." Fee.org. November 9, 2020, Accessed online April 7, 2021. <https://fee.org/articles/why-native-american-reservations-are-the-most-poverty-stricken-lands-in-america/>

<sup>2</sup> Bureau of Indian Affairs. Accessed online April 7, 2021. <https://www.bia.gov/bia>

<sup>3</sup> Fletcher, Matthew L.M. "A Short History of Indian Law in the Supreme Court." American Bar Association. October 01, 2014. Accessed online April 7, 2021. [https://www.americanbar.org/groups/crsj/publications/human\\_rights\\_magazine\\_home/2014\\_vol\\_40/vol--40--no--1--tribal-sovereignty/short\\_history\\_of\\_indian\\_law/#:~:text=The%20history%20of%20Indian%20law,1831\)%3B%20and%20Worcester%20v.&text=Moreover%2C%20these%20cases%20established%20the,structure%20that%20still%20governs%20today](https://www.americanbar.org/groups/crsj/publications/human_rights_magazine_home/2014_vol_40/vol--40--no--1--tribal-sovereignty/short_history_of_indian_law/#:~:text=The%20history%20of%20Indian%20law,1831)%3B%20and%20Worcester%20v.&text=Moreover%2C%20these%20cases%20established%20the,structure%20that%20still%20governs%20today)

<sup>4</sup> Edwards, Chris. "Indian Lands, Indian Subsidies, and the Bureau of Indian Affairs. Downsizing Government.org. Cato Institute. February 1, 2012. Accessed online April 7, 2021. <https://www.downsizinggovernment.org/interior/indian-lands-indian-subsidies>

<sup>5</sup> "Indian Country Demographics." National Congress of American Indians. Accessed online April 7, 2021. <https://www.ncai.org/about-tribes/demographics>

<sup>6</sup> Edwards, 2012.

<sup>7</sup> Regan, Shawn. "Tribal Energy Resources: Reducing Barriers to Opportunity." The Property and Environment Research Center (PERC). July 23, 2018, Accessed online April 7, 2021. <https://www.perc.org/2018/07/23/tribal-energy-resources-reducing-barriers-to-opportunity/>

<sup>8</sup> Edward, Chris. "What Do American Indians Deserve: Name Changes or Policy Changes?" CATO Institute. April 2, 2014. Accessed online April 7, 2021. <https://www.cato.org/commentary/what-do-american-indians-deserve-name-changes-or-policy-changes?queryID=659bb9531ae0aa122b9fedf4ebcfcb3c>

<sup>9</sup> Fogarty, Mark. “\$20 Billion: Total US Support for American Indians.” Indian Country Today.  
<https://indiancountrytoday.com/archive/20-billion-total-us-support-for-american-indians>

## SUGGESTED READING

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[https://www.ncai.org/FY2020\\_Presidents\\_Budget\\_Analysis.pdf](https://www.ncai.org/FY2020_Presidents_Budget_Analysis.pdf)

U.S. Department of the Interior Bureau of Indian Education. <https://www.bie.edu/>

Department of Justice Office of Tribal Justice. <https://www.justice.gov/otj>

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<https://www.forbes.com/sites/realspin/2014/03/13/5-ways-the-government-keeps-native-americans-in-poverty/?sh=1a8295122c27>

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