

# Native Americans

## Part I - Needs

Over 500 distinct nations and millions of lives were lost in the European conquest of the Americas and their native peoples. By 1900 the Indian population decreased to 300,000 due to war and disease. There are roughly 2 million American Indians, one third of whom are under 15. Most of this population is living on some three hundred reservations, covering 52.4 million acres of land in twenty-seven states.

Once very prosperous, Indians have the lowest life expectancy of any group in the country and live only two-thirds as long as the non-Indian population. The unemployment rate on many reservations exceeds 70%. Indians fall well below the national average in income, quality of housing, and education. At least half the Indian population lacks a high school diploma.

Native Americans continue to be the poorest segment of the population. In 1989, 30.8% of the American Indian, Eskimo and Aleut population lived below the poverty level. About 44% of Native American children ages 5 and under lived in poverty.

Over the past five hundred years, a unique and complex body of law that governs the lives of Indians has developed. It consists of hundreds of treaties, thousands of federal statutes, a multitude of case law, and numerous regulations and administrative rulings. Federal Indian policy has never been consistent, and up until recently it has always been implemented without American Indian involvement. For over 200 years, Congress has vacillated between two conflicting policies -- strengthening tribal self-government versus assimilating Indian tribes into state and local government. The tension between those themes will very likely remain in the future.

## Historical Roots of Indian Law

History is the essential foundation for understanding contemporary American Indian law and policy. From colonial times through the late 1800's colonial governments and ultimately Congress dealt with individual tribes by formal treaties. Many treaties and agreements were made between settlers from various European countries and neighboring tribes. Following the Revolutionary War, the federal government regarded tribes as having the same status as foreign nations. Congress enacted many laws to protect Indians from non-Indians, prohibiting non-Indians from settling on Indian lands. In practice however, the government consistently overlooked the forcible taking of Indian land.

When Andrew Jackson was elected president in 1828, what had been unspoken policy became a publicly stated goal. Despite some effort by the Supreme Court to ensure that commitments to Indian tribes were honored, federal policy became more and more draconian as the United States reached the position of overwhelming military power in comparison to the tribes. Removal of the eastern Indian tribes to the West became the dominant 19th century federal Indian policy. With the 1848 gold discoveries in California, demand for land increased, forcing Indians in the west onto reservations as well. Congress passed numerous laws in the mid-1800's to increase federal control over Indians and promote their assimilation into white society. For example, emphasis was placed on "educating" and "civilizing" Indian youth. With federal help by 1887 more than two hundred Indian schools were established, where students were severely punished if they spoke their native language or practiced other traditions. Significantly, in 1871 Congress eliminated the practice of making treaties with Indian tribes as individual nations.

In 1887 Congress passed the General Allotment Act (Dawes Act) with the stated purpose to break up tribal governments, abolish Indian reservations and force Indians to assimilate into white society. To this end, Congress divided communally held tribal

lands into separate parcels giving each member a parcel and selling "surpluses" to white farmers. The results of the allotment policies were disastrous. Much of the land was unsuitable for farming, many Indians were unable to pay property taxes and therefore sold their property or were foreclosed upon. Of the 140 million acres of land which tribes collectively owned in 1887, only 50 million acres remained in 1934 when the allotment system was abolished.

Mounting public criticism of Indian policy and the Great Depression that all but eliminated white people's desire for Indian land, were major factors in prompting Franklin Roosevelt to make some radical changes. In 1934 Congress passed the Indian Reorganization Act (IRA) to rehabilitate Indian economic life, creating opportunities "to develop the initiative destroyed by a century of oppression and paternalism." Between 1935 and 1953, Indian landholdings increased by over 2 million acres and federal funds were spent for reservation health facilities, irrigation, roads, homes and community schools. Indians were given employment with Bureau of Indian Affairs so as to have some influence in administering, if not formulating, Indian policy.

During the 1950's Congress abandoned the goals of the IRA and adopted a policy of termination: the termination of federal benefits and support services to certain tribes and forced dissolution of their reservations. From 1953 to 1963 Congress terminated assistance to over 100 tribes, ordering them to distribute land and property to their members and dissolving their tribal government. Congress passed Public Law 83-280, generally known as P.L. 280, which conferred on designated states full criminal and some civil jurisdiction over Indian reservations. It also allowed other states to assume this jurisdiction if they wanted to accept it. P.L. 280 thus gave what had been federal powers and responsibilities to the states, the tribes' traditional enemies, who had long tried to gain control over Indian resources and people.

In 1968 policy shifted again. Repudiating the termination policies of the 1950's, Congress promoted Indian self-determination -- to strengthen the Indian sense of autonomy. In 1968, for example, Congress prohibited states from acquiring any authority over Indian reservations without the tribal consent. It also passed laws that fostered economic development.

### **THE TRUST RESPONSIBILITY**

The United States Supreme Court has recognized a "trust" relationship between the federal government and American Indians, describing tribes as "distinct political" communities akin to domestic, dependent nations. When the United States entered into the many treaties with the Indians, the Indians gave up their land. In return, the United States promised to set up permanent reservations for the Indians and to protect tribal member well-being. The federal government's obligation to fulfill these treaty commitments and to honor this trust relationship is known as its "trust responsibility".

Federal statutes, agreements, and executive orders also can create trust responsibilities, imposing express and implied obligations upon the federal government to advance Indian interests.

Tribes that have a trust relationship with the federal government are eligible to participate in many federal Indian programs. Unfortunately, the federal agencies administering the government's Indian programs are inefficient, unnecessarily complex, patronizing, insensitive and antagonistic to tribal self-government. The Bureau of Indian Affairs (BIA) has a history of waste, corruption and red tape and is one of the least respected of federal agencies, with the Indian Health Service (IHA) close behind.

Indians may bring suit in federal court to have trust obligations enforced. In past cases, Indians have successfully prevented federal officials from selling tribal lands, diverting water from their reservations, and

mismanaging their resources. They have also obtained money damages for injuries caused by administrative agency mismanagement.

Congress has the power to terminate or limit the trust responsibility.

## **PRESERVING TRIBAL EXISTENCE**

### **Sovereignty**

A critical issue is preserving tribes as sovereign governmental entities with all the power and authority that this status confers. Although the government has always recognized the inherent right of tribal sovereignty, it only exists absent Congressional action.

Congress has the power to terminate a tribe that it has exercised on several occasions. States also attempt to exercise jurisdiction over Indians and reservations.

### **Recognition & Restoration**

For over the last 100 years, Congress has enacted laws that sought to assimilate Native Americans into white society. To accomplish this goal, Congress has disbanded tribal governments, parceled out reservation land to tribal members, and allowed white people on the reservations. It has pursued a policy of "termination" -- terminating federal benefits and support services to certain Indian tribes and dissolving their reservations.

Some tribes that have been terminated are seeking to have their status as a federally recognized Indian tribe restored so that they can once again enjoy the benefits that status confers. Other tribes are seeking to be recognized for the first time as Indian tribes.

### **Taxation**

Tribes have the power to tax, a key to economic self-sufficiency. Tribes enjoy immunities from most state taxes. States and localities however, hungry for revenue still attempt to tax Indians.

### **Protecting Natural Resources**

For a tribe to sustain itself, it must have control over resources such as water, land,

hunting and fishing. Many tribes depend on commercial fishing for income as well as individual hunting for food.

Much of the conflict between Indians and non-Indians involves Indian hunting, fishing and gathering rights. Every tribe has the inherent right to regulate its land and resources including the taking of wildlife. Many Indians also have a federally protected right to hunt and fish outside of the reservation and the authority to regulate those rights. However the federal government has been reluctant to recognize many of the rights claimed by Indian tribes.

Water is a very valuable commodity. Tribes have become very concerned about preserving and defending their water rights. The Supreme Court has recognized that tribes have rights to amounts of water that meet their present and future needs. Problems arise around how much water a tribe is entitled to and what junior interests (usually non-Indian) are entitled to.

Indian water rights can be litigated in federal and state courts. Traditionally, state courts are hostile to Indian water rights. The federal government is obligated to protect Indian water rights. It also is charged with maintaining parks and forests and undertaking reclamation projects, putting it in many conflict of interest situations. When faced with scarce resources, Indian water rights often are ignored in favor of other interests.

## **TRIBAL SELF GOVERNMENT**

"Indian Country" consists of all land within an Indian reservation (including land owned by non-Indians), trust and restricted Indian allotments (federal land set aside for exclusive use of an Indian), and dependent Indian communities.

Indian tribes have the inherent right to govern themselves. Tribal powers are "inherent powers of a limited sovereignty." Tribal governments have the same powers as the federal and state governments to regulate their internal affairs with a few exceptions.

Important areas of tribal authority include:

forming a government; determining tribal membership; regulating tribal and individual property; the right to tax and maintain law and order; exclude nonmembers; regulate domestic relations; and the right to regulate commerce and trade.

Tribal governments have no jurisdiction to punish non-Indians for crimes except as authorized by Congress. Jurisdiction in civil matters partly depends on the controversy's subject matter.

### **1. INCOME**

Unemployment among Indians is ten times the national average and on some reservations is as high as 80%. The majority of Indians live at subsistence level. Many tribes lack the money to start their own businesses and geographic isolation makes them unattractive to private investors. Some private businesses located on reservation have been unprofitable because of problems adjusting to the tribe's cultural and religious traditions.

### **2. EMPLOYMENT**

Indians have an exceedingly high rate of unemployment on and off the reservation. Programs to alleviate this problem have been unsuccessful. For example, the BIA Employment Assistance Program pays Indians to leave the reservation and accept employment in urban areas. Most relocated Indians cannot adjust to urban life and resent the menial jobs they usually are required to take once they get there. The vast majority of participants soon return to the reservation.

### **3. HOUSING**

More than half of the housing on reservations do not meet federal habitability standards and a third need outright replacement. About 15% of reservation Indian families share homes with other families due to a shortage of housing. Few commercial lenders extend credit to people living on reservations because reservations are trust land owned by the federal government.

### **4. EDUCATION**

From the 1880's to the early 1930's, the federal government operated schools for Indians to force assimilation into Western culture. Mostly boarding schools, they are now being phased out and the responsibility for educating Indians has been transferred to the states. Some of these boarding schools survived as schools for "problem" children but most Indian children go to local day schools.

Although tribes have begun to regain control over the education, almost 90% of all Indian children attend state public elementary and secondary schools which provide little to no language training or religious/cultural education. School districts that encompass Indian reservations often lack a sufficient tax base because Indian trust land is exempt for taxes on local property (the way most public schools are funded.)

Native American students have the highest high school dropout rate in the nation. As many as 35%, and in some places 50 to 60%, of American Indian and Alaskan Native students leave school before completion.

### **5. HEALTH CARE**

Indians have the lowest health level and the highest disease rate of all major populations in the United States. Indian deaths from curable diseases such as tuberculosis, dysentery, and influenza are over 400 times the national average. Many physical illnesses suffered by Indians are directly related to malnutrition and substandard housing.

Many of their psychological problems are attributable to chronic unemployment, a personal sense of displacement, and cultural conflicts. These problems are reflected in excessive alcohol use, a rising divorce rate, and increasing violent crime.

The Indian Health Service (IHS) provides direct medical service to American Indians and pays for medical care for American Indians in non-IHS facilities. However, the IHS lacks sufficient funding to have full service to all Indians. It ranks according to

many as one of the least respected and most mismanaged federal agencies.

## **6. CHILD CUSTODY**

For many years, state welfare agencies and state courts removed many reservation Indian children from their families and tribes. Nearly one-third of reservation Indian children have been separated from their families by state agencies and placed in adoptive families, foster care, or institutions. Most residential placements were to non-Indian homes. These forced separations are disastrous for the children involved, their parents, and their tribes.

Many state social workers and judges are either ignorant of Indian culture and tradition or a prejudiced against it. This means that many children are removed from their families simply because they are Indian and poor. This practice has depleted many reservations of their youth.

## **7. CIVIL RIGHTS**

### **Religious Freedom**

Religion plays a major role in Indian culture. Without the ability to freely practice their religions, Indians are in grave danger of losing their way of life. In many states the sacramental use of peyote is illegal due to criminal prohibition of the drug. Sacred sites have repeatedly been destroyed and sacred religious objects have been pilfered and sold.

### **Discrimination**

Like other minorities, Indians are regularly discriminated against in all areas of life.

### **Environmental Racism**

A growing menace to people of color is developing from a variation of NIMBY in which industrial waste is discarded in areas predominantly occupied by people of color including Indian reservations.

While all segments of society benefit from the use of the petro-chemicals, a small minority bears the cost from the byproducts of these goods. Most argue that people of color are

targeted for waste facilities and other environmental hazards by waste-management firms because their residents are more likely to be poor and politically powerless. These communities are also more vulnerable to offers of compensation made in exchange for accepting hazardous environmental conditions.

## **8. POLITICAL EMPOWERMENT**

For a significant part of our history, Native Americans have been denied the right to vote. Native Americans are United States citizens and as such have the right to vote. This right has been granted only since in 1924. However, many Native Americans need language assistance throughout the electoral process in order to realize this right. Some local governments have attempted to dilute the voting power of Indians by creating large voting districts or using any of the number of other techniques such as gerrymandering that are used to artificially preserve the political power of the ruling elite.

# **Native Americans**

## **Part II - Laws**

The law regarding Native American tribes is unique in that tribes deal primarily with the federal government. Each tribe can be said to be its own state, and thus beyond the jurisdiction of the individual state where it lives.

### **TRUST RESPONSIBILITY**

The doctrine of trust responsibility (the federal government's obligation to fulfill its treaty commitments and to protect tribal member's well-being) was reaffirmed in **United States v. Mitchell**, 463 U.S. 206, 225 (1983). The **Indian Tribal Justice Act [25 U.S.C.A. 3601]** codified the doctrine by stating: "The Congress finds and declares that . . . the United States has a trust responsibility to each tribal government that includes the protection of the sovereignty of each tribal government." Indians may bring suit in federal court to have trust obligations enforced and obtain money damages for

resulting injuries. This doctrine is a critical tool in making federal agencies that administer Indian programs accountable for their actions.

## **PRESERVATION OF TRIBAL EXISTENCE**

### ■ **Sovereignty**

#### **U.S. Const. art. I, § 8, cl. 3 (the Commerce Clause)**

Provides that "Congress shall have the Power . . . to regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes."

#### **U.S. Const. art. II, § 2, cl. 2 (the Treaty Clause)**

Gives the President and the Senate the power to make treaties, including treaties with Indian tribes.

These two constitutional provisions provide Congress with all that is required for complete control over Indian affairs.

#### **Indian Tribal Justice Act** [25 U.S.C.A. §§ 3601 et seq.]

This Act creates a new Office of Tribal Justice Support within the Bureau of Indian Affairs (BIA) and transfers all of the functions and personnel of the BIA Branch of Judicial Services to this office. It also provides for Federal funding of tribal judicial systems in maintaining various tribal codes and judicial practices and creating law libraries.

#### **Native American Languages Act Of 1992** [106 Stat. 3434, Amending 42 U.S.C. § 2991]

This Act will fund 80% of the cost of a project to preserve or study Native American languages. The programs funded by the Act may be conducted by tribes and tribal organizations alone or in partnership with third parties. There is a requirement for 20% of non-Federal funding in cash or in kind (equipment, resources or services).

#### **Native American Graves Protection and Repatriation Act of 1990** [25 U.S.C. § 3001 et seq.]

The Act provides for recovery of Native American human remains and sacred or cultural objects found on Federal land. Federal agencies holding such remains or artifacts are required to inventory them, providing the information on the articles and the find site to lineal descendants or specific tribe with which the artifacts are affiliated and to surrender the items upon request. The Act also provides for anyone discovering such items on Federal property to cease activity, attempt to preserve the items and notify the appropriate tribe.

#### **Indian Self-Determination and Education Assistance Act of 1975** [25 U.S.C. § § 450 et seq.]

This Act allows Indians to assume control over many of the programs administered by the Departments of the Interior, Education, and Health and Human Services. The Act requires the secretaries of these departments to transfer the administration of various programs to qualifying Indians tribes and to give these tribes the same amount of funds that the department would have spent on the program. This Act eliminates the government's monopoly over Indian services and permits tribes to plan and administer their own programs.

#### **Native American Programs Act** [42 U.S.C. §§ 2991-2d]

This Act was passed to "promote the goal of economic and social self-sufficiency" of Indians. The act established the Administration for Native Americans which funds a broad range of programs for Indians. ANA programs are aimed at strengthening tribal administration, providing human services, and fostering economic growth. Through subsequent amendments the Act also regulates such diverse issues as preservation of Native American languages and environmental programs.

**Indian Reorganization Act of 1934** [25 U.S.C. §§ 461 et seq.]

This Act was intended to help tribes modernize their government. It allows each tribe to draft a new constitution giving the tribe specific powers. However, each tribal constitution is subject to the approval of the Secretary of the Interior.

■ **Taxation**

**Indian Tribal Government Tax Status Act** [26 U.S.C. § 7871]

This Act exempts tribes from having to pay certain federal taxes. It is unclear whether the enumerated exemptions are the only ones that may be taken or examples of some of the exemptions that may be taken. **Flandreau Santee Sioux Tribe v. U.S.** 197 F.3d 949 (8<sup>th</sup> Circuit 1999) (currently on appeal (Petition for Certiorari Filed, 68 USLW 3713 (May 08, 2000)(NO. 99-1775)), seemed to indicate that the only exemptions are those listed in the Act. The **Flandreau** court ruled that because selling gasoline to the public was not an “essential government function” the tribe was not entitled to refund of federal excise taxes on gasoline as specified in the Act.

**Tax Injunction Act** [28 U.S.C. § 1341]

This Act prohibits all persons from challenging states taxes in federal court. Indian tribes, however **are exempt** from this requirement. **28 U.S.C. § 362** allows Indians tribes to seek relief in federal court from violation of their federal rights. This law allows tribes to immediately file suit in federal court to challenge the constitutionality of a state tax law.

■ **Recognition and Restoration**

Recognition and Restoration can be accomplished through legislation or administrative action through the Bureau of Indian Affairs. As a practical matter, BIA does not approve many tribe petitioners for tribal recognition. Therefore most tribes seeking recognition and restoration must develop a bill and find congressional sponsorship to assure passage.

California has many unrecognized tribes; as such they receive no protection from the federal government.

■ **Protecting Natural Resources**

**Indian Environmental Regulatory Enhancement Act Of 1990** [U.S.C. § 2991]

The Act provides for funding tribal laws on environmental quality and enforcement of such laws, as well as the training of personnel responsible for enforcement of tribal environmental laws. 80% of the costs will be funded by the Act while 20% must be provided by private or non-Federal resources.

**Water Rights** were first formally recognized in a 1908 U.S. Supreme Court decision that came to be known as the Winters Doctrine.

**[Winters v. United States, 207 U.S. 564**

**(1908)]** The Court ruled that when reservations were established, sufficient water to make the reservations liveable was also reserved. This provision is now implied in all treaties. Yet there are still problems. Water law is very complex and time consuming to litigate. For this reason, many of these claims are negotiated and settled out of the courts.

**Hunting and Fishing Rights**, both on and off reservations have long been recognized.

Many are specifically set out in treaties and the rest are recognized through case law. Note that these rights can be expressly limited by Congress at any time, without the consent of the Indians.

**General Allotment Act of 1887 (repealed by the Indian Reorganization Act of 1934)**

[25 U.S.C. §§ 331-58]

Under this Act, tribal trust land was divided into parcels by the federal government and allotted to tribal members. Although it was repealed, special tax rules still apply to these allotments.

■ **Identification**

When dealing with a Native American client, you must determine whether s/he is recognized as a Native American for purposes of federal Indian law. Two factors usually determinative are whether the individual: 1)

has some ancestors that lived in what is now the United States before European discovery; 2) is recognized as an Indian by a federally recognized tribe. Beware that both Congress and tribes have the power to determine tribal membership. Therefore, a variety of definitions could apply. The other important thing to determine is what is the meaning of "Indian Country" within the context of your case. The most common definition is found at **18 U.S.C. §1151**.

### **1. INCOME**

#### **[Section 7: Public Benefits]**

Historically many states and local governments refused Indians a variety of rights and benefits available to other residents, relying on the Indians' federal status as an excuse. The general rule is that Indians are entitled to the same rights, benefits, services, and entitlements as other state residents and citizens.

Most of the time, Indians living either on or off the reservations are eligible for the same social programs as the rest of society. If for some reason they are unable to receive assistance from state, local or other federal welfare agencies, the BIA offers benefits such as general assistance and aid to dependent children of Indians only.

Federal law, 42 U.S.C. § 612 et. seq., allows federally recognized Indian tribes or tribal consortia to administer Tribal Temporary Assistance to Needy Families (TANF) Programs. Counties are required to allocate a share of their TANF funds to Tribes who have their own tribal TANF program. *See*, Cal. Welf. Inst. Code § 10553 et. seq. If a person receives TANF aid while living on an Indian reservation with a jobless rate of 50% or more, those months do not count toward the 5 year lifetime limit. (This applies whether or not the person is Indian.)

Recipients must still be in a work activity. If a tribe has its own TANF program and a person is eligible, they must participate in that program and not CalWORKs. They cannot participate in both programs at the same time.

The Counties may contract with tribes and Indian organizations to provide community service jobs and such CalWORKs services as transportation, child care, and substance abuse prevention /rehabilitation.

Congressionally approved cash distribution (up to \$2000 per year) are excluded from public benefit eligibility determinations. 25 U.S.C. § 1407. Interests held in trust land are also excluded from these determinations. 25 U.S.C. § 1408. Cash dividends up to \$2000 per year from Native Alaskan Corporations are similarly excluded under 43 U.S.C. § 1626(c)(3)(A).

### **2. EMPLOYMENT**

#### **Indian Employment, Training and Related Services Demonstration Act of 1992 [25 USCA § 3401 et seq.]**

The demonstration program provides for integration of various job-creation programs made available to tribes and provides for private sector training with federal funds.

### **3. HOUSING**

Native American Housing Assistance and Self-Determination Act of 1996 [25 U.S.C.A. §§ 4101 et seq.] In particular it removes the Native American housing assistance from the purview of the Housing Act of 1937, a law designed to aid low-income people but focusing on the urban poor, and thus not as applicable to the Indian populace. The Act replaces the previous aid programs with a single block grant program.

The Act consolidates and enhances a number of Federal assistance programs for Native Americans including:

1. The United States Housing Act of 1937 (42 U.S.C. §§ 1437 et seq.);
2. The Indian Housing Child Development Program under Section 519 of the Cranston-Gonzalez National Affordable Housing Act of 1990 (12 U.S.C. § 1701z-6 note);
3. The Youthbuild Program under subtitle D of Title IV of the Cranston-Gonzalez National

Affordable Housing Act (42 U.S.C. §§ 12899 et seq.);

4. The Public Housing Youth Sports Program under Section 520 of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. § 11903a);

5. The HOME Investment Partnerships Program under Title II of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. §§ 12721 et seq.); and

6. Housing assistance for the homeless under Title IV of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. §§ 11361 et seq.) and the Innovative Homeless Demonstration Program under Section 2(b) of the HUD Demonstration Act of 1993 (42 U.S.C. § 11301 note)

**Housing Improvement Program under the Snyder Act** [25 U.S.C. §13; 25 C.F.R. Pt. 256 (1990)]

This program provides assistance in getting:

1) repairs to substandard housing that will remain substandard even after the repairs; 2) repairs to substandard housing that will then meet standards; 3) down payments for new homes; and 4) building new housing.

Although more than 25,000 homes have been repaired or built under this program, its funding recently has been limited.

**4. EDUCATION**

**Johnson-O'Malley Act of 1934** [25 U.S.C. §452 et seq.]

Administered by the Bureau of Indian Affairs, this Act assists school districts that have nontaxable Indian land within their borders. (Most public schools are financed by taxes on local property from which Indian trust land is exempt.)

Generally, Johnson-O'Malley funds are limited to providing "special needs" These special needs include guidance counseling, teacher training, home school coordinators, clothing, athletic equipment, and summer school programs. This Act also provides funds for bilingual-bicultural educational services.

**Improving America's Schools Act of 1994** [20 USCA § 6301]

This Act replaces several earlier acts designed to improve educational performance of disadvantaged students. It provides funds for teacher training, instructional programs and other educational aid for all schools with a large number of disadvantaged students, including Native American students.

**Indian Education Act (IEA)** [25 U.S.C. et seq.; 34 C.F.R. Pt. 350 (1989)]

This Act provides funds for both urban and reservation Indian education, especially for counseling and for remedial programs in language, mathematics, and reading. It includes funds for bilingual-bicultural educational services. It also offers scholarships for graduate studies in law, medicine, forestry, business, and engineering. IEA funds are intended to supplement other funds; not used to meet basic needs.

**Title IV of the Civil Rights Act of 1964** [28 U.S.C. § 2000d]

This provision prohibits educational institutions that receive any federal funding from discriminating against their students on account of race. Courts have interpreted Title IV to require bilingual-bicultural education so to enable certain students to obtain a basic education. This interpretation means that public schools can be required to offer bilingual-bicultural education services to Indian students deficient in English.

**Title I of the Indian Self-Determination and Education Assistance Act of 1975 (ISDEA)** [25 U.S.C. §§ 450f-n]

This Act authorizes the Secretary of the Interior to contract with a tribe or tribal organization to administer any Indian education program now administered by the Department of the Interior, using the same funds that Congress appropriated to the federal agency. A tribe requesting this authority cannot be refused unless found incompetent. This Act encourages tribes to operate the schools and programs now operated by the BIA.

## **5. HEALTH CARE**

### **[See Section 5: Health]**

Indians who qualify are eligible for Medicare and Medicaid.

#### **Snyder Act of 1921** [25 U.S.C. § 13]

This Act was the first effort by Congress to improve general Indian health care. It authorizes funding for "the relief of distress and conservation of health of Indians." Until 1955, it was mismanaged by the Bureau of Indian Affairs. Now it is mismanaged by the Indian Health Services.

#### **Indian Health Care Improvement Act of 1976** [25 U.S.C. § 1601 et seq.; 42 C.F.R. §§ 36.301 et seq. (1989)]

This Act recognizes the federal government's trust responsibility to the Indians and gives Indians a legal right to certain health services. The government can be sued under this Act if it fails to provide the necessary services.

## **6. JUVENILE DEPENDENCY/FOSTER CARE**

### **Indian Child Welfare Act of 1978 (ICWA)** [25 U.S.C. §§ 1901-63]

ICWA's purpose is "to protect the best interests of Indian children and to promote the stability and security of Indian tribes and families." It limits the state's powers and encourages respect for tribal authority about the placement of Indian youth.

ICWA establishes specific procedures that state courts must follow in handling Indian child custody matters. Basically, these requirements create a dual jurisdictional scheme that favors the tribes. In general, if a child is domiciled on the reservation, the tribe has exclusive jurisdiction. If the child lives off the reservation, jurisdiction lies presumptively in the tribe; the court. Furthermore, ICWA requires the state courts to give preference to Indians whenever they make adoptive or foster care placements.

## **7. CIVIL RIGHTS**

### **Public Law 280 of 1953** [18 U.S.C. § 1162, 25 U.S.C. §§ 1321-1326, 28 U.S.C. § 1360] (P. L. 280)

A product of the termination era, P.L. 280 is the only federal law that extends state jurisdiction to Indian reservations generally. It requires states that had to accept this jurisdiction ("mandatory" states) to assume complete criminal and some civil jurisdiction over Indian reservations. The six states are: Alaska, California, Minnesota, Nebraska, Oregon and Wisconsin. Most option states (those which could assume jurisdiction) limited their jurisdiction to: less than all the Indian reservation in their state, less than all geographic areas within an Indian reservation or less than all subject matters of the law. For example, Arizona assumed jurisdiction to control the air and water pollution; Idaho and Washington assumed jurisdiction for eight subject areas.

Most tribes opposed P.L. 280 because the states could increase their jurisdiction whenever they wanted. In 1968, Congress amended P.L. 280 so that a majority of a tribe must consent to a state obtaining jurisdiction. It also authorized the federal government to accept a "retrocession" (or return) of any jurisdiction that a state has acquired through P.L. 280. As a result, for example, Nevada retroceded its jurisdiction over all but one of the tribes living in Nevada and Oregon retroceded its criminal jurisdiction over the Umatilla Reservation.

### **Indian Civil Rights Act of 1968** [25 U.S.C. §§1301 - 1341]

This Act extended most of the Bill of Rights to tribal members in dealings with their tribal governments. Such action was taken because the Constitution itself does not limit tribal self-government by imposing the Bill of Rights on Indian tribes. ICRA also included important retrocession provisions described above.

## ■ Religious Freedom

### **American Indian Religious Freedom Act (AIRFA)** [42 U.S.C. §1996]

AIRFA's declared purpose is "to protect and preserve for Native Americans their inherent right of freedom of belief, expression, and exercise of traditional religions of the American Indian . . . including but not limited to access to sites, use and possession of sacred objects, and the freedom to worship through ceremonials and traditional rites."

AIRFA contains no penalty provisions enforceable against violators and is not very useful. Given recent restrictions on the First Amendment right to religious freedom, Indians now must look to state constitutions and laws, or lobby for the passage of new laws to protect their religious practices.

## ■ Discrimination

**Civil Rights Laws** If Indians suffer discrimination on account of race, color, creed, religion, sex or national origin with respect to **housing** [42 U.S.C. §3601 et seq.], **employment** [42 U.S.C. §2000e et seq.], **commercial transactions** [42 U.S.C. §1981, 1982], or **access to public accommodations** [42 U.S.C. §2000a-a6], in most instances they can file suit in federal court to halt this discrimination and recover damages for any injury suffered as a result of it.

## 7. POLITICAL EMPOWERMENT

**U.S. Const. amend. XV** Guarantees that no citizens shall be denied the right to vote in a state or federal election on account of race.

**Voting Rights Act of 1965** [42 U.S.C. §§1973-1973-bb-1]

Protects all persons from having to pay a fee or pass a literacy test in order to vote. The **1975 amendments** to this act prohibit discrimination against persons whose primary language is other than English.[42 U.S.C. §§1973b, 1973aa-1a to 1973 aa-3, 1973dd-5]

## RESOURCES - NATIVE AMERICAN

### **California Indian Legal Services**

Main Office  
510-16th Street, Suite 301  
Oakland, CA 94612  
510/835-0284 Voice  
510/835-8045 Fax  
Offices in Eureka, Escondido, Bishop  
[www.calindian.org](http://www.calindian.org)

### **Indian Law Support Center Native American Rights Fund**

1506 Broadway  
Boulder, CO 80302  
303/447-8760 Voice  
303/443-7776 Fax

[www.narf.org](http://www.narf.org) has information on various tribes, laws, treaties, library and NARF Law Review; comprehensive publications list; good links.

### **Tribal Institute**

<http://tribal-institute.org/> provides information on legal matters affecting Native Americans including links to applicable Federal programs as well as court decisions and Native American tribal justice.

### **Native American Legal Resources on Internet**

<http://hanksville.phast.umass.edu/misc/indices/NAlegal.html> has exhaustive links.

### **Native Web**

[www.nativeweb.org](http://www.nativeweb.org) has a whole section on links to law and legal issues plus society and culture, pages of tribes.

**Askwilteachik.org** is a wonderful site with federal and state by state legislation on Indian issues.