



THE NEED FOR NATIVE LAWYERS: OPPORTUNITIES IN INDIAN LAW AND ADVICE FOR ASPIRING LAWYERS

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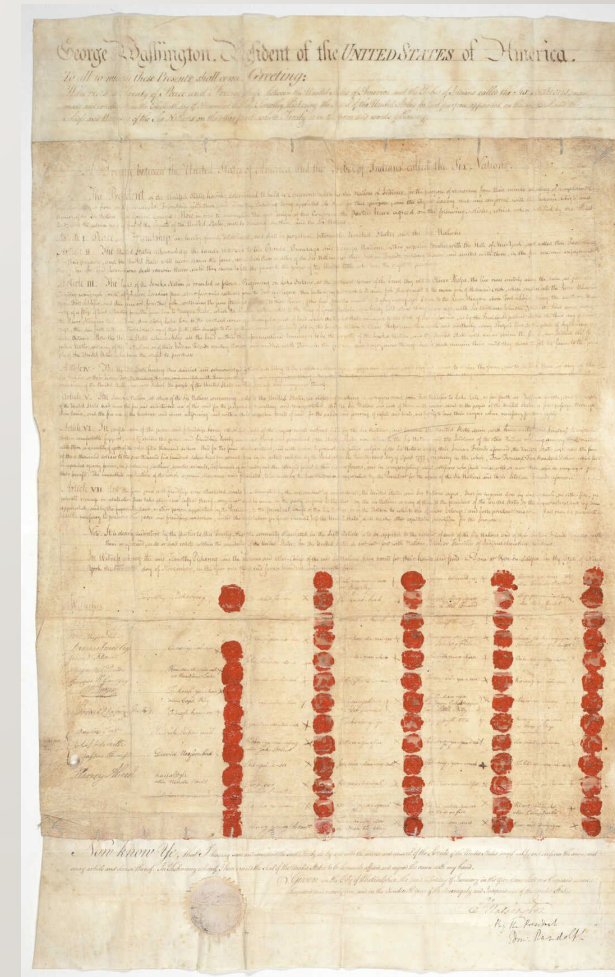
MARCH 7, 2023

FEDERAL INDIAN LAW

- 1. What is Federal Indian Law?**
- 2. Why Study Indian law?**
- 3. Indian Lawyering Today**
- 4. American Indians Today**

WHAT IS FEDERAL INDIAN LAW?

- Law that regulates the legal relationships between Indian tribes and the US
- Law that has imposed colonization on tribes throughout US history
- But also, law that tribes have wielded to protect their sovereignty and rights and engage in nation-building



Treaty of Canandaigua of 1794

FEDERAL INDIAN LAW SOURCES

≈ 374 Treaties between the United States and Tribes

US Constitution

- **Indian Commerce Clause:** “[The Congress shall have Power . . .] To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes”
- **Treaty Clause**
- **Supremacy Clause**
- **Article I and 14th Amendment:** “excluding Indians not taxed”

Statutes

Federal Regulations

Judicial Opinions



THREE KEY PRINCIPALS OF FEDERAL INDIAN LAW

- **Plenary Power/Trust relationship**
- **Limited State authority in Indian country**
- **Tribal inherent sovereignty**

SOME IMPORTANT LEGAL TERMS

1. Indian Country

The term Indian country is defined in 18 U.S.C. § 1151 and 40 C.F.R. § 171.3 as:

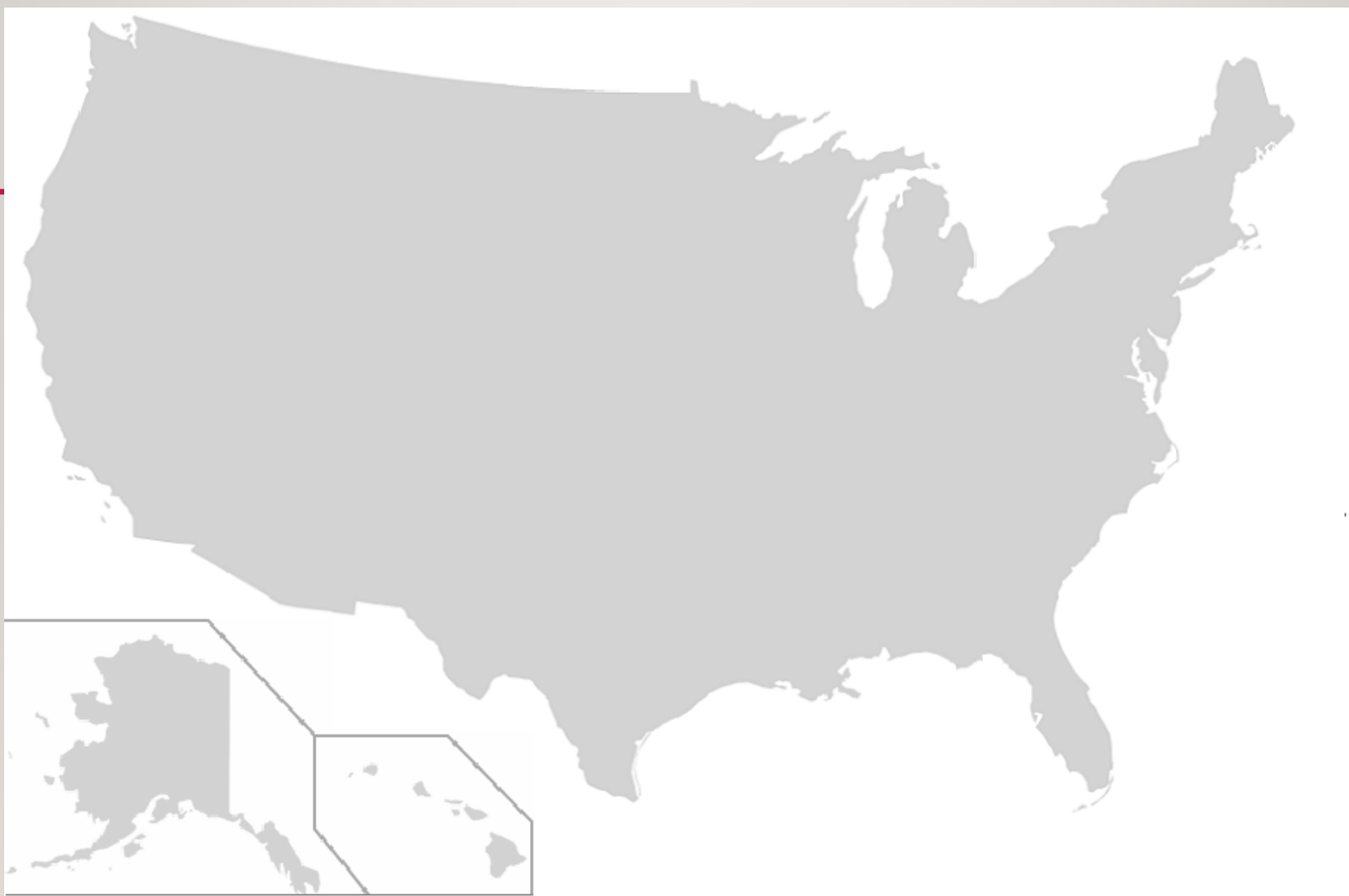
- a. all land **within the limits of any Indian reservation** under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and, including rights-of-way running through the reservation;
- b. all **dependent Indian communities** within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a state; and
- c. all **Indian allotments**, the Indian titles to which have not been extinguished, including rights-of-way running through the same.

Consistent with the statutory definition of Indian country, as well as federal case law interpreting this statutory language, lands held by the federal government in **trust** for Indian tribes that exist outside of formal reservations are informal reservations and, thus, are Indian country.

2. Tribal Law

Why Study Indian Law?









- 89,000 square miles of Indian country in the U.S.
- Together, would represent the 12 largest state in the U.S. – between size of Michigan and Minnesota
- Dramatic variations in size and function of Indian reservations





- Likely Rancheria of the Pit River Tribe in Modoc County, northern California is the smallest reservation with just 1.32 acres. The land is used as a cemetery.



- Reservations in the US are inhabited by anywhere from 1 – 174,000 people each

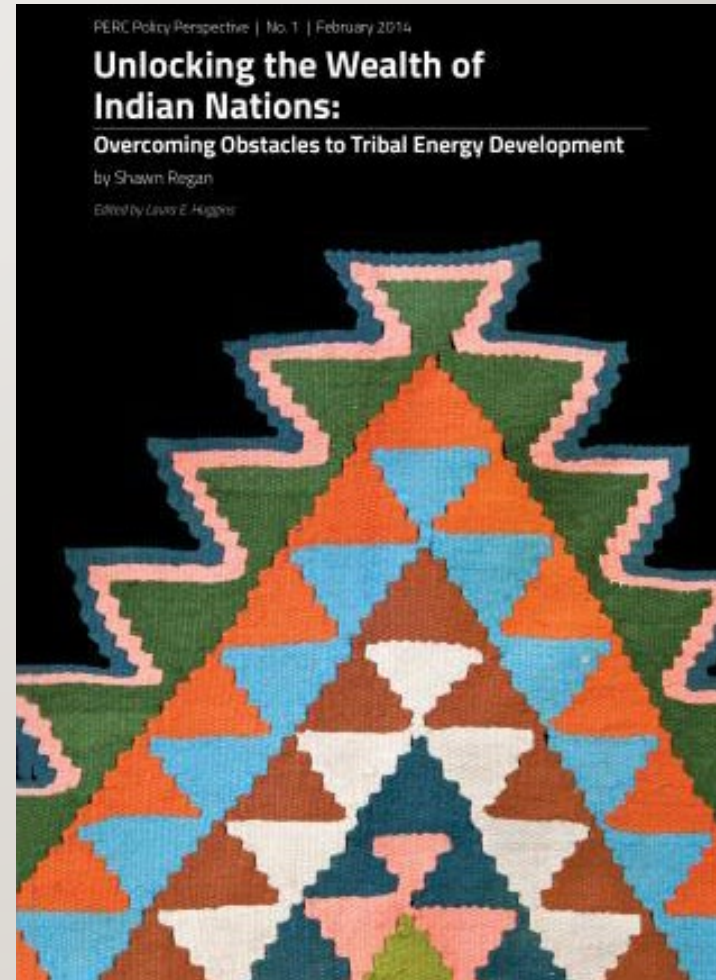


- The largest reservation in the U.S. is the Navajo Nation.
- Navajo Nation is larger than 10 U.S. states
- Its population is greater than 18 UN-recognized countries

Reservation / State	Total Square Miles
Navajo Nation (AZ, NM, & UT)	22,174
Maryland	12,407
Hawaii	10,932
Choctaw Nation (OK)	10,613
Massachusetts	10,555
Vermont	9,615
Hew Hampshire	9,351
New Jersey	8,722
Cheyenne-Arapaho Nation (OK)	8,121
Chickasaw Nation (OK)	7,285
Ute Tribe (UT)	6,768
Cherokee Nation (OK)	6,702
Kiowa-Comanche-Apache-Fort Sill Apache OTSA (OK)	6,360
Connecticut	5,544
Creek Nation (OK)	4,678
Tohono O'odham Tribe (AZ)	4,453
Cheyenne River Sioux (SD)	4,260
Standing Rock Sioux (ND & SD)	3,572
Crow Tribe (MT)	3,562
Wind River (WY)	3,465
Fort Peck (MT)	3,289
Pine Ridge (SD & NE)	3,159
San Carlos Apache (AZ)	2,911
Fort Apache (AZ)	2,628
Hopi Reservation (AZ)	2,531
Delaware	2,489
Blackfeet Reservation (MT)	2,371
Osage Nation (OK)	2,251
Confederated & Yakima (WA)	2,153
Confederated Tribes (WA)	2,117
Flathead Reservation (MT)	1,938
Hualapai Reservation (AZ)	1,590
Rhode Island	1,545

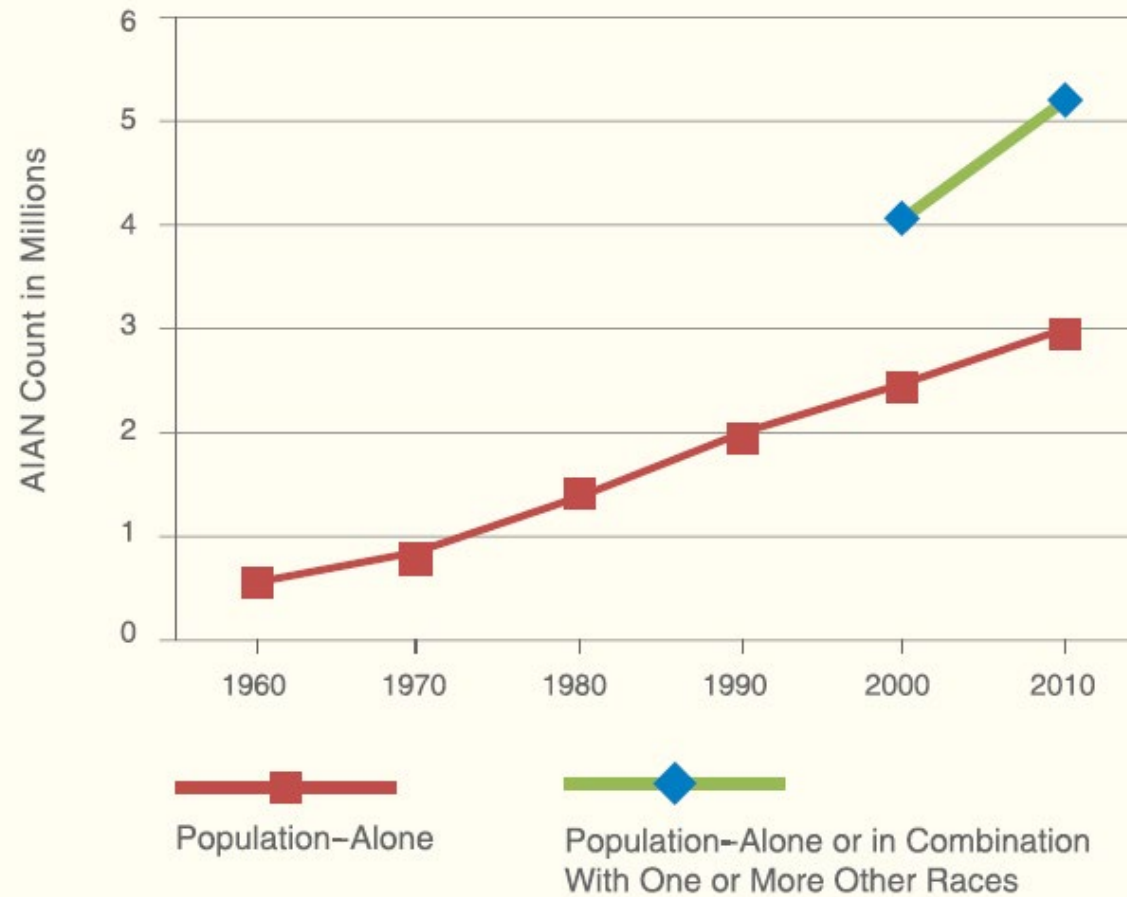
Indian reservations contain almost 30% of the nation's coal reserves west of the Mississippi, 50% of potential uranium reserves, and 20% of known oil and gas reserves — resources worth nearly \$1.5 trillion, or \$1.5 million per tribal member.

Conservative organizations like the American Enterprise Institute, the Cato Institute, and the PERC (The Property and Environment Research Center) support privatization of indigenous lands and resources to promote greater access for the U.S. energy industry



Tribe	Fossil Fuel and Uranium Resources
Hopi (Arizona)	Coal, oil, and gas
Navajo (Arizona and New Mexico)	Coal, oil, gas, and uranium
Southern Ute (Colorado)	Coal, oil, and gas
Ute Mountain (Colorado)	Coal, oil, gas, and uranium
Blackfeet (Montana)	Coal, oil, and gas
Crow (Montana)	Coal, oil, and gas
Assinboine and Sioux (Montana)	Coal, oil, and gas
Northern Cheyenne (Montana)	Coal and oil
Jicarilla Apache (New Mexico)	Coal, oil, and gas
Three Affiliated Tribes (Fort Berthold, North Dakota)	Coal, oil, and gas
Osage (Oklahoma)	Oil and gas
Uintah and Ouray Ute (Utah)	Coal, oil, gas, and oil shale
Arapaho and Shoshone of Wind River (Wyoming)	Coal, oil, gas, and uranium

Figure 1. Decennial Census Count of American Indian and Alaska Native Population





25 Largest Tribal Groupings Among American Indians and Alaska Natives

(Alone or in any combination: 2010)

Cherokee	819,105
Navajo	332,129
Choctaw	195,764
Mexican American Indian	175,494
Chippewa	170,742
Sioux	170,110
Apache	111,810
Blackfeet	105,304
Creek	88,332
Iroquois	81,002
Lumbee	73,691
Pueblo	62,540
Chickasaw	52,278
South American Indian	47,233
Yup'ik	33,889
Potawatomi	33,771
Inupiat	33,360
Yaqui	32,595
Seminole	31,971
Central American Indian	27,844
Pima	26,655
Tlingit-Haida	26,080
Tohono O'odham	23,478
Comanche	23,330
Alaskan Athabascan	22,484

Download our maps at:
<http://go.usa.gov/WCrB>

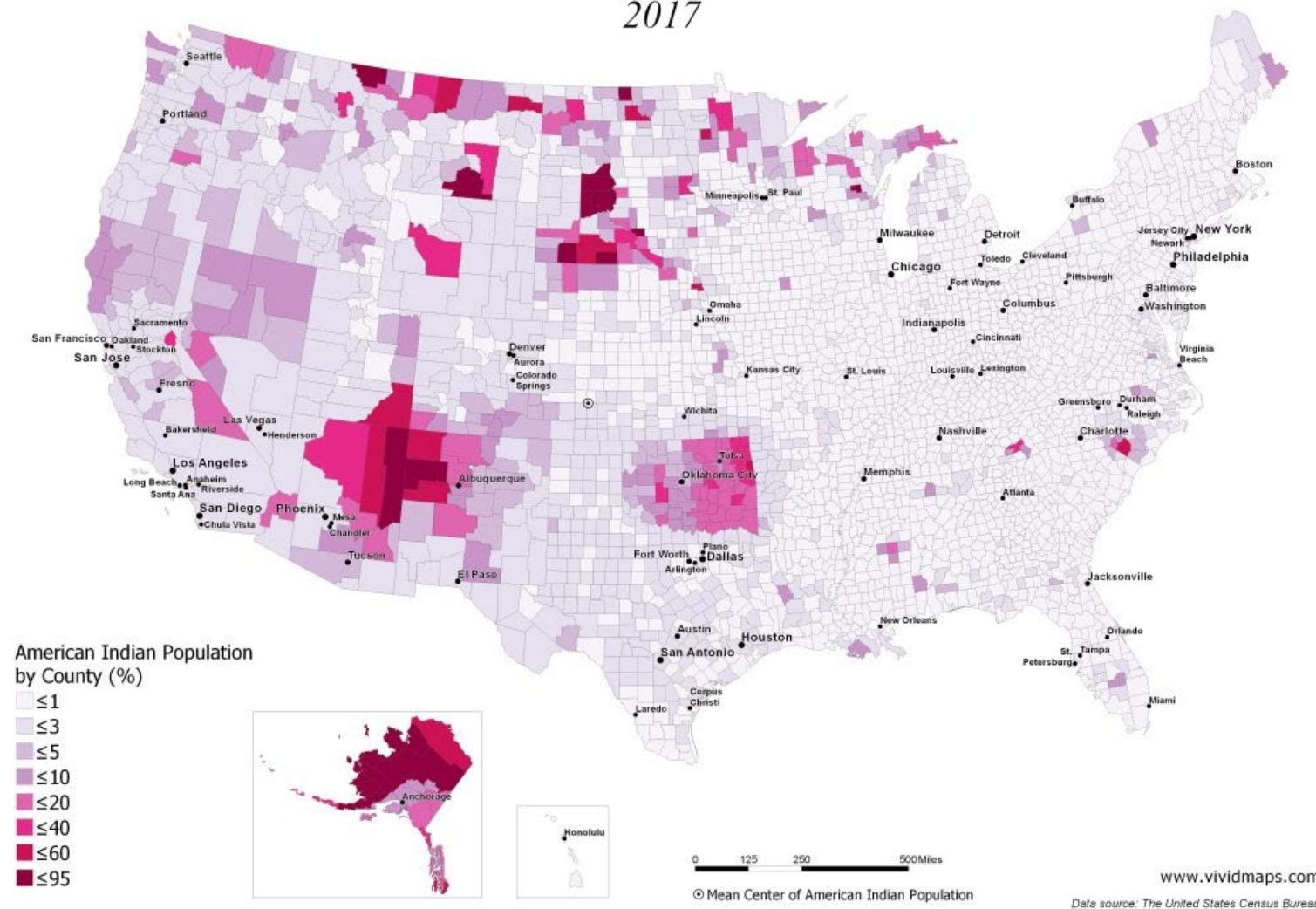


U.S. Department of Commerce
Economics and Statistics Administration
U.S. CENSUS BUREAU
census.gov

Source: 2010 Census Population and
Housing Tables (CPH-T-6).

American Indian Population by County

2017



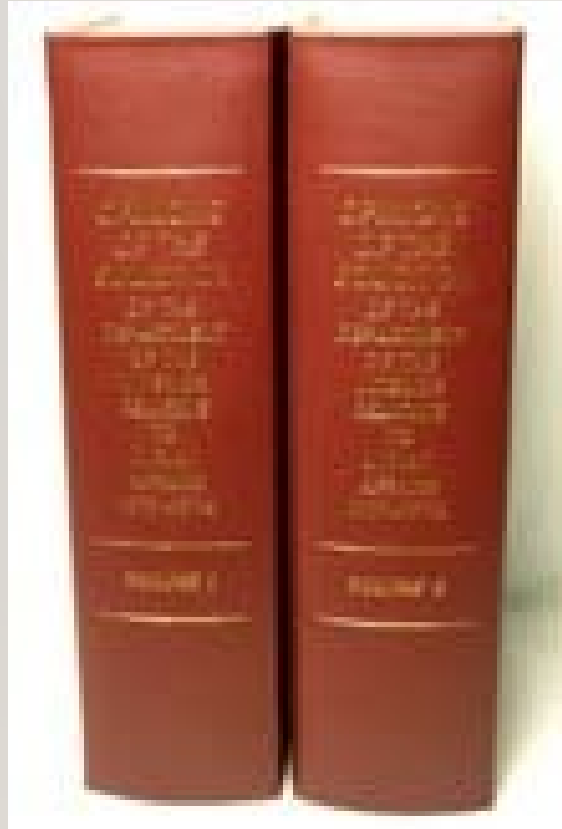
Snapshot of the economic conditions of American Indian families

Real per capita income, poverty rate, unemployment rate, and labor force participation rate of American Indians and Alaska Natives, compared to overall U.S. rates, 1990–2015

	AIAN				U.S.
	1990	2000	2010	2015	2015
Real per capita income	9,624	12,828	14,307	17,869	32,112
Family poverty rate	47.7	35.7	32.2	28.8	11.3
Unemployment rate	25.7	21.9	18.9	11.6	8.3
Labor force participation rate	50.9	51.5	52.4	55	63.7

Source: Randall KQ Akee, Katherine A. Spilde, and Jonathan B. Taylor, "The Indian Gaming Regulatory Act and its effects on American Indian economic development," *Journal of Economic Perspectives* 29 (3) (2015): 185–208; American Community Survey, "2006-2010 5-Year ACS Data" (n.d.); American Community Survey, "2011-2015 5-Year ACS Data" (n.d.). Dollar values are inflated to 2020 amounts.

Opinions of the Solicitor of the Department of Interior



Hilary Tompkins, former
Solicitor of the
Department of Interior



QUICK REVIEW

The sources of Federal Indian Law include ...

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C _____

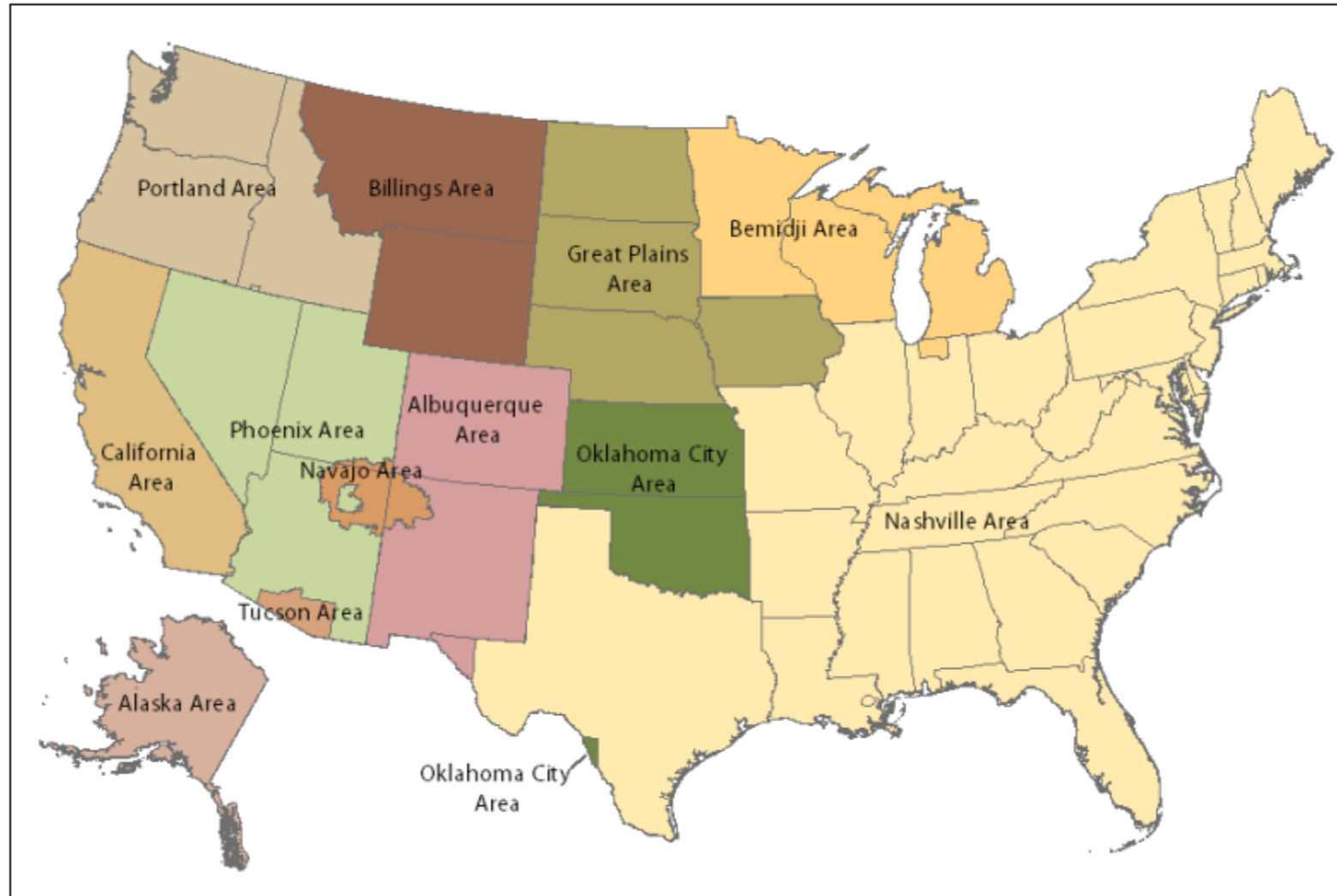
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Figure 1. Indian Health Service Areas

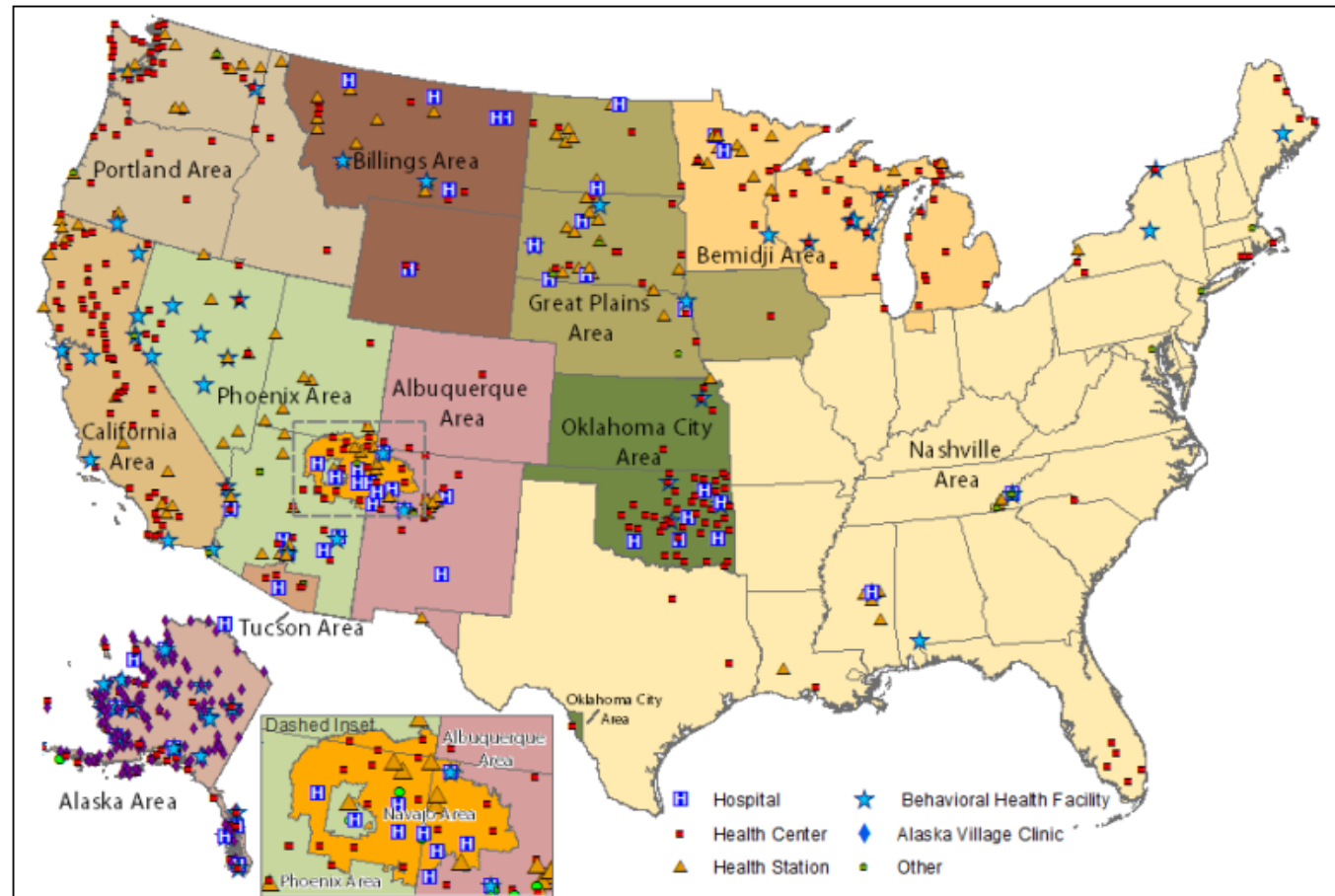
(as of March 2015)



Source: CRS Analysis of IHS data from U.S. Department of Health and Human Services, Indian Health Service, "Visualizing Data" at [http://www.ihs.gov/communityhealth/gis/Provided Geographic Data](http://www.ihs.gov/communityhealth/gis/Provided%20Geographic%20Data).

Note: Hawaii, not pictured, is part of the California area.

Figure 2. Locations of Indian Health Service Facilities, by Area



Source: CRS analysis of IHS provided data.

Note: The figure does not include Hawaii because there are no federally recognized Indian Tribes or IHS-funded facilities in Hawaii. The category “Other” includes facilities or programs that address specific concerns like emergency care, or dental care.



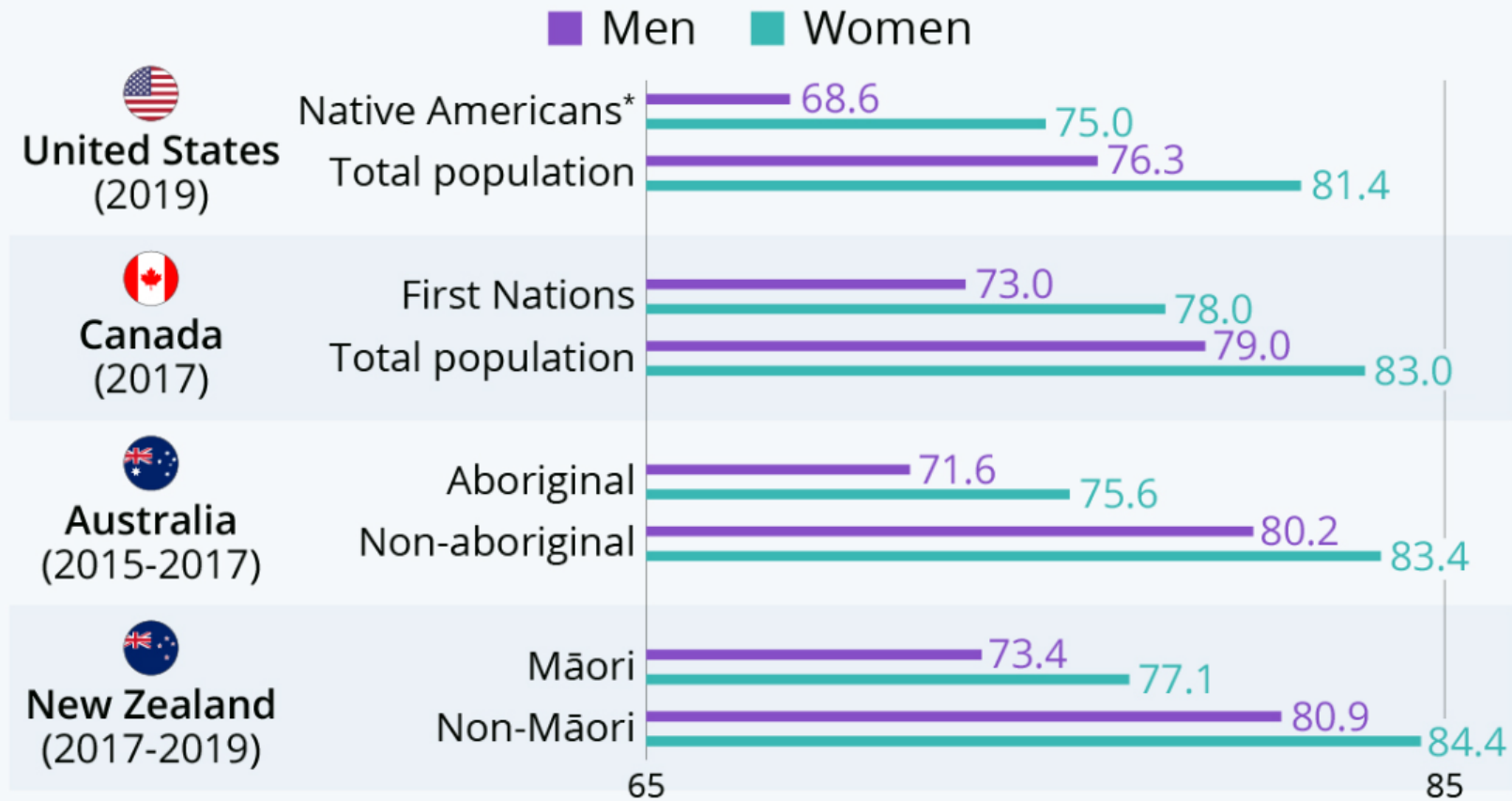
Table 1. Number of Facilities Operated by IHS and Tribes
(FY2015)

Type of Facility	Total	IHS Operated	Tribally Operated
Hospitals	46	28	18
Ambulatory (out-patient) facilities	606	90	516
<i>Health centers</i>	344	62	282
<i>School health centers</i>	7	3	4
<i>Health stations</i>	105	25	80
<i>Alaska village clinics</i>	150	0	150
Health facilities, total	652	118	534

Source: U.S. Dept. of Health and Human Services, Indian Health Service, "IHS Year 2015 Profile"
<https://www.ihs.gov/newsroom/factsheets/ihsyear2015profile/>.

The Global Chasm In Indigenous Life Expectancy

Indigenous life expectancy at birth in selected countries (by gender)



Risk for COVID-19 Infection, Hospitalization, and Death By Race/Ethnicity

Updated July 28, 2022

[Print](#)

Rate ratios compared to White, Non-Hispanic persons	American Indian or Alaska Native, Non-Hispanic persons	Asian, Non-Hispanic persons	Black or African American, Non-Hispanic persons	Hispanic or Latino persons
Cases ¹	1.5x	0.8x	1.1x	1.5x
Hospitalization ²	2.8x	0.8x	2.2x	2.1x
Death ^{3, 4}	2.1x	0.8x	1.7x	1.8x



Carol Schumacher, who was raised in the remote community of Chilchinbeto in the Navajo Nation, lost 42 family members to Covid-19 over the last two years. Angela Major/Wisconsin Public Radio.

POLL



American Indians and Alaska Natives are how much more likely than white households to lack indoor plumbing?

- 4 times more likely
- 8 times more likely
- 19 times more likely

POLL



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Navajo Nation residents are how many times more likely than other Americans to live without access to running water?

- 15 times more likely
- 43 times more likely
- 67 times more likely

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The average American family with piped water delivery spends \$600 per acre-foot of water. How much do Navajo families relying on hauled water spend per acre-foot of water?

- \$5,000 per acre-foot
- \$28,000 per acre-foot
- \$43,000 per acre-foot

POLL



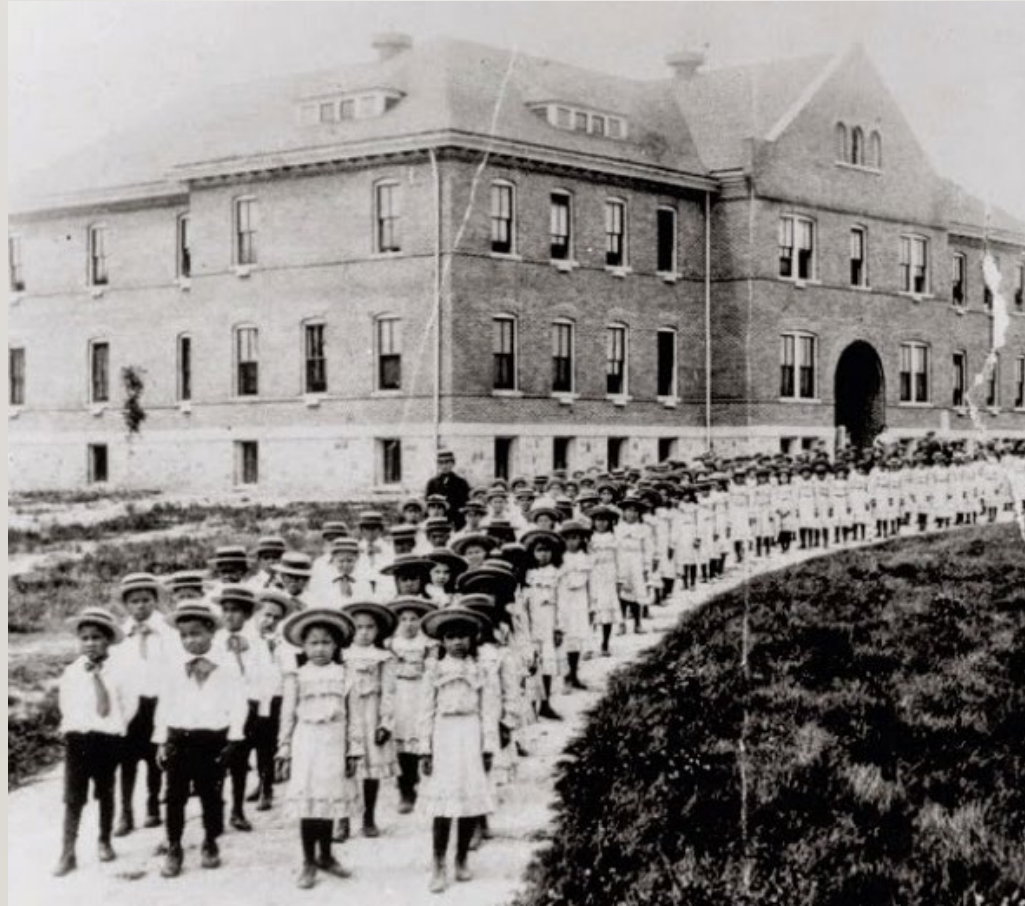
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**Child Separation Policies and the
Forcible Assimilation of Michigan
Indians**

Children of the Mount Pleasant Industrial Indian Boarding School in Michigan (1893-1934)

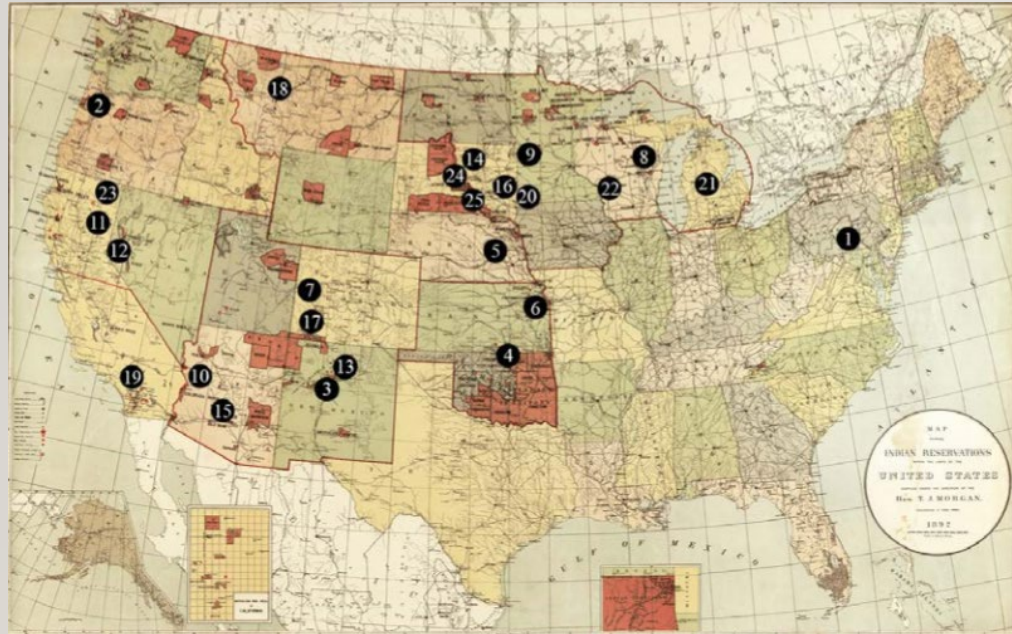


Indian Boarding Schools
“Kill the Indian and Save the Man”



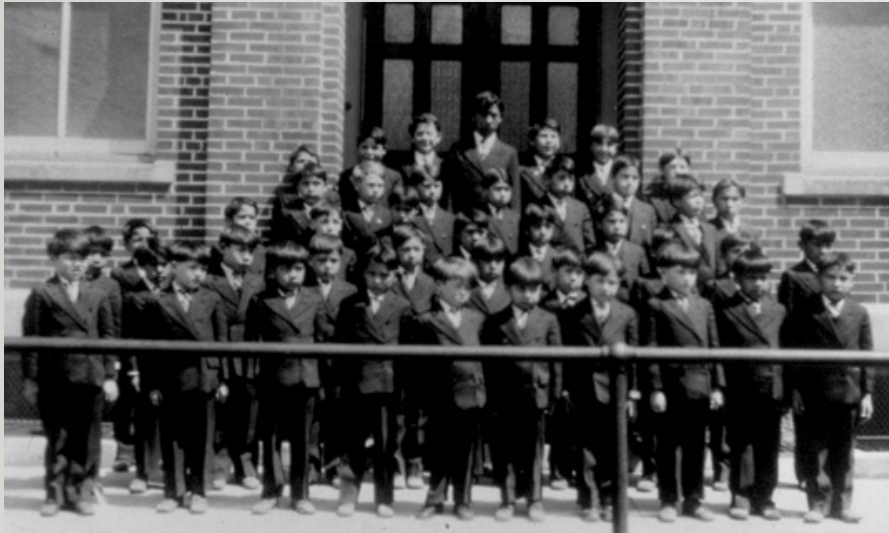
Indian Boarding Schools

“Kill the Indian and Save the Man”



- 25 federal government-run Indian boarding schools in the US
- Goal was to forcefully assimilate Indian children to become patriotic US residents without ties to tribal traditions
- Military-style regimentation
- Indigenous languages were forbidden; children were required to speak English
- Mandatory enrollment by 1893

**Children of the Holy Childhood
School of Jesus
Boarding School in Harbor
Springs, MI (1829-1983)**



ve: Female students at Holy Childhood circa early 1900s.

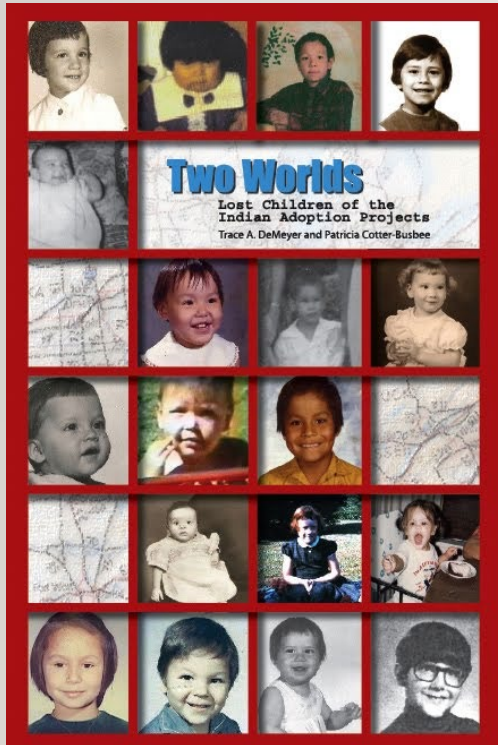
Children of the Carlisle Indian Boarding School in Carlisle, PA



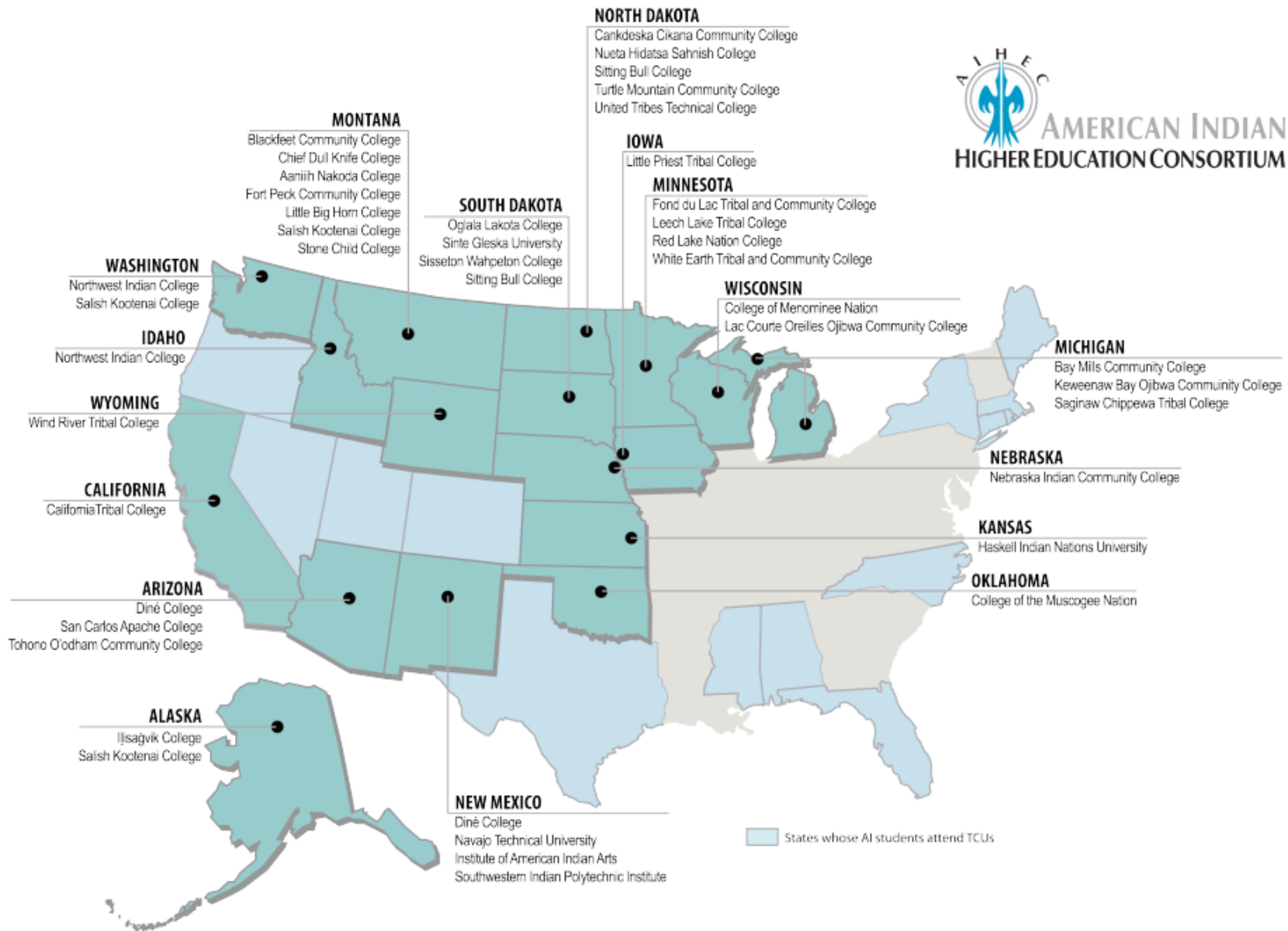
**Child-sized handcuffs used to forcibly
separate children from their families and
bring them to Indian boarding schools**



25-33% of Indian Children in Foster Care or Adopted



- Adoption and foster care considered less costly than continued funding of Indian boarding schools
- Tribes viewed as incapable of caring for their children
- Public and private agencies remove and place Indian children into non-Indian homes far from their families and communities
- The American Association on Indian Affairs conducted a study and found that 25-33% of all Indian children had been separated from their families
- In 16 states in 1969, 85% of Indian children were placed in non-Indian homes
- Congress responds by enacting the Indian Child Welfare Act (ICWA) in 1978
- Today, Indian children continue to be dramatically over-represented in the child welfare system





880 x 1,047



Mary Peltola's victory in Alaska adds to a series of recent wins for Democrats. Ash Adams for The New York Times