

THE ACCIP HISTORICAL OVERVIEW REPORT:

**THE SPECIAL CIRCUMSTANCES OF
CALIFORNIA INDIANS**

A Report by the
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I. Introduction: The Complexity of Indigenous California

Indigenous California was different from any other part of Native North America, and has maintained this difference to the present day. Of all the Native cultures in North America, Native California is the most diverse in ecology, society and history. As a result, it is difficult to present a unified picture of the state as a whole.

Aboriginal California was never a unified region, either culturally, ecologically or historically. It encompassed hundreds of thousands of people, thousands of villages and over one hundred separate languages, with many more dialects of those languages.¹ California Indians lived in deserts, on mountains, along the coastline, in the great central valley, on lake shores, beside rivers, and in the lush foothills.² Rainfall in the southeast was as little as 5 inches per year, while in the northwest, it may have been as much as 70 inches per year. The tallest and the shortest of all North American Indian groups lived in California: the Mojave in the south, and the Yuki in the north.³

The history of Native California's first contact with non-Indians and the resultant collision of cultures that occurred at each contact also varies from the history of the rest of Native America. The magnitude of contact ranged from the occasional Spanish ship stopping briefly on the southern and central coast in the 16th century, to the masses of American gold seekers who swarmed through the eastern and northern mountain valleys in the mid-19th century.⁴ Unlike other regions of the Country, California's late settlement included a direct policy of extermination.⁵

A. Pre-Contact California

California had the largest aboriginal population with the most diverse groups of any area in North America. These groups lived on relatively isolated land bases within an ecological diversity that required multiple strategies and technologies for survival. Individual groups had small populations, ranging from 500 to less than 100. The groups occupied relatively small homelands and lived in close proximity to other peoples who, in most cases, spoke a different language. It is possible that most California Indians were at least passively multilingual.⁶ Children learned early that they had to adapt linguistically, and to understand and speak at least one other language.

Most groups were politically organized as village communities. Villages were organized on the basis of kinship and typically consisted of extended families of one or two clans.⁷ Among many groups that shared a common language and culture, villages would come together for annual and seasonal ceremonies, as well as mourning ceremonies and other important tribal events.⁸

In situations requiring political solidarity (such as times of danger or resource scarcity), the villages formed alliances and confederations, albeit temporarily, for action. These alliances were flexible, with partners shifting whenever changes in natural, social or personal circumstances required.

The subsistence economies of pre-contact California do not fit into the usual hunting-gathering and agricultural typologies. Native Californians were not solely foragers, nor were they pure agriculturists; they were hunter-gatherer-harvesters, who maintained intricate calendar systems to utilize the natural bounties of California's diverse ecology.⁹ California's Native groups would mobilize to harvest seasonal natural crops, such as the October harvest of acorns. The settlement pattern thus consisted of permanent, or semi-permanent villages, in addition to seasonal harvest camps in areas distant from the villages.

Natural harvests, collected during short harvest times, were processed and stored for months. Surpluses were exchanged through regional trade networks, often between tribes living in widely diverse ecosystems.¹⁰ The extensive trade network that covered California was an important super-economic and super-political structure which allowed sedentary people, who harvested in small local territories, to acquire diverse resources without having to travel great distances.

Religion was the primary method of social control, and conflicts were handled through religious sanctions more often than through confrontation and warfare.¹¹ Proper social behavior was learned through childhood socialization into the rules of the community, and was reinforced by the reactions of tribal members to its infringement. Gossip, sanctions and ostracism served as immediate punishment to an offense of tribal laws. Infractions were mediated by leaders of families, villages or tribes, and if severe or covert, by medicine people. Although warfare existed, it was not the normal method for resolution of internal or inter-tribal disputes. Most often, the dispute was settled in the exchange of material goods and was often followed by the forging of new political alliances.

B. Early Contact with Non-Indians

Early contact occurred in different parts of California at different times, and with invaders from countries with different ideas about the position the Native people should have in their societies. Some coastal people briefly met the ships exploring the California coast in the 16th, 17th and 18th centuries, beginning 250 years before the Spanish missionaries and military arrived by land in 1769.¹² The ships stayed a few days at most, and political and economic interaction with Native people was minimal, although there was some exchange of goods.

1. Spanish and Mexican

The Spanish and Mexican invasion occurred in the southern and central coastal areas. Hispanic philosophy valued the Indian people as an essential workforce necessary for building

their missions, presidios, and pueblos, and for working in them and in the fields. They viewed Indian as people who could become citizens if enlightened through the teaching of Christianity. Although conversion to Catholicism was the primary goal of the priests and missionaries, royal support of the missions was motivated by political expansion.¹³

Under the Spanish, and later, Mexican system, some Indian people were permitted to live in tribal communities, called *rancheros* or *rancherías*, on or near the missions, *ranchos* and *haciendas*. As a result, remnants of original communities remained together. The communities were able to maintain cultural traditions and kinship ties, as well as a land base to which their right of permanent occupancy was recognized.¹⁴ Leadership in the missions, whether as mission *alcaldes* or as leaders of native revolts, followed traditional leadership principles of birthright and character.

The saddest and most serious effect of the Spanish occupancy was that diseases, such as measles, cholera, smallpox, diphtheria, and syphilis devastated the Native American population, which had no immunity to these diseases.¹⁵ The crowded missions were an ideal incubating ground for the diseases, resulting in extremely high death rates. Diseases also spread well beyond the areas which experienced direct contact. By 1830, the Indian population in Hispanic territory had been reduced by 75%.¹⁶

2. Russian

Beginning in 1803, in partnership with a Boston merchant and seaman, the Russians began to harvest the pelts of sea otters and seals off the California coast.¹⁷ California Indians were inexperienced sea hunters and could not supply the number of pelts needed for the insatiable demand in the Far East. Thus, the Russians recruited Aleutian Indians—the finest of sea hunters—and sent them to California on hunting exhibitions.¹⁸

Eventually, year-round hunting and supply posts were established, most notably at Fort Ross, near Bodega Bay, and a smaller installation on the Farallon Islands off the San Francisco Coast. However, contacts with California coastal Natives were generally limited to small-scale exchanges of goods.¹⁹ The character of the Russian presence never changed except that it diminished with the obliteration of the sea otters and seals, and with the increased Spanish and Mexican resistance to Russian intrusions south of the San Francisco Bay. By 1841, the Russians had virtually lost interest in California. All bases were eventually abandoned, Fort Ross being sold to Captain John Sutter for \$30,000.²⁰

3. British

Great Britain's presence was very much like that of Russia; her only real interest was in harvesting furs, though in this instance, the inland variety. In the early years, two rival British companies competed viciously for control of the fur trade in the Northwest, but after 1821, the powerful Hudson's Bay Company (HBC) gained absolute control and solidified itself by building

Fort Vancouver on the north bank of the Columbia River.²¹

The HBC brigades entered the northern California river valleys from Oregon. Though very few HBC brigades are on record, their impact on the Native population was devastating because of the epidemics they left in their wake. The 1833 malaria epidemic, which killed half the population of the Lower Sacramento and San Joaquin River valleys, came with the HBC brigade led by John Work.²²

4. American

American trappers and explorers came over the Sierra Nevadas in the east and hunted mainly in the northern part of the state outside of Mexican-occupied coastal California. The fur trappers moved relatively quickly through Indian country, and every team had expert negotiators who knew how to approach the Indian tribes. One of the ways by which the negotiators enlisted the aid of Indians in hunting territory was through marriages of convenience with their women. There was not much trapping in California, however, and few such marriages were recorded.

Indeed, the Spanish missions and Mexican ranchos remained the principal invasive presences in Indian country until the Gold Rush commenced in 1849. Suddenly, tens of thousands of miners, mainly young American males, poured into California from the east over the Sierras.²³ The American attitude towards Indians was shaped by their having fought, subdued and isolated Indians in the rest of the country for 300 years. "The only good Indian is a dead Indian," was a common belief among the miners and, for many northern tribes, first contact with these men was quick and brutal.²⁴

II. The American Period in California, 1850-1900

California Indians became fully known to Americans at the time of the 1849 Gold Rush. The gradual adjustments between Indians and non-Indians which had occurred over centuries on the east coast did not occur in California. The early history of contact outside of California was characterized by political alliance between White and Indian and the former's dependence upon the latter for protection and survival. European nations competed for territory, economic domination and political supremacy in America. As Native populations were decimated by disease, and territories were encroached upon by European invasion, Indian nations began to compete with each other for territory, political relationships with Europeans and food resources. During this time, alliances between Indian tribes and European nations shifted constantly as each struggled to claim American soil and resources. This kind of gradual acculturation between the two did not occur in California.

By the time of the Gold Rush, much federal Indian policy had already been created. Americans were ready to be "done with" the Indian problem in the country. The era of Manifest Destiny portrayed America as a wide open empty country, ready for settlement and civilization. The American view of Indian tribes embodied a harsh confidence in an ability to conquer the

native people, settle the land, and exploit available resources. Just as the trees in the east had been cut down to make clearings for settlement, and the sod cleared in the prairies to create fields, so the Indian people had to be cut down to clear the land for economic exploitation. California Indians of the second half of the 19th century bore the brunt of this view.

Federal policy up to this point had been to remove tribes from their homelands and transplant them to the western frontier. This solution to the "Indian Problem" was also considered in California, and tribes from the eastern parts of the state were taken to reservations in the west. The removal of Indians from Chico and other eastern regions to the Nome Cult Reservation in 1863 was one of many forced relocations following the establishment of reservations in northern California in the 1850s.²⁵ In Southern California, the Cupeño were also forcibly removed from their ancient homelands.²⁶ Some Indians from Northeastern California, including Pit River and Modoc warriors, were taken by train and relocated to Oklahoma's Indian Territory, where many of their descendants still live today.²⁷

A. The California Treaties

In addition to removal, the federal government decided to negotiate treaties with California tribes. Treaty Commissioners Redick McKee, George Barbour and O.M. Wozencraft, as well as other federal agents, negotiated 18 treaties with 139 signatories between March 19, 1851, and January 7, 1852.²⁸

The lands ceded under these agreements were not clearly specified but, at the time, the areas were presumed to encompass the entire state of California. The tribes retained approximately 8.5 million acres for reservations. However, on July 8, 1852, in Executive Session, the Senate refused to ratify the treaties because of objections from California's legislature and business community, and the treaties and related documents were placed under an injunction of secrecy until January 18, 1905.²⁹ Many of the signatory tribes, not knowing that the agreements would not be honored, relocated to the areas reserved under the treaties.

The California Land Claims Act of March 3, 1851, required every person "claiming lands in California by virtue of any right or title derived from the Spanish or Mexican government" to present their claims within two years.³⁰ As the tribes did not yet know that the treaties had not been ratified, they were unaware of any need to protect their aboriginal title. Moreover, Indians generally had no way of knowing of the existence and the implications of this Act, and neither the federal government, nor the State of California filed on their behalf. The notion eventually prevailed that the failure of California to appear before the special claims board on the tribes' behalf nullified tribal claims and brought their lands into the public domain.³¹ Thus, the California tribes were denied any legal interest in either their aboriginal lands or in the lands reserved by treaty.

This was tantamount to a death sentence for the Indians of California, because very little federal protection was available to them. California, located so far from Washington, D.C., often

acted the political maverick, as if it were independent of federal law. The State had been founded by economic opportunists who went on to occupy positions in local, state and federal government. Whenever these state officials found federal law counter to California's best economic interest, they simply ignored it or framed state legislation to counter it. Although such legislation conflicted with principles of federalism, it was supported and enforced within the State.

For instance, although Indian slavery elsewhere in the United States was rare, California had a state law that codified it. In 1850, the California legislature passed a law called the "Government and Protection of the Indians" Act, which provided for the indenture of loitering, intoxicated and orphaned Indians, and regulation of their employment. It also defined a special class of crimes and punishment for these Indians.³² Under the Act of April 22, 1850, Justices of the Peace took jurisdiction over all cases by, for or against Indians. Non-Indians could take any Indian male under age 18, or female under age 15, before a Justice of the Peace, claim the child had not been kidnapped, and acquire custody of the child and proprietorship over his or her earnings until he or she reached majority. This action was subject to a \$10 fine and loss of custody in the event of neglect or mistreatment of the child.³³

A non-Indian could not be convicted of a crime on the testimony of Indians. Justices would instruct local Indians on the law and hold the headman responsible for all infractions by tribal members. Indians were subject to arrest without warrant by any non-Indian, and non-Indians could post bail for Indian convicts and hire them out for labor until they had worked off their fines. The Act also prohibited traditional controlled burnings of prairies to eliminate pests and assure a good crop of native food plants.³⁴

In contrast to the Spanish and Mexican models of Indian labor exploitation, the American model did not allow communities to live and work in a single area. Laborers were taken from their homes and families at a young age and put to work in far-away locations. Men could find only seasonal, low-paying work, usually away from their native communities. Moreover, the Indian communities' right of permanent occupancy was not recognized.³⁵

In 1850, the state government began subsidizing military campaigns against Indians with the justification that settlers needed protection from the Indian threat, but in truth, allowing the indiscriminate killing of all Indians. A program of genocide, popularly called "extermination," was carried on by the permanent "California Volunteer Militia," and by temporary bands of miners and ranchers organized for the express purpose of killing Indians.³⁶ As late as 1870, communities were raising subscriptions to support the Volunteers, and paid bounties for Indian scalps. Over 4000 deaths were attributable to military homicide.³⁷

The law codifying Indian slavery was amended in 1860 to expand the scope of slavery to include adults. The state policy resembled the "black codes" adopted by the slave states as a means to control both free blacks and bondsmen. Indians in California lived under the constant threat of arrest and auction. The law remained in effect until 1863. Yet, in 1866, three years after Lincoln's Emancipation Proclamation and one year after the adoption of the Thirteenth

Amendment, which abolished slavery throughout the United States, a special Bureau of Indian Affairs investigator found that Indian slavery was “not uncommon” in California.⁴⁰

The reservation system in California operated from 1853, when Congress appropriated \$250,000 to establish several reservations—Nome Lackee, Nome Cult, Klamath, Fresno, Mendocino, and King’s River Farm—until 1864, when they were all closed.⁴¹ In 1864, Congress authorized the Superintendent of Indian Affairs to set aside four tracts of land “for the purposes of Indian reservations, which shall be of suitable extent for the accommodation of the Indians of said State.”⁴²

The California Reservation system was unlike that of any other state. All the California Indians became landless when the Senate refused to ratify the treaties, which would have set lands apart for the California Indians. Congress established reservations on lands leased or purchased by the government, rather than on land in which title was recognized as belonging to the Indians. It refused to recognize the distinct organization and cultures of the individual bands or tribelets, and consequently, Indian people from a very large geographic area were collected onto small reservations, far from their homelands. The United States also failed to provide adequate lands or sufficient resources to make the reservations sustainable, and they became pockets of human poverty, despair and abuse.⁴³ California Indian survivors of the eradication and removal campaigns found uneasy refuge at these places.

Because of their remote locations, the California military forts, to a certain extent, operated independently. The central authority of the U.S. Army was unable to monitor the distribution of resources in the remote areas, or to keep a watchful eye on the outposts. Army officers assigned to remote California outposts usually did not stay long, seeking better posts within the larger society. Consequently, Indians on reservations received minimal supplies, were subjected to abuses by military men, and received little communication about policy that directed reservation conditions.⁴⁴

In 1864, Congress passed the Four Reservations Act, which authorized the Hoopa Valley and Tule River Reservations, and formally established the Round Valley Reservation.⁴⁵ No fourth reservation was ever completed under this Act. Besides the military forts, these were the only lands secured for Indian occupation within the State. Because of the disparity between the number of tribes and established reservations, tribal communities that had little in common were often forced together, in areas where they did not know how to (or were not allowed to) exploit the natural food resources. Being placed in close proximity to traditional enemies led to tension, anxiety and feuding among the tribal groups.

The aboriginal population in California has been estimated to be 310,000.⁴⁶ By 1845, the Indian population in California had been reduced to no more than 150,000.⁴⁷ During the worst decade for California Indians—between 1845 and 1855—the population declined by two thirds, to just 50,000:

This desolation was accomplished by a ruthless flood of miners and farmers who annihilated the natives without mercy or compensation. The direct causes of death were disease, the bullet, exposure, and acute starvation. The more remote causes were insane passion for gold, abiding hatred for the Red man, and complete lack of any legal control.⁴⁸

By 1900, the California Indian population had dropped to its all-time low of 20-25,000.⁴⁹ Thus, the pre-contact population of California Indians had been reduced by at least 92%.

Congress acknowledged an obligation to the remaining Indian population, but did nothing, presuming that a few more years of assimilation and disease would either absorb them into the mainstream, or kill them off.

In 1887, the General Allotment Act (Dawes Act)⁵⁰ authorized the breakup of reservations into individual allotments, with un-allotted land made available for public sale. The rhetoric of allotment and assimilation policies emphasized independent, small-scale agriculture as the salvation of Indian people nationwide. On the national level, within 50 years, nearly two-thirds of former reservation lands were lost, and the once-powerful tribal governments were in decline. In California, though less than one-fourth of the tribal land was taken out of trust in the allotment process, because the land base was already so limited, it further impoverished the Indian communities. Still, much of the allotted land was retained by Indian owners. By 1893, there were 2,300 Indian allotments in California.⁵¹

Following the publication of Helen Hunt Jackson's A Century of Dishonor in 1881, and Ramona in 1884, there was organized activity to provide relief, particularly for the Mission Indians in Southern California. In 1891, the Mission Indian Relief Act set aside land for 14 reservations in Southern California.⁵² After 1900, Indian advocacy organizations grew in response to the public exposure of the government's treatment of the California Indians.⁵³

B. Native Response to the American Period

Native response to the events of the late 1850s corresponded to the diversity of experiences throughout California. Indian labor was especially prized during the early Gold Rush years when all other laborers were heading for the gold fields. A vast majority of the laborers, mechanics and house and farm servants of San Diego and Los Angeles counties were Indians. Farther north, Indians worked as lumbermen in Monterey, as launderers in Mariposa, as deck hands on vessels in San Francisco Bay and the Sacramento River, and as sheep shearers along the Tule River. In the 1850s and 1860s, there was also a constant demand for Indians as domestic servants, manifested in the frequent kidnapping and indenturing of Indian women and children.⁵⁴

The most important use of California Indian labor in the early American period was in agriculture. In the early 1850s, the miners' demand for beef produced a California cattle boom. Most of the labor on cattle ranches was performed by California Indians. In the Sacramento and

San Joaquin Valleys, cattle ranching was common until the mid-1860s, when following several rainy winters, wheat was planted. Cultivation techniques were labor intensive and Indians worked as harvesters on the farms in central and northern California. By the 1870s, California farming had become more mechanized, which reduced the need for cheap Indian labor.⁵⁵

In the 1880s, there was renewed demand for cheap labor, as fruit growers and specialty farmers sought to reduce production costs. But by then, there were not enough California Indians to fill the need.⁵⁶

As their population declined, Indian groups activated traditional alliances and partnerships. A group under threat would move to the territory of an ally, where they would be taken in, fed and protected. The alliances of this period were structured along traditional patterns of political organization, such as marriage, extended family, shared religious system, and language group.⁵⁷ When indigenous communities were forced to fragment or disperse, they divided along family lines of kinship and intermarriage. For example, in Pomo country, groups under threat would move to the territory of their relatives living in other Pomoan language communities, or with White spouses. Thus, structural segments of the societies survived, even where whole communities could not.

Traditional leadership patterns also were undermined by the decline in population and by the pressure of newly imposed institutions. Army officers in tribal territories would often choose new leaders from among men who were not traditional leaders, just because they were willing to work with them. Many new leaders were given old military uniforms to mark their status in the new society.

When California Indians developed their own political institutions against the powerful non-Indian forces, their leaders and spokespersons became targets for imprisonment and murder.⁵⁸ As it became increasingly difficult and dangerous for men to speak for their tribes, women began to assume positions of community leadership. The men, who had been occupied as hunters, fishermen and religious and political leaders before contact, were now denied access to subsistence resources and political positions of power, and were forced to find work on the farms, ranches and mines owned by white Americans. After 1860, vagrancy laws targeting Indian men came into full effect.⁵⁹

Even as the Indian religious world view was being assaulted by new powers and threatened by the drastic decline in population, new religious movements were being born in California, or brought in from other tribes.⁶⁰ The 1870 Ghost Dance was brought by Paiutes from Nevada who were working as laborers in the Central Valley farms. The Ghost Dance spread rapidly and was adopted by Pomos, Southern Maidus, Southern Valley Yokuts, and others.⁶¹

California Indians used multiple strategies to survive and maintain their cultures. Some married non-Indians who could offer protection, while others moved to cities and entered the mainstream society to a limited extent. Still others acculturated more thoroughly, learned English,

wore American clothing, and learned new skills. Some ultimately chose to raise their children in both white and Indian ways.

Survivors of communities under assault hid in the foothills, far from the main population centers, but within familiar territory. Often these journeys took Indians into sacred "high country," where the landscape, plants and animals were known to the spiritual leaders who led the people in the preservation of their lives and cultures.⁶² Both men and women leaders took on the role of community coordinators. As these groups were unprotected by federal status or reservation residency, leaders did not make their status public to the outside world. Some communities lived quietly, without a public presence as Indian; others associated with the Hispanic population in order to escape persecution and maximize chances of survival.

III. Early 20th Century California Indian Social History

The early 20th century was dominated by policies of social engineering. Indian boarding schools were the vehicles of socialization and acculturation.⁶³ The Indian schools were driven by the same federal policy of assimilation that was behind the Dawes Act. They forced the socialization of children without cultural influence or parental interaction. In fact, the schools were explicitly created to wean young Indians away from the old ways and into the American mainstream, albeit at the lowest social and economic levels.⁶⁴

Indian children were frequently punished in brutal and humiliating ways for displaying attachment to their home, family, culture, and language. This created a backlash among many of the California Indian children: many children ran away, and some who returned to the reservations brought with them a fear and hatred of the BIA, the schools, external authority, and any programs brought in to help them.

California Indians who were able to keep the allotments created by the Dawes Act used the land to maintain their cultures. The tribes separated into lineage-like "families," some of whom always lived on the allotted land, and provided a home-base for others. This was unlike the situation in other parts of the country, where individual tribal populations were often too large to be supported as a community on any one person's allotted land.

California was remarkable in the early 20th century, both for the miserable social and economic conditions under which landless Indians lived, and for the number of civic-minded organizations that formed to respond to the deplorable conditions. The Sequoia League, Mission Indian Federation, Northern California Indian Association, Indian Board of Cooperation, and the California Indian Brotherhood were all socially and politically oriented, and were unique in that California Indians played important roles in their structure and function. The Indian Board of Cooperation, for example, incorporated under the laws of California in 1910, and encouraged Indians to undertake self-determination on their own terms.

The Indian Board of Cooperation addressed many social welfare issues, such as securing

educational opportunities and funding for Indian children; health care for Indians in county facilities; monetary relief for the needy; Indian child protection and allowances for the care of orphans; and legal relief for Indians who needed it.⁶⁵ It also lobbied for other causes at the state and federal levels. All Indians of California were eligible to join, and members paid dues, if possible, and shared in the work. At various times, the organization had over 80 auxiliaries and over 10,000 members.⁶⁶

In 1904, a clerk in the Senate Archives discovered the California Indian treaties, which had been "lost" for 52 years.⁶⁷ This discovery added to the public concern over the condition of California Indians. In 1905, the Commissioner of Indian Affairs initiated an investigation in response to reports that California Indians were literally starving to death.⁶⁸ That same year, Congress authorized an investigation into the condition of Indians in Northern and Central California, and directed the Commissioner to report to Congress "some plan to improve the same."⁶⁹ C.E. Kelsey, a San Jose attorney and officer of the Northern California Indian Association, was appointed Special Agent to the Commissioner to carry out the Congressional mandate.

Six months from the date of his appointment, Kelsey completed his report and submitted it to the Commissioner of Indian Affairs. According to the report, Agent Kelsey "visited and personally inspected almost every Indian settlement between the Oregon line and the Mexican border."⁷⁰ Kelsey found that, for the most part, Indians in Northern California lived in small, scattered bands and remnants of bands averaging about 50 members.⁷¹ The Indians were forced to live on unusable lands abandoned by settlers. If they succeeded in making the land productive, they faced eviction by nearby non-Indian landowners:

It is not strange that the Northern California Indians have ceased to try to have gardens, when any appearance of thrift is warrant for their ejection from the premises. Indeed, most of them at the present time are living on land where, for lack of water or worthlessness of the soil, gardens are impossible. Most of the Indians have now been crowded out of anything like good soil and are found in waste places not having value enough to attract anyone else. It is now a matter of difficulty for an evicted Indian to find any place of refuge, except in other Indian settlements already overcrowded.⁷²

Kelsey attributed the continuing decrease in the Indian population of the state to the lack of a secure Indian land base. He noted that "[t]he entire Indian population of Northern California has decreased . . . by about 1,100 in the last three years, most of the decrease being in the landless bands."⁷³

Kelsey emphasized the need for immediate relief for the homeless Northern California Indians,⁷⁴ and recommended that Congress buy small parcels of land for these destitute and displaced people, indicating "that the land should be of good quality with proper water supply, and shall be located in the neighborhoods in which the Indians wish to live."⁷⁵ He also made

specific recommendations for the improvement of the reservations in Southern California.⁷⁶

On March 29, 1906, the Commissioner of Indian Affairs, after "a comprehensive review," approved Kelsey's report and ". . . strongly urge[d] that Congress be requested to make an appropriation of sufficient amount to enable the Department to carry out the plans proposed."⁷⁷ Congress responded by appropriating \$100,000 to acquire land for California Indians. Similar appropriations were passed almost yearly until 1933.

In 1934, the Indian Reorganization Act granted separate authority to the Secretary of the Interior to acquire land for Indian tribes and individuals.⁷⁸ The land acquisition program ultimately resulted in the creation or purchase of some 82 rancherias.⁷⁹ While some rancherias were established for the benefit of a particular band or group, others consolidated multiple groups. The rancherias did not always provide proper home sites, irrigable land, water supply, and other necessities. In fact, several rancherias were virtually uninhabitable due to a lack of fresh water supply.⁸⁰ Thus, the main goal of the land acquisition program--to provide homeless California Indians with a secure and usable land base--was not realized in most cases. However, the lands that were acquired did provide a refuge, if only temporary, and limited means of subsistence to many California Indians.

In 1928, Congress permitted the Indians of California to sue the federal government for compensation for the loss of reservations and other benefits promised under the unratified treaties.⁸¹ The claims of all tribal plaintiffs were consolidated and all Indians living in California on July 1, 1852, and their descendants, were qualified to participate.⁸² This was the only case before the U.S. Claims Commission that was not brought by an individual tribe, until a second claim was brought by the Indians of California in 1946.⁸³ In effect, all Indians in the state were treated as one tribe, the "Indians of California," and all members were listed on one roll. Although not everyone was aware of which treaty, if any, their own ancestors had signed in the 1850s, they were allowed to share in the settlement, based on the Congressional and administrative presumption that all Indians of California, given the choice, would have chosen treaty-making to out-right annihilation.

The second case was authorized by the U.S. Indian Claims Commission Act in 1946, and concerned compensation for land ceded in the unratified treaties.⁸⁴ A second roll, assembled from 1950-55, contained 36,095 California Indian names. The two California Indian land claims cases took over half of the 20th century to settle--from 1928 until 1963--with some additional legal activity up to 1974. The first case was litigated in the U.S. Court of Claims until its settlement in 1944. Payment occurred in the 1950s and in 1974.⁸⁵ The second case was settled in 1963, although some claims remain outstanding to this day.

Because the Land Claims Cases rested on the issue of proving tribal identity through descendancy, mainly from the 1928 and 1955 Judgment Rolls, many California Indians today use the Judgment Rolls as proof of tribal status. Probably more than any other issue in the 20th century, the Land Claims Cases have mobilized California Indians in the common cause of

defining their ancestry and homeland.

IV. Post World War II—The Termination and Relocation Policies

The period following World War II was an era of tremendous change for Indians in California and nationwide. The war accelerated the detribalization process for many Indians as they were forced to choose between remaining isolated on the one hand, or adopting mainstream appearances and behavior, and giving up their cultural traditions. Many Indians lost their fear of the non-reservation world as they learned to survive in the mainstream workforce.

Before the war, almost all Indian people in California were descendants of Native Californians. But as the Indian New Deal relief programs dried up, and the wartime economy offered jobs off the reservation, Indians realized that they could find steady employment if they were willing to leave their homelands.⁸⁶ Nationwide, 40,000 Indians left Indian Country to work in cities like Los Angeles, San Francisco and San Jose. By 1950, some cities in California had significant Indian populations, especially Los Angeles and the San Francisco Bay Area.

During the 1940s, personnel within the BIA began to propose termination of the federal trusteeship over Indians. In 1953, the House passed House Concurrent Resolution No. 108, which codified the era of Termination.⁸⁷ Termination was a federal policy to end the Indian's status as wards of the United States which included discontinuing most government services to Indians and the division of tribal assets among individual members.⁸⁸ While the process was meant to be collaborative, many of the regulations and activities were implemented by the government, without tribal consent. As Felix Cohen, the brilliant Indian law scholar, wrote in 1953:

In place of the old Jeffersonian formula of "consent" of the governed, one finds the Indian Bureau now using the formula of "consultation." In practice, "consultation" means trying to persuade the Indians to go along with a Bureau program; if the effort fails, then the Bureau asks Congress to adopt the Bureau program anyway.⁸⁹

In the same year, Congress passed Public Law 280, which gave five states, including California, civil and criminal jurisdiction over most Indian lands within their borders.⁹⁰ This law diminished federal responsibility, as states were to assume many of the services to American Indians. The termination directive also called for federal withdrawal of all government intervention in Indian affairs. So, in 1955, the BIA ended all health services for California Indians and subsequently withdrew vocational education, economic development programs, water and sanitation development projects, and other services.⁹¹ It was expected that California Indians would become eligible for local, county and state aid programs. There was confusion, however, among both government officials and Indian people about the transfer of responsibilities, and many Indians were excluded from services altogether.⁹²

Then in 1958, after several failed attempts to terminate California tribes, the Rancheria Act was passed.⁹³ It listed 41 California tribes that were to be terminated after certain improvements had been provided to the Rancheria lands, and the tribes had consented to a plan for distribution of their assets.⁹⁴ Thirty-eight of the listed tribes eventually “consented” to termination, largely because the BIA misrepresented the purpose of the program, and coerced tribal members to approve the distribution plans.⁹⁵ Following termination, tribes and their members were ineligible for federal benefits provided to Indians.⁹⁶

In California, Indian people who had relocated to urban areas as a result of the relocation and termination policies generally did not congregate in Indian neighborhoods in the cities. While African Americans felt the common bond of identity with each other and lived in common neighborhoods, Indian people who came from California reservations identified with their tribes and were not drawn into a neighborhood with Indian families of other tribes. Consequently, there has been some difficulty ascertaining the true urban Indian population in California cities.

The urban estrangement eventually encouraged many displaced Indian people to return home, but for those who remained, the isolating aspects of urban life led to a mobilization of new forms of Indian community. These were urban networks with Indian institutional centers, such as the Intertribal Friendship House in Oakland, California. The centers brought Indian people together inter-tribally and, over time, urban Indians began to identify themselves as “American Indian” rather than as members of specific tribes. Powwows, dances, bowling teams, softball teams, and other inter-tribal activities were all part of the process of re-socialization. Urban centers also became breeding grounds for American Indian activism.⁹⁷

The increasing trend towards urbanization among California Indians and the growth of out-of-state Indian populations in the cities have had a tremendous impact on Native California. One of the effects of relocation was the loss of talented men and women, who would otherwise have provided efficient tribal leadership. Even when young people returned from temporary relocations to cities, they often came trained in an urban ethic of materialism and competitiveness, which clashed with traditional values of community and cooperation.

California occupies a remarkable position in the history of Relocation efforts. In the 1950s, many out-of-state reservation Indians, especially from the Southwest and the Plains, were brought to California cities. In 1960, the U.S. Census showed 39,014 Indians, indigenous and out-of-state, living in California. The 1970 U.S. Census showed that number more than doubled at 91,018. Since 1970, more Indians in California have lived in cities than on reservations, and Native Californians have been outnumbered by Native Americans from other states. At present, about half of the Native California Indians live on reservations, the rest live in cities. By the 1980s, more than half of all relocated Indians in the United States had chosen to settle down in Los Angeles or the San Francisco Bay Area, and the 1980 U.S. Census reported that California had the largest American Indian population: 198,095. The 1990 U.S. Census found California to be the state with the second largest American Indian population, behind Oklahoma, with a population of 242,164—an increase of 22% since 1980. Urban immigrant native people

accounted for more than half of the total Indian population.

In modern California, three distinct Indian worlds or realities have developed: the indigenous reservation life, the urban life, and somewhere between the two, the life of the unacknowledged indigenous.

Unacknowledged California tribes share aspects of both the reservation and urban Indian worlds. While they are indigenous California tribes, their lack of a land base and their unacknowledged status often force them into urban centers where jobs and services are more readily available than on reservations where they have no membership or rights. The tribal status problems of California's unacknowledged tribes remain one of the great inequities of federal-Indian relations in California. Until these status issues are resolved through definitive congressional or federal executive action, these indigenous peoples will be denied their rightful place in native California life, and the historic injustices of federal-Indian relations in California will be perpetuated.

V. The 1960s and Indian Activism

In the 1960s, the Kennedy and Johnson administrations' War on Poverty increased money to reservations to deal with high unemployment, and the worst demographic health problems in the country. Money was dispensed through federal agencies, such as the Office of Economic Opportunity and the Economic Development Administration.⁹⁸ Job training and administrative positions for Indian people were created, thereby producing politically trained Indian administrators who later went home to become tribal leaders. In conjunction with the opening of employment opportunities for Indian people, Native American college enrollment increased. Educated and trained Indian people could find employment in government positions, and for the first time, could hope to find jobs on the reservation administering federal government programs.⁹⁹

In 1969, most reservation Indians earned less than \$3000 a year per family.¹⁰⁰ An estimated 90% of reservation homes needed replacement or major repairs; 50% to 70% of houses had inadequate sewage systems; and about 40% of the houses had contaminated water.¹⁰¹ More than 40% of rural and reservation Indians had not studied beyond the 8th grade, and the dropout rate of Indian students was three times that of non-Indians.¹⁰² In response, the BIA restored certain services to California Indians, including vocational and college scholarship programs.¹⁰³ New inter-reservation, Indian-run agencies, such as the California Rural Indian Health Board, were formed to apply for and administer the new federal benefits.

Tribal governments during the 1960s administered an increasing number of services, their resurgence supported by federal anti-poverty money.¹⁰⁴ This was a period during which a great deal of federal money went into creating new social programs to decrease the suffering of poverty-stricken Indian families. By the 1980s, however, the optimism surrounding these social programs gave way to the realization that they rarely led to economic development and self-government among the tribes. Federal anti-poverty programs had the effect of increasing tribal

dependency on federal funding, but did, however, educate the federal government about tribal governments, and trained Indians to run their own tribal programs.¹⁰⁵

In the 1960s, the Civil Rights Movement focused primarily on African American civil rights, some issues of individual rights, social policy, and the structure of American values and opportunity. For many Native Americans also, the period between 1968 and 1980 was one of civil rights activism, Indian self-determination, and the assertion of tribal rights.

In 1969, a group of Indian people from various tribes nationwide, organized by leaders of the American Indian Movement (AIM), riveted the nation's attention as they occupied Alcatraz Island—the old federal penitentiary—in San Francisco Bay.¹⁰⁶ The occupation force issued “The Proclamation from Indians of All Tribes,” which outlined Native peoples' dissatisfaction with federal trusteeship. AIM, which had its roots in the Plains, especially on the Sioux reservations of Pine Ridge and Rosebud in South Dakota, grew quickly in urban inter-tribal California. By the 1970s, the Native American civil rights movement had emerged as Red Power activism.

VI. The Self-determination Era

In 1970, President Richard Nixon proposed a new political context for efforts to revitalize reservation economies.¹⁰⁷ He sought a middle ground of self-determination without termination, and made the connection between sound reservation economies and self-government. Rather than making the old federal offer of an exchange of economic benefits for terminating the federal relationship, he proposed a policy in which the federal government would work with the tribes on economic development to bolster tribal solidarity:

This must be the goal of any new national Indian policy toward the Indian people: to strengthen the Indian's sense of autonomy without threatening his sense of community. We must assure the Indian that he can assume control of his own life without being separated involuntarily from the tribal group. And we must make it clear that Indians can become independent of Federal control without being cut off from Federal concern and Federal support.¹⁰⁸

Since that time, Congress has passed several significant Acts affecting Native Americans, such as the Indian Self-Determination and Educational Assistance Act of 1975.¹⁰⁹ Signaling a significant reversal in public policy, it directed the BIA and Indian Health Service to contract with tribes that wanted to provide programs and services previously administered by those agencies. This meant that the federal government recognized tribal governments to be long-term institutions capable of taking over many of the functions performed by the federal government.

In 1977, “A Report to the Commissioner of the Bureau of Indian Affairs Regarding Funding of Bureau Programs in the Sacramento Area” was issued.¹¹⁰ It documented the mistreatment of California Indians, the failure of the Termination policy in California, and the disparities in the BIA's funding of Indian programs in California compared to the rest of the

country.¹¹¹ The distinctive, separate, and underprivileged status of California Indians was also the finding of previous and subsequent investigations.¹¹²

In 1978, Congress passed the Indian Child Welfare Act, by which Indian communities were empowered with regard to adoption and other family-related matters, and especially in protecting tribal interest in retaining custody of children of enrolled tribal members.¹¹³ The goals of the Act, however, have been only partially met. The problems with the implementation of the Indian Child Welfare Act in California are discussed more fully in the ACCIP Community Services and Cultural Resources reports.

Also in 1978, Congress passed the American Indian Religious Freedom Act.¹¹⁴ The Act is a statement of federal policy to protect the rights of Native Americans to the free exercise of their traditional religions. Although the Act requires federal agencies to consider Indian religious values and avoid unnecessary interference with Indian religious practices, the Act has been very narrowly interpreted and is not enforceable through a private cause of action.¹¹⁵ In interpreting the Act, the U.S. Supreme Court has ruled that the U.S. Forest Service could cut a logging road through a mountain area held sacred and used for religious worship by the Karok, Tolowa and Yurok tribes.¹¹⁶ In 1990, the Court upheld Oregon's prohibition against the ingestion of peyote by members of the Native American Church.¹¹⁷ Although the latter decision was legislatively overruled,¹¹⁸ the American Indian Religious Freedom Act has not proven to be an effective tool in protecting Native religions. This issue is discussed more fully in the ACCIP Cultural Resources Report.

In 1979, Congress passed the Archaeological Resources Protection Act,¹¹⁹ which requires permits for archaeological work on federal lands and contains provisions for getting the consent of affected Indian tribes, if the work impinges on their lands or heritage. California already had such a law in place and had established the Native American Heritage Commission, which notifies archaeologists of the location of all of the Indian tribes in the state, and maintains a confidential Sacred Lands file, which must be consulted before archaeological projects can proceed.¹²⁰ After 1979, state and federal agencies which managed land in California, such as the California Department of Parks and Recreation and the U.S. Bureau of Land Management, created Indian Advisory Committees to advise staff members on issues of policy and implementation where agency work impacted Indian lands or resources. The various laws protecting archaeological resources are discussed more fully in the ACCIP Cultural Resources Report.

In the late 1960s, California Indian Legal Services (CILS) was established. Commencing in 1967, CILS has led the effort to reverse, through litigation, the termination of the California rancherias, and to restore to California tribes the recognition and services stripped from them by the termination policy.

The emphasis of the Native California tribes in the 1970s and 1980s was involvement in and control of educational issues, from pre-school to the university, in such areas as curriculum, staffing, organization of educational associations, publishing, and the use of educational materials

in cultural revival. DQ University, a tribally-controlled community college was established on federal land near Sacramento in 1971. In 1972, Congress passed the Indian Education Act,¹²¹ and shortly afterwards, the California Indian Education Association (CIEA) was formed. In the mid-1970s, Native American Studies Departments were instituted at California universities and colleges. In 1974, the Johnson-O'Malley Act (originally of 1934) was amended to encourage Indian direction of its education programs.¹²² In the mid-1980s, the Rupert Costo Chair in California Indian History was established at UC Riverside. In 1984, the first two California Indian Conferences were held at UC Berkeley: "Weaving Ancient Traditions" and the California Indian Conference. In 1988, the California Indian Library Collections (CILC) Project began distribution of copies of UC Berkeley resources to county libraries throughout California.

Publishing became a focus of Indian activity in California in the 1970s, with the establishment of the Indian Historian Press by Rupert and Jeannette Costo in San Francisco, and the Malki-Museum sponsored publication of the Journal of California Anthropology, now called the Journal of California and Great Basin Anthropology. In 1978, California (Volume 8) became the first book published on California Indians in the Smithsonian Institution's new encyclopedic series, the Handbook of the Indians of North America. Also in 1978, the first California Indian tribal history book was published, Our Home Forever: A Hupa Tribal History by Byron Nelson, Jr. In 1985, News from Native California began publication and became an important forum for many native writers to publish their first writing, creating a voice for Native California views.

Cultural centers and tribal museums were also formed in the 1970s. Malki Museum on the Morongo Reservation was the first.¹²³ Ya-Ka-Ama was established in Pomo country outside of Santa Rosa, funded by the U.S. Department of Labor, to train Indian people in agricultural techniques, and to host a springtime festival featuring traditional dances, games, regalia, and foods.¹²⁴ The 1976 American Bicentennial monies went into the construction of the Hoopa Tribal Museum and the rebuilding of three old villages.¹²⁵ Other tribal museums have since been established across the state, such as the Bishop Paiute-Shoshone Cultural Center, the Sierra Mono Tribal Museum, the Fort Mojave Tribal Museum, and the Colorado River Tribal Museum.¹²⁶ Since 1985, native art, music and literature have entered a period of revitalization and popularity.

Sadly, the 1970s era of federal protection of natural and cultural resources was to be short-lived. The Reagan administration's federal land use policy emphasized exploitation of resources for economic purposes and placed little value on the cultural resources that might be located on those same federal lands.

For California tribes, however, the 1980s were an era of burgeoning self-determination, self-government, sovereignty, and economic development aimed at self-sufficiency. In 1983, the Tillie Hardwick decision re-established 17 of the 38 California rancherias that had been terminated under the original Rancheria Act.¹²⁷ Ten other tribes were restored through litigation, and two others were restored by legislation in 1993.¹²⁸

An unforeseen consequence of the move towards economic self-sufficiency in the early

1980s was the nationwide tribal awareness of and growing involvement in gaming enterprises. Some California tribes were at the forefront of this national trend to establish gaming on Indian land. In 1987, the right to engage in this type of economic development seemed secure when the Supreme Court held that state regulatory gaming laws did not extend to Indian lands, even in Public Law 280 states. In 1988, however, Congress passed the Indian Gaming Regulatory Act, which increased the States' involvement in tribal gaming enterprises. Gaming as a means of economic development and the effect of the Indian Gaming Regulatory Act are discussed more fully in the ACCIP Economic Development Report.

In 1990, the Native American Graves Protection and Repatriation Act (NAGPRA) was passed.¹²⁹ This law requires museums to return human remains, funerary and sacred objects and objects of cultural patrimony to the tribes.¹³⁰ The 1990s have also been characterized by cultural revitalization in California:¹³¹ traditional foods are used at social and ceremonial events; kinship is emphasized; traditional songs and dances are performed; personal spiritual practices are adhered to; language programs and classes are growing in importance; tribal museums and cultural institutions are generating community interest, mobilizing knowledgeable people, and preserving traditional skills; and most importantly, Indian Doctors practice traditional medicine and talk to the ancestral spirits in the hills.

VII. Conclusion

Federal Indian policy has been applied to California in a haphazard and unpredictable way. Significant and contradictory policy changes have taken effect about every twenty years. At times, social forces among tribes have mobilized to bring a political cause to the attention of federal officials with little results; at other times, official federal action has responded to the requests of Native Californians, only to change the policy shortly thereafter. There have been times when federal policy shifted for reasons that had nothing to do with California's circumstances, and other times when political action led to positive federal action in return. This is a pattern of "intermittent reinforcement," a situation in which it is impossible to predict what effect Indian action will have. The psychological result is one of confusion regarding the federal-Indian relationship, and a distrust of federal employees and their promises. This sense of being in a world without working rules is a continuation of the 19th century forces that drove Indian people into a covert and self-reliant existence, especially those people without political power—the unrecognized tribes.

In 1992, in an effort to redress federal inconsistency, Congress passed the Advisory Council on California Indian Policy Act (ACCIP), establishing a statewide Indian Council consisting of representatives of federally recognized, terminated and unacknowledged tribes. The Council's mandate included submission of recommendations to Congress regarding remedial measures to address the special status of California's terminated and unacknowledged tribes and the needs of California Indians with regards to education, health, economic self-sufficiency, natural resource management, and cultural resource protection. The accompanying reports seek to fulfill that mandate.

ENDNOTES

1. See, e.g., Robert F. Heizer, Languages, Territories, and Names of California Indian Tribes, (University of California Press, 1966); Leanne Hinton, Flutes of Fire: Essays on California Indian Languages, (HeyDay Books, 1994).
2. See, e.g., Lowell John Bean and Thomas F. King, eds., Antap: California Indian Political and Economic Organization, (Anthropological Papers No. 2) (Ballena Press, 1974). Professors Bean and King discuss the importance of ecology in the study of California Indians, since the physical surroundings have a tremendous effect on language diversity, social organization, cultural paradigms, and political grouping in California.
3. E.W. Gifford, "California Indian Physical Traits," in The California Indians, A Source Book, R.F. Heizer and M.A. Whipple, eds., (University of California Press, 1971), 100.
4. See Edward Castillo, "The Impact of Euro-American Exploration and Settlement," in Handbook of North American Indians, Vol. 8, Robert F. Heizer, ed., (University of California Press, 1976), 99-100, 107.
5. Chad L. Hoopes, Domesticate or Exterminate: California Indian Treaties Unratified and Made Secret in 1852, (Redwood Coast Publications, 1975). The author states that the previous policy of westward removal was not possible, for there was no more West. Moreover, by the time of California's settlement, the Whites generally desired to be entirely rid of the Native people, who were viewed as animals and a mere nuisance to the advancement of civilization. Id. at 1-6.
6. Hinton, *supra* note 1, at 2.
7. Alfred L. Kroeber, Types of Indian Culture in California, (Publications in American Archaeology and Ethnology, Vol. 2, no. 3.), (University of California Press, 1904), 83-84. Some of the larger California Indian villages were composed of more than two clans.
8. For example, Lowell Bean describes the integration of neighboring Cahuilla villages for important ceremonies, such as funerals and fiestas. Lowell Bean, Mukat's People, (Ballena Press, 1972).
9. See Kat Anderson, Before the Wilderness: Environmental Management by Native Californians, (Ballena Press, 1993).
10. See The California Indians, A Source Book, *supra* note 3, at 75, 181, 353-355, and 447.
11. For example, tribes on the Northwest Coast have an intricate system for settling disputes, including a War Dance, orchestrated by the medicine man.
12. Castillo, *supra* note 4, at 99-100.

13. Id. at 109.
14. Van H. Garner, The Broken Ring: The Destruction of the California Indians, (Westernlore Press, 1982), 53-55.
15. Castillo, *supra* note 4, at 100.
16. See Sherburne F. Cook, "Historical Demography," in Heizer, *supra* note 4, 91-98, 92.
17. Garner, *supra* note 14, at 46.
18. Id.
19. Even these brief contacts led to outbreaks of disease among Northern California tribes. Contact with the Wintu in 1815, for example, introduced a widespread malaria epidemic which is documented as killing perhaps 80% of the Wintu population. Sherburne F. Cook, The Epidemic of 1830-1833 in California and Oregon, (Publications in Archaeology and Ethnography, Vol. 43, no. 3), (University of California Press, 1955), 303-326.
20. Id.
21. Id. at 47-48.
22. See, Ermine Wheeler-Voegelin, Pitt River Indians of California, (Garland Press, 1972), 6-20.
23. The newly acquired California territory became inundated with gold miners and white settlers lured by heightened accounts of ideal climate, fertile soils and an abundance of cheap Indian labor. The early accounts boasted of Indians building the miners' camps and settlements for only the clothing on their backs as principal compensation. The Indians' tractable condition was touted as a positive aspect of California: the Indians of California "are easily domesticated, not averse to labor . . . Throughout all of California the Indians are the principal laborers; without them the business of the country could hardly be carried on." J.J. Rawls, Indians of California: The Changing Image, (University of Oklahoma Press, 1984), 77-79, 172.
24. Hoopes, *supra* note 5, at 1-6.
25. Most of those removed from Chico were Maidu from the northern Sacramento Valley and adjacent foothills, but members of other tribes were also relocated. In September 1863, 461 Indians were marched under guard from Chico to the Nome Cult Reservation, nearly 100 miles across the Sacramento Valley and rugged North Coast Ranges. Only 277 Indians completed the journey. Some were killed, a few escaped and others, too sick to go on, were left behind. "The Nome Cult Trail," U.S. Forest Service Brochure, Mendocino National Forest.
26. Castillo, *supra* note 4, at 117.

27. Young Indians in Oklahoma today are often surprised to learn that the Modoc Tribe in Oklahoma originated in California and Oregon. Over time, they have become integrated into the Oklahoma tribal community.

28. Act of September 30, 1850, 9 Stat. 519; 9 Stat, 558; and the California Indian Act of 1850, 9 Stat. 572. Representatives from 139 different Indian groups agreed to sign the 18 proposed treaties, thereby acknowledging the jurisdiction of the United States, agreeing to refrain from hostilities, and relinquishing all claims to their aboriginal territory. In return, the U.S. promised to establish reservations for the Indian groups, provide them protection from non-Indians, as well as clothing, food and education on the "art of civilization." See R.F. Heizer, The Eighteen Unratified Treaties of 1851-1852 between the California Indians and the United States Government, (University of California Press, 1972), 33.

29. The Senate had bowed to pressure from the California delegation, which contended that the Indians would be receiving too much. Id. at 2. The California Legislature ordered its first federal senators to do all in their power to stop the ratification of the 18 treaties. The senators, in turn, argued to their colleagues in Washington that the 8.5 million acres of land set aside for reservations were worth at least 100 million dollars, and that it would be a waste to give Indians property of this value. Other senators scrambled to please the newly arrived Californians, whose votes held the balance of power in a vicious struggle between Whigs and Democrats. Garner, *supra* note 14, at 70-71.

30. Act of March 3, 1851, 9 Stat. 631, entitled "An Act to Ascertain and Settle the Land Claims in the State of California."

31. See Barker v. Harvey, 181 U.S. 481 (1901); United States v. Title Insurance and Trust Co., 265 U.S. 472 (1924); Super v. Work, 3 F.2d 90, *aff'd*, 271 U.S. 643 (1925); United States v. Santa Fe Railroad Co., 314 U.S. 339, 350 (1941).

32. C.S. Goodrich, The Legal Status of the California Indians, 14 California Law Review 7, 9 (1926).

33. Id.

34. Id.

35. See generally Garner, *supra* note 14.

36. See, R.F Heizer, The Destruction of the California Indians, (Peregrine Scott Press, 1974), 41-99.

37. Sherburne F. Cook, The Conflict between the California Indian and White Civilization, III: The American Invasion 1848-1870, (University of California Press, 1976), at 5-9.

40. See also Castillo, *supra* note 4, at 109.

41. The reservations were authorized by 10 Stat. 238, 686 (1853) and 11 Stat. 388, 400 (1853). On the closing of the reservations, see Castillo, *supra* note 4, at 112.
42. 13 Stat. 39 (1864). Several other small reservations were established by executive order in the early 1870s. See 1 Kappler, Laws and Treaties, (Government Printing Office, 1904), 824-825 (Tule River), 829 (Round Valley), and 815 (Hoopa Valley).
43. See Castillo, *supra* note 4, at 109-113.
44. See Heizer, *supra* note 36, at 101-175.
45. Act of April 13, 1864, 13 Stat. 39.
46. See Cook, "Historical Demography," *supra* note 16, at 91.
47. Id. at 93.
48. Id.
49. Id.
50. 24 Stat. 388 (1887), *codified as amended* at 25 U.S.C. §§ 331-334, 339, 341-42, 348-49, 354, 381.
51. Castillo, *supra* note 4, at 119.
52. 26 Stat. 712-714 (1891).
53. See Garner, *supra* note 14, at 126, 133, 157.
54. Castillo, *supra* note 4, at 109.
55. Id. at 55.
56. Id.
57. George H. Phillips, Chiefs and Challengers: Indian Resistance and Cooperation in Southern California, (University of California Press, 1975).
58. Id.
59. Hearings before a Subcommittee of the Committee of Indian Affairs, House of Representatives, 66th Congress, 2d Session (March 23, 1920), 63-65.
60. A.L. Kroeber, "Elements of Culture in Native California," in The California Indians. A Source Book, *supra* note 3, at 54-59.

61. Id.
62. Id. at 43-59.
63. Castillo, *supra* note 4, at 115.
64. Id.
65. Id. at 79-92.
66. Id.
67. See Robert W. Kenney, History and Proposed Settlement: Claims of California Indians, (California State Printing Office, 1944), 24.
68. Id. at 25-26.
69. Act of March 3, 1905, 33 Stat. 1048, 1058.
70. See the Report of C.E. Kelsey to the Commissioner of Indian Affairs (1906), at 2. The Kelsey Report is attached as Exhibit 1 to the ACCIP Termination Report.
71. Id. at 13.
72. Id. at 9.
73. Id. at 15.
74. Id.: "It seems clear to your special agent that the Northern California Indians have not had a 'square deal,' and that it is not too late to do belated justice. The landless Indians cannot be placed in status quo ante, but they can be given what is sometimes expressed as 'a white man's chance,' and it ought to be possible to put an end to the periodical wiping out of Indian children."
75. Id. at 23-24.
76. Id. at 16-22, 23-24. Many of these reservations had been created by the Mission Indian Relief Act of 1891, 26 Stat. 712. See also H.R. Rep. No. 801, 103d Cong., 2nd Sess., 2 (1994).
77. Letter dated April 2, 1906, from the Secretary of the Interior, to the Senate Committee on Indian Affairs.
78. 25 U.S.C. § 465.
79. See, e.g., "Reservation Data, California, 1951," reproduced in Hearings: A Review of California Indian Affairs, House Committee on Interior and Insular Affairs, Subcommittee on Indian Affairs, 85th Cong., 1st Sess., May 24, 1963, Serial No. 10, pp. 186 et seq.

80. See Sherburne F. Cook, The Population of California Indians, 1769-1970, (University of California Press, 1976), 62, 67. See also C.H. Merriam, The Indian Population of California, *American Anthropology*, 594-596 (1905).
81. California Indian Jurisdictional Act, 25 U.S.C. §§ 651 et seq.
82. 25 U.S.C. § 651.
83. In 1946 Congress created the Indian Claims Commission. Act of August 13, 1946, 60 Stat. 1049. Over the following decade, several groups of California Indians filed more than twenty separate petitions for compensation. The claims were initially dismissed because the petitioners were held not to represent an identifiable group with capacity to sue. 1 Ind. Cl. Com. 383 (1950). Hearings were conducted to determine whether the "Indians of California" was an "identifiable group, with the right to present a claim." After twenty years of argument and briefing, the Indian Claims Commission held that the "Indians of California" were an identifiable group, as defined by the California Indian Rolls. Thompson, et al. v. United States, 13 Ind.Cl.Comm. 369, 373, 382 (1964). Thereafter, all claims were combined.
84. See id.
85. Id.
86. For a general discussion of the federal government's relocation programs, see Felix S. Cohen's Handbook of Federal Indian Law, Robert S. Strickland, ed., (Michie Bobbs-Merrill Law Publishers, 1982), 151-170.
87. H.R. Con. Res. 108, 83rd Cong., 1st Sess., 67 Stat. B132 (1953); see also Wilkinson & Biggs, The Evolution of the Termination Policy, 5 *Am. Indian L. Rev.* 139 (1977).
88. See generally the ACCIP Termination Report.
89. Felix S. Cohen, The Erosion of Indian Rights, 1950-1953: A Case Study in Bureaucracy, 62 *Yale L.J.* 348, 376 (1953).
90. Act of Aug. 15, 1953, ch. 505, 67 Stat. 588 *codified as amended* at 18 U.S.C. § 1162, 25 U.S.C. §§ 1321-1326, 28 U.S.C. §§ 1360, 1360 note. For a detailed analysis of the statute, see Goldberg, Public Law 280: The Limits of State Jurisdiction Over Reservation Indians, 22 *U.C.L.A. L. Rev.* 535 (1975).
91. State Advisory Commission on Indian Affairs, Final Report to the Governor and the Legislature, (1969), 9.
92. Id. at 9-10.

93. California Rancheria Act, Pub. L. No. 85-671, 72 Stat. 619 (1958); see also the ACCIP Termination Report .
94. For a discussion of the distribution process, see Duncan v. Andrus, 517 F. Supp. 1 (1977).
95. Id.
96. See § I of the ACCIP Termination Report.
97. See, e.g., Adam Fortunate Eagle, Alcatraz! Alcatraz! The Indian Occupation of 1969-1971, (HeyDay Books, 1992).
98. For an overview of events and policies leading up to the Self-Determination Era, see Philip S. Deloria, "The Era of Indian Self-Determination: An Overview," in Indian Self Rule: First-Hand Accounts of Indian-White Relations from Roosevelt to Reagan, Kenneth R. Philp, ed., (Howe Brothers Press, 1986), 191-208.
99. Id.
100. State Advisory Commission, *supra* note 91, at 21.
101. Id.
102. State Advisory Commission, Report to the Governor and the Legislature, (1966).
103. Id.
104. See generally Deloria, *supra* note 98.
105. Id.
106. Fortunate Eagle, *supra* note 97.
107. Message from the President of the United States Transmitting Recommendations for Indian Policy, H.R. Doc. No. 363, 91st Cong., 2nd Sess. (1970).
108. President Nixon, Speech of July 8, 1970. The speech set the tone for a new articulation of federal Indian policy, and directed attention to specific legislative proposals that could be of assistance to the tribes. Id. at 22.
109. 25 U.S.C. § 450a-450n.
110. "A Report to the Commissioner of the Bureau of Indian Affairs Regarding Funding of Bureau Programs in the Sacramento Area," prepared by William D. Oliver, former Administrative Officer to the Sacramento Area, at the request of the Sacramento Area Indian Advisory Board (1977).

111. Id.
112. For a list of reports on California Indians, see § I(B) of the ACCIP Executive Summary.
113. The Indian Child Welfare Act, 25 U.S.C. §§ 1901, et seq.
114. 42 U.S.C. § 1996.
115. Lyng v. Northwest Indian Cemetery Protective Association, 485 U.S. 439 (1988).
116. Id.
117. Employment Division, Department of Human Resources of Oregon v. Smith, 494 U.S. 872 (1990).
118. 42 U.S.C. § 1996a.
119. 16 U.S.C. §§ 470aa-747ll.
120. Cal. Pub. Res. Code § 5097.9.
121. 20 U.S.C. §§ 241aa et seq.
122. 25 U.S.C. §§ 452-457. The Act expanded the Snyder Act (25 U.S.C. § 13) authority to the Secretary of the Interior to expend federal monies for Indian “benefit, care and assistance,” and a considerable amount of this money went to local school districts to provide education for Indians.
123. Jeannine Gendar, “Food for Thought,” News from Native California, Vol. 4, no. 4 (Fall, 1990).
124. Paul Apodaca, “California Tribes Look into Creating Museums,” News from Native California, Vol. 4, no. 4 (Fall, 1990).
125. Lee Doris, “Locating the Live Museum,” News from Native California, Vol. 4, no. 1 (Fall, 1989).
126. See § IV of the ACCIP Cultural Resources Report for a wider discussion of tribal museums.
127. Tillie Hardwick v. United States, No. C-79-1710 SW (N.D. Cal.)(3/14/89).
128. See Appendix B to the ACCIP Termination Report.
129. 25 U.S.C. §§ 3001-3013.
130. For a discussion of NAGPRA implementation, see §§ 2 and 4 of the ACCIP Cultural Resources Report.

131. See § I of the ACCIP Cultural Resources Report.



