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**Native Americans and the Law:
The example of the Navajo**
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Native Americans and the Law:

The example of the Navajo

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Plzeň, duben 2013

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1. INTRODUCTION

The thesis *Native Americans and the Law: The example of the Navajo* provides basic information about the structure and system of law of Indians and Indian tribes in the United States and then applies the theoretical information to a particular Indian tribe – the Navajo Indian tribe – in order to answer the main question: *Has the Navajo Indian tribe been able to customize the Anglo-American legal system¹ to comply with the traditional Navajo life pattern? If yes, how have they done that?*

In the theoretical part, first of all, use of the term Indian and Native American is explained. Then, a brief summary of a history of American Indian policy is outlined for better understanding to the special legal status of Indians and tribes, as it was formed gradually over the centuries. In following two chapters, the current state is described and Indian treaties, federal statutes and all three powers over the Indians and tribes – federal, state and tribal – and relations between them are characterized and complemented with illustrative examples.

The practical part seeks to answer the above mentioned question, thus, it analyzes the Navajo Indian tribe from this point of view. Firstly, basic facts and brief history of the tribe are stated, then, Navajo Indian treaties, federal and state powers over the tribe and Navajo Nation government itself are analysed with regard to the areas that could be hypothetically influenced by the tribe.

I have chosen this topic with respect to my previous legal knowledge and because I have always been captivated by the life in the Wild West.

Throughout the thesis, I am not trying to describe particular statutes, treaties or programs connected with Native Americans and their tribes, but to outline and characterize relevant legal relationships, powers and their development, source and limitations, main terms and possibilities in relation to Native Americans and the tribes.

In the theoretical part of the thesis, I draw mainly from the book *The rights of Indians and tribes* by Stephen L. Pevar from 2012, as this book is most comprehensive and fully-updated, and the author is highly competent to write such a publication, as he is a senior staff counsel of the American Civil Liberties Union, worked for Legal Services on the Rosebud Sioux Reservation several years, taught Federal Indian Law at

¹ System of law based on common law, which is law developed by judges through their decisions – precedents.

the University of Denver School of Law for sixteen years, has litigated many Indian rights cases and has lectured extensively on the subject.

1.1. Terminology

“Indian” is the name which Columbus gave the people he met when he arrived in what he mistakenly believed was India (at that time the “Indies”). Later, the new term “Native American” was introduced to create difference between people of India and indigenous people of America, but the term “American Indian” served the purpose too (Brunner). According to the Bureau of Indian Affairs (BIA):

The term “Native American” came into broad usage in the 1970's as an alternative to “American Indian.” Since that time, however, it has been gradually expanded within the public lexicon to include all Native peoples of the United States (Frequently asked questions),

such as American Indians, Alaska Natives (Eskimos, Aleuts, and Indians), American Samoans, Native Hawaiians etc.

However, institutions and movements have not been renamed and many Indians continue to call themselves Indians or American Indian regardless of how other people call them. According to Christina Berry, two main reasons exist for it: habit and the feeling, that the white people only want to wash what they did to these people:

The term Native American is so recent that it does not have all the negative history attached. Native Americans did not suffer through countless trails of tears, disease, wars, and cultural annihilation -- Indians did (Berry).

Moreover, there seems to be a preference for using the word Indian in names of laws, such as the Indian Civil Rights Act, Indian Country Crimes Act, Indian Child Welfare Act, Indian Reorganization Act etc., institutions, such as the Bureau of Indian Affairs, organizations, such as the National Congress of American Indians, etc.

Finally, according to the BIA, it is still appropriate to use the more specified terms, like American Indian or Native Hawaiian (Frequently asked questions); moreover, the term “*Indian*” is increasingly falling back into use, as it is not considered to be offensive, such as “*redskin*” or “*injun*” (Berry), and according to Indians themselves, it does not matter, which term is used:

Over the years, the people whom these words are meant to represent have made their preference clear: the majority of American Indians/Native Americans believe it is acceptable to use either term, or both (Brunner).

A Census Bureau Survey of preferences for racial and ethnic terminology (1995) indicated that 49% of Native people preferred being called “American Indian,” 37% preferred “Native American,” 3.6% preferred some other term, and 5% had no preference (Brunner).

Thus, it depends on a personal choice. However, the recommended method is to refer to a person by his or her tribe, in case the information is known, as it shows respect to the person and to the tribe as well (Berry). For example, the publisher and editor of The Navajo Times, Tom Arviso Jr., would rather be known as a member of the Navajo tribe, instead of a Native American or American Indian, as it gives an authentic description of his heritage (Brunner).

2. HISTORY OF AMERICAN INDIAN POLICY

American (since 1789 federal) Indian policy is a set of rules, laws and attitudes towards Indians and tribes, according to them the relationship between the U. S. government and the Indian tribes abides. This policy has changed many times – it went through the periods of tribal independence, treaties, relocation, assimilation, reorganization, termination and self-determination (Pevar 3-12; Gilio-Whitaker) – and in the course of these periods, the situation and status of Indians and tribes has been gradually formed. That is why the history of American (federal) Indian policy is fundamental for the understanding of the current special legal status of Indians and tribes.

History of American/federal Indian policy began slowly after discovering America, but it took many years before it was possible to speak about a federation at all and before the Indian style of life started to be regulated. There exists not much information about Indian law before the white man came, however, the historical development after 1492 can be divided into several periods according to the policy, which the incomers exercised towards the Indians, as already mentioned.

In 1492, at the time of discovering America by Christopher Columbus, it is estimated, that in North America were living about 5 million people and approximately 6 hundreds tribes. These people, later called Indians, American Indians or Native Americans, lived in communities, had their own governments, language, culture, habits and “*deep religious faith centered in the sanctity of nature*” (Pevar 1). Different tribes lived in different areas, according to their style of life² and in harmony with nature (Pevar 1).

Tribal independence survived till 1787; many Indians welcomed the newcomers, helped them to overcome the start-up difficulties, which they had in unfamiliar country, and allowed them to live in their territory. Nevertheless, the intent of the newcomers was not to live in peace next to the Indians and respect them and their land, but to take this land and use it with no regards to the aborigines (Pevar 3-4).

² For example the “*Plains Indians*” (the Sioux, the Comanche, the Pawnee etc.) lived in the Great Plains regions of North America, where they hunted buffalo, elk and antelope for food. They used to surround the herds and try to corner them or force them off cliffs to make the hunting easier (Plains Indians).

They maintained good relations with Indians only because of the self-preservation; tribes were eminently powerful and predominated till the half of the 18th century, but on the score of diseases from Europe,³ flood of Europeans, who started to move west, and the fights with dead men on both sides,⁴ forces slowly reversed. In 1664 the English defeated the Dutch and in 1763⁵ they gained victory over the French with the help of the Iroquois Confederacy (Pevar 4).

As an acknowledgement to the Iroquois, the English king George III issued a Royal Proclamation, under which Indian land could not be purchased without the consent of the British government. However, the Royal Proclamation was ignored and the English incomers continued to steal Indian land (Pevar 5).

A few years later the fight for independence – the American Revolutionary War 1775 – 1783 – broke out and the colonists did not want the Indians to help the English. They were trying “*to carry the war into Indian country, destroy Indian villages and burn Indian crops*” (Pevar 5), whereby they intended to prevent natives from supporting the British. Though it was a fight between the English and the colonists, the Native Americans were a very affected group. After gaining independence from Great Britain, the colonists could be stopped no more and their conception of their new homeland collided with the needs of Indian tribes (Pevar 5).

According to Professor Reginald Horsman, a member of the History Department at the University of Wisconsin-Milwaukee, the period between 1783 and 1812 is called the “*post-Revolutionary American Indian policy*,” took place especially in the Old Northwest and could be divided into several phases. In these phases, federal officials tried to gain the tribes’ confidence, peace, and above all their land, and they tried several approaches to achieve the objectives – such as purchase of land, assimilation into American society or simply honest dealings. However, they were not particularly successful (Horsman 137-138).

According to Professor Stephen L. Pevar, in 1787 began the “*period of agreements between the Founders of the United States and Indian tribes*,” which lasted to 1828. The majority of tribes lived politically and geographically outside of the thirteen original states and were thus regarded as sovereign nations with all rights.

³ mainly smallpox, cholera and dysentery

⁴ 1634 – 1638 the Pequot War, 1643 – 1645 the Kieft’s War, 1675 – 1676 the King Philip’s War

⁵ the French and Indian War (Seven Years’ War)

Treaties were then the usual method of regulation of the international relations and dealings and the U.S. government tried to maintain good relations with the tribes, which were still powerful and thus could be a threat to the United States, weakened after the Revolutionary War (Pevar 5-6).

Between 1789 and 1793 Congress passed a number of laws for assuring the independence of the tribes and protecting Indian land⁶ and continued to respect their sovereignty. However, only few of these laws were enforced, because nobody wanted to inhibit the westward expansion in fact (Pevar 6).

Most of the 19th century was dedicated to the relocation of Indians from the East to the West. This so called “*removal policy*” was the dominant federal Indian policy after 1828. Continually increasing demand for land by the whites led to the Indian Removal Act in 1830. By 1843, most eastern tribes were removed to the West, or placed on smaller reservations in the East.⁷ The most of the treaties were broken (this period thus can be called the period of “*broken treaties*” as well) and many tribes were moved from one place to another even several times (Pevar 7).

With the discovery of gold in California in 1848 and in South Dakota in 1874 increased the demand for Indian land again. Confrontations such as the Sand Creek Massacre in 1864 had for object to eradicate the Indians from the area. As a result of many battles and the tactic of slaughtering bison, on which most of the Plains Indians depended as they were their main source of food, by the settlers, more and more tribes were forced to live in reservations and accept the life there (Pevar 7).

During this period, there was an intensive effort to educate and civilize Indian children as well; many schools with strict rules were established for this purpose. A lot of children were removed from their families, were punished, if they spoke their native language, wore their tribal clothing or practiced their traditions or religion (Pevar 7-8).

Congress strove to increase federal control over the reservations and that is why it passed several laws for this purpose – such as the law, under which Indians could be prosecuted by federal courts, if they committed certain crimes on reservations – and placed federal agents there (Pevar 8). Indian tribes slowly stopped being considered

⁶ for example a passage of the Northwest Ordinance of 1789, which declared: „*the utmost good faith shall always be observed towards Indians; their land and property shall never be taken from them without their consent*“ or a law exempting Indians from complying with state trade regulations (Pevar 6)

⁷ One of the worst trails was the *Trail of Tears*, during which fifteen thousand Indians died (Pevar 265).

foreign independent nations, they started to be regarded as “*domestic dependent nations*” and “*wards to their guardian*,” which drastically influenced their legal status and finally led to the Indian Appropriation Act in 1871, which ended treaty making with Indians and stated that Indian tribes were not acknowledged or recognized as independent nations, tribes or powers any more (Smith 233).

During 1887, the policy of removal and separation changed into the policy of assimilation of Indians into white society. In the same year the General Allotment Act (GAA or the Dawes Act) was passed with the objectives “*to extinguish tribal sovereignty, erase reservation boundaries, and force the assimilation of Indians into the society at large*” and everything without the pretence of tribal consent (Pevar 8-9).

By this Act the tribal land, which was held communally, was divided into allotments⁸ and each tribal member got one piece. The remaining tribal land was then sold to white farmers and ranchers, who still demanded more and more land (Pevar 9).⁹

Indians were thought to accept the Anglo-American concept of private ownership and to be absorbed into the white community. However, it failed and the conditions of Indians got even worse, because they were not able to accept the white settler’s life from many reasons, lost much of their tribal land again and white men were allowed to live on their reservations (Pevar 9).

Thousands of Indians had to sell their allotments or lost their land, because they could not pay the real estate taxes which became due after they were issued documents to their property. When the GAA was abolished in 1934, tribes owned only 50 million acres of land¹⁰ (Pevar 9).

Congress then passed a number of laws that

authorized the Secretary of the Interior to lease Indian lands to non-Indians, to control all funds received from those leases, and to determine when to distribute those funds to tribes and tribal members (Pevar 9).

During this period, many Indians who voluntarily adopted the habits of civilized life obtained the U.S. citizenship,¹¹ which, however, had only little effect on improving

⁸ separate parcels

⁹ See appendix Nr. 1 - An advertisement from the Department of the Interior.

¹⁰ In 1887, they owned 150 million acres of land.

¹¹ See appendix Nr. 2 - President Calvin Coolidge at the White House with four from the Osage Nation, 1925.

their situation (Pevar 10) and called up an idea, that after the ward-guardian relationship had ended with the granting of citizenship, these Indians were then subjects to the same laws as the non-Indians (Smith 239). However, as the Supreme Court later stated, it did not intend to dissolve this special relationship and the Indians were both wards and citizens concurrently. Finally, in 1924, rest of the Indians were declared to be citizens of the United States as well (Smith 240-241).

In 1926, the Brooklings Institution was asked to make a study of economic and social conditions on the Indian reservations and to make recommendations for their improvement. Then, in 1928, a highly critical study *The Problem of Indian Administration* (“Meriam Report”) was issued. It described the poor conditions, bad food, terrible epidemics and inadequate formal education in reservations, which evoked an increasing sentiment in favour of Indians and a criticism of federal Indian policy (Page 355-357).

Together with the decline of the ability to buy additional Indian land as a result of the Great Depression¹² and with the awareness, that the most reservations are resistant to adopting the white men’s life and do not have enough money for cultivation of allotments, federal Indian policy changed again and the more human approach was accepted (Pevar 10).

In 1933, John Collier, who had long criticized the federal government’s approach to Indians, was appointed Commissioner of Indian Affairs and declared:

No interference with Indian religious life or expression will hereafter be tolerated. The cultural history of Indians is in all respects to be considered equal to that of any non-Indian group (Pevar 10).

According to Lawrence C. Kelly, a professor of history at North Texas State University, John Collier was a genius, who saw the bankruptcy of this policy, which had brought widespread poverty and demoralization to the majority of Indians, since “*it was based upon the false premise that all Americans should conform to a single, uniform cultural standard*” (Kelly 243), more clearly than anyone else in his generation (Kelly 242-243).

¹² The Great Depression was a severe worldwide economic depression in 1930s, which originated in the U.S., after the fall in stock prices (Great Depression).

He decided to encourage tribal efforts to retain and even revitalize native languages, religious practices, social customs, and forms of artistic expression (Kelly 242).

Subsequently, the Indian Reorganization Act (IRA)¹³ was passed by Congress and signed by President Franklin Roosevelt in 1934 with objective to:

promote tribal self-government, improve tribal economies, and assist tribes expand their land base in an effort to ameliorate the damage caused by the allotment policy (Pevar 75),

and to increase Indian influence in the management of federal Indian programs¹⁴ (Pevar 11, 75; Kelly 248).

After more than 100 years, it was a huge change; although it has been later criticized as ethnocentric, paternalistic and insufficient, tribes were given more land, were encouraged to adopt their own constitution,¹⁵ in order to exercise their powers of self-government and to become federally chartered corporations, and thus rejuvenate their government. Until the policy changed again, during the reorganization tribal governments experienced a revitalisation after hundred years of pressure. Federal funds were spent to improve life in reservations and Indian land increased by over two million acres (Pevar 11).

However, the federal government terminated the trust relationship¹⁶ with Indians and eliminated federal benefits, services and federal Indian programs in 1953 as a result of a report issued by a federal commission and a change of president.¹⁷ This new policy of termination was based on complete integration of Indians into American society¹⁸ (Pevar 11, 12).

As a result of House Concurrent Resolution No. 108 from 1953, the trust relationship with 109 tribes was terminated till 1966. The reservations were eliminated

¹³ IRA is sometimes called the Wheeler-Howard Act as well

¹⁴ Indians were preferred in employment within the Bureau of Indian Affairs, which is the agency administrating most of Indian programs.

¹⁵ See appendix Nr. 3 – Signing of the first tribal constitution under the Wheeler-Howard Act.

¹⁶ Trust relationship is a relationship between the United States and the Indian people, based on the federal government's trust responsibility – a duty to fulfil promises from treaties with Indian tribes (Pevar 29-31).

¹⁷ Dwight D. Eisenhower became president in 1953.

¹⁸ See appendix Nr. 4 - Bureau of Indian Affairs relocation brochure distributed to Native Americans, 1950s.

and “*the state acquired full jurisdiction over this land and the people who resided there*” (Pevar 12).

In the same year Congress passed Public Law 83 – 280 (P.L. 280), which gave six states with the largest Indian population¹⁹ criminal jurisdiction over reservations in their area with a view to relieve federal officials in this respect (Pevar 12).

Relocation program from 1956 was a part of the policy as well. It offered help to Indians, who would decide to live in urban areas. Many thousands of Indians entered this program, but about one-third returned back home, because they found out that the promises of better job and housing were false (Pevar 12).

Policy of termination was a disaster for Indian tribes. Many reservations – even the successful ones – were abolished again and in Indian tribes a deep mistrust intensified (Pevar 12).

After 1968, when President Lyndon Johnson said:

We must affirm the rights of the first Americans to remain Indians while exercising their rights as Americans. We must affirm their rights to freedom of choice and self-determination (Pevar 12),

the federal Indian policy changed again. The previous policy was viewed as inhumane and the same opinion was held by the other presidents (such as Richard Nixon or Ronald Regan) as well²⁰ (Pevar 12-13).

In this period, there has been more Indian litigation and Indian law than what previously existed and Congress has supported sovereignty, greater tribal autonomy and self-determination and has established a number of programs and laws in favour of tribes:

- 1968 - prohibition of obtaining any other authority over Indian reservations without the consent of the affected tribe and restoration of federal status almost all the terminated tribes since this year;
- 1975 - the Indian Self-Determination and Education Assistance Act allowing tribes to administer various federal Indian programs on reservations;

¹⁹ Alaska, California, Minnesota, Nebraska, Oregon and Wisconsin

²⁰ See appendix Nr. 5 - President Gerald R. Ford visits Oklahoma during Native American Awareness Week, Lawton, Oklahoma, 1976.

- 1976 - the Indian Health Care Improvement Act for Indian control of health care in reservations;
- 1978 - the Indian Child Welfare Act for protection against the removal of children from their homes;
- 1982 - the Indian Mineral Development Act authorizing tribes to conclude agreements with mineral developers to gain more profit and the Indian Tribal Government Tax Status Act creating the tax advantages for tribes;
- 1988 - the Indian Gaming Regulatory Act confirming the authority of tribes to engage in gaming;
- 1990 - amendment of the Indian Arts and Crafts Act for protection of goods made by Indians;
- 2001 - the No Child Left Behind Act reauthorizing the program for disadvantaged students, expressly with Indian and Native Alaska children as beneficiaries;
- 2008 - a law promoting Indian foster care and adoption programs (Pevar 13).

During this era some funds aimed at helping Indians were established as well:

- the Indian Business Development Fund for stimulating Indian business and employment;
- the Indian Financing Act and the Native American Programs Act - two loan funds for development of Indian commercial opportunities and resources (Pevar 13);
- the Native American Rights Fund of 1970, a national organization dedicated to providing free legal assistance to Indian people (Thomas 442).

However, it is important to notice, that not all of the laws passed during this period have been passed to the benefit of tribal sovereignty. For example, the Indian Civil Rights Act from 1968 (ICRA) is highly controversial, as it *“limits the power of tribes by conferring civil rights on all persons subject to tribal law, and gives federal courts the power to enforce those rights in various situations”* (Pevar 241).

“However, it has been a phenomenal period of Indian activism legally and politically” (Pevar xii). Contemporary presidents, such as Bill Clinton or Barack Obama, have supported Indian self-determination as well, when they issued executive

orders²¹ to reaffirm and protect tribal sovereignty and rights. One of them, issued by Barack Obama in 2009, ordered to go through the purposeful consultation with tribal governments before taking any action that could influence the tribe's interests. He also signed the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), which rests on the principle, that:

strengthening the political, cultural, and economic independence of native communities is beneficial both for these communities and for the nation states in which they live (Pevar 82),

convened “*a meeting with representatives of every federally recognized Indian tribe in the country*” (Pevar 14) and tried to improve Indian health care and quality education (Pevar 14, 82).

Thus, since 1968, tribal nations are in a period of cultural renewal and spiritual rebirth and the tribal self-determination has become the contemporary American Indian policy, although the Indian interests have been not supported by the judicial branch – particularly by the Supreme Court – where they have lost more than 80% of the cases since 1970²² (Pevar 14; Pommersheim 194).

²¹ for example an executive order from 1994 which requires all federal agencies to carry out business with Indian tribes on a “*government-to-government*” basis

²² It is sometimes called “*a new form of termination by limiting tribal authority through judicial decree*” (Pevar 14).

3. PRESENT STATE

Centuries ago, it was clear, who Indians are – simply the heathens living on American continent before the white man came. But today, “*Indian*” can be defined in either an ethnological or in a legal sense, whereas each government²³ uses a different delimitation. The common definition does not exist and thus the same person can be considered an Indian in some situations, but not in others. However, if the courts need to determine, whether the person is an Indian, they use a two-part test; the person has to have some Indian blood and has to be recognized as an Indian by the Indian community (Pevar 17-18).

The situation is even more complicated, if we need to determine, what an Indian tribe is, because not even here exists a universally accepted definition. Each government, again, creates its own definition and thus some Indian tribes are not recognized by all these governments. To be federally recognized and thus be able to participate in federal Indian programs,²⁴ a tribe needs to fulfil a number of requirements established by the Department of the Interior (Pevar 19), such as a continuous basis, inhabiting a specific area or living in a community, governmental authority over its members, submitting a copy of its current governing documents and so on (Pevar 272).

Today, there are 566 federally recognized Indian tribes in the United States (What we do). Some of them have thousands of members (the Cherokee Nation) and others only a few (Pevar 20). According to the 2010 Census, the total population of Native Americans is about 5.3 million, which is less than 2% of the nation’s population. Almost 60% Indians live in metropolitan areas and about 40% on or near some 315 reservations,²⁵ lying on more than 55 million acres of land far from industrial centres and without valuable natural resources. In these reservations, there is very high unemployment (up to 80%), difficult life conditions and poverty. Indians there remain the poorest and the most disadvantaged group of people in America (Pevar 2).

It can be questioned, why these tribes still live in such conditions and in such places. The answer is a rescue and preservation of their ancestral land, traditions and unique culture connected with it, which is a reason for their fight for independence as

²³ tribal, state and federal

²⁴ Tribes not federally recognized can take part in such federal programs, which have not been limited only to the recognized tribes by Congress (Pevar 19).

²⁵ See appendix Nr. 6 - Indian reservations and communities in the United States.

well. But they have to face many regulations of their activities by law, which is not helping their efforts and they were not accustomed to it for the long term (Pevar 3).

On the other hand, some Indian tribes, especially those which are located close to populated urban areas and started to run casinos, reduced their unemployment and are quite successful, prosperous and self-sufficient (Pevar 285).

The last term important to explain for the use of any law is in which territory it can be applied. If the general rule is that “*state laws do not apply to Indians in Indian country*”²⁶ (Pevar 20), we need to know, that Indian country includes not only land within all Indian reservations, but “*all land under the supervision of the U.S. government that has been set aside primarily for the use of Indians*” (Pevar 21). This definition is stated in a federal criminal statute, but it is valid in civil law as well (Pevar 21).

3.1. Treaties

Federal treaties (and federal statutes as well, because they have equal dignity) are according to the U.S. constitution “*the supreme law of the land,*” have to be obeyed and enforced and are superior to state constitutions and laws; however, the Constitution of the United States is superior to any law or treaty. The president is authorized to enter into them with the two-thirds consent of the Senate (Pevar xii, 33, 45-46).

A treaty is a contract between two sovereign nations. In this context, it is about four hundred contracts between the United States and Indian tribes, which were during the treaty making period (between 1787 and 1871) regarded “*as distinct, independent political communities, retaining their original natural rights*” (Pevar 45). They thus “*provide the legal cornerstone for the tribal-federal government-to-government relationship*” (Pommersheim 40). However, the treaties, often signed under the threat of force, were written in English, thus the tribes could not be sure what they were signing and had to rely on government interpreters (Pevar 45, 49, 51). Treaty making was ended by a law from the year 1871 (Title 25, U.S.C., section 71) and since then, Indian affairs have been regulated by legislation:

²⁶ Tribal and federal laws apply instead.

No Indian nation or tribe within the territory of the United States shall be acknowledged or recognized as an independent nation, tribe, or power with whom the United States may contract by treaty (Title 25 - Indians).

The purpose of the treaties was to gain Indian land through negotiation (treaties) rather than war. In those treaties,²⁷ the Indian land, which the United States wanted, was exchanged for some parcels of land for the tribes (federally protected reservations) and a set of promises – the warranty that:

the United States would respect the independence of the tribes, would protect them and ensure peace with them, and would provide to them food, clothing, supplies, and various services (Pevar 30),

such as medical care or education – so called “*affirmative obligations*” (Pommersheim 41). Nearly all of the treaties expressly recognized the tribal sovereignty and their rights and usually assured that Indians would not be forced to move from their new reservations. They also guaranteed the particular needs of the tribes, for example fishing, whaling or trading with other tribes. Some of them contained a “*bad man provision*” as well, which means:

if bad men among the whites commit a crime on the reservation, federal agents will arrest and prosecute these lawbreakers and will reimburse an Indian who sustained an injury or loss from that misconduct (Pevar 47).

Many of these promises were however soon broken²⁸ (Pevar 30, 46-47) and the treaties “*have often been altered, ignored, or displaced*” (Pommersheim 40).

3.1.1. Doctrine of trust responsibility

Thus the United States obtained most of its land through treaties of this nature and the principle that the federal government has a duty to fulfil its promises to the Indians is known as “*the doctrine of trust responsibility*” (Pevar 30-31).

In consideration of the historical development,²⁹ however, many Indians have been reluctant to rely on this doctrine, although since that time, Congress has already

²⁷ for example the Treaty with the Navajo Nation in 1849 or the Treaty with the Eastern Band of Shoshone and Bannock in 1868 (Pevar 30)

²⁸ for example the Ottawa Tribe had to sign five treaties which moved them from one place to another (Pevar 49)

improved its treatment. Today, the trust doctrine is viewed as a source of federal responsibility to Indians, which broadly means the responsibility “*to promote a tribe’s political integrity*” and “*ensure the survival and welfare of Indian people and tribes*” and raise their standards and economic prosperity (Pevar 32).

According to Professor Stephen L. Pevar:

The extent to which the United States honours its treaty commitments to Indian tribes reflects the extent to which our³⁰ society is committed to the rule of law and justice. The integrity of our country depends on it (Pevar 54).

3.1.2. Reserved rights doctrine

These treaties do not list all the rights that Indian tribes have. They list only such rights which tribes were relinquishing. It means that Indian tribes possess all rights of a sovereign nation so far as they were not expressly extinguished by a treaty or a subsequent federal statute. This principle is known as “*the reserved rights doctrine.*” So a treaty is not a source of Indian rights (such as fishing), merely recognizes rights that tribes have always had (Pevar 48).

3.1.3. Canons of construction

There are three main rules – “*the canons of treaty construction*” – which govern the interpretation of Indian treaties, if any disputes arise. They should compensate the fact that tribes were notably disadvantaged in the treaty-making process and support the trust relationship (Pevar 51).

1. Any ambiguities must be resolved in favour of the Indians,
2. treaties must be interpreted as the Indians would have naturally understood them at the time they were signed and
3. they must be construed liberally in favour of the Indians (Pevar 51).

3.2. Statutes

Closely associated with these treaties are statutes, which have to be passed by both houses of Congress – the Senate and the House of Representatives. Up to now,

²⁹ for example the theory of Manifest Destiny, under which the expansion of white men was divinely inspired and they had right, even duty, to take land from “*savage*” Indians and put it to “*proper*” use (Pevar 32)

³⁰ American

Congress has passed so many statutes applicable only to Indians that a separate volume of the U.S. Code – Title 25 – has been created for them (Pevar 49, 59).

After 1871, when treaty making ended, the modification of Indian affairs by making laws corresponded with a loss of legal and political status of Indian tribes and in spite of the fact that the law from 1871 did not invalidate any existing Indian treaty, many of them have been then subsequently abrogated by Congress, because it could (and still can) pass a statute that amends or abrogates an earlier statute or treaty (including peace treaties with Indians) without the consent of affected tribe³¹ (Pevar 49-50; Pommersheim 40).

Nevertheless, as the Indian treaty rights are too fundamental to be easily disclaimed, the intention to abrogate an Indian treaty must be expressed by Congress clear and plain and cannot be only inferred by a court. Whereas a state may not make arrangements inconsistent with an Indian treaty, a federal agency can abrogate such a treaty with the express consent of Congress. It is thus entirely in the Congress' discretion whether it will honour a treaty or will abrogate it (Pevar 49-50, 53).

However, according to the Fifth Amendment to the Constitution, Congress may not deprive anyone of private property without just compensation. Indian treaty rights are a form of this property as well and that is why a tribe has to be adequately compensated for the loss of any relevant rights and property³² (Pevar 50).

The principle that Congress has the power to repeal Indian's treaty rights by a federal law has been continually supported by the Supreme Court, but on the other hand, often criticized by the others, because it permits to break promises given to Indians (Pevar 50).

Contrariwise, the statutes should be viewed as extensions of the treaties and from which the trust relationship arises out: first, "*statutes are the vehicles by which Congress creates the programs and services necessary to fulfil its treaty promises,*" second, many statutes place Indian property and resources in federal agencies and impose them that they have to manage these resources "*wisely, in the tribe's best interests, and in the manner instructed by Congress*" (Pevar 33). Most of these statutes

³¹ For example in 1877, Congress removed land in the Black Hills from the Sioux without their consent (Pevar 49).

³² The Sioux have been compensated more than 100 million dollars for the loss of the Black Hills (Pevar 50).

also require the federal government to collect royalties from the sale or lease of that property and then to distribute the money to the tribe or a tribal member. In addition, there is a presumption that “*all funds held by the United States for Indian tribes are held in trust*” and they can be handled by federal officials only in a particular manner (Pevar 33, 39).

Moreover, the Supreme Court has established the principle that doubtful expressions in treaties or statutes have to be interpreted in favour of the Indians – the canons of construction apply to the interpretation of federal statutes regarding Indians as well – and a number of laws authorize Indians and tribes to enforce their treaty rights and to request remedies from a court when a federal agency is violating its trust duties; nobody is allowed to take any action conflicting with an Indian treaty unless Congress has expressly authorized it and there exists a legal, moral and ethical duty of citizens to enforce these treaties. In such cases of violation, courts have to issue effective remedies, which vary with the situation and they can be for example damages to compensate for the loss or injunctive relief to prevent future injury. “*However, the trust responsibility is a moral and ethical rather than a legally enforceable, duty*” (Pevar 34). If Congress, which has plenary power to regulate Indian affairs and has the authority to modify a trust relationship, decides to terminate an Indian program, trust relationship with a tribe or a tribe itself, a federal court has no authority to prevent it (Pevar 33-34, 36, 52-53).

Since 1994, the federal government is under obligation to consult with Indian tribes prior to making any decisions that directly influence them. This consultation is a part of the doctrine of trust responsibility and decisions made without proper and meaningful consultation can be invalidated by courts (Pevar 40-41).

However, to be honest, “*the more the federal government controls tribal resources and programs, the less independence tribes have*” (Pevar 43). On the other hand, many tribes simply need federal assistance and they are entitled to receive it (Pevar 43).

4. POWERS OVER THE INDIANS AND TRIBES

System of powers that can be (and are) exercised over Indians, Indian tribes and non-Indians on Indian reservations, i.e. federal, state and tribal power, is highly complex and complicated. These powers blend together, complement each other, interact with each other, and in many cases, some of them take effect on the same affairs at the same time and it depends only on discretion of the individual, jurisdiction³³ of which government he or she will choose.³⁴

For example, normally, each government – federal, state and tribal – can exercise its full criminal jurisdiction everywhere within its borders. Theoretically, then, all these governments should be able to exercise their full criminal jurisdiction on an Indian reservation, as it lies within state borders and the state is a part of the United States of America as a whole. However, Indian reservations are an exception to the rule, because on no reservation can all these governments exercise their full criminal jurisdiction (Pevar 127).

Indian reservations are not only parts of the states; Indian tribes possess special political status of sovereign political entities,³⁵ resulting from the historical development, and have inherent sovereign powers, such as to regulate their internal affairs, which complicates in many respects the whole, already complicated, situation (Pevar 82).

An Indian can be both a citizen of the United States and a member of an Indian tribe and have all the benefits and obligations that arise out of that dual status (Pevar 19).

Although it is not possible to discuss these three powers fully separately, since they blend together as already mentioned, in order to make this system of powers more transparent, each of these powers will be examined as separately as possible and suitable in one of three subchapters. Each subchapter deals with one of these powers,

³³ Every government has two broad powers: criminal jurisdiction and civil jurisdiction. Criminal jurisdiction is the power to create rules of conduct (mostly to prohibit certain conduct) and punish those who violate them, civil jurisdiction is the power to regulate all other matters, such as domestic or property matters, and the power of courts to decide disputes that arise in this area (Pevar 127, 149).

³⁴ so called concurrent jurisdiction

³⁵ „Indian tribes are neither states, nor part of the federal government, nor subdivisions of either“ (qtd. in Pevar 82).

with its source, scope and limitations, and illustrates the scope, means of exercise and the variety of that power on several examples.

4.1. Federal power

The government of the United States of America is the federal government and is composed of three distinct branches: legislative (Congress), executive (the president as chief officer, Cabinet, federal agencies) and judicial (the courts). All of them have consistently supported the government's power to regulate Indians and their property and despite the fact that Congress promotes self-determination of Indians now, the federal government will probably never permit Indian tribes to gain their full independence again (Pevar 56, 61).

4.1.1. Source of federal power

The fundamental source of federal government's power over Indians consists in the fact that the United States is militarily more powerful than Indian tribes and thus it has the superior military power to do so (Pevar 56).

Anyway, according to the Supreme Court, there are four other arguments to justify this power over Indians and provide Congress with all instruments required to control Indians and tribes (Pevar 56-57).

1. The Commerce Clause of the U.S. Constitution (article I, section 8, clause 3), which provides Congress with the authority to regulate commerce with other nations, among the several states and with Indian tribes;
2. the Treaty Clause of the U.S. Constitution (article II, section 2, clause 2) authorizing the president and the Senate to make treaties, including those with Indian tribes;
3. the rule of international law stating that "*discovery and conquest gives the conquerors sovereignty over and ownership of the lands thus obtained*" (qtd. in Pevar 57);
4. the doctrine of trust responsibility guaranteeing that the federal government will protect tribes and thus endowing the federal government with the power and the duty to regulate Indians and their tribes for their protection (Pevar 57).

Along with these "*justifications,*" it needs to be mentioned that nothing in the Commerce and Treaty Clauses grants the federal government any power over Indians –

they only identify who can regulate commerce and enter into treaties with Indians. Further, Europeans could not discover America in 1492, because hundreds of independent nations had been already living there. Lastly, the trust doctrine shall support Indians by fulfilling the promises given to them and not support the federal power over them. In addition, no tribe would surrender its right of self-government in any treaty with the United States (Pevar 57-58).

Nevertheless, the Supreme Court announced in 1903 that Congress has full and complete authority over Indians and tribes – “*the plenary power doctrine*” – even though it does not have a solid basis in any document and its rationale is dubious (Pevar 58; Pommersheim 40).

4.1.2. Scope of federal power

As mentioned above, “*Congress has plenary power over all Indian tribes, their governments, their members, and their property*” (Pevar 58). It can administer nearly all Indian affairs, regulate individual property, tribal membership, tribal assets, land and governments, regulate trade and liquor, exercise criminal jurisdiction and even terminate a tribe. It can deprive tribes of any attributes of their sovereignty, can legislate for tribes in all matters and can destroy a tribal government whenever it wants, whereas these decisions made by Congress respecting Indians are not subject to review by a court just because of the congressional ultimate authority over Indians (Pevar 58, 61).

However, the Supreme Court held that this plenary power over Indians was not absolute and that there existed two constitutional limitations of this power: the Due Process Clause and the Just Compensation Clause, both included in the Fifth Amendment to the U.S. Constitution (Pevar 58).

Under the Due Process Clause, nobody can be divested of life, liberty, or property without due process of law and that is why unreasonably, arbitrary or discriminatory laws cannot be enforced by Congress. It may be, however, challenged that Indians are treated differently from non-Indians and thus discrimination occurs. Nevertheless, these laws are not viewed as race legislation, the Supreme Court held, because treating Indians differently has important historical and political reasons due to their status as the early inhabitants of the territory. Moreover, there exists a trust responsibility to treat them differently and a constitutional basis for enacting laws unique to them (Pevar 58, 60).

Each federal Indian law, then, must be examined in its historical, political, and cultural context to determine if it constitutes race discrimination. Congress is permitted to give Indians special rights and benefits if doing so is a reasonable exercise of Congress's plenary powers over Indians (Pevar 60).

Likewise, reasonable unique restrictions can be imposed as well. From the same reasons, some groups of Indians can be even privileged compared to the others (Pevar 58, 60-61).

Under the Just Compensation Clause, everyone has to be paid an adequate compensation, if the private property of this person was taken by federal government. It applies to Indian treaty rights (for example hunting and fishing rights, immunity from state taxation etc.) as well, as noted previously (Pevar 59).

Theoretically, other limits are posed by the “*doctrine of trust responsibility*,” under which the federal government should act only in the best interests of the Indians and tribes and honour its promises. Unfortunately, this limitation is not legally enforceable (Pevar 59).

It is also important to mention that although Congress exercises almost unlimited power over Indians and tribes, it operates “*only*” in the legislative branch of federal government. Therefore, the policies and laws formulated by Congress have to be then performed and implemented by the executive branch – by departments and federal agencies. The most important department relevant to Indian affairs is the United States Department of the Interior (DOI). One of the federal agencies under its control is the Bureau of Indian Affairs (BIA), which administers Indian policy and the majority of the Indian programs and is overseen by the Assistant Secretary of the Interior. The other departments in charge of some Indian programs are the Department of Health and Human Services, the Department of Housing and the Department of Agriculture (Pevar 62).

4.1.3. Examples of federal power

“*The results*” of this congressional power over Indians and tribes – policies, programs and laws – can be then implemented in many different ways; to illustrate the possibilities of this implementation, here are a few examples from three selected areas: tribal membership, trade and liquor and termination of a tribe (Pevar 61).

Tribal membership can be controlled by an Indian tribe, which determines tribal membership for its own purposes, but also by the federal government, which determines this membership for federal purposes, for example which Indians are entitled to federal health benefits or education scholarships. Federal officials and federal courts cannot intervene in tribal enrolment determinations, but Congress has this power and may regulate tribal membership by passing a law or creating a program by which it can define who is a tribal member for the purposes of the particular law or program. In case Congress does not determine who is eligible, then, it must be determined subsequently by the federal agency that implements the program, or, as regards laws, by the courts which generally use a two-part test, already mentioned (Pevar 18, 69).

Trade and liquor can be regulated by Congress under the Commerce Clause. Through a comprehensive law from 1790, “*all persons, except Indians “of the full blood,” who trade on an Indian reservation*” are required to “*obtain a federal licence and to obey certain restrictions on the type of goods and services being offered and the manner of their sale*” (Pevar 78).

In this area, Congress has delegated its authority to the Assistant Secretary of Indian Affairs – the person in charge of the BIA. He or she may issue a trader’s license after meeting the requirements by the applicant and enacts regulations that describe details of reservation trade and which goods and services can be sold; if a violation of these regulations occurs, the trader’s goods shall be confiscated and sold by the federal government. Federal officials cannot ignore their duties, otherwise they could be ordered to enforce the law by a court. To prevent corruption and undue influence, federal employees working directly with Indians and tribes are not allowed to trade with them “*except on behalf of the United States*” (Pevar 78).

Regarding liquor, the current version of a law from 1892:

authorizes each tribe to decide for itself what types of liquor regulations to establish, and tribes have the authority to issue their own liquor licenses, to refuse to issue a liquor license to non-Indians, and to ban entirely the sale of liquor on the reservation (Pevar 79).

From the point of view of Indians, the worst and ultimate way how Congress can exercise its power over Indians is to terminate a tribe, because Congress terminates the federal government’s trust relationship with a tribe, which disqualifies the tribe from the

services and support available only to federally recognized tribes. “*At the same time, Congress eliminates the tribe’s reservation and forbids the tribe from exercising powers of self-government*” (Pevar 67), and replaces tribal law with state law (Pevar 67-68).

The termination process starts by the act that Congress passes a law that directs the Secretary of the Interior – the highest official in the Department of the Interior – to distribute all property of the affected tribe either to tribal members or to a tribal corporation in case the tribe chose to incorporate itself under state law. After this property is distributed, the Secretary eliminates the reservation and places a notice in the Federal Register about termination of the tribe. Tribal members then become subject to state law – it means that they lose their immunities from state law which they would normally possess. However, they can continue to exercise their treaty right if they were not expressly extinguished by the termination act passed by Congress (Pevar 67, 69).

Naturally, termination must comply with all of the limitations mentioned above and termination act must be clear and unequivocal (Pevar 68-69).

4.2. State power

In the most important case in federal Indian law – *Worcester v. Georgia* from 1832 – the U.S. Supreme Court decided that Indian tribes were “*distinct, independent political communities in which state laws can have no force unless Congress had given its express consent*” (qtd. in Pevar 109). This decision sets the main course of the relationship between state and tribal power; a state can normally regulate all persons and activities within its borders, however, it cannot force reservation Indians and tribes to comply with state law without express authorization of Congress, that has exclusive authority over Indian affairs (Pevar 109).

Many states and Indian tribes, nevertheless, cooperate and create common programs,³⁶ enter into agreements to regulate common affairs, such as the use of water and other natural resources, or aspects of reservation gaming, coordinate law enforcement activities and extradition of criminal suspects, divide tax revenues etc., because they share many affairs and difficulties and have many interests in common (Pevar 109-110).

³⁶ The State-Tribal Relations Project has been designed recently to promote intergovernmental cooperation (Pevar 110).

4.2.1. Source of state power

The only source of state power over reservation Indians and tribes can be the express authorization of Congress, by virtue of its plenary power to regulate Indian affairs, and Congress has granted this authorization in certain cases. The most important laws that notably increased state jurisdiction in Indian country are: the General Allotment Act of 1887 (GAA), Public Law 82-280 from 1953 (P.L. 280) and the termination laws enacted 1953 – 1968 (Pevar 111).

The GAA, which was already mentioned, authorized federal officials to assign allotments to tribal members and to sell the remaining tribal land to non-Indians. Twenty-five years later, these allotments became subject to state real estate taxation and could be sold to non-Indians or seized by county officials when the Indians failed to pay the taxes. By 1934, tribes had lost about two-thirds of the lands they held in 1887 (Pevar 111).

The GAA did not give states any power over Indians themselves, however, it hugely increased state authority over the land within Indian reservations privately owned by non-Indians; under the GAA, states may generally regulate the activities occurring on reservation land owned by a non-Indian and tax the value of that land (Pevar 112-113).

P.L. 280 is a product of the termination era and reflects the assimilatory policy between 1953 and 1968. It authorizes six so called “*mandatory states*” (California, Minnesota, Nebraska, Oregon, Wisconsin and Alaska³⁷) to exercise full criminal jurisdiction in Indian country within these states (except several exempted reservations³⁸), thus increasing state jurisdiction. Under P.L. 280, the other forty-four states – “*option states*” – can acquire the same jurisdiction by passing a law agreeing to exercise that power, but since 1968 only with a consent of potentially affected tribe. However, only ten option states³⁹ assumed any jurisdiction under this act and most of them assumed only partial one. They limited their jurisdiction in several ways:

³⁷ Alaska was added as a sixth mandatory state in 1958 (Pevar 113).

³⁸ the Red Lake Reservation, the Warm Springs Reservation, the Menominee Reservation and the Annette Islands (Pevar 113)

³⁹ Arizona, Florida, Idaho, Iowa, Montana, Nevada, North Dakota, South Dakota, Utah and Washington (Pevar 116)

to (1) less than all the Indian reservations in the state, (2) less than all the geographic areas within an Indian reservation, or (3) less than all subject matters of the law (Pevar 115),

and this jurisdiction can be even also retroceded by a state through the office of the Secretary of the Interior (Pevar 112-113, 115, 117).

As regards civil jurisdiction, nothing in this law confers “*general state civil regulatory control over Indian reservations*” (qtd. in Pevar 113), such as to tax reservation Indians or regulate reservation gambling. But, it does authorize state courts to decide a limited sphere of civil cases filed by or against individual Indians that arise in Indian country, unless they interfere with exclusive jurisdiction of federal government over certain issues – *the federal pre-emption test* – or their result intervenes in tribal self-government – *the infringement test* (Pevar 113-114).

Moreover, P.L. 280 contains an exception clause that expressly withholds state authority to determine the ownership of trust land, interfere with treaty rights, or encumber trust property (Pevar 114).

Thus, P.L. 280 does not limit tribal authority itself, it “*only*” authorizes “*P.L. 280 states*” to have concurrent jurisdiction⁴⁰ in certain activities (Pevar 114).

Termination laws are other and most devastating means how to increase state jurisdiction over Indians. During the termination era, Congress terminated 109 tribes and tribal members of these terminated tribes thus became fully subject to state law and so did their lands. The termination process itself is discussed above (Pevar 118).

Some amount of state jurisdiction over particular tribes or over certain subject matters has been given the states under several other laws passed by Congress. Nevertheless, these laws are not of so great importance as the previous ones.

Thus, every state may exercise some jurisdiction on Indian reservations, with the mandatory P.L. 280 states being allowed to exercise the most. On the whole, however, Congress has kept reservation Indians and tribes free from state jurisdiction (Pevar 118-119).

⁴⁰ It means, that Indians can choose, if they file suit in either state or tribal court, for example when they want to get divorced (Pevar 114).

4.2.2. Scope of state power

The scope of state power differs, according to over which group of people is exercised. Relevant groups for the purposes of this chapter are: *reservation Indians* (Indians on their own reservation), *non-member Indians* (Indians on a reservation different from their own), *off-reservation Indians* (Indians who engage in activities outside an Indian reservation), and *reservation non-Indians* (non-Indians on Indian reservation) (Pevar 110, 125).

As noted previously, states may not regulate the activities of reservation Indians and tribes, and state laws cannot be enforced in Indian country without express consent of Congress. However, the Supreme Court has retreated from this principle in some cases, and now, a state can apply its laws in Indian country mainly in the field of the state's regulation of reservation non-Indians, without congressional consent. But, such state laws have to primarily pass a two-part test in order to be valid in Indian country without congressional authorization: the federal pre-emption and the infringement tests, already mentioned. Thus, it must be examined, if the exercise of state authority does not conflict with federal law, which would prevail as it is the supreme law of the land, and, if the state law does not infringe on tribal self-government. The exercise of state jurisdiction will then usually pass the test, when it "*has little impact of federal law or tribal sovereignty and primarily impacts non-Indians*" (Pevar 123). Thus, states have to obey and honour all Indian treaties and federal statutes relevant to Indians, and respect tribal sovereignty (Pevar 110, 119-120, 123).

Non-member Indians do not enjoy the same immunities from state law as tribal members do. Thus, states have broader powers over non-member Indians; these Indians can be, for example, prosecuted for committing a traffic offense of an Indian reservation by a state, or have to pay state sales taxes when they purchase goods on a reservation (Pevar 110-111).

Off-reservation Indians are fully subject to the same state laws as everyone else while engaging in activity outside a reservation, unless a treaty or federal law grants an immunity. Thus, when Indians are fishing or hunting outside the reservation under a treaty, state law, which may be applied only in a non-discriminatory manner over them, is generally inapplicable (Pevar 125).

The scope of state power over Indians varies also with respect to the particular state; under P.L. 280, the states can be divided into three groups: the *mandatory states*, the *option states that assumed mostly partial jurisdiction* under this act (both groups together create so-called *P.L. 280 states*), and the *option states that did not assume any jurisdiction* under this act.

The mandatory states exercise full criminal jurisdiction in Indian country within their borders. The scope of power in the option states that did acquire any jurisdiction under P.L. 280 varies from state to state and depends often on tribal approval. The states that did not assume any jurisdiction under P.L. 280 cannot exercise it. The P.L. 280 states are also authorized to have concurrent jurisdiction in certain activities – their courts can resolve a limited sphere of civil disputes involving individual reservation Indians that arise in Indian country, if they pass the federal pre-emption and infringement tests (Pevar 113-114).

Under termination laws, states can exercise their full jurisdiction over tribal members and lands that used to be a part of a terminated tribe. However, Congress has restored to federal status almost all of the terminated tribes since the termination era (Pevar 118).

Finally, under the GAA, as mentioned above, states can regulate activities occurring on reservation land privately owned by non-Indians and tax the value of that land (Pevar 112).

Generally, state law remains inapplicable to Indians regarding their on-reservation behaviour (Pevar 124) and “*the policy of leaving Indians free from state jurisdiction and control is deeply rooted in the Nation’s history*” (qtd. in Pevar 109).

4.2.3. Examples of state power

To outline various situations, in which state power can be exercised in relation to individual Indians, Indian tribes or Indian land, here are two examples. The first one illustrates state power over non-Indians on their own land within the reservation, the second one possibilities of “*partial P.L. 280 jurisdiction*” in three selected option states.

A good example of state power over non-Indians on their own land within the Indian reservation is the case *Montana v. United States* (1981). The Supreme Court held that:

exercise of tribal power beyond what is necessary to protect tribal self-government or to control internal relations is inconsistent with the dependant status of tribes, and so cannot survive without express congressional delegation (qtd. in Pommersheim, 92).

The Court continued, that hunting and fishing by non-Indians on their land within a reservation is governed by state law, unless the tribe can show either that the non-Indians entered in consensual relationships with the tribe or its members, or the activities of them directly affect the “*political integrity, economic security, or health or welfare of the tribe*” (Pommersheim 92).

Similarly, when one of these two “*Montana exceptions*” is not proved by a tribe, non-Indians living in the reservation inhabited mainly by non-Indians do not have to comply with tribal zoning laws (Pevar 112; Pommersheim 93).

As the second example, here are three different option states – Arizona, Idaho and Utah, which limited their jurisdiction under P.L. 280 only to a part. Arizona, for example, assumed jurisdiction over all Indian country within the state, but limited it only to enforcement of the state’s air and water pollution control laws. Idaho assumed jurisdiction only with respect to a few crimes and Utah assumed jurisdiction over all Indian country within the state with tribal consent, but no tribe has consented (Pevar 116).

4.3. Tribal Power

Tribal power is closely connected with the inherent right of self-government, which creates basis from which this power arises. Although Congress has the authority to limit and abolish tribal powers, they are not “*delegations of authority from the United States*” (Pevar 82). They result from the historical development and special status of Indians and Indian tribes and that is why the United States⁴¹ recognizes and supports them (Pevar 82).

Indian tribes used to be sovereign nations and today, they are still considered to be distinct, independent political communities, retaining their original rights, having territorial boundaries, within which their authority is exclusive, and continuing to exercise the inherent sovereign power over their members and territories. This so called

⁴¹ The United States, as a signatory to the UNDRIP, recognizes a right to political and cultural autonomy of indigenous peoples around the world (Pevar 82).

“*Worcester doctrine of inherent tribal sovereignty*” has changed over the years, but its basic premises remain still the same. Moreover, this concept of inherent tribal sovereignty is consistent with international law as well, since President Barack Obama signed the UNDRIP, already mentioned (Pevar 81-82).

4.3.1. Source of tribal power

“*The source of an Indian tribe’s power is its people*” (Pevar 82). It comes out from their unique history, special political status of sovereign political entities and inherent tribal sovereignty, not derived from the United States, mentioned above. Indian tribes can exercise powers of self-government (they may prescribe laws applicable to tribal members, and in some areas to non-Indians as well, administer them and enforce them), because of their original sovereignty (Pevar 82).

4.3.2. Scope of tribal power

Tribal government possess the same powers as the federal or state government to control their internal affairs, with several exceptions. Anyway, the most important areas of tribal authority are the right to form a government, to determine tribal membership, to regulate tribal and individually owned land, to exercise criminal and civil jurisdiction, to regulate domestic relations and to engage in and regulate commerce and trade. Indian treaty rights, tribal rights under the doctrine of trust responsibility, hunting, fishing, trapping, gathering and water rights are no less important (Pevar 84, 107).

Indian tribes have thus considerable powers and discretion over their members and territory. However, they are also subject to the plenary power of Congress, which means, that Congress has plenary authority over them. It results from the plenary power doctrine, and although this doctrine has been extensively criticized on both legal and moral grounds since none of the justifications of this power by the Supreme Court has been standing on solid basis, Congress has authority to limit tribal powers (Pevar 64-65, 83).

Limitations that can be placed on Indian governmental powers are of two types: express and implied. “*The express limitations*” are created by the restrictions explicitly expressed by Congress, in many of legal regulations it has made or it will make, such as the Indian Civil Rights Act from 1968 (ICRA), which confers many civil rights on all persons subject to the jurisdiction of a tribal government and thus limits the power of tribes and permits federal judges to enforce those rights in various situations. “*The*

implied limitations” arise from the “*dependent status*” of Indian tribes, their position under the control of the federal government, as a result of their “*incorporation*” into the United States. For example, Indian tribes may no longer declare war or exercise certain powers over non-Indians. Nevertheless, tribal powers are not limited by the U.S. Constitution itself and the Constitution does not even apply to them – it means, that tribal governments can enact statutes that would violate the Constitution if they were enacted by the federal or state governments (Pevar 83-84, 241).

However, as already mentioned, Indian tribes possess all powers of a sovereign nation which were not expressly extinguished by a treaty or Congress or lost by implication, due to the reserved rights doctrine (Pevar 83).

4.3.3. Examples of tribal power

As an illustration, here are examples of tribal power from three selected areas, described in more detail: the right to regulate individually owned land, the right to exercise criminal jurisdiction and the right to regulate domestic relations.

Most Indian reservations have parcels of land owned by non-Indians on them, but Indian tribes do not have the same power to regulate activities on land which is privately owned by non-Indians, such as to occupy the land and to exclude other persons from it, or to regulate various activities on it, as it has for activities that occur on trust land. In addition, various railroads, transmission lines or highways can be built across tribal land, due to rights-of-way given to non-Indians and states by Congress, although it requires the consent of the affected tribe since 1948. Nevertheless, Indian tribes possess the inherent sovereign right to prohibit activities on privately owned land that jeopardize the “*political integrity, the economic security, or the health or welfare of the tribe*” (qtd. in Pevar 99), it means to place restrictions on the use of private property within its borders for safety and welfare of its members and resources – to zone land, to determine who may inherit private property, to take private land for a public use, to tax and impose regulations on businesses inside the reservation (Pevar 98-99).

Indian tribes have the inherent right to exercise criminal jurisdiction⁴² over their tribal members and they have the same authority over non-member Indians as well, under the law passed by Congress in 1991. They can maintain law and order by creating

⁴² “*Criminal jurisdiction is the power that a government possesses to create rules of conduct and to punish those who violate them*” (Pevar 127).

a police force, establishing courts and prisons and punishing tribal members who violate tribal law, however, they cannot exercise this jurisdiction over non-Indians, unless Congress has expressly given this power to a tribe – which it has never done. They can only exclude non-Indians from the reservation, to investigate their criminal activity on the reservation and to detain them until appropriate state or federal authorities put them into custody. Moreover, tribal police may be charged to arrest non-Indians under agreements concluded with state and federal law enforcement agencies. At present, many tribal leaders have been trying to restore inherent tribal power over all people and places within Indian country⁴³ (Pevar 99-100).

This power has been, nevertheless, limited in several aspects by Congress. The Indian Civil Rights Act of 1968 (ICRA) limits the penalties that tribal courts can impose and requires that criminal defendants have to be vested with almost all of the rights they would have before state and federal courts. In addition, state and federal officials can prosecute certain crimes committed by Indians in Indian country. The tribes may, however, prosecute these Indians for the same or related offenses too (Pevar 100-101).

In general, the exercise of criminal jurisdiction in Indian country is dominated by five main court-created principles:

1. Congress has final authority to determine which governments can exercise this jurisdiction in Indian country and can increase or decrease this jurisdiction;
2. an Indian tribe possesses the inherent right to exercise criminal jurisdiction over its members, which is part of its own retained sovereignty;
3. neither state nor federal government can exercise this jurisdiction over tribal members for crimes committed on the reservation unless Congress has expressly conferred that power;
4. an Indian tribe cannot exercise this jurisdiction over non-Indians without express consent of Congress, and
5. a state can exercise this jurisdiction over non-Indians for crimes committed on the reservation against other non-Indians (Pevar 127-128).

Except the ICRA – the statute that limits the tribal criminal jurisdiction, there are three other very important statutes passed by Congress that govern the criminal

⁴³ Many influential Indian leaders issued a paper called Tribal Governance and Economic Enhancement Initiative in 2002 (Pevar 100).

jurisdiction in Indian country, namely: Public Law 83-280 (P.L. 280) from 1953, which allows some states to exercise full criminal jurisdiction in Indian country, then the Indian Country Crimes Act of 1834 (ICCA), which authorizes the federal government to extend all of its criminal laws into Indian country with some exceptions, and finally the Major Crimes Act from 1885 (MCA), which gives the federal government jurisdiction over most serious crimes when committed by an Indian against any other person in Indian country (Pevar 128-129).

To illustrate the complexity and composition at least of a part of criminal jurisdiction in Indian country, here are two tables – the first one shows the division of jurisdiction when the perpetrated crime is covered by the MCA, the second one is for all other crimes:

When the crime committed is a “major” crime

<i>Persons involved</i>	<i>Jurisdiction</i>
Indian accused, Indian victim	Federal government (MCA) and tribal government (inherent sovereignty)
Indian accused, non-Indian victim	Federal government (MCA) and tribal government (inherent sovereignty)
Non-Indian accused, Indian victim	Federal government only (ICCA)
<u>Non-Indian accused, non-Indian victim</u>	<u>State government only</u>

When the crime committed is not a “major” crime

<i>Persons involved</i>	<i>Jurisdiction</i>
Indian accused, Indian victim	Tribal government only (inherent sovereignty)
Indian accused, non-Indian victim	Federal government (ICCA) and tribal government (inherent sovereignty)
Non-Indian accused, Indian victim	Federal government only (ICCA)
<u>Non-Indian accused, non-Indian victim</u>	<u>State government only</u>

(Pevar 129-130)

The right to regulate domestic relations among tribe members on the reservation, as the last example in this chapter, involves matters relating to home and family life (marriage, divorce, adoptions, child custody), including their resolving by tribal courts. This right is an inherent and exclusive part of tribal sovereignty to its full extent, unless limited by treaty or statute. The Supreme Court acknowledged, that the tribe's authority over proceedings in these matters was exclusive and that states lacked jurisdiction to intervene, otherwise they would seriously interfere with tribal self-government. Among the statutes that regulate this area belongs for example the Indian Child Welfare Act of 1978, which supports the inherent tribal right to determine the custody of children (Pevar 103-104).

5. NAVAJO INDIAN TRIBE

In this chapter, the previously discussed theoretical legal basis will be applied to the particular Indian tribe – the Navajo Indian tribe. First, some basic facts about the tribe and its history will be stated, then, the legal situation of this tribe will be examined, including the main treaties, which the tribe signed during the relocation period. The presented data should help answer the examined question.

5.1. Basic facts

The Navajo Nation⁴⁴ (from the Tewa word “*Nava*,” cultivated land, and “*hu*,” the mouths of canyons), which is official name of the Navajo reservation since 1969,⁴⁵ covers more than 27,000 square miles and extends into the southwest states of Utah, Arizona and New Mexico.⁴⁶ It has a still increasing population of more than 250,000⁴⁷ people, with many families living beyond the boundaries of the reservation. This region is not well adapted to crop farming, however, it is suitable for pasturage, that is why the Navaho have preferred stock raising, especially sheep and goats (Navajo Indian Tribe History, navajoindian.net; History; Navaho Indian Tribe History, accessgenealogy.com).

While official history of Navajo Nation doesn't date back very far, the history of the Navajo people is complex and eventful.⁴⁸ The first records of the Navaho come from 1629, when this name was mentioned by Zarate-Salmeron. During the 18th century, there were some attempts to Christianize them, but unsuccessfully, and the Navajo still preserve their unique religious culture, with many well-defined divinities, mythic and legendary traditions, songs, prayers and ceremonial dances (Navajo Indian Tribe History, navajoindian.net; Navaho Indian Tribe History, accessgenealogy.com).

Previous the occupancy by the United States, they had been in a constant war with the Pueblos and the white settlers from New Mexico, and they were usually victorious. Nevertheless, after gaining New Mexico by the United States, they had to face greater military force. The first invasion into their country started up in 1846 and was finished by the first peace treaty with the Navaho in the same year. However,

⁴⁴ The Navaho do not use this name and call themselves Diné - people (Navaho Indian Tribe History, accessgenealogy.com).

⁴⁵ From 1923 until 1968, the Navajo Nation was called the “*Navajo Indian Reservation*” (Navajo Indian Tribe History, navajoindian.net).

⁴⁶ So called four corners region (Navaho Indian Tribe History, accessgenealogy.com). See appendix Nr. 7 - Navajo Nation – Location map.

⁴⁷ Additional 50,000 Navajos live in urban area outside the reservation.

⁴⁸ See appendix Nr. 8 - Timeline.

“despite a peace treaty, a series of raids on both sides inflamed tensions between Americans and the tribe” (Navajo Indian Tribe History, navajoindian.net), and in 1849, there was another military expedition into their land. Another peace treaty was concluded, and again, the peace was soon broken. Thus, in the period between 1846 and 1863, a number of treaties were concluded, nevertheless, always other raids and counter-raids occurred. Finally, Colonel Kit Carson invaded the Navajo land from New Mexico in 1863. Many people were killed, crops burnt and houses destroyed, and the great part of the Navajo tribe was relocated to the Fort Sumner internment camp in Bosque Redondo, eastern New Mexico. The series of deportations began in 1864; it is called the “*Long Walk*,” and symbolizes one of the most traumatic events in the Navajo history (Page 270; Navajo Indian Tribe History, navajoindian.net; Navaho Indian Tribe History, accessgenealogy.com). They were forced to live in terrible conditions there and at least 2,000 Navajos had died, before Lieut. General W. T. Sherman, the head of the Peace Commission to the Navajos, signed a treaty allowing Navajos to leave the camp and return to a portion of their former lands in 1868 (1868: Navajo internment ends). Since then, they have remained at peace, greatly prospered and successfully extended their reservation. Later, Howard W. Gorman in his *Navajo Stories of the Long Walk Period* from 1973 stated:

As I have said, our ancestors were taken captive and driven to Hwééldi⁴⁹ for no reason at all. They were harmless people, and, even to date, we are the same, holding no harm for anybody ... Many Navajos who know our history and the story of Hwééldi say the same (1864: The Navajos begin Long Walk to imprisonment).

According to a legend, the first Navajo clan was created by gods. However, in fact, the Navajos are descendants of Athapascans, who came to the southwest from Canada around 1400 A.D. (And even before them, the first known inhabitants of the southwest were Anasazi, the Ancient Ones.⁵⁰) However, in course of time, Athapascans joined together with other groups, and as a result, the Navajo are a very composite nation, with prevailing features hardly to define, and with a rich vocabulary (The history of cowboys and Indians; Navaho Indian Tribe History, accessgenealogy.com), which

⁴⁹ Bosque Redondo in Navaho language (Long Walk of the Navajo)

⁵⁰ See appendix Nr. 9 - Map showing extent of Anasazi, Hohokam, and Mogollón settlements in what is now known as New Mexico and Arizona.

was used during the World War II for creation of the unique code for sending battlefield information in a secure manner, that was never broken by the Japanese. The Navajos who were inducted into the Marine Corps during this war are called “*code talkers*” and are very famous (Page 365).

According to Navaho Indian Tribe History on the website accessgenealogy.com, the Navajo are:

very industrious, and the proudest among them scorn no remunerative labor. They do not bear pain with the fortitude displayed among the militant tribes of the north, nor do they inflict upon themselves equal tortures. They are, on the whole, a progressive people (Navaho Indian Tribe History, accessgenealogy.com).

Still, the Navajo have a great dread of ghosts and mortuary remains. For example, they used to destroy or leave houses, where somebody died. Thus, in order to save their dwellings, some of them still carry out the dying and let them pass outside (Navaho Indian Tribe History, accessgenealogy.com).

The arts, for which the Navajo are most appreciated, are weaving and silversmithing. They make especially remarkable jewellery from silver and turquoises and create beautiful blankets, belts, saddle girths etc., only with simple looms, which they took over from the Pueblo women, incorporated into the tribe. They used to make a fine red pottery with characteristic black design, but today, they make it merely for cooking purposes. On the other hand, for ceremonial purposes, they still bake food in the ground and use other aboriginal methods of cooking. Generally, the Navaho are highly religious nation, as already mentioned (Navaho Indian Tribe History, accessgenealogy.com). However, they continue to endorse their traditions, while supporting the economy through tourism, gambling and arts and crafts (Navajo Indian Tribe History, navajoindian.net).

5.2. Navajo Indian treaties

The first occasion, when the Navajo could familiarize with the Anglo-American legal document, was during the federal Indian policy of Indian relocation between 1828 and 1887. In this period, tribes, especially the eastern ones, were forced to sign the treaties, according to them they had to move to reservations far from their ancestral homeland or at least reduce their homeland, often more than once, and relinquish some

of their rights, in exchange for set of promises given by the U.S. government. Most of these treaties were however very soon broken and other treaties were concluded.

The Navaho signed several treaties in the years 1846 – 1868 as well. In the “*Treaty of Canyon de Chelly*” from 1849, for example, the Navajo tribe was placed under the exclusive jurisdiction, protection and guardianship of the U.S. government. The Navajo tribe agreed to cease hostilities and remain at peace, recognize the government of New Mexico and be annexed to it, deliver all stolen property and American and Mexican captives to the military authority in New Mexico, grant the people of the U.S.A. free and safe passage through the Navajo territory, and let the U.S. government establish military posts and agencies in order to preserve tranquillity, and designate, settle and adjust Navajo territorial boundaries. In exchange for it, the United States of America promised to cease hostilities, remain at peace and return all stolen property and Indian captives as well, grant to the Navajo Indians such donations, presents and implements, and adopt such other liberal and humane measures, which the U.S. government may deem “*meet and proper,*” and legislate and act with a view to ensure the permanent prosperity and happiness of the Navajo Indians (Treaty with the Navaho, 1849).

Under the “*Bonneville Treaty*” of 1858, the Navajo land was already reduced. However, the main treaty from June 1, 1868 that assigned the Navajo a permanent reservation, was paradoxically the treaty that allowed them to return back to their original homeland from the internment camp in Bosque Redondo. It is one of the few examples when the U.S. government relocated a tribe back to its original boundaries (Long Walk of the Navajo).

According to the *Status Report of the Condition of the Navajos* at the Bosque Redondo reservation (May 30, 1868), which was submitted to Lieut. General W. T. Sherman and Col. S. F. Tappan, this relocation to the original land was first of all merit of the Navajo Indians themselves. In this report, Theo. H. Dodd, U.S. Indian Agent for Navajos, wrote:

During the past year they have been constantly begging me to endeavor to have them removed to their old country where they say the soil is more productive, where there is an abundance of timber, where mescal, mesquite, beans, wild potatoes & fruits are found in abundance and

where they would be far removed from their old enemies The Comanches, Kiowa and other Indians.

I am satisfied that the Navajos will never be contented to remain on this or any other reservation except one located west of the Rio Grande ...

I therefore believe that it would be better for the Indians and the people of N.M. and a saving to the Government & in the end more likely to succeed in civilizing and making them self-sustaining to locate them upon a good reservation west of the Rio Grande (Dodd).

Then, Lieut. General W. T. Sherman, who represented the United States, concluded the treaty with the Navajo Nation, where he fully respected the recommendations of U.S. Indian Agent for Navajos, Theo. H. Dodd.

Under this treaty, called the “*Treaty of Bosque Redondo*” or the “*Treaty of Fort Sumner*” and concluded there in 1868, both parties (the Navajo Nation and the United States) agreed to cease war and wrongdoing and keep peace. The Navajos were granted a reservation of 5,200 square miles in Arizona and New Mexico, inside their four sacred mountains (Long Walk of the Navajo), further provisions of seeds, agricultural implements and other articles, construction of some basic buildings (such as warehouse, carpenter, schoolhouse or chapel), and a sum of money for purchase of livestock and corn. They could also retain the right to hunt on any unoccupied lands contiguous to their reservation. On the other side, they had cede to the United States their claim to other lands, to agree with an agent reporting to the Commissioner of Indian Affairs, with compulsory education for children between six and sixteen, and they had to promise not to oppose the construction of railroads, military posts and roads across the reservation, and not to attack any U. S. citizens or their belongings. The treaty also contained the typical “*bad man provision*,” already discussed, and conditions for validation of any future treaties (Treaty with the Navaho, 1868).

After the return from Bosque Redondo, the Navajo tribe became more cohesive and was able to successfully increase its reservation by subsequent executive orders to over 27,000 square miles since then⁵¹ (Long Walk of the Navajo; Navaho Indian Tribe History, accessgenealogy.com).

⁵¹ See appendix Nr. 10 - Border changes and expansions of the Navajo Reservation 1868 – 1934.

The difference between extent of the reservation from 1868 and current extent of the Navajo Nation is also evident from the Navajo flag, where the original reservation, shown in dark brown, creates only about one fifth of the current one⁵² (Navajo Nation History).

5.3. Federal power over the Navajo

As already mentioned, Congress has plenary power over Indians and tribes, which means, it can regulate through legislation most of the Indian affairs. Its authority is so broad, that it may even terminate a tribe or diminish or abolish a reservation. If Congress decided for example to diminish the Navajo Nation one day, Navajo would probably have insignificant chance to reverse this decision. Fortunately, their membership is not inconsiderable – Navajo enrolment exceeded 300,000 members⁵³ in 2011 (Donovan, Census) – and with reference to contemporary federal Indian policy, it is improbable Congress would make decision like this in near future.

However, it is essential to realize, that most of the possibilities of individual Indians and tribes are strictly given, developed over the centuries and that the individual Indian or tribe has only a tiny chance and possibility to change an existing particular federal law, the less the entire federal Indian policy.

On the other hand, it is not true that the Indians and tribes cannot influence federal Indian law and federal actions regarding Indians and tribes at all; in certain phases of the whole process, they may – at least hypothetically – use particular means for affecting the future result. The most important phase is probably the one of creation and passing a law itself. In this phase, tribes could theoretically influence the result through their own representation in Congress.

In 2012, for example, Wenona Benally Baldenegro, Navajo woman, who has a Harvard law degree and a Harvard Master of Public Policy degree, was running for Congress in Arizona's First Congressional District. She said:

As Congresswoman for Congressional District One, I will bring good, sustainable jobs to our district, I will create educational opportunities for our children, and I will absolutely protect Social Security, Medicare,

⁵² See appendix Nr. 11 - Navajo flag.

⁵³ However, not all of them live on the reservation; some of them are considered urban Navajos (Donovan, Census).

and Medicaid (Navajo Congressional Candidate Reports Over 2,000 Individuals Contributors).

“If she had won against Ann Kirkpatrick for Congress, she would have been the first Native American woman elected to Congress” (Shebala). Even though *“in the history of the United States, less than ten American Indians have ever served in Congress”* (Navajo Congressional Candidate Reports Over 2,000 Individuals Contributors), this chance still exists, and Wenona was very close to the position.

However, there are several more practicable ways, how Navajo Nation (and all other federally recognized tribes as well) can affect law or its outcomes for their own benefit. One of these ways is tribal-federal consultation, which is *“form of implementing government to government relations”* (Melton), a critical part of the doctrine of trust responsibility, and has been supported by recent American presidents (Pevar 40).

Thus, through this direct dialogue, that has several phases,⁵⁴ Navajo Nation – or more precisely elected officials and other representatives of its tribal government – can intervene in any action or decision of the executive departments and agencies of the U.S. government that could influence the tribe’s interests or impact the tribe. The consultation is obligatory for these departments and agencies since 1994 and is based on principles of cultural and historical knowledge, intergovernmental relations, openness, respect, spirit of cooperation and complying with tribal sovereignty (Melton). In case the consultation is meaningful and well performed, it should end in informed decision, which is fair and reasonable to both sides, and in *“creation of more enlightened, better constructed, and more effective federal policies, projects, and regulations”* (qtd. in Pevar 41). On the other hand, decisions made without proper and meaningful consultation can be invalidated by courts, as mentioned previously (Pevar 41).

Unfortunately, although Navajo Nation has been trying to consult, not always the results have been satisfactory; in 2006, at a meeting in Washington, D.C., Navajo President Joe Shirley, Jr., said that *“in general there has been a ‘lack of meaningful consultation’ between the federal government and Indian tribes”* (qtd. in Pevar 41).

Another possibility, how Navajos can actively influence legal events, impacts of laws and decisions of federal officials and agencies, is to use the opportunity to apply

⁵⁴ such as informing the tribe of all facts, time to consider the situation, providing technical assistance and additional data, maintaining a dialogue, keeping the tribe informed, documentation of the process, accepting the tribe’s recommendation, sending a written explanation etc. (Pevar 41).

for a job within the BIA and the Indian Health Service (IHS), which is operating division within the U.S. Department of Health and Human Services. Indians, who prove that they are members of a federally recognized Indian tribe, are entitled to preference in employment in these institutions under the Indian Preference Act of 1934. This act intended:

to give Indians greater control within the agency that administers most of the federal government's Indian programs so as to promote Indian self-government (Pevar 60).

In 2012, more than 85 percent of the BIA employees were Indian (Pevar 62).

Influential and qualified Navajos in the right positions – such as Assistant Secretary for Indian Affairs at the Department of the Interior – could affect many “*facets of tribal life,*” because federal agencies implement federal government’s Indian policies “*on a daily basis*” (Pevar 62). According to Professor Stephen L. Pevar:

Indians and tribes need to work within the political arena to garner support for tribal self-government, self-determination and economic stability (Pevar 15).

Another, very significant possibility, how Navajo Indian tribe can customize the Anglo-American legal system to comply more with the traditional Navajo live pattern, is to use the possibility given to Indian tribes by the Indian Self-Determination and Education Assistance Act of 1975 (ISDEAA). Under this law, tribes can decide to administer any Indian programs individually and not only to derive benefit from programs provided and managed by federal agencies for them. Thus, ISDAA authorizes tribes to operate these programs on the reservations by themselves. The federal agency must approve such a decision of a tribe and:

*must then transfer to the tribe all funds given by Congress to the agency for the operation of that program, including administrative expenses. The tribe then administers the program subject only to the agency's general oversight*⁵⁵ (Pevar 63).

⁵⁵ The law has been a great success and now more than one-half of the budgets and functions of the BIA and the IHS are managed by Indian tribes themselves (Pevar 64).

Recently,⁵⁶ Navajo Indian tribe has even decided to take on running its own Medicaid program (Donovan, Medicaid) – which is an entitlement health benefit program helping people with low incomes and limited financial resources, children, seniors and people with chronic disabilities. In this program, which is not designed only for members of Indian tribes, the costs are shared by the states and the federal government, the local Medicaid programs are managed and run by individual states, and each state has its own requirements for eligibility and Medicaid application process (Medicaid Program).

Since almost every third Navajo member is eligible to receive help from this program, Navajo Nation officials have been trying to find out, whether Navajo Nation would be able to operate this program itself. Erny Zah, director of communications for the tribe's Office of the President and Vice President pointed out, that:

the Navajo Nation would become the first tribe in the country to take the program over from the states, which have been running it since the early 1990s (Donovan, Medicaid).

Recently, it has been under review by the U.S. Department of Health and Human Development and it should go to Congress soon (Donovan, Medicaid).

However, Indian tribes are not forced to run programs that benefit their members; they have this possibility under the above mentioned act, but it is only their choice, how much responsibility they want to assume. Administration of the programs by a tribe can be very expensive and demanding, but it also supports tribal self-government and self-reliance, which is the aim of the act.

Thus, the Navajo Nation can choose to operate social welfare programs, Indian schools, financial services, purchase of land for its tribe, various health care programs, housing, food programs, economic development programs etc., which is one of the methods, how it can customize the legal system to its life pattern.

Finally, Congress has plenary authority over Indian affairs; however, it also gives tribes certain possibilities that they can use, such as the administration of the Indian programs or, perhaps, receiving federal loans for business purposes under the 25 U.S.C. (Pevar 105) etc., and in case the Navajo Indian tribe wants to customize the

⁵⁶ earlier this year (February 2013)

Anglo-American legal system to itself, it should use as many of these possibilities given by the legal order as possible.

5.4. State power over the Navajo

As already mentioned, generally, a state cannot force reservation Indians and tribes to comply with state law unless Congress so provides. However, under the General Allotment Act of 1887, a state can exercise its jurisdiction over those parcels of Indian reservations owned by non-Indians, unless the tribe shows the presence of one of the Montana exceptions. Fortunately, the Navajo Indian tribe has been affected by this act only for the smaller part; on the contrary, it has succeeded in gaining additional land for its reservation. According to Peter Iverson, a historian, who provided source material for the geographers, these are the important factors for the Navajo success.

The Navajos successfully fought this initiative and avoided seeing their land splintered. They also set about acquiring land to add to the reservation, which ultimately resulted in its dramatic expansion (Parry).

Moreover, the Navajo had a significant advantage of their isolated location in the southwest. Their land was rugged and dry, thus less desirable for non-Indians, and oil and coal were not discovered there until the 20th century (Parry).

Besides, substantial state power can be exercised over Indian country under Public Law 83-280. This law gives full criminal jurisdiction to six mandatory states and authorizes the other – option – states to acquire the same one. However, since 1968, it is possible only with a tribal consent (Pevar 113, 117). The Navajo Nation extends into the states of Utah, Arizona and New Mexico, whereas none of these states is the mandatory one. Still, two of them assumed at least partial jurisdiction. Arizona acquired jurisdiction over all Indian country within its borders, but limited it only to enforcement of the state's air and water pollution control laws. This decision had impact on the greater part of the Navajo Nation, which is located within Arizona; however, it influences only a small part of Navajo range of activities. Utah assumed P.L. 280 jurisdiction over all Indian country within its borders, but made it dependant on tribal consent (Pevar 116). Thus, there, the particular reservations within the Utah borders had a possibility to influence their future legal situation. Navajo Nation, as well as the other reservations within this state, has not consented so far. Moreover, theoretically, in Navajo Nation, there would arise so called “*checkerboard*” situation, with a portion of

the reservation and not others under P.L. 280 jurisdiction. This situation would be otherwise legal (Pevar 115), but definitely not practical. The last from the three states, New Mexico, has not assumed any jurisdiction under P.L. 280.

Moreover, the Navajo Nation can widely cooperate with all these three states in order to ensure some common affairs, such as water supply or road maintenance etc. Such agreements and contracts about cooperation are typically multilateral legal acts, within the scope of Anglo-American law, and through the conclusion of these contracts the Navajos can influence and regulate impacts of this law on the Navajo Nation and customize the Anglo-American law itself in this way for their own benefit.

5.5. Navajo Nation government

Within its reservation and over its members and internal affairs, the Navajo Nation can exercise powers of its government as a sovereign nation. The Navajo Nation has its own laws, government and leaders.

In 1868, Navajo Indian tribe obtained its permanent reservation under the Fort Sumner Treaty of 1868, and it was successfully extending this reservation till 1934. In the early 1920's, oil was discovered on this land, thus, many American oil companies wanted to lease Navajo land for exploration, and a need of a systematic form of government arose. That is why in 1923, a tribal government was established (History).

Over time, *“Navajo government has evolved into the largest and most sophisticated form of American Indian government”* (History), and today, it is classically divided into three separate branches – legislative, executive and judicial⁵⁷ – after the fashion of the Anglo-American legal system, and has two levels – tribal and local, with a capital Window Rock in Arizona (Tribal and Local Government).

The main legislative body is the Navajo Nation Council, consisting of 24 council delegates,⁵⁸ who serve a four-year term and are elected by the registered voters of all 110 Navajo Nation chapters, the smallest administrative units of the Navajo Nation, which they represent (Navajo Nation Council; Tribal and Local Government; History). First, the tribal council dealt almost only with the leasing matters (The History of Cowboys and Indians), but now, it is a full-value body that discusses critical issues and

⁵⁷ It is so called three-branch system of government (Tribal and Local Government).

⁵⁸ There were 88 council delegates till November 2010, but Navajo people voted in favour of reduction of this number (Begay).

enacts legislation to determine the future of the Navajo people (History). However, all proposed laws have to be submitted to the Secretary of the Interior via the BIA for Secretarial Review, as Congress still possesses plenary power over Indian affairs, and the approved laws of the Navajo Nation are codified in the Navajo Nation Code (Navajo Nation: Jurisdiction). The Navajo Nation Council meets at least four times a year in Window Rock and the meetings are presided over by a Speaker elected by the council for a two-year term (Navajo Nation Council).

While the Council is in session, you'll likely hear delegates carry on the tradition of speaking in Navajo, providing a perfect example of how the Navajo Nation retains its valuable cultural heritage while forging ahead with modern progress (History).

When it is not in session, legislative work is done by standing committees. During the work, the council delegates and other officials are still reminded of their culture, history and traditions by a decoration of an interior of the Council Chamber, and by the location of the Navajo Nation Administrative Center and other government offices near a Navajo sacred place (History; Navajo Nation History, navajoindian.net).

The executive branch is headed by the President and the Vice President since 1991, when the system changed from having a tribal chairman. Both of them are elected for a four-year term by the popular vote of the Navajo people (Tribal and Local Government).

Since 2011, the Navajo Nation President has been Ben Shelly, who was elected for his vision to bring stability to the government and to ensure a future of prosperity for the Navajo Nation, and who:

remains influential in the Democratic Party, is active in state & national politics, and continues to work closely with tribal leaders to ensure that critical services are provided to Indian Country (Navajo Nation President Ben Shelly).

The Vice President has been Rex Lee Jim since 2011, who:

continues to make diplomatic trips abroad on behalf of the United Nations to improve relations between nation states and indigenous peoples. As a representative of the Carter Foundation, the Vice President

has helped improve relations between the United States of America and the Andean Countries of Colombia, Venezuela, Bolivia, Peru and Ecuador. Vice President Jim played a key role in the drafting and final passage of the International Declaration on the Rights of Indigenous Peoples (Navajo Nation Vice President Rex Lee Jim).

Both these men are very active and influential, even internationally, and as leaders of the Navajo Nation, which they represent, could hypothetically change a lot in favour of the tribe.

As regards judiciary, this branch is headed by the Chief Justice of the Navajo nation, who is appointed by the President and confirmed by the Navajo Nation Council (Tribal and Local Government). The Navajo Indian tribe continue to exercise this judicial power successfully since times before any European entered the continent. In his article from 2003, called History of the Courts of the Navajo Nation, Chief Justice (Emeritus) Robert Yazzie stated:

Prior to the arrival of the Spanish (1598) and the Anglos (1846), Navajos governed themselves and resolved disputes in their own way. They lived in family groups and clans, and resolved disputes by "talking things out." The judges were the hozhoji' Naat'aah, or peace chiefs. They were leaders, chosen by community consensus, because of their wisdom, spirituality, exemplary conduct, speaking ability, and skill in planning for community survival and prosperity. They mediated disputes by encouraging people to fully talk out their problems, in order to reach agreed settlements and restore harmony in the community. Unlike European law, traditional Navajo law was not based on power but based on relationships, respect, and mutual need (Yazzie).

After the return of the Navajo from Bosque Redondo in 1868, the first Navajo courts were established. Their names and system changed several times since then and finally, in 1985, the Navajo Nation Supreme Court was created and court operations were streamlined by the Judicial Reform Act. By the early 1980's, the Navajo sought to revive traditional Navajo justice methods and apply traditional Navajo legal principles in their decisions, in English. This led to re-discovery and revitalization of Navajo style of justice, and now, *"the Navajo Nation court system is the largest Indian court system*

in the United States and has been called the “flagship” of American tribal courts” (Yazzie).

Local governance occurs through the 110 Navajo Nation chapters, which are the smallest geographical administrative units of the Navajo Nation, centred near population centres, such as Chin, Crownpoint, Kayenta, Ojo Amarillo or Shiprock (Tribal and Local Government).

In the chapters, tribal members can vote on local economic development issues, for example the granting of home or business site leases within the community, due to the Local Governance Act from 1998.

Though chapters have significant power in the community with planning and development, the ultimate authority legally remains in the hands of the Navajo Nation Council (Tribal and Local Government).

6. CONCLUSION

The aim of the bachelor thesis *Native Americans and the Law: The example of the Navajo* was to provide basic information about the structure and system of law of Indians and Indian tribes in the United States and to answer the question, if the Navajo Indian tribe has been able to customize the Anglo-American legal system to comply with the traditional Navajo life pattern, and eventually, how they have done that.

Generally, to be able to customize the Anglo-American legal system to an Indian tribe and its life pattern, the Indian tribe has to be able to influence at least some parts of this legal system.

Navajo Indian tribe was, however, quite successful in this already in former times, since it did its best to return to its homeland inside their four sacred mountains in the southwest during the period of relocation, as one of the few. This achievement probably encouraged the Navajo Indian tribe to make efforts to extend its reservation from 1868, and thanks to the isolated location of this reservation and its adjacent regions in dry area, at that time without valuable resources and thus not interesting for non-Indians, this endeavour was incredibly effective.

Navajo Nation has become due to its extent of 27,000 square miles, membership exceeding 300,000 members, and thanks to its struggle, a tribe which cannot be easily disregarded or even terminated. Navajos have a good starting position for additional customizing the Anglo-American legal system, and their representative, Navajo woman Wenona Benally Baldenegro, almost succeeded in Congressional election in 2012, which would have made the Navajo tribe the first tribe with a congresswoman ever.

Still, it is not easy for Navajo Indian tribe to influence particular laws or Indian policy itself, in case it does not have its own representatives in Congress. However, it is much easier to affect the implementation of these laws and policies for them.

Navajos can use (and do use) several ways for this purpose; at the federal level namely the consultation with federal departments and agencies (which is, however, not always meaningful), then, active service in the Bureau of Indian Affairs and in the Indian Health Service (which reduces their unemployment at the same time), and finally, proper using of federal government's Indian programs, or administration of

these programs individually under the Indian Self-Determination and Education Assistance Act.

As regards state level, generally, state law does not apply to Indians in Indian country, and even under the Public Law 280, a state cannot increase power over the Navajos without their consent. However, the Navajo Nation can still broadly cooperate with the states and thus influence many issues for its own benefit.

Finally, at the tribal level, the Navajo Nation government uses three-branch system of government, within its scope it can enact legislation and regulate its own tribal issues, and it has managed to evolve into the largest and most sophisticated form of American Indian government.

The future course of federal Indian policy, which is closely associated with the issued laws and general attitude towards Indians and tribes, is difficult to predict, with respect to the history and how often this policy has changed over the centuries. Only time will show whether the United States will support or oppress Indians in several decades. However, the Navajo Indian tribe, compared to other American Indian tribes, has succeeded quite well and has a good position to influence its own future.

7. WORKS CITED

Printed literature

- Horsman, Reginald. "American Indian Policy in the Old Northwest, 1783-1812." *The American Indian: Past and Present*. Ed. Roger L. Nichols. 3rd ed. New York: Newbery Award Records, 1986. 137-149. ISBN 0-394-35238-6. Print.
- Kelly, Lawrence C. "The Indian Reorganization Act." *The American Indian: Past and Present*. Ed. Roger L. Nichols. 3rd ed. New York: Newbery Award Records, 1986. 242-255. ISBN 0-394-35238-6. Print.
- Page, Jake. *In the hands of the great spirit: the 20,000-year history of American Indians*. New York: Free Press, 2004. ISBN 978-0-684-85577-6. Print.
- Pevar, Stephen L. *The Rights of Indians and Tribes*. 4th ed. New York: Oxford University Press, 2012. ISBN 978-0-19-979535-2. Print.
- Pommersheim, Frank. *Braid of feathers: American Indian Law and Contemporary Tribal Life*. Berkeley: University of California Press, 1995. ISBN 0-520-20894-3. Print.
- Smith, Michael T. "The History of Indian Citizenship." *The American Indian: Past and Present*. Ed. Roger L. Nichols. 3rd ed. New York: Newbery Award Records, 1986. 232-241. ISBN 0-394-35238-6. Print.
- Thomas, David H., et al. *The Native Americans: an illustrated history*. Atlanta (Georgia): Turner Publishing, 1993. ISBN 1-878685-42-2. Print.

Internet sources

- Begay, Jason. "Majority of Diné vote for 24-member council, line-item veto for president." *Navajo Times*. The Navajo Times Publishing Co., Inc., 2013. Web. 24 Apr. 2013. <<http://navajotimes.com/news/2009/1209/121709elex.php>>.
- Berry, Christina. „What’s in a Name? Indians and Political Correctness.“ *All Things Cherokee*. Christina Berry/All Things Cherokee, n.d. Web. 20 Apr. 2013. <http://www.allthingscherokee.com/articles_culture_events_070101.html>.
- Brunner, Borgna. „American Indian versus Native American.“ *Infoplease*. Pearson Education, 2000-2013. Web. 20 Apr. 2013. <<http://www.infoplease.com/spot/aihmtterms.html>>.

- Donovan, Bill. "Census: Navajo enrollment tops 300,000." *Navajo Times*. The Navajo Times Publishing Co., Inc., 2013. Web. 14 Apr. 2013. <<http://navajotimes.com/news/2011/0711/070711census.php>>.
- Donovan, Bill. "Navajo's take on running its own Medicaid program." *Navajo Times*. The Navajo Times Publishing Co., Inc., 2013. Web. 24 Apr. 2013. <<http://www.navajotimes.com/politics/2013/0213/021413med.php>>.
- Dodd, Theo. H. "Status Report of the Condition of the Navajos May 30, 1868." *New Mexico State University: Regional Educational Technology Assistance*. NMSU Board of Regents, 2008. Web. 15 Apr. 2013. <<http://reta.nmsu.edu/modules/longwalk/lesson/document/index.htm>>.
- "Frequently asked questions." *Indian Affairs*. IndianAffaris.gov, 2013. Web. 20 Apr. 2013. <<http://bia.gov/FAQs/index.htm>>.
- Gilio-Whitaker, Dina. "An Overview of Federal Indian Policy History." *About.com*. About.com, 2013. Web. 17 Apr. 2013. <<http://nativeamericanhistory.about.com/od/Policies/a/An-Overview-Of-Federal-Indian-Policy-History.htm>>.
- "Great Depression." *Wikipedia: The Free Encyclopedia*. Wikipedia, 2013. Web. 18 Apr. 2013. <http://en.wikipedia.org/wiki/Great_Depression>.
- "History." *Navajo Nation Government*. Department of Information Technology, 2011. Web. 11 Apr. 2013. <<http://www.navajo-nsn.gov/history.htm>>.
- "Long Walk of the Navajo." *Wikipedia: The Free Encyclopedia*. Wikipedia, 2013. Web. 12 Apr. 2013. <http://en.wikipedia.org/wiki/Long_Walk_of_the_Navajo>.
- "Medicaid Program." *MedicaidProgram.net*. MedicaidProgram.net, 2013. Web. 24 Apr. 2013. <<http://www.medicaidprogram.net/>>.
- Melton, Ada Pecos. "Consultation With Indian Nations." *American Indian Development Associates Quarterly*. American Indian Development Associates, 2004. Web. 22 Apr. 2013. <http://aidainc.net/Publications/tribal_consultation.htm>.
- "Navajo Congressional Candidate Reports Over 2,000 Individuals Contributors." *Native News Network*. Native News Network, 2011-1013. Web. 18 Apr. 2013. <<http://www.nativenewsnetwork.com/navajo-congressional-candidate-reports-over-2000-individuals-contributors.html>>.

- “Navajo Indian Tribe.” *Access Genealogy*. Access Genealogy.com, 1999-2013. Web. 10 Apr. 2013. <http://www.accessgenealogy.com/native/catalogue/navajo_indian_tribe.htm>.
- “Navajo Indian Tribe History.” *Access Genealogy*. Access Genealogy.com, 1999-2013. Web. 11 Apr. 2013. <<http://www.accessgenealogy.com/native/tribes/navajo/navahoindianhist.htm>>.
- “Navajo Indian Tribe History.” *Navajo Indians*. Navajo Indians, 2013. Web. 12 Apr. 2013. <<http://www.navajoindian.net/navajo-indian-tribe-history/>>.
- “Navajo Nation Council.” *22nd Navajo Nation Council*. Navajo Nation Council, n.d. Web. 24 Apr. 2013. <<http://www.navajonationcouncil.org/index.html>>.
- “Navajo Nation History.” *Navajo Indians*. Navajo Indians, 2013. Web. 12 Apr. 2013. <<http://www.navajoindian.net/navajo-nation-history/>>.
- “Navajo Nation: Jurisdiction.” *Wikipedia: The Free Encyclopedia*. Wikipedia, 2013. Web. 24 Apr. 2013. <http://en.wikipedia.org/wiki/Navajo_Nation#Jurisdiction>.
- “Navajo Nation President Ben Shelly.” *Navajo Nation President and Vice President*. DIT, 2011. Web. 25 Apr. 2013. <<http://www.president.navajo-nsn.gov/president.html>>.
- “Navajo Nation Vice President Rex Lee Jim.” *Navajo Nation President and Vice President*. DIT, 2011. Web. 25 Apr. 2013. <<http://www.president.navajo-nsn.gov/vicePresident.html>>.
- Parry, Wynne. “Tribal Fates: Why the Navajo Have Succeeded.” *Live Science*. TechMediaNetwork.com, 2011. Web. 13 Apr. 2013. <<http://www.livescience.com/17086-navajo-tribal-fate-jared-diamond.html>>.
- “Plains Indians.” *Native Net*. Native-Net.org, 2005-2012. Web. 22 Apr. 2013. <<http://www.native-net.org/tribes/plains-indians.html>>.
- Shebala, Marley. “Most notable people of 2012 make difference in lives of Diné.” *Navajo Times*. The Navajo Times Publishing Co., Inc., 2013. Web. 18 Apr. 2013. <<http://navajotimes.com/news/2012/1212/122712not.php>>.

- “Title 25 – Indians.” *Search the United States Code*. Office of the Law Revision Counsel, 2013. Web. 14 Apr. 2013. <<http://uscode.house.gov/xhtml/1996/1996usc25.htm>>.
- “The history of Cowboys and Indians.” *Discover Navajo*. Discovernavajo.com, 2008. Web. 12 Apr. 2013. <<http://www.discovernavajo.com/Cowboys%20&%20Indians-1.pdf>>.
- “Treaty With The Navajo, 1849.” *Access Genealogy*. Access Genealogy.com, 1999-2013. Web. 11 Apr. 2013. <<http://www.accessgenealogy.com/scripts/data/database.cgi?file=Data&report=SingleArticle&ArticleID=0024620>>.
- “Treaty With The Navajo, 1868.” *Access Genealogy*. Access Genealogy.com, 1999-2013. Web. 11 Apr. 2013. <<http://www.accessgenealogy.com/scripts/data/database.cgi?file=Data&report=SingleArticle&ArticleID=0020261>>.
- “Tribal and Local Government.” *The Navajo Nation*. Division of Economic Development, Navajo Nation, 2004. Web. 25 Apr. 2013. <<http://www.navajobusiness.com/fastFacts/Government.htm>>.
- “What we do.” *US Department Of The Interior: Indian Affairs*. IndianAffair.gov, 2013. Web. 17 Apr. 2013. <<http://www.bia.gov/WhatWeDo/index.htm>>.
- Yazzie, Robert. “History of the Courts of the Navajo Nation.” *The Judicial Branch of the Navajo Nation*. 2003. Web. 14 Apr. 2013. <<http://www.navajocourts.org/Index.htm>>.
- “1868: Navajo internment ends, but 2,000 died while imprisoned.” *Native Voices*. U.S. National Library of Medicine, n.d. Web. 12 Apr. 2013. <<http://www.nlm.nih.gov/nativevoices/timeline/343.html>>.
- “1864: The Navajos begin ‘Long Walk’ to imprisonment.” *Native Voices*. U.S. National Library of Medicine, n.d. Web. 12 Apr. 2013. <<http://www.nlm.nih.gov/nativevoices/timeline/332.html>>.

8. RÉSUMÉ

The bachelor thesis *Native Americans and the Law: The example of the Navajo* provides basic information about the structure and system of law of Indians and Indian tribes in the U.S.A. and applies the information to the particular Indian tribe.

The thesis has two main parts; in the theoretical part, main doctrines, terms and powers over the Indians and tribes are described, in the practical part, the theoretical information are applied to the Navajo Indian tribe to answer the question, if this tribe has been able to customize the Anglo-American legal system to comply with the traditional Navajo life pattern, and eventually, how they have done that.

The conclusion of the thesis is that the Navajo successfully influenced above all the location and extent of their reservation by treaties and executive orders in former times, and today, they can affect by several means primarily the implementation of federal statutes and policies, range of state power over them and broadly regulate their internal affairs on their land. Thus, the Navajo were and are able to customize the Anglo-American legal system to comply with their life pattern and can use many various means to the effect.

9. RESUMÉ

Bakalářská práce *Native Americans and the Law: The example of the Navajo* poskytuje základní informace o struktuře a systému práva Indiánů a indiánských kmenů v USA a aplikuje tyto informace na konkrétní indiánský kmen.

Práce má dvě hlavní části; v teoretické části jsou popsány hlavní principy, pojmy a pravomoci nad Indiány a jejich kmeny, v praktické části jsou tyto teoretické informace aplikovány na indiánský kmen Navaho, za účelem zodpovězení otázky, zda byl (a stále je) tento kmen schopný přizpůsobit anglo-americký právní systém tak, aby vyhovoval tradičnímu způsobu života kmene Navaho, a případně, jak toho dosáhli (či ještě mohou dosáhnout).

Závěrem této práce je, že v minulosti Navahové pomocí smluv a nařízení prezidenta úspěšně ovlivnili především umístění a rozlohu své rezervace, a dnes mohou několika způsoby ovlivňovat hlavně implementaci federální zákonů a politik, rozsah státní moci nad nimi a široce upravovat své vnitřní záležitosti na svém území. Navahové tedy byli a jsou schopni přizpůsobit anglo-americký právní systém tak, aby vyhovoval jejich životnímu stylu, a mohou k tomu využívat mnoha různých prostředků.

10. APPENDICES

1. An advertisement from the Department of the Interior (ca. 1911) luring individuals to purchase land designated as surplus after tribal allotments were made to Indians.
2. President Calvin Coolidge at the White House with four from the Osage Nation, 1925
3. Signing of the first tribal constitution under the Wheeler-Howard Act
4. Bureau of Indian Affairs relocation brochure distributed to Native Americans, 1950s
5. President Gerald R. Ford visits Oklahoma during Native American Awareness Week, Lawton, Oklahoma, 1976
6. Indian reservations and communities in the United States
7. Navajo Nation – Location map
8. Timeline
9. Map showing extent of Anasazi, Hohokam, and Mogollón settlements in what is now known as New Mexico and Arizona
10. Border changes and expansions of the Navajo Reservation 1868 – 1934
11. Navajo flag

Appendix Nr. 1 – An advertisement from the Department of the Interior (ca. 1911) luring individuals to purchase land designated as surplus after tribal allotments were made to Indians.

INDIAN LAND FOR SALE

GET A HOME
OF
YOUR OWN
*
EASY PAYMENTS



PERFECT TITLE
*
POSSESSION
WITHIN
THIRTY DAYS

FINE LANDS IN THE WEST
IRRIGATED GRAZING AGRICULTURAL
IRRIGABLE DRY FARMING

IN 1910 THE DEPARTMENT OF THE INTERIOR SOLD UNDER SEALED BIDS ALLOTTED INDIAN LAND AS FOLLOWS:

“An advertisement from the Department of the Interior (ca. 1911) luring individuals to purchase land designated as surplus after tribal allotments were made to Indians.” Advertisement. Thomas, David H., et al. *The Native Americans: an illustrated history*. Atlanta (Georgia): Turner Publishing, 1993. ISBN 1-878685-42-2. Print.

Appendix Nr. 2 – **President Calvin Coolidge at the White House with four from the Osage Nation, 1925.**



“President Calvin Coolidge at the White House with four from the Osage Nation, 1925.” Photograph. “1924: American Indians granted U.S. citizenship.” *Native Voices*. U.S. National Library of Medicine, n.d. Web. 15 Apr. 2013. <<http://www.nlm.nih.gov/nativevoices/timeline/431.html>>.

Appendix Nr. 3 – **Signing of the first tribal constitution under the Wheeler-Howard Act.**




“Signing of the first tribal constitution under the Wheeler-Howard Act.” Photograph. “1934: President Franklin Roosevelt signs the Indian Reorganization Act.” *Native Voices*. U.S. National Library of Medicine, n.d. Web. 15 Apr. 2013. <<http://www.nlm.nih.gov/nativevoices/timeline/452.html>>.


Appendix Nr. 4 – Bureau of Indian Affairs relocation brochure distributed to Native Americans, 1950s.

COME TO DENVER.
THE CHANCE OF YOUR LIFETIME !

Good Jobs

- Retail Trade
- Manufacturing
- Government—Federal, State, Local
- Wholesale Trade
- Construction of Buildings, Etc.







Happy Homes

- Beautiful Houses
- Many Churches
- Exciting Community Life.
- Over Half of Homes Owned by Residents
- Convenient Stores—Shopping Centers

Training

- Vocational Training
- Auto Mech., Beauty Shop, Drafting,
- Nursing, Office Work, Watchmaking
- Adult Education
- Evening High School, Arts and Crafts
- Job Improvement, Home-making





Beautiful Colorado

- *Tallest* State, 48 Mt. Peaks Over 14,000 Ft.
- 350 Days Sunshine, Mild Winters
- Zoos, Museums, Mountain Parks, Drives
- Picnic Areas, Lakes, Amusement Parks
- Big Game Hunting, Trout Fishing, Camping

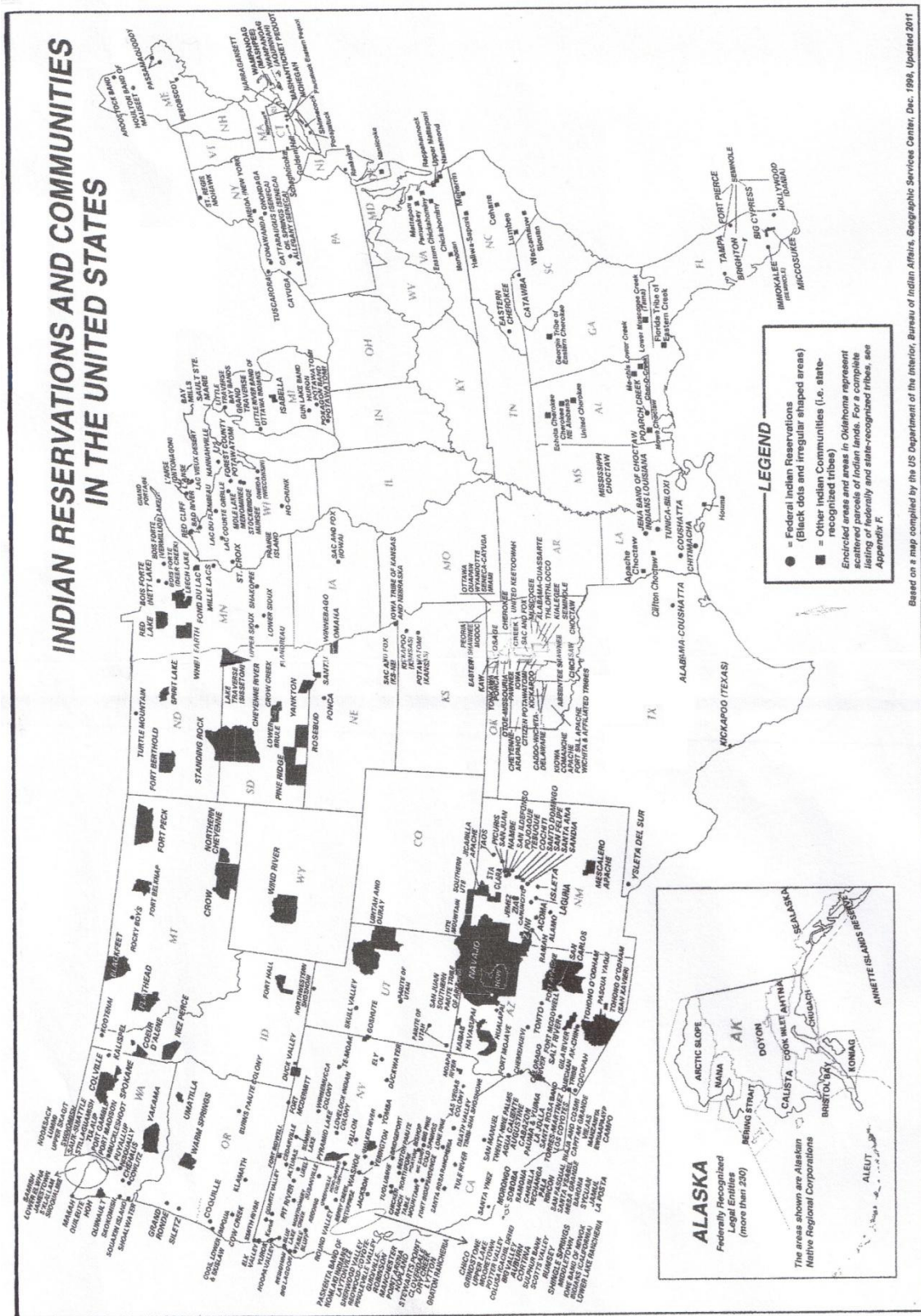
“Bureau of Indian Affairs relocation brochure distributed to Native Americans, 1950s.” Brochure. “1953: Congress seeks to abolish tribes, relocate American Indians.” *Native Voices*. U.S. National Library of Medicine, n.d. Web. 16 Apr. 2013. <<http://www.nlm.nih.gov/nativevoices/timeline/488.html>>.

Appendix Nr. 5 – **President Gerald R. Ford visits Oklahoma during Native American Awareness Week, Lawton, Oklahoma, 1976.**



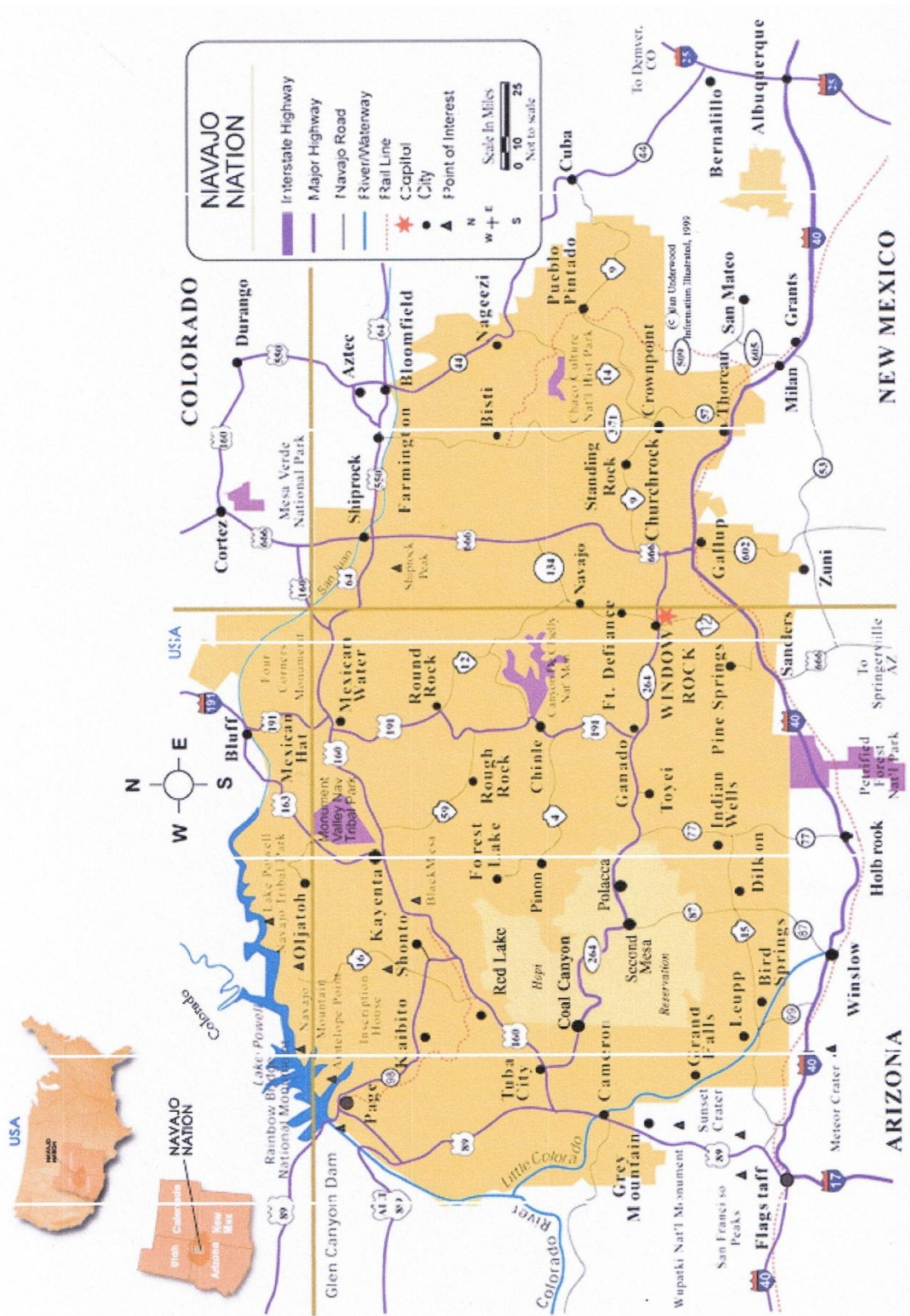
“President Gerald R. Ford visits Oklahoma during Native American Awareness Week, Lawton, Oklahoma, 1976.” Photograph. “1975: Indian self-determination becomes the law of the land.” *Native Voices*. U.S. National Library of Medicine, n.d. Web. 15 Apr. 2013. <<http://www.nlm.nih.gov/nativevoices/timeline/539.html>>.

Appendix Nr. 6 – Indian reservations and communities in the United States.



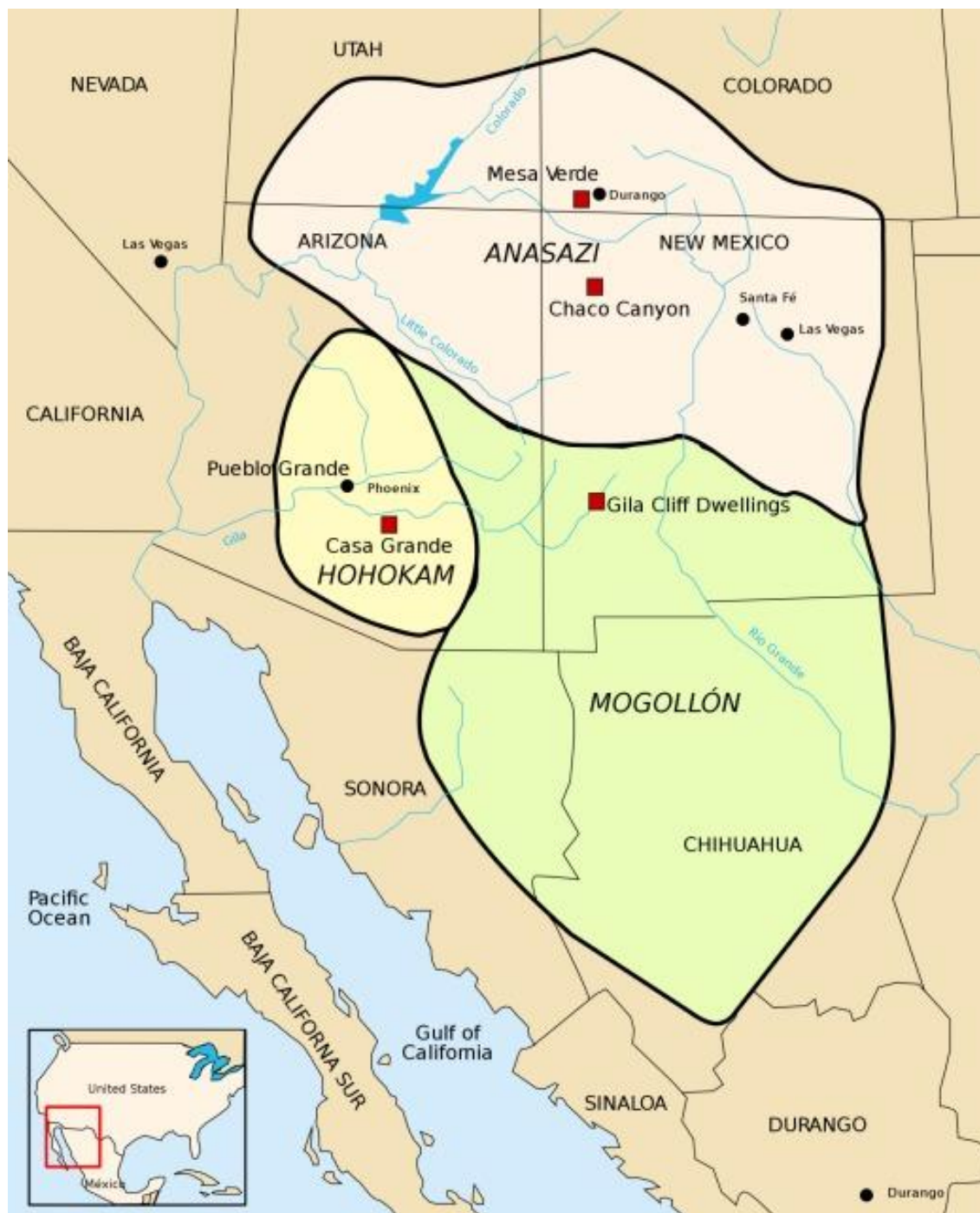
“Indian reservations and communities in the United States.” Map. Pevar, Stephen L. *The Rights of Indians and Tribes*. 4th ed. New York: Oxford University Press, Inc., 2012. xvi-xvii. ISBN 978-0-19-979535-2. Print.

Appendix Nr. 7 – Navajo Nation – Location map.



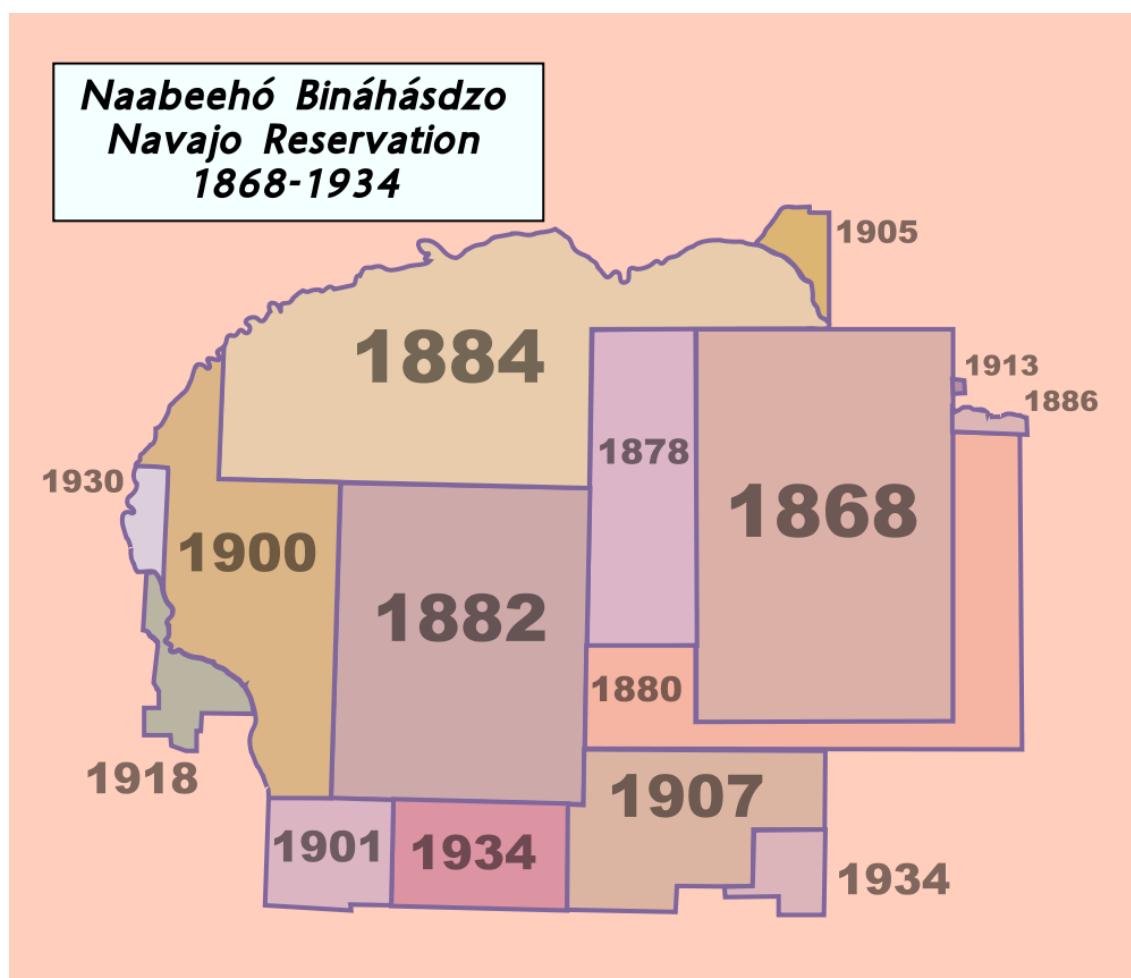
“Navajo Nation – Location map.” Map. *The Navajo Nation*. Division of Economic Development, Navajo Nation, 2004. Web. 13 Apr. <<http://www.navajobusiness.com/fastFacts/lrgmap2.htm>>.

Appendix Nr. 9 – Map showing extent of Anasazi, Hohokam, and Mogollón settlements in what is now known as New Mexico and Arizona.



“Map showing extent of Anasazi, Hohokam, and Mogollón settlements in what is now known as New Mexico and Arizona.” Map. “3000 BC: South-western peoples plant corn, beans, squash; population grows.” *Native Voices*. U.S. National Library of Medicine, n.d. Web. 14 Apr. 2013. <<http://www.nlm.nih.gov/nativevoices/timeline/162.html>>.

Appendix Nr. 10 – **Border changes and expansions of the Navajo Reservation 1868 – 1934.**



“Border changes and expansions of the Navajo Reservation 1868 – 1934.” Map. *Wikipedia: The Free Encyclopedia*. Wikipedia, 2013. Web. 15 Apr. 2013. <http://en.wikipedia.org/wiki/File:Nn_border_hist_map.svg>.

Appendix Nr. 11 – Navajo flag.



“Navajo flag.” Graphic. *Wikipedia: The Free Encyclopedia*. Wikipedia, 2013. Web. 15 Apr. 2013. <http://en.wikipedia.org/wiki/File:Navajo_flag.svg>.