

THE INDIGENOUS WORLD 2005

Copenhagen 2005

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Prepress and Print: Eks-Skolens Trykkeri, Copenhagen, Denmark

ISBN 87-91563-05-4 - ISSN 0105-4503

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Distribution in North America: Transaction Publishers

390 Campus Drive / Somerset, New Jersey 08873

www.transactionpub.com

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The Indigenous World is published annually in English and Spanish by The International Work Group for Indigenous Affairs, Classensgade 11E, DK 2100 – Copenhagen, Denmark.

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This book has been produced with financial support from the Danish Ministry of Foreign Affairs, NORAD, Sida and the Ministry for Foreign Affairs of Finland.



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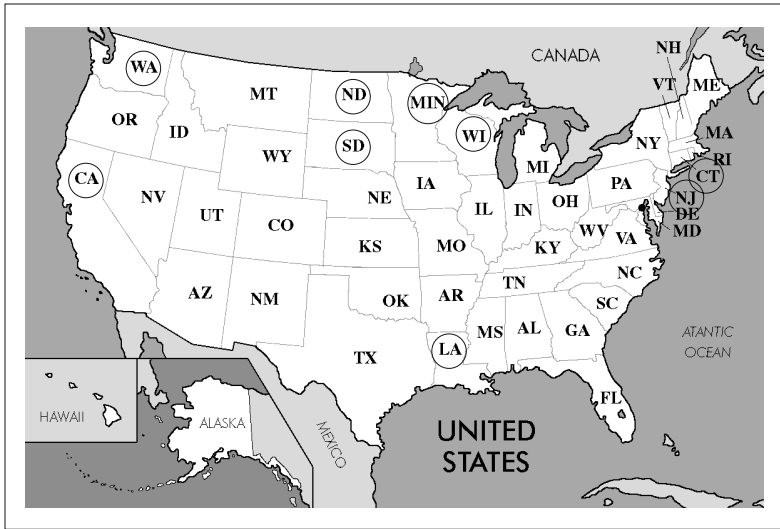
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THE UNITED STATES

According to the 2000 national census figures, 4,119,301 people in the United States identified themselves as a member of an American Indian or Alaska Native tribe. This includes people who exclusively self-identified as Native as well as those who identified as a member of two or more “races” (this terminology being used in official documents in the United States). The Indian Health Service estimated its service population to be around 1.5 million in 2000. In comparison to other segments of American society, the American Indian population in the United States is overall marked by a high percentage of young people, high unemployment on reservations, high poverty, low life expectancy rates for both sexes, high rates of diabetes, heart problems, alcoholism and suicide, and a low high school and college graduation rate. Reservations have been granted limited sovereignty but are under the control of the federal government.

The war in Iraq and federal elections took the spotlight in national politics in 2004, and they and their consequences impacted, and will continue to impact, on Native American communities. While some communities, like Western Shoshone, continue the protest against the war, Native communities still have the highest ethnic percentage of soldiers in the United States army, and several Native soldiers have been killed in Iraq. On the other hand, reservation-based manufacturers that undertake contract work for the military are experiencing an economic upturn.

Several states are concerned with Native gaming operations, particularly California and Minnesota. The most important cultural event in 2004 was probably the opening of the National Museum of the American Indian.



Elections

In the presidential elections, George W. Bush won against John Kerry. In the hope that Kerry would listen more to Native issues and voices and perhaps appoint a Native American to the cabinet, the Navajo Nation, among others, had endorsed him. In other election-related news, Senator Nighthorse Campbell from Colorado, the only Native American senator, retired this year.

One of the most closely watched states in the 2004 elections was South Dakota, where Indian reservations have established themselves as kingmakers in state-wide, national elections. In 2002, Tim Johnson (Democrat) won a senatorial election by a slim margin, with crucial support coming from the reservations. In June 2004, Stephanie Herseth (Democrat) won a very close replacement election for the state's lone seat in the House of Representatives, again with significant help from the state's Indian reservations. She defended her seat in the general elections in November. However, Senator Tom Daschle (Democrat), the Senate Minority Leader, lost his seat to John Thune (Republican). The South Dakota senate election was marked by huge out-of-state monetary contributions, Democratic efforts to get the Native vote out

and a Republican reaction to the last two elections narrowly lost because of reservation votes. After allegations of voting fraud on reservations in 2002, workers for the Thune campaign took pictures of early voters on reservations and wrote down license plate numbers of cars outside polling stations in November. This in turn led to accusations of voter intimidation.

Both Daschle and Thune campaigned heavily on reservations and made efforts to listen to Native concerns. While Daschle's defeat was initially regarded as proof that the Indian vote does not carry too much weight, Thune won the election narrowly, in part because he had made inroads among the reservation vote. It seems that the South Dakota reservations have established themselves as a powerful electorate. It is hoped that this will ensure that the state's national congressional delegation will listen to the needs and wants of tribal governments and grassroots organizations in the future.

In state politics, however, South Dakota wanted action to be delayed in order to remedy a change in voting districts that was found to violate the rights of Native American voters. In the United States, voting districts are not geographically given but can be redrawn according to demographics. This is sometimes used to restrict the influence of ethnic groups or political parties by limiting their political representation. In this case, the reservation vote had been split by a redrawing of districts, ensuring that the Indian vote would remain a minority in the new districts for state elections.

Gaming

The only issue directly affecting American Indian policies that came to the fore on election day was Indian gaming. In Washington State and Wisconsin, votes on local initiatives seemed to support the casino projects of local tribes who have entered into contracts with the experienced Mohegan tribe of Connecticut, operator of the Mohegan Sun Casino. The Cowlitz and Menominee tribes have signed multi-million dollar agreements with the Mohegans in order to benefit from their practical and political expertise in running successful gaming opera-

tions. In related developments, the Mohegan tribe's professional women's basketball team, Connecticut Sun, lost in the Women's National Basketball Association finals. Several tribes are hoping to expand into the professional sports business, and some are buying horse racing tracks. It is not a coincidence that the proposed Menominee casino in Kenosha, Wisconsin, is to be built at a greyhound track.

Increasingly, tribes are coming under pressure from cash-strapped states to share gaming revenues in return for a continuation of tribal gaming monopolies. Under the law, tribal gaming operations cannot be taxed by the states, although some states have entered into agreements with tribes to share a certain percentage of their revenues in return for restricting casinos under state law. States are now pushing tribes for more revenue sharing. This year, California secured one billion dollars of future increased revenue from five tribes. Governor Schwarzenegger (Republican) upset tribes, however, by campaigning for the need for gubernatorial control of gaming compacts on the basis that the tribes "are ripping us off". In Minnesota, Governor Pawlenty (Republican) has not been successful in pressuring tribes to share revenues. The governor has threatened to allow gaming state-wide if the tribes will not agree to his proposed deal, which calls on them to give the state 350 million dollars a year from their gaming revenues.

A casino compact is also involved in the partial settlement of a long-standing Oneida land claim with the state of New York. The suit, dating back to 1970 and relating to over 100,000 acres taken illegally in 1795, was originally brought by three Oneida tribal governments: the Oneida Nation of Wisconsin, the Oneida Indian Nation of New York and the Oneida of the Thames in Canada. All of these tribes trace their ancestry back to the land in question. The Supreme Court ruled in favor of the tribes in 1985, and a mediation process began in 2002. In 2004, the Oneida Nation of Wisconsin agreed to a settlement involving 1,000 acres of land in central New York and a 300-acre casino development close to New York City. Governor Pataki announced that the deal would settle all pending land claims, which upset the Oneidas in New York. The Oneida Indian Nation of New York has not accepted the settlement. As in previous years, this latest attempt to settle the land claims also seems to be an attempt to pit the tribes against each other.

In 2002, the Oneida Indian Nation of New York accepted a settlement involving 500 million dollars and a 35,000-acre reservation but the deal fell through because the Oneidas of Wisconsin and Canada were never consulted about it.

New York State also offered another Wisconsin tribe a casino deal in settlement of old land claims. The Stockbridge-Munsee band of Mohicans were to receive rights to operate a 333-acre casino in New York. The Stockbridge-Munsee, as well as the Oneida Nation of Wisconsin, had agreed to remit all state taxes on the respective lands offered in order to settle their claims. News of these deals was not well received by New York tribes already operating casinos in the state. The Oneida Indian Nation of New York has begun lobbying against out-of-state tribes receiving casino licenses in New York, which would prevent the Wisconsin tribes from operating their promised casinos. In turn, the two tribes argue that they have only been placed outside the state by forces of history, and should therefore not be considered out-of-state tribes.

Land and recognition

The *Cobell v. Norton* lawsuit over the mishandling and misappropriation of money owed to Indian trust account holders is still ongoing, but has entered mediation. This case is aimed at remedying the fact that the federal government holds Indian lands in trust and collects income from them but has never paid that income to thousands of beneficiaries. So far the mediation is going nowhere, as the federal government is still blocking attempts to ascertain the true extent of debt to Indian account holders.

Two court cases have the potential to fundamentally impact on Indian land policies in the future. A federal appeals court is hearing *Carciari v. Norton*, a challenge from the governor of Rhode Island against any right of the federal government to take tribal lands into trust. This case has potentially far-flung consequences for the core of United States Indian policies. The Supreme Court has also agreed to hear *Sherrill, New York v. Oneida Indian Nation* in early 2005. This case originated with the city of Sherrill wanting to tax property that had been bought

by the Oneida Nation. The Oneidas argued that because these properties lay within the original boundaries of their reservation, which had been illegally dispossessed, they legally constituted Indian Country and were therefore not taxable, even though they had only recently been purchased. In 2003, a federal appeals court agreed with the Oneida that the Treaty of Canandaigua, which set up the reservation in 1794, was still in force. However, a dissenter voiced doubts as to whether the Oneida Nation of New York had been in continuous existence for the last 150 years, and argued that this would negate their right to the land. In taking this case, the Supreme Court has surprised many observers, and a long list of *amicus* briefs have been filed from both sides. These allow interest groups not directly affiliated with the parties to become involved in a case. In this particular case, the U.S. Solicitor General has filed a brief in favor of the Oneida Nation.

In other land-related cases, tribes on the Plains won a victory in a sacred land case in early January 2004. The proposed shooting range at Bear Butte in South Dakota, a sacred place for several tribes but especially for the Lakota and Cheyenne, has been dropped. Unexpectedly, the project's backers filed papers with the court declaring that they would abandon the shooting range development. In addition, a dispute between social scientists has flared up again in the journal *Ethnohistory* over federal recognition of the Houma Indians of Louisiana, pending before the Bureau of Acknowledgement Research. Federal recognition depends on proof that the applicant tribe was a socially and culturally distinct unity before contact and has been so continuously since. The issue of whether or not the United Houma Nation, Inc. represents people of historical Native American identity was also tied in with an indigenous land claim against Texaco, in which the scientists involved gave testimony on opposing sides, and which the Houma lost.¹

Culture and economy

After fifteen years of planning, the National Museum of the American Indian opened its doors in September 2004 on the National Mall in Washington, D.C. The museum opening was a huge event attended by

about 20,000 Native Americans from all over the country. It marked the representation of the country's indigenous peoples via their own museum in the nation's capital. The museum, whose key leadership positions are held by Native Americans, sees its mission not only in exhibition and education but in giving a voice to Native communities, and in a "special responsibility" to perpetuate native culture and community. While the museum has been celebrated by some, its exhibitions have drawn criticism from others as overlooking or dismissing scholarship and presenting history from a romantic perspective. Wherever one comes down on the issue of scholarship and education, it is clear that the museum has indeed established a space and a potential for Native Americans to express their own perspectives of history and culture, and is at least a visible reminder of the continued presence of Native Americans in American society today.

From 1997 to 2000, the number of businesses owned by Native Americans grew by 84%, while their gross revenues rose by 179% to 34.3 billion dollars. The majority of these businesses are micro-enterprises. These numbers are very encouraging and show that the increasing number of small loan funds for business development on reservations is having a real impact. Large economic disparities remain, however, between urban and rural Native American populations, and between Native Americans and other groups in American society. Residents of many reservations in rural areas remain deeply impoverished, with higher rates of infant mortality, alcoholism and diabetes, and lower life expectancy. In 1990, a third of all Indians lived below the poverty line, compared to 13.1 percent of the population as a whole. As in all American ethnic groups, American Indian women are most affected by these issues. A report by the Institute for Women's Policy Research found that one quarter of Indian women nationwide live in poverty, a figure that rises to almost forty percent for Indian single mothers.

Education

Around 500,000 American Indian and Alaska Natives are enrolled in the state school system, 50,000 of whom attend Bureau of Indian Af-

fairs (BIA) schools. Under the Bush administration's "*No Child Left Behind*" Act, all schools have to meet certain standards, evaluated in standardized tests, or face sanctions. This is supposed to help reform schools and elevate the standard of education. BIA schools, which can set their own standards, are mostly trying to achieve the standards set by the states in which they are located. Federal budgets that cut BIA programs, however, do not help in this regard. For reservation schools, like many other rural schools, the act creates problems. Sanctions for underachieving schools include: the parents' right to send their children to a successful school within the same district (although this is impossible if there is only one, as in many rural areas); removing under-performing teachers (virtually impossible considering the high turnover rate at reservation schools); changing the school administration (with the consequent problem of finding enough qualified people); or even shutting the school down. The last option would theoretically force students to attend a better school but, if there is only one to begin with, it is hard to understand how draining money from a problem school can improve education for its students.

Tribal sovereignty

In *U.S. v. Lara*, the Supreme Court ruled in April 2004 that a tribal court system prosecutes as a separate sovereign, even when prosecuting a non-member Indian. Bureau of Indian Affairs (BIA) police officers had arrested Lara for public intoxication on the Spirit Lake Nation reservation. Lara was a member of a federally recognized Indian tribe but not a member of the Spirit Lake Nation. During the arrest, Lara attacked a police officer. The tribe convicted him of assault and the federal government subsequently prosecuted him for assault on a federal officer. Lara argued that this violated the double jeopardy clause, which prevents multiple convictions for the same crime. The Supreme Court ruled that the tribal court had acted as a "separate sovereign" from the United States and, therefore, double jeopardy was not at issue.

In its more prosaic effects, this case upheld and strengthened previous court decisions to affirm that tribal court systems can not only

prosecute members of their own tribes but any Indian (and, although not implied in this case, in some instances also non-Indians) as long as the crimes prosecuted fall under the federal limitations for tribal legal sovereignty and the severity of crimes committed.

While this decision upheld tribal sovereignty in general, by declaring reservations to be distinct sovereigns from the United States, and was hailed as a victory by many tribal governments, under the specifics of the case the decision also reaffirmed the granting of “plenary and exclusive” power to legislate over Indian tribes to the United States Congress. As such, as Justice Thomas pointed out, Congress was reaffirmed in its power to “regulate virtually every aspect of the tribes without rendering tribal sovereignty a nullity”. In other words, tribal sovereignty is still absolutely regulated by one particular branch of the federal government, and can be limited, expanded or practically abolished at will. □

Notes

- 1 *Ethnohistory* 48, no.3 (2001):473-494; *Ethnohistory* 51, no. 4 (2004): 779-797.