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UNITED STATES OF AMERICA

According to the 2000 United States Census, 2,377,913 people in the United States minus Alaska identified as Native American only, and 4,000,060 people identified as Native American in combination with another ethnic identity. These numbers add up to slightly less than 1% and around 1.5% of the total population respectively.

There are currently around 335 federally recognized tribes in the United States minus Alaska. More than half of American Indians live off-reservation, many in cities.

American Indian law includes individual treaties and federal Indian law, which is in flux and often dependent on individual U.S. Supreme Court decisions. Tribal governments' sovereignty is limited by plenary power of the U.S. Congress. Separate federal agencies, such as the Bureau of Indian Affairs and the Indian Health Service, are responsible for the federal government's trust responsibilities to Indian tribes.

As a whole, American Indians have a lower life expectancy and higher poverty rates, and have the highest rate of service in the U.S. armed forces. Some of the main challenges they face are related to trust lands and sovereignty, unemployment, housing shortages, health problems and youth suicides.

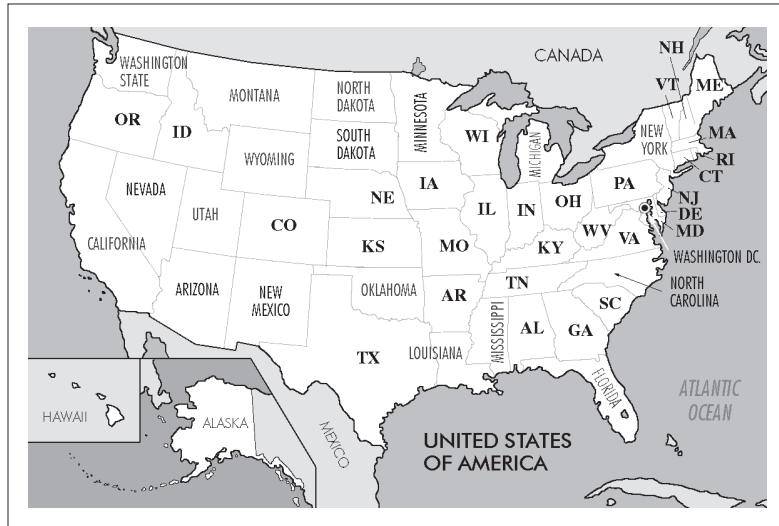
Once again, developments in the political, legislative, social and cultural context for indigenous peoples in the United States in 2006 took place against the backdrop of an emotionally, physically, and financially costly prolonged war in Iraq and Afghanistan. With the federal budget running record deficits, many sources of funding for

American Indians have been continuously cut back. In addition to this, the Bush administration cut the already strained budget for the Bureau of Indian Affairs (BIA) by US\$3 million. The money, the administration argued, was needed to pay legal fees in connection with the Cobell lawsuit over trust money irregularities (see below). This move was roundly rejected by the plaintiffs and key members of Congress as a conscious attempt to “divide and conquer” tribal governments.¹

Trust responsibility

After ten years, the Cobell lawsuit over the government’s mishandling of more than US\$100 billion of trust money was close to a settlement in 2006.² The Senate Committee on Indian Affairs had proposed a settlement of US\$8 billion. However, the White House failed to respond to the settlement proposal and asked for more time. In a related issue, the Bush administration proposed sweeping changes to the federal trust responsibility in general. In its adopted role as guardian of its Indian wards, the federal government holds some Native American lands in trust, i.e., it holds the title to the land and collects lease monies, which it is then responsible for paying out to the individual and collective Indian owners of the land. In return, these lands are freed from state taxation. The proposed trust reform would terminate federal liabilities for trust fund accounts, which are supposed to manage tribal income from oil, gas, and timber leases within ten years. The federal government has mismanaged these accounts for decades. A report on the years 1973 through 1992 found US\$2.3 billion in unaccounted transactions; the whole extent of federal mismanagement is impossible to reconstruct.³

In December 2006, the federal judge presiding over the Cobell lawsuit was replaced in an unprecedented move. Judge Lamberth had repeatedly found the government in contempt of court. An appeals court found that he had appeared biased against the government, and he was replaced by Judge Robertson. Robertson has also recently expressed dissatisfaction with the Bureau of Indian Affairs over inaction by the agency in the recognition process for the Mashpee Wampanoag Tribe. Lawyers for the Cobell side, representing over 500,000 individual trust fund holders, expressed hope that a settlement could be reached in 2007.⁴



In January 2006, a federal court handed four Chippewa tribes, the Chippewa Cree Tribe (Montana), the Little Shell Chippewa Tribe (Montana/North Dakota), the Turtle Mountain Band of Chippewa (North Dakota) and the White Earth Band of Ojibwe (Minnesota), a victory in a trust fund case. In 1981, the tribes had been awarded US\$52 million by the Indian Claims Commission for the loss of 20 million acres. The money, as is custom in such cases, had been given to the Treasury Department. However, investment records were either not kept or were lost, so that the tribes or tribal members never saw any of the money. The Bush administration tried to argue that the money had not been labeled explicitly as “trust” money by Congress when authorizing the acts that led to the award. U.S. Court of Federal Claims judge Hewitt refused this argument. The government is expected to pose more challenges to the case.⁵

Elections

National elections in the United States in November 2006 handed over both the House of Representatives and the Senate to the Democrats. The results were in part based on a loss of trust in the political system

after the Abramoff scandal had unearthed a wide network of political corruption (see *The Indigenous World* 2006). President Bush (Republican) will stay in office for two more years. The change in political power in Congress gave American Indians hope that budget cuts in Native American-related government programs would be limited in the future.

Several tribes also held tribal elections in November. The race for tribal president on the Pine Ridge Sioux Reservation in South Dakota attracted the most attention. In May, President Cecilia Fire Thunder was suspended from office by the tribal council after arguing that an extremely strict South Dakota state law banning abortion procedures would not apply to the reservation. The council outlawed abortions and impeached Fire Thunder in late June. Alex White Plume was named President until elections in November, and then stood against John Yellow Bird Steele. Days before the elections, however, White Plume was taken off the ballot because of an old felony record. Steele won the vote but White Plume nullified it and called for new elections. He continued to occupy administrative office until the middle of December.⁶ Of note also was the defeat of Tex Hall, a prominent political figure and previous leader of the National Congress of American Indians, in the race for Tribal Chairman on the Fort Berthold Reservation in North Dakota.

Cherokee Freedmen

In March 2006, the Cherokee Nation's highest court ruled that the Cherokee Freedmen, descendants of African-American slaves of the Cherokee in Oklahoma, should retain citizenship rights and were entitled to voting rights. The 1975 Cherokee constitution has no "blood quantum" rule that would limit Cherokee tribal membership to those of "Indian blood". Instead, individuals need to show that their ancestors appeared on the so-called Dawes Rolls, census rolls from the 1890s. Freedmen were assigned citizenship of the Cherokee Nation after the Civil War, during which the United States passed legislation for the emancipation of all slaves. The dispute over the tribal membership of the Freedmen had been ongoing for at least twenty years. In response

to the court ruling, the Cherokee Nation council proposed a change in the constitution that would limit membership to those of Indian blood. The U.S. Department of the Interior has refused to recognize a new constitution approved in 2003 because Freedmen were prohibited from voting on it. The tribe has called for a referendum on the issue to take in place in March 2007.⁷

Besides raising questions over whether citizenship in Native societies should be defined culturally, historically or racially, this case marks a new test for tribal sovereignty when determining membership. Historically, U.S. courts have denied the government from interfering in tribal decisions over citizenship, even if those decisions went against the equal rights protection clauses of the U.S. Constitution (see *The Indigenous World* 2006). In this case, however, a federal judge ruled in December 2006 that the Freedmen could sue the Cherokee Nation's leadership over the proposed denial of citizenship. Judge Kennedy ruled that the Thirteenth Amendment of the U.S. Constitution, which abolished and prohibited slavery, applies to the Cherokee Nation as a private party although other parts of the constitution do not apply to tribal governments. Principal Chief Chad Smith, on the other hand, argued that the tribe did not need federal approval of its constitution. He sees the Freedmen as not belonging in an "Indian" nation.⁸ The question of who qualifies as "Indian", and whether that decision should be based on cultural or biological criteria, has been an ongoing issue in the United States, where society in general classifies people according to "race". While historically, most Indian nations saw citizenship as defined by culture, the biological perspective of "blood quantum" has become a hegemonic criterion for defining identity.

Spirit Cave Man

In a case related to the legal definition of indigenesness, in September 2006 a federal district court judge ordered the federal Bureau of Land Management (BLM) to reconsider its decision on the repatriation of human remains found in Nevada, the so-called Spirit Cave Man. The BLM refused to repatriate the 10,000-year-old remains to Nevada tribes under the Native American Graves Protection and Repatriation Act

(NAGPRA) because a cultural affiliation to existing tribes could not be shown. Judge Hicks called this decision “arbitrary and capricious”. The NAGPRA Review Committee also roundly criticized the BLM for the decision, having recommended repatriation of the remains in 2001.

The question of the cultural affiliation of remains to existing tribes was deemed fundamental in the more well-known Kennewick Man case (read more about this in *The Indigenous World 2006*). The definition of “Native American” in NAGPRA technically hinges upon such an affiliation. Although senators have repeatedly introduced amendments to NAGPRA that would extend the definition pertaining to historic and prehistoric groups, the Bush administration has opposed any such changes so far. The Interior Department testified in 2005 that, in their view, the intent of NAGPRA was “to give American Indians control over remains of their genetic and cultural forbears, not over the remains of people bearing no special and significant genetic or cultural relationship to some presently existing indigenous tribe, people, or culture”. By limiting the definition of “American Indian” to existing societies, the U.S. government has actually denied the fact that people in North America prior to 1492 are culturally related to contemporary groups, and has excluded pre-Columbian peoples from being indigenous. This could have disastrous consequences for NAGPRA, which applies in no small measure to archaeological findings on public lands in the United States.⁹

Poverty and Justice

According to new census figures, Native Americans continue to have the highest poverty rate of any ethnic group in the United States. While the average household income for an American family was US\$ 46,326 between 2004 and 2005, that for American Indian households was US\$ 33,627. African American households earned even less, on average US\$ 31,140. The United States has a poverty rate of 12.6 percent: this translates into 7.7 million families officially living in poverty. The American Indian population, however, has a poverty rate of 25.3 percent.¹⁰ These numbers are averages. Some Indian reservations have

made tremendous economic progress and, as a whole, the economy of Native Americans is looking up (see *The Indigenous World* 2006). However, some reservations have poverty rates of more than 50 percent, and unemployment rates of more than 80 percent. While some parts of the American Indian population have joined the mainstream, others remain in abject poverty. This raises the question as to whether a breakdown of economic figures by racial or ethnic category makes much sense.

Some of the poorest Indian reservations are in South Dakota, where a new report from the South Dakota Equal Justice Commission has found that there “is a strongly held perception among minority people in South Dakota, especially Native Americans, that the judicial system shows favoritism toward non-minorities”. In view of the over-representation of minorities in the criminal justice system, the report finds that the “perceptions we heard from many minority people have an undeniable basis in reality”.¹¹ This report thus confirms a 2001 report by the South Dakota Advisory Committee on Civil Rights.¹² What needs to be emphasized is that South Dakota does not stand alone on these issues; rather they can be seen as systemic.

Land and sovereignty

In a landmark agreement, the Hopi and Navajo tribes in Arizona settled a land dispute that had afflicted their peoples for forty years. In 1966, U.S. Commissioner of Indian Affairs Bennett restricted all construction on 700,000 acres of the Navajo Reservation, which the neighboring Hopi claimed for themselves. In the so-called Bennett Freeze Area, water lines, electrical lines and even repairs of homes could only be carried out with the approval of the Hopi government. In December 2006, the ban was lifted after both tribes settled the dispute. The settlement recognizes the cultural ties of both tribes to the land and allows both tribes to cross onto the other’s land to carry out religious ceremonies.¹³

An agreement that shared management of the National Bison Range in Montana between the U.S. Fish and Wildlife Service (FWS) and the Confederated Salish and Kootenai Tribes of the Flathead Res-

ervation was unexpectedly ended by FWS in December 2006. The bison range is situated within the Reservation, and the tribes had planned a staged takeover of the range. FWS and the tribes had agreed on a shared management plan in 2004, and management responsibilities began to be shared in 2006. A report by the FWS, however, found that the tribes had neglected certain responsibilities. While the tribes denied the findings, some federal employees of the bison range also complained that the tribes created a hostile work environment.¹⁴ This development comes as a sudden setback in a project that seemed destined to become a historic takeover of federal responsibilities by an Indian tribe. The shared management plan had been vehemently opposed by some interest groups ever since the idea was first circulated. That the government agreed to it marked a willingness to work with tribal natural resource agencies and pointed to an increase in ecological sovereignty. The tribes announced that they would continue to seek a role in the management of the bison range. What form this will take, and whether it will still be possible, remains to be seen.

In Washington State, the Lower Elwha Klallam tribe has settled a dispute with the state and the city of Port Angeles over land where the largest pre-conquest village in the state was excavated. The site of Tsewhit-zen was discovered in 2003 during construction work for a dry dock. In September 2006, the state agreed to transfer 17 acres and US\$ 5.5 million to the tribe, which will be used for the reburial of ancestors and site restoration. The tribe plans to build a museum on part of the land, and agreed to the development of the surrounding land for heavy maritime industrial use.¹⁵ The agreement is seen as potentially being a national model for the settlement of such disputes over archaeological sites.

Federal recognition

The Lumbee Tribe of North Carolina again saw their full recognition falter on the floor of Congress in 2006, despite the fact that the Senate Committee on Indian Affairs had submitted a favorable report on the Lumbee Recognition Bill. The Lumbee were recognized as an Indian tribe in 1956 but did not receive any benefits or privileges granted to

other tribes. They have been battling ever since to gain full recognition. The Recognition Bill would provide around US\$473 million over four years to the tribe, to be used for economic development, housing, education and health. Opposition to the Lumbee's full recognition has come from other tribes, among them the Eastern Band of Cherokee Indians.

In Oklahoma, the Delaware Tribe has been seeking to regain federal recognition. The tribe was removed from the list of federally recognized tribes in 2005 as a result of a lawsuit brought by the Cherokee Nation. The Delaware had signed an 1867 accord with the Cherokee relinquishing their tribal sovereignty but retaining their tribal institutions. In the twentieth century, the Cherokee included the Delaware as Cherokee citizens. The Delaware gained recognition in 1996, but the Cherokee appealed against that decision. After being de-recognized, some of the Delaware are now hoping to regain federal recognition under a deal with the Cherokee Nation: while the Delaware would gain federally recognized status, they would, however, lose their sovereignty to the Cherokee, especially in terms of lands and federal funding.

Native languages

One of the very positive developments for Native peoples in the United States in 2006 was the entry into force of the Esther Martinez Native Languages Preservation Act in December. The bill, named after a Tewa elder and recipient of a National Heritage Fellowship days before she was killed in a car accident, amends the 1974 Native American Programs Act. It allows the Secretary of Health and Human Services to make three-year grants for Native language nests, i.e., immersion preschools, and other language immersion programs.¹⁶ It is hoped that increased immersion programs from a very young age on will help more Native languages to survive. Current predictions estimate that only twenty Native languages, out of originally more than seven hundred, will survive to the year 2050. □

Notes and references

- 1 Indian Trust: Cobell v. Kempthorne, <http://www.indiantrust.com>
- 2 The government, acting as the guardian of Indian landowners, has since 1887 collected lease money for grazing and mineral exploitation but never paid the individual Indian account holders. Read more about the case in *The Indigenous World 2005, 2006*.
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